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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No.: 2015-0001291
Circuit Case No.: 2014-CP-18-01284

Toni Lynn Tillman,

Respondent,

v.

Timothy Troy Tillman and Crystal Tillman,

Defendants.

Of whom Timothy Troy Tillman is the Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
)
TONI LYNN TILLMAN)
)
PLAINTIFF)
)
v.)
)
)
TIMOTHY TROY TILLMAN and)
CRYSTAL TILLMAN)
)
DEFENDANTS)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-1801284

ORDER

2015 APR 29 PM 12:32
FILED
CLERK OF COURT
DORCHESTER COUNTY
SOUTH CAROLINA

This matter came before the Court on January 29, 2015 for a hearing on the Plaintiff's Motion to Dismiss the Third, Fourth, Fifth, and Sixth Causes of Action, which the Defendant Timothy Troy Tillman had asserted in his Counterclaim in this case. The Plaintiff, the Plaintiff's attorney, both of the Defendants, and the Defendants' attorney were present and participated in the hearing.

After reviewing the papers filed with the Court, hearing the arguments of counsel, and consulting relevant portions of the law, the Court enters the following findings of fact and conclusions of law.

PROCEDURAL HISTORY

1. This case concerns title to and ownership of a residence, which is located in Dorchester County and commonly known and numbered as 526 Butternut Road a/k/a 530 West Butternut, Summerville, SC 29483 (herein "the Butternut property").

2. The Plaintiff Ms. Toni Tillman initiated this case by filing the Summons and Complaint

with this Court on July 3, 2014.

3. On August 6, 2014, the Defendant Crystal Tillman filed an Answer and Counterclaim in this case.

4. On August 7, 2014, the Plaintiff filed a Motion for Default Judgment against the Defendant Troy Tillman.

5. On August 7, 2014, the Clerk of this Court entered a Certificate of Default against the Defendant Troy Tillman.

6. On August 14, 2014, the Plaintiff filed her Motion to Strike the Answer and Counterclaim of the Defendant Crystal Tillman.

7. On August 27, 2014, the Defendant Troy Tillman filed his Motion to Set Aside Clerk's Entry of Default. On September 5, 2014, the Defendant Crystal Tillman filed her Amended Answer and Counterclaim.

8. After conducting a hearing on August 29, 2014 on the pending motions, the Court ruled from the bench that the Defendant Crystal Tillman could file her Amended Answer and Counterclaim and that the Defendant Mr. Tillman could file a response to the Complaint.

9. On September 5, 2014, the Defendant Crystal Tillman filed her Amended Answer and Counterclaim.

10. On October 20, 2014, this Court entered its written Order to permit the Defendant Crystal Tillman to file her Amended Answer and Counterclaim.

11. On November 3, 2014, this Court entered its written Order to vacate the Default against Mr. Tillman.

12. On October 17, 2014, Mr. Tillman filed his Answer and Counterclaim.

13. On November 17 2014, the Plaintiff Toni Tillman filed her Motion to Dismiss Third,

Fourth, Fifth, and Sixth Causes of Action, which the Defendant Troy Tillman had asserted in his Counterclaim.

THE DEFENDANT'S CAUSES OF ACTION

14. In his Counterclaim, the Defendant Troy Tillman asserted six claims against the Plaintiff.

15. The Plaintiff did not address the First or Second Causes of Action that Mr. Tillman asserted in his Counterclaim. The focus of the Plaintiff's Motion and this Order is, therefore, exclusively on the Third, Fourth, Fifth, and Sixth Causes of Action of Mr. Tillman's Counterclaim.

16. Mr. Tillman's Third, Fourth, Fifth, and Sixth Causes of Action rest on two fundamental premises:

- a. an assertion that the Plaintiff acted improperly in 1991 regarding the death of their Mother and the administration of the estate of their Mother in the Charleston County Probate Court; and
- b. an assertion that the Plaintiff was obligated to convey to Mr. Tillman title to the Butternut property upon Mr. Tillman and his wife, Ms. Crystal Tillman, obtaining a new mortgage loan to replace and refinance the mortgage, which the Plaintiff had obtained to permit the Plaintiff to purchase the Butternut property.

17. It is undisputed that Mr. Tillman and his wife, Ms. Crystal Tillman, never obtained a new mortgage loan to replace and refinance the mortgage, which the Plaintiff had obtained to permit the Plaintiff to purchase the Butternut property.

18. Mr. Tillman asserted a claim for "fraud and misrepresentation" as his Third Cause of Action (¶¶ 203-217). He alleged there that:

- a. (¶¶ 204-205) the Mother (Ms. Mildred Tillman) of the Plaintiff and Mr. Tillman

- executed a will approximately 3 ½ months before her death on December 27, 1991 and that Ms. Mildred Tillman was incompetent at the time at which she executed the will;
- b. (¶ 206) the Plaintiff exercised undue influence over Ms. Mildred Tillman when she executed her 1991 will to exclude Mr. Tillman as a beneficiary of her estate;
 - c. (¶ 207) Mr. Tillman did not receive proper and contemporaneous service of documentation relative to the probate of his Mother's estate;
 - d. (¶ 208) the Plaintiff used fraudulent and dishonest means in failing to apprise the Charleston Probate Court of his address;
 - e. (¶ 209) as a consequence of the Plaintiff's allegedly fraudulent and dishonest conduct, the Plaintiff excluded Mr. Tillman and his brother from receiving title to residential real property in Charleston County that is located at 1342 New Castle, Charleston, South Carolina ("the Charleston property");
 - f. (¶ 210) for many years after the settlement of the estate of Ms. Mildred Tillman, the Plaintiff falsely represented to Mr. Tillman that he owned a one-fourth share in the Charleston property; and
 - g. (¶¶ 211-14) the Plaintiff's representations to Mr. Tillman were false, material, made with actual knowledge of the falsity of those representations or reckless disregard for the truth, and with the intent that Mr. Tillman rely on such representations; and
 - h. (¶¶ 215-17) Mr. Tillman was ignorant of the alleged falsity of the representations, reasonably relied on the representations, and suffered alleged damages as a consequence.

19. Mr. Tillman asserted a claim for “constructive trust” regarding the Charleston property as his Fourth Cause of Action (¶¶ 218-222). He alleged there that:

- a. (¶¶ 218-19) the Plaintiff made false and fraudulent misrepresentations to Mr. Tillman regarding his alleged ownership of a portion of the Charleston property;
- b. (¶ 220) the Plaintiff owed a fiduciary duty to Mr. Tillman to ensure that he received a one-fourth intestate share of the estate of Ms. Mildred Tillman and that the Plaintiff was in a confidential relationship with Ms. Mildred Tillman during a period when she was allegedly incompetent;
- c. (¶ 221) the Plaintiff allegedly acquired title to the Charleston property by means of fraud, bad faith, undue influence, abuse of confidence placed by Ms. Mildred Tillman, and violation of fiduciary duties at the expense of Mr. Tillman; and
- d. (¶ 222) a constructive trust should be imposed on the Plaintiff’s title to the Charleston property.

20. Mr. Tillman asserted a claim for “constructive trust” regarding the Butternut property as his Fifth Cause of Action (¶¶ 223-28). He alleged there that:

- a. (¶ 224) the Plaintiff made false and fraudulent representations that she would convey to him title to the Butternut property when he was “prepared to obtain a new mortgage loan and refinance” the existing loan, which was in the Plaintiff’s name;
- b. (¶ 225) the Defendant relied upon such alleged promise;
- c. (¶ 226) the Plaintiff owed Mr. Tillman a fiduciary duty to convey to him title to the Butternut property when he was “ready to refinance said property by obtaining” a new loan to satisfy the existing mortgage, which was in the

Plaintiff's name;

- d. (§ 227) the plaintiff had acquired title to the Butternut property by means of fraud, bad faith, abuse of confidence, and violation of fiduciary duties; and
- e. (§ 228) a constructive trust should be imposed on the Plaintiff's title to the Butternut property.

21. Mr. Tillman asserted a claim for "promissory estoppel" regarding the Butternut property as his Sixth Cause of Action (§§ 229-33). He alleged there that:

- a. (§ 230) the Plaintiff promised to convey to him title to the Butternut property when Mr. Tillman and his wife "informed plaintiff that they were ready to obtain a new mortgage loan . . . and refinance [the Butternut] property to satisfy the existing loan in the plaintiff's name on said property";
- b. (§ 231) Mr. Tillman reasonably relied upon such alleged promise to convey to him title to the Butternut property when "he and [his] wife were ready to obtain a new mortgage loan on said property";
- c. (§ 232-33) Mr. Tillman has allegedly suffered damages as a failure of the Plaintiff's failure to convey to him title to the Butternut property and equitable enforcement of the promise to convey title is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

22. This Court lacks subject matter jurisdiction to consider the defendant's Third and Fourth Causes of Action. South Carolina's law vests exclusive subject matter jurisdiction with the probate court over "all subject matter related to (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents"

S.C. Code Ann. § 62-1-302(a) (1).

23. Since it is undisputed that the Charleston County Probate Court previously entered certain orders regarding the enforceability of the Decedent's will and the beneficiaries of the estate of the Decedent, the Charleston County Probate Court had exclusive subject matter jurisdiction regarding the Decedent's estate and has continuing exclusive subject matter jurisdiction to consider the matters raised by the Defendant's Third and Fourth Causes of Action.

24. Venue is not proper for this Court to hear the Defendant's Third and Fourth Causes of Action.

25. Mr. Tillman has failed to plead fraud with particularity in his Third Cause of Action.

26. Rule 9(b) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

27. To satisfy the requirements of Rule 9(b), a party asserting a fraud claim must set out clearly the facts and circumstances which constitute the alleged fraud. *Bookhart et al. v. Central Electric Co-op., Inc.*, 222 S.C. 289, 72 S.E.2d 576 (1951). Cited with approval Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 463 S.E.2d 85, 320 S.C. 49 (S.C. 1994). The party must allege facts which would afford a basis upon which a jury could properly find support for each of the elements of a fraud claim. *Gordon v. Fidelity & Cas. Co. of NY*, 120 S.E.2d 509, 238 S.C.438, 444 (1961). If the party fails in the claim to allege facts to support any one of the elements of fraud, the claim is fatally defective and should be dismissed. *Able v. Equitable Life Assur. Society of United States*, 195 S.E. 652 (S.C.1938) and *Warr v. Carolina Power & Light Co.*, 115 S.E.2d 799, 802, 237 S.C. 121, 126-27 (1960).

28. The Court in *Kiriakides v. Atlas Food Systems & Serv.*, 527 S.E.2d 371, 338 S.C. 572, 586 (S.C. Ct. App. 2000) set forth the nine elements, which must be shown to establish a fraud

claim. Those elements are: “1) a representation or nondisclosure of a material fact, 2) its falsity, 3) its materiality, 4) either knowledge of its falsity or a reckless disregard of its truth or falsity, 5) intent that the representation be acted upon, 6) the hearer's ignorance of its falsity, 7) the hearer's reliance on its truth, 8) the hearer's right to rely thereon, and 9) the hearer's consequent and proximate injury. See *Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120 (1978); *Lawson v. Citizens and Southern National Bank of South Carolina*, 259 S.C. 477, 193 S.E.2d 124 (1972); *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601 (1967); *Hurst v. Sandy*, 329 S.C. 471, 482, 494 S.E.2d 847, 853 (Ct.App.1997). The ‘[f]ailure to prove any element of fraud is fatal to the action.’ *Sorin Equipment Co. v. The Firm*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct.App.1996) (citing *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984)).”

29. In his Third Cause of Action, the Defendant failed to state with particularity the following required elements of his fraud and misrepresentation claim:

- a. The Defendant does not allege a representation or a nondisclosure of a material fact by the Plaintiff to the Defendant – the Defendant admits that he was aware of his Mother’s death in 1991 and he fails to explain how the Plaintiff’s alleged exercise of undue influence on the decedent constituted a misrepresentation or nondisclosure to him. See Counterclaim of Timothy Troy Tillman, ¶¶ 204-06.
- b. The Defendant does not allege that such alleged representation or nondisclosure of a material fact was false – the Defendant alleges only that the Plaintiff misrepresented his mailing address to the Probate Court and, therefore, any such Cause of Action must necessarily be heard by the Probate Court.
- c. The Defendant does not allege that such misrepresentation or nondisclosure was material -- the Defendant does not explain why any representation or nondisclosure alleged in the

Third Cause of Action was allegedly “material.”

- d. The Defendant does not allege that the Plaintiff made such representation or nondisclosure with a reckless disregard of its truth or falsity – the Defendant does not address this matter in his Third Cause of Action.
 - e. The Defendant does not allege that the Plaintiff made such alleged representation or nondisclosure with the intent that the Defendant act upon it – the Defendant does not address this matter in his Third Cause of Action.
 - f. The Defendant does not allege that he was ignorant of the alleged misrepresentation or nondisclosure -- quite the contrary, the Defendant acknowledges in paragraph 204 his awareness of the death of his Mother in 1991, which gave him actual notice of his legal rights regarding her estate in 1991.
 - g. The Defendant does not allege in his Third Cause of Action that he relied on any representation or nondisclosure by the Plaintiff.
 - h. The Defendant does not allege in his Third Cause of Action that he had a right to rely on the alleged representation or nondisclosure by the Plaintiff. Like the plaintiff in *Reid v. George Washington Life Ins. Co.*, 109 S.E.2d 577, 578, 234 S.C. 599, the Defendant failed to take advantage of the opportunity and means that he had during had 23 years after the death of his Mother to inspect public records and discover the fraud that he alleges regarding ownership of the Charleston property and the will of the Decedent.
 - i. The Defendant did not allege in his Third Cause of Action the specific damages, which he allegedly suffered as a consequence of the matters alleged in that Cause of Action.
30. Many of the necessary elements of a fraud claim are not even mentioned within the Third Cause of Action. “Where the complaint omits allegations on any element of fraud, the trial court

should grant the defendant's motion to dismiss the claim." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

31. The Defendant has failed to plead fraud with particularity in his Fourth Cause of Action. The Fourth Cause of Action is devoid of any allegations regarding the necessary elements of a fraud claim.

32. The Defendant has failed to plead fraud with particularity in his Fifth Cause of Action.

33. The Defendant did not allege the following necessary elements of this fraud-based cause of action:

- a. The Defendant did not assert that the alleged false representations were material.
- b. The Defendant did not allege that the Plaintiff made such representation or nondisclosure with a reckless disregard of its truth or falsity.
- c. The Defendant did not allege that the Plaintiff made such alleged representation or nondisclosure with the intent that the Defendant act upon it.
- d. The Defendant did not allege that he was ignorant of the alleged misrepresentation or nondisclosure.
- e. The Defendant did not allege in his Fifth Cause of Action that he had a right to rely on the alleged representation or nondisclosure by the Plaintiff.

34. Significantly, the Defendant admits in his Fifth Cause of Action that the Plaintiff was not obligated under the Defendant's theory of the claim to convey title to the Butternut property until the "defendant was prepared to obtain a new mortgage loan and refinance said property to satisfy the existing loan in the plaintiff's name on said property." Counterclaim of Timothy Troy Tillman, ¶ 224.

35. The Defendant does not allege in the Fifth Cause of Action that the Defendant was ever

prepared or able to refinance the existing loan on the Butternut property.

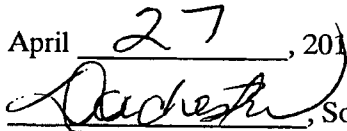
36. The Defendant failed to allege in his Sixth Cause of Action a necessary element of a claim for promissory estoppel. Specifically, the Defendant did not allege that Mr. Tillman and his wife had informed Plaintiff at any time that they were ready to obtain a new mortgage loan to refinance the Butternut property to satisfy the existing loan in the Plaintiff's name on the Butternut property. In the absence of such allegation, the Defendant has failed to allege performance of a condition precedent to the Plaintiff's alleged duty to convey the Butternut property to the Defendant and his wife

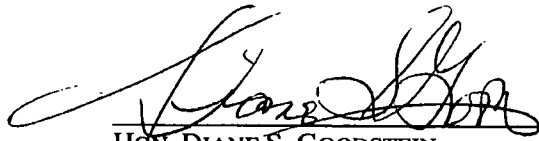
IT IS THEREFORE ORDERED AND ADJUDGED THAT:

- (a) The Plaintiff's Motion to Dismiss is granted.
- (b) The Third Cause of Action of the Defendant Timothy Troy Tillman is dismissed because this Court lacks subject matter jurisdiction to consider the claim, the Charleston County Probate Court has the exclusive subject matter jurisdiction to address all matters concerning the estate of the Defendant's Mother.
- (c) The Fourth Cause of Action of the Defendant Timothy Troy Tillman is dismissed because this Court lacks subject matter jurisdiction, the Charleston County Probate Court has the exclusive subject matter jurisdiction to address all matters concerning the estate of the Defendant's Mother and the Defendant has failed to plead fraud with sufficient particularity.
- (d) The Fifth Cause of Action of the Defendant Timothy Troy Tillman is dismissed because there was a failure of a condition precedent (i.e., the Defendant being prepared to refinance the existing mortgage) and the Defendant has failed to plead fraud with sufficient particularity.

- (e) The Sixth Cause of Action of the Defendant Timothy Troy Tillman is dismissed because Defendant has failed to allege a necessary condition precedent to his promissory estoppel claim (i.e., the Defendant being prepared to refinance the existing mortgage).
- (f) The request of the Defendant Timothy Troy Tillman to file an amended counterclaim is denied. This Court previously vacated a default against Mr. Tillman and allowed him to answer the complaint at which time he asserted his counter claims. His pleading with regards to his counterclaims were deficient (including the failure to plead fraud with particularity), and to allow him to amend his pleadings at this late date would prejudice the Plaintiff in that matter.

IT IS SO ORDERED!

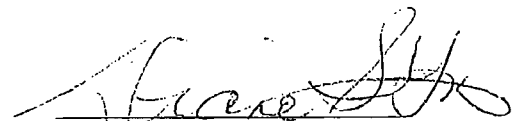
April 27, 2015.

_____, South Carolina

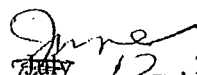

HON. DIANE S. GOODSTEIN
Judge for the First Judicial District

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO. 2014-CP-1801284
	)	
TONI LYNN TILLMAN	)	
	)	
PLAINTIFF	)	
	)	
v.	)	ORDER
	)	
	)	
TIMOTHY TROY TILLMAN and	)	
CRYSTAL TILLMAN	)	
	)	
DEFENDANTS	)	
	)	

This matter came before this Court by way of Defendant's Motion for Reconsideration. Because the Defendant's Motion does not raise any new issues for the Court's consideration, the Defendant's Motion for Reconsideration is denied. The Court takes this opportunity to clarify its order dismissing the defendants' counterclaims. The oral motion to amend counterclaims was denied but the defendants may make a formal motion to amend their counterclaims. It would have been patently unfair to the plaintiff to allow the amendment of said counterclaims without giving the plaintiff the opportunity to see the amended counterclaims and be heard on the motion.

AND IT IS SO ORDERED.


Diane S. Goodstein, Judge
First Judicial Circuit


June 12, 2015
Dorchester South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

TONI LYNN TILLMAN)

PLAINTIFF)

v.)

TIMOTHY TROY TILLMAN and)
CRYSTAL TILLMAN)

DEFENDANTS)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP- 18-1284

Charles Tillman
CLERK OF COURT
DORCHESTER COUNTY
2014 JUL -3 PM 12:29
CERTIFIED COPY

COMPLAINT

The Plaintiff Toni Lynn Tillman (identified individually herein as “the Plaintiff”) by and through her undersigned attorney states, alleges, and asserts as her Complaint in this action as follows:

THE PARTIES

1. The Plaintiff Toni Lynn Tillman is a citizen and resident of Charleston County, South Carolina.
2. The Defendant Timothy Troy Tillman is a citizen and resident of Dorchester County, South Carolina. He is also the brother of the Plaintiff and the husband of the Co-Defendant Crystal Tillman.
3. The Defendant Crystal Tillman is a citizen and resident of Dorchester County, South Carolina.
4. All necessary parties have been joined in this action.

JURISDICTION AND VENUE

5. This case concerns claims that involve application of certain principles of the South

Carolina common law and various South Carolina statutes, including (but not limited to) S.C. Code §§ 15-53-20 and -30, § 15-61-10, §§ 27-39-210, -220, -240, and -270, and §§ 27-40-710, -750, -770, and -790. This Court also has subject matter jurisdiction for the claims asserted herein under the provisions of S.C. Code §§ 27-39-40 and 29-5-120 and Rule 57 of the South Carolina Rules of Civil Procedure.

6. This case concerns certain real estate and improvements, which are located in Dorchester County, South Carolina and which are legally described as: Lot 3, Maplevue Place as shown on that certain plat entitled LOTS 1, 2, 3, 4, & 15, MAPLEVIEW PLACE, DEVELOPED BY PERCY D. KNIGHT JR. DORCHESTER, S.C. and recorded in Plat Book D at Page 391 in the RMC Office for Dorchester County, South Carolina a/k/a 526 Butternut Road a/k/a 530 West Butternut, Summerville, SC 29483 (herein “the subject property”).

7. This is an action in which the Plaintiff seeks – among several claims – to eject and evict the Defendants from the subject property.

8. This is an action in which the Plaintiff seeks in part a determination of the respective rights (if any) of the parties in the subject property, quiet title, partition by sale of the subject property, and an award of economic damages, attorney’s fees and costs.

PRIOR MAGISTRATE COURT PROCEEDINGS

9. In the Dorchester Magistrate’s Court in Civil Case No. 2013CV1810302932 (herein “the prior case”), the Plaintiff in this action filed suit in 2013 against the Defendants in this action.

10. There were no other parties in the prior case.

11. The Plaintiff sought in the prior case to have the Defendants evicted from the subject property.

12. Magistrate P. Brandt Shelbourne entered a written decision in the prior case on June 28, 2013. A true and correct copy of his decision is attached as Exhibit 1 and incorporated herein by

this reference.

13. Magistrate Shelbourne entered certain findings of fact and conclusions of law as part of his written decision in the prior case.

14. In the prior case, Magistrate Shelbourne “dismissed without prejudice” the Plaintiff’s application for ejectment of the Defendants from the subject property.

15. Magistrate Shelbourne found that he lacked jurisdiction to evict or eject the Defendants from the subject property.

16. Further, Magistrate Shelbourne made the following findings, which are binding on the parties in this action under the doctrine of res judicata:

- a. The Plaintiff purchased the subject property on January 21, 2011 for \$216,051.05.
- b. The parties entered into an oral agreement by which the Defendants were to pay the amount of the mortgages and taxes and insurance for the subject property until the Defendants could obtain a loan to pay off the balance.
- c. At some point, the Defendants stopped paying the mortgages, taxes, and insurance, which has forced the Plaintiff to utilize her own funds to pay for the outstanding payments for the mortgages, taxes, and insurance.
- d. The Defendants have an equitable interest in the subject property.
- e. Based on the finding of an equitable interest in the property, the Magistrate Court could not evict or eject Defendants from the subject property because it lacked jurisdiction to do so.
- f. The Magistrate dismissed without prejudice the Plaintiff’s application for ejectment.

17. None of the parties appealed or otherwise sought review of the Magistrate’s June 28, 2013 written decision.

18. The Plaintiff is the sole legal owner of record of the subject property.

19. The Plaintiff obtained legal title to the subject property by means of a deed, which has been recorded in the Dorchester County records.

20. Neither of the Defendants owns any legal interest in the subject property.

21. The subject property is encumbered by two mortgages, which identify the Plaintiff as the owner of the subject property and the sole obligor for the respective mortgage debts.

FIRST CLAIM FOR RELIEF
(APPLICATION FOR EJECTMENT AND POSSESSION)

22. The Plaintiff incorporates herein the allegations of paragraphs 1 through 21 of this Complaint.

23. This claim is brought pursuant to the provisions of S.C. Code §§ 27-40-710, -750, -770, and -790.

24. From January 21, 2011 through the current date, the Defendants have had sole and exclusive use of the subject property as tenants.

25. As the Magistrate found in the prior case, the Defendants agreed orally with the Plaintiff on or before January 21, 2011 that they would pay to the mortgage company as rent each month an amount equal to the total cost owed each month for the two mortgages, property taxes, and insurance for the subject property.

26. As the Magistrate found in the prior case, the Defendants failed to pay rent – prior to June 28, 2013 – for their use of the subject property.

27. Subsequent to June 28, 2013, the Defendants have paid no rent for their use of the subject property.

28. The Defendants currently owe the Plaintiff rent of not less than \$85,214.32, plus interest to the extent permitted by law.

29. On information and belief, the Defendants will not subsequently pay anything for the

mortgages, property taxes, and insurance for the subject property.

30. By failing to pay monthly as rent the cost of the mortgages, taxes, and insurance for the subject property, the Defendants have breached a material term of their oral lease with the Plaintiff for their use and occupancy of the subject property.

31. Prior to the commencement of this action, the Plaintiff caused a written Notice of Intent to Terminate Lease to be hand delivered to the Defendants. A true and correct copy of that Notice is attached and incorporated herein as Exhibit 2.

32. More than five days have passed since the Plaintiff posted the Notice of Intent to Terminate at the subject property.

33. The Defendants have not paid the Plaintiff or the mortgage company the delinquent amount of rent, which they owe for the mortgages, taxes, and insurance.

34. As a consequence of the Defendants' failure to pay the rent, the Plaintiff has terminated the oral lease with the Defendants for the subject property.

35. The Defendants have forfeited their right to continue to reside at and use the subject property.

36. The Plaintiff has suffered substantial economic damages as a direct consequence of the Defendants' failure to pay as rent the monthly amount owed for the mortgages, property taxes, and insurance.

37. The Plaintiff's damages will continue to accrue through the date on which the Defendants ultimately vacate the subject property.

38. The Plaintiff is entitled to an award of her damages (including three months of rent or twice her actual damages – whichever is greater), attorney's fees, and costs under S.C. Code §§ 27-40-750 and -770(c).

39. The Plaintiff is entitled to issuance of an order evicting the Defendants from the subject

property and restoring possession of the property to the Plaintiff, while the Court considers separately the Plaintiff's other claims and requests for an award of damages, attorney's fees, and costs.

40. Pursuant to S.C. Code §§ 27-40-790(b), the Court should require the Defendants, as tenants, to pay the full amount of rent now overdue (i.e., \$85,214.32, plus interest and costs), if either of the Defendants raises a defense or counterclaim in response to the Plaintiff's claim for possession of the subject property.

SECOND CLAIM FOR RELIEF
(COLLECTION OF RENT BY PREDISTRESS)

41. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 40 of this Complaint.

42. This claim is brought pursuant to the provisions of S.C. Code § 27-39-210 for collection of rent by predistress.

43. The Plaintiff is entitled to the issuance of a predistress warrant jointly and severally against the property of the Defendants, pursuant to the provisions of S.C. Code §§ 27-39-220.

44. The Plaintiff is entitled to execution of such predistress warrant against the property of the Defendants on the subject property, pursuant to the provisions of S.C. Code § 27-39-240.

45. The Plaintiff is entitled to execution of such predistress warrant against the property of the Defendants that may be removed from the subject property, pursuant to the provisions of S.C. Code § 27-39-270.

THIRD CLAIM FOR RELIEF
(LANDLORD TENANT STATUTORY BREACH OF CONTRACT)

46. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 45 of this Complaint.

47. This claim is brought in part pursuant to the provisions of S.C. Code § 27-39-40 for the

collection unpaid rent.

48. Each of the Defendants has breached material terms and conditions of the alleged oral contract between the Plaintiff and the Defendants.

49. The Plaintiff has suffered significant economic damages as a direct consequence of the Defendants' breach of the material terms and conditions of the alleged oral contract.

50. The Plaintiff is entitled to an award of her damages jointly and severally against each of the Defendants.

51. By failing to pay the amount they owed monthly for the mortgages, taxes, and insurance, the Defendants breached the terms of the alleged oral contract and have forfeited their right to continue to reside in the subject property.

52. This Court should order them to immediately vacate the subject property.

FOURTH CLAIM FOR RELIEF
(COMMON LAW BREACH OF CONTRACT)

53. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 52 of this Complaint.

54. This claim is brought in part pursuant to the provisions of the South Carolina common law for breach of contract.

55. Each of the Defendants has breached material terms and conditions of the alleged oral contract between the Plaintiff and the Defendants.

56. The Plaintiff has suffered significant economic damages as a direct consequence of the Defendants' breach of the material terms and conditions of the alleged oral contract.

57. The Plaintiff is entitled to an award of her damages jointly and severally against each of the Defendants.

FIFTH CLAIM FOR RELIEF
(RESCISSION)

58. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 57 of this Complaint.

59. This claim is brought in part pursuant to the provisions of the South Carolina common law.

60. The Defendants' claim to an equitable interest in the property was conditioned upon their promise to pay the mortgages, property taxes, and insurance for the subject property.

61. The Defendants have failed to timely pay the mortgages, property taxes, and insurance for the subject property.

62. The failure of the Defendants to pay the mortgages, property taxes, and insurance constitutes a total failure of consideration by each of the Defendants.

63. Each of the Defendants has forfeited her/his right to claim an equitable interest in the subject property as a consequence of such failure of consideration.

64. The Court should rescind the oral contract between the parties and set aside the alleged oral conveyance of an equitable interest in the subject property to the Defendants and place the parties in the position in which they were in the absence of the oral agreement.

65. The Court should enter an order ruling that the Plaintiff is the sole owner of the subject property, free and clear of any claim, lien, option, interest, or right of any kind, which either of the Defendants may assert that they have in the subject property.

SIXTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT)

66. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 65 of this Complaint.

67. This claim is brought in part pursuant to the provisions of the South Carolina common law.

68. Each of the Defendants has been unjustly enriched by their exclusive use and occupancy of the subject property from January 21, 2011 through the date on which the Defendants vacate the

subject property.

69. The Plaintiff has been deprived of the fair market rent for the subject property during period of time from January 21, 2011 through the date on which the Defendants vacate the subject property.

70. The Plaintiff has been damaged by the Defendants' exclusive use and occupancy of the subject property from January 21, 2011 through the date on which the Defendants vacate the subject property.

SEVENTH CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

71. The Plaintiff incorporates herein the allegations of paragraphs 1 through 70 of this Complaint.

72. This claim for a declaratory judgment is brought pursuant to S.C. Code §§ 15-53-20 and 15-53-30.

73. The Plaintiff requests, pursuant to Rule 57 of the South Carolina Rules of Civil Procedure, that this Court order a speedy hearing on this claim and advance it on the Court's calendar.

74. A dispute has arisen between the Plaintiff and the Defendants regarding their respective rights and interests (if any) in the subject property.

75. A dispute has arisen between the Plaintiff and the Defendants regarding the alleged terms and conditions of an alleged oral agreement between the parties concerning the subject property and related matters.

76. The Defendants claim an equitable interest in the subject property.

77. The Plaintiff denies that either of the Defendants owns an equitable interest in the subject property.

78. To the limited extent to which an oral contract may exist between the Plaintiff and the

Defendants, the Defendants have breached material terms and conditions of that oral contract.

79. The Plaintiff has suffered damages as a consequence of the Defendants' material breach of the terms and conditions of the alleged oral contract between the Plaintiff and the Defendants.

80. The Plaintiff is entitled to a judgment declaring her to be the sole owner of the subject property free and clear from any claim, option, interest, right, or lien of any kind that either of the Defendants may assert that they have regarding the subject property.

81. The Plaintiff is entitled to a judgment declaring that the Defendants have forfeited – by their material breach of the alleged oral contract between the parties – any right, interest, claim, lien, or option, which they may have had to purchase the subject property and any right that they may have to any compensation for their role (if any) in negotiating the purchase price of the subject property and/or releasing any lien that they may have filed previously against the prior owner of the subject property.

82. The Plaintiff is entitled to a judgment declaring the respective rights of the parties under the alleged oral contract between the Plaintiff and the Defendants.

83. The Plaintiff is entitled to a judgment declaring the Defendants to be in material breach of the alleged oral contract between the Plaintiff and the Defendants.

84. The Plaintiff is entitled to a judgment declaring her rights under the alleged oral agreement between the parties and ordering each of the Defendants to pay her damages jointly and severally for such breach.

85. The Plaintiff is entitled to recover her costs for this claim under S.C. Code §§ 15-53-100.

EIGHTH CLAIM FOR RELIEF
(QUIET TITLE ACTION)

86. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 85 of this Complaint.

87. The Defendants have asserted that they own an equitable interest in the subject property.
88. The Plaintiff denies that the Defendants have an equitable interest in the subject property.
89. On July 5, 2013, the Defendants filed with the Dorchester County Clerk a Notice and Certificate of Mechanic's Lien in the amount of \$183,455.00 (herein "the Mechanic's Lien"). A true and correct copy of the Mechanic's Lien is attached and incorporated herein as Exhibit 3.
90. More than six months have passed subsequent to the date on which the Defendants filed their Mechanic's Lien.
91. Pursuant to S.C. Code § 29-5-120, the Mechanic's Lien has been dissolved by the passage of time and the failure of the Defendants to file a timely action concerning same.
92. The Defendants' Mechanic's Lien constitutes a frivolous lien within the meaning of S.C. Code § 29-5-15 because the Defendants failed to provide proof at the time of filing that one of the Defendants was licensed or registered.
93. The Court should fine each Defendant \$5,000.00 pursuant to the South Carolina mechanic's lien statute for filing a frivolous lien against the Plaintiff's property.
94. The Plaintiff is entitled under S.C. Code §§ 29-5-10 and -20 to recover her attorney's fees in pursuing this claim to defend against the Defendants' Mechanic's Lien.
95. The Plaintiff is entitled to an Order dissolving the Mechanic's Lien and releasing the subject property from any encumbrance or cloud upon title, which may otherwise arise from the prior recording of the Defendants' Mechanic's Lien.
96. The Plaintiff is further entitled to an Order quieting title to the subject property solely in the Plaintiff free and clear of any encumbrance, equitable claim, equitable lien, mechanic's lien, or other claim, lien, option, interest, or right of any kind, which either of the Defendants may assert that they have in the subject property.

NINTH CLAIM FOR RELIEF

(PARTITION BY SALE)

97. The Plaintiff incorporates herein the allegations of paragraphs 1 through 96 of this Complaint.

98. This claim is asserted pursuant to S.C. Code § 15-61-10 for partition by sale of the subject of property.

99. On information and belief, one or both of the Defendants may claim an ownership interest in the subject property as a joint tenant or tenant in common.

100. The Plaintiff vigorously disputes any assertion that one or both of the Defendants is/are a joint tenant or tenant in common with her in ownership of the subject property.

101. The subject property is zoned residential.

102. A large single-family residence is the only permanent structure on the subject property.

103. The subject property cannot be subdivided.

104. Needless expense would be incurred by issuance of a writ for partition in kind.

105. This Court should order sale of the property without writ upon testimony pursuant to S.C. Code § 15-61-100.

106. The Plaintiff requests that the Court conduct an accounting to determine the respective interests (if any) of each of the parties and divide the net proceeds from the sale of the property in accordance with such accounting and applicable provisions of South Carolina law.

107. The Court should authorize the Plaintiff to select a realtor with whom to list the subject property for sale, determine the terms and conditions for the property listing agreement, and make all decisions and take all actions, which may be necessary to list the subject property, change the offering price, accept/reject/counter any offer for purchase of the property, and take all actions necessary to close the sale of the subject property, as she may decide to be appropriate in the sole exercise of her reasonable discretion and without the necessity of prior consultation with or

restraint by either of the Defendants.

108. This Court should award the Plaintiff any costs that she may incur in making the property saleable, closing the sale of the property, or otherwise necessary to complete the transaction.

109. This Court should award the Plaintiff her reasonable and necessary attorney's fees and costs pursuant to S.C. Code § 15-61-110.

TENTH CLAIM FOR RELIEF
(SLANDER OF TITLE)

110. The Plaintiff incorporates herein by this reference the allegations of paragraph 1 through 109 of this Complaint.

111. Each of the Defendants knowingly published a false statement, which was derogatory to the Plaintiff's title to the subject property, with malice causing special damage to the Plaintiff as a result of diminished value in the eyes of third parties.

112. The Plaintiff is entitled to recover compensatory and punitive damages against each of the Defendants for their slander of her title to the subject property.

WHEREFORE, the Plaintiff respectfully requests that this Court grant her the following relief and enter judgment in her favor and jointly and severally against each of the Defendants as follows:

- a. On her first claim for eviction and possession, an order
 - i. issuing a written rule, pursuant to S.C. Code § 27-37-20, for the Defendants to vacate the subject property or show cause within 10 days why they should not be evicted,
 - ii. evicting the Defendants from the subject property and restoring the Plaintiff to possession of the subject property,
 - iii. issuing a warrant of ejectment pursuant to S.C. Code §§ 27-37-40 and -100;
 - iv. awarding the Plaintiff her actual damages under S.C. Code § 27-40-750

(including additional unpaid rent accruing after the filing of this Complaint as allowed by S.C. Code § 27-40-150),

- v. awarding the Plaintiff twice her actual damages under S.C. Code § 27-40-770(c) (including additional unpaid rent accruing after the filing of this Complaint as allowed by S.C. Code § 27-40-150),
 - vi. awarding the Plaintiff her prejudgment and post-judgment interest and attorney's fees (pursuant to S.C. Code §§ 27-40-750 and -770(c)), and
 - vii. awarding the Plaintiff her court costs, costs of collection, and such other relief as may be permitted by law;
- b. On her second claim for collection of rent by predistress, issuing an order
- i. for a predistress warrant pursuant to S.C. Code § 27-39-220,
 - ii. directing the officer to make demand for payment of the rent and costs pursuant to S.C. Code § 27-39-240,
 - iii. if the rent is not paid in response to such officer's demand for payment, directing the officer to distrain sufficient property of the Defendants to pay the rent and costs as provided by S.C. Code §§ 27-39-250 and -270, and
 - iv. granting such other relief as may be permitted by law;
- c. On her third claim for landlord-tenant statutory breach of contract, issuing a judgment in favor of the Plaintiff and against each of the Defendants for the Plaintiff's damages, costs, attorney's fees, and interest;
- d. On her fourth claim for common law breach of contract, issuing a judgment in favor of the Plaintiff and against each of the Defendants for the Plaintiff's damages, costs, attorney's fees, and interest;
- e. On her fifth claim for rescission, issuing an order to

- i. rescind the alleged oral contract between the parties,
 - ii. set aside the alleged oral conveyance of an equitable interest in the subject property to the Defendants,
 - iii. place the parties in the position in which they were in the absence of the oral agreement, and
 - iv. find that the Plaintiff is the sole owner of the subject property, free and clear of any claim, lien, option, interest, or right of any kind, which either of the Defendants may assert that they have in the subject property;
- f. On her sixth claim for unjust enrichment, entering a judgment in favor of the Plaintiff and against each of the Defendants in the amount by which the Defendants have been unjustly enriched by their exclusive use and occupancy of the subject property as squatters since January 11, 2011;
- g. On her seventh claim for a declaratory judgment, for entry of a judgment declaring that
 - i. the Defendants have forfeited – by their material breach of the alleged oral contract between the parties – any right, interest, claim, lien, or option of any kind, which they may have had to purchase the subject property and/or to any compensation for their role (if any) in negotiating the purchase price of the subject property and/or releasing any lien that they may have filed previously against the prior owner of the subject property,
 - ii. the Plaintiff is the sole owner of the subject property, free and clear of any any encumbrance, equitable claim, equitable lien, mechanic's lien, or other claim, lien, option, interest, or right of any kind, which either of the Defendants may assert that they have in the subject property, and

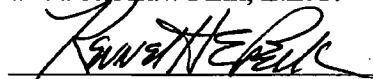
- iii. the Plaintiff has been damaged by the Defendants in the amount proven at trial, and
 - iv. awarding the Plaintiff attorney's fees, costs, interest, and such other relief as may be appropriate in these circumstances;
- h. On her eighth claim for quiet title, for entry of a judgment
- i. declaring that the Mechanic's lien has been dissolved,
 - ii. fining each of the Defendants \$5,000 for filing a frivolous lien,
 - iii. quieting title to the subject property solely in the Plaintiff free and clear of any encumbrance, equitable claim, equitable lien, mechanic's lien, or other claim, lien, option, interest, or right of any kind, which either of the Defendants may assert that they have in the subject property,
 - iv. awarding the Plaintiff her attorney's fees under S.C. Code §§ 29-5-10 and -20, and
 - v. awarding costs, interest, and such other relief as may be appropriate in these circumstances;
- i. On her ninth claim for partition by sale, a judgment that
- i. orders sale of the subject property without a writ for partition in kind,
 - ii. accounts for expenditures and determines the respective interests (if any) of each of the parties in the subject property,
 - iii. authorizes the Plaintiff to select a realtor with whom to list the subject property for sale, determine the terms and conditions for the property listing agreement, and make all decisions and take all actions, which may be necessary to list the subject property, change the offering price, accept/reject/counter any offer for purchase of the property, and take all

actions necessary to close the sale of the subject property, as she may decide to be appropriate in the sole exercise of her reasonable discretion and without the necessity of prior consultation with or restraint by either of the Defendants and

- iv. awarding attorney's fees, costs, interest, and such other relief as may be appropriate in these circumstances;
- j. On her tenth claim for slander of title, judgment in favor of the Plaintiff and jointly and severally against each of the Defendants for the Plaintiff's compensatory and punitive damages caused by their slander of her title to the subject property
- k. For all compensatory and punitive damages as may be permitted by statute, common law, and/or rule; and
- l. On each claim for her costs, reasonable attorney's fees, expert witness fees, and such other and further relief as this Court deems to be just and proper in these circumstances.

Dated: June 28, 2014.

Respectfully submitted,
The Peck Law Firm, L.L.C.



Kenneth E. Peck
2040 eWall Street
Suite G
Mount Pleasant, South Carolina 29464
Telephone: (843) 284-1016
kenpeck@thepeckfirm.com
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MAGISTRATE'S COURT
CIVIL CASE # 2013CV1810302932

2014 JUL -3 PM 12:30
CERTIFIED COPY
CLERK OF COURT
DORCHESTER COUNTY

TONI TILLMAN,

Plaintiff,

vs.

NOTICE OF DECISION

TIMOTHY TROY TILLMAN & CRYSTAL
TILLMAN,

Defendant

This matter was heard before the Honorable P. Brandt Shelbourne on the 17TH of June, 2013 upon Plaintiff's request to evict the Defendants from the property. Defendants are the brother and sister-in-law of the Plaintiff. All parties were present in the court room. Plaintiff was represented by Kenneth Peck, Esq. Defendants were pro se. After hearing testimony of both parties and counsel's arguments along with reviewing the evidence submitted, this court makes the following findings of fact and law.

Plaintiff purchased the house from Charles Slone and Mary Slone on January 21, 2011 for \$216,051.05. Immediately prior to purchase, Defendants had a judgment lien or mortgage against the Slone's for in excess of \$100,000.00. Per an agreement between Plaintiff and the Defendants, Defendants satisfied their lien/mortgage so that Plaintiff could purchase the house. The house was worth in excess of \$350,000.00.

Plaintiff testified that she was unaware of where or how the balance on the value of the house was determined or what the purchase price actually was prior to the closing. Defendants contended that they had an agreement with Plaintiff whereby they would mark their lien against the Slone's as satisfied and that Plaintiff would then purchase the house at the reduced price. Defendants had problems with obtaining credit for a purchase loan. Plaintiff admitted that when

PLAINTIFF'S EXHIBIT 1 TO COMPLAINT

002

she executed the purchase note and mortgage that she represented to the mortgage company that she was going to live in the property, however this court finds that she never intended to do so and was only signing the note and mortgage to assist Defendants with obtaining the home.

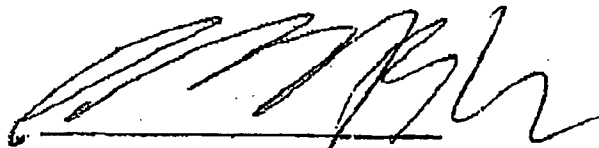
Per the agreement between Plaintiff and Defendants, Defendants were to pay the amount of the mortgage and taxes and insurance on the property until they could obtain a loan to pay off the balance. At some point Defendants stopped paying for the note which has forced Plaintiff to utilize her own funds to pay for the outstanding payments. Defendants testified that additional cash was obtained from a second mortgage to assist Defendants with payments when or if they ran into financial difficulty and that Plaintiff was not actually out any of her own funds. This court makes no finding on that.

While there is no written agreement between Plaintiff and Defendants, either as a lease or as a purchase agreement or as an agreement to memorialize the parties agreement to purchase the property and allow Defendants to buy it back, this court finds that Defendants action in satisfying their lien against the property to facilitate the sale from the Stone's to Plaintiff, is partial performance of the agreement and therefore the agreement is not subject to the statute of frauds.

Further, since Defendant did tender assets by way of the lien, Defendants have an equitable interest in the property. Based on that finding of an equitable interest in the property, this court cannot evict or eject Defendants from the property as it lacks jurisdiction to do so. Plaintiff must pursue this action, should she so desire, in a court of common pleas or a court of equity. Therefore, Plaintiff's action is dismissed without prejudice.

AND IT IS SO ORDERED!

Dated this 28 day of June, 2013.



P. Brandt Shelbourne, Magistrate

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)
2014 JUL -3 PM 12:31) CASE NO. 2014-CP-18-1284

TONI LYNN TILLMAN)

CLERK OF COURT
DORCHESTER COUNTY
PLAINTIFF)

v.)

APPLICATION FOR EJECTMENT

(EVICTION)

TIMOTHY TROY TILLMAN and)
CRYSTAL TILLMAN)

DEFENDANTS)

I, Tony Lynn Tillman, Plaintiff in this action, state that I am the landlord-lessor of premises within the jurisdiction of the Dorchester County Court of Common Pleas, which is described as:

Lot 3, Maplevue Place as shown on that certain plat entitled LOTS 1, 2, 3, 4, & 15, MAPLEVIEW PLACE, DEVELOPED BY PERCY D. KNIGHT JR. DORCHESTER, S.C. and recorded in Plat Book D at Page 391 in the RMC Office for Dorchester County, South Carolina a/k/a 526 Butternut Road a/k/a 530 West Butternut, Summerville, SC 29483.

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the Defendants Timothy Troy Tillman and Crystal Tillman, the tenant lessees, under the terms of an oral agreement.

Grounds for this ejectment are one or all of the following:

- ☒ The tenants fail and refuse to pay the rent when due or when demanded;
- ☒ The term of tenancy or occupancy has ended; and/or
- ☒ The terms of the tenancy have been violated as is stated in paragraphs 1-40 of the Complaint in this action.

Sworn to before me this 3 day of July, 2014)

Elizabeth G. Anderson)
Notary Public of South Carolina)

Toni Lynn Tillman)
PLAINTIFF)

My Commission expires: 4/4/23)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) CASE NO. 2014-CP-
)

TONI LYNN TILLMAN

)
)
) PLAINTIFF)
)

v.

) **WRIT OF EJECTMENT**
) (EVICTION)
)

TIMOTHY TROY TILLMAN and
CRYSTAL TILLMAN

)
)
) DEFENDANTS)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon the judgment of this court, rendered on _____ day of _____, 2_____,
you are hereby ordered to proceed to the premises located at _____,
_____, SC _____.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them that they have **twenty-four (24) hours to voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, **a deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway.** All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty-eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty-eight (48) hours.

Dated: _____

CIRCUIT COURT JUDGE

_____, being duly sworn state that:
☐ I personally served a copy of this Writ on _____, an occupant of the rental unit.

☐ On _____, 20_____, at _____, the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premises. On _____, 20_____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.

☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.

☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.

☐ Informed by Plaintiff that case is settled.

Dated: _____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

COUNTY OF DORCHESTER CERTIFIED COPY

2014 JUL -3 PM 12:31 CASE NO.: 2014-CP-18-1284

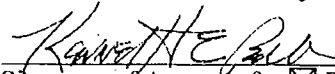
TONI LYNN TILLMAN

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Plaintiff,
CLERK OF COURT
DORCHESTER COUNTYTIMOTHY TROY TILLMAN and)
CRYSTAL TILLMAN

Defendant.)

Plaintiff's Attorney: Kenneth E. Peck, Bar No. 100523 Address: 2040eWall Street, Suite G, Mount Pleasant, South Carolina 29464 Phone: (843) 284-1016 Fax _____ E-mail: kenpeck@thepeckfirm.com Other: _____	Defendant's Attorney: _____ Bar No. _____ Address: _____ Phone: _____ 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: _____ Estimated Time Needed: _____ 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 July 3, 2014 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: \$ _____	

PLAINTIFF'S EXHIBIT 2 TO COMPLAINT

NOTICE OF INTENT TO TERMINATE
RENTAL AGREEMENT
FOR
NON-PAYMENT OF RENT
S.C. CODE SECTION 27-40-710(b)
S.C. CODE SECTION 27-37-10

CERTIFIED COPY
2014 JUL -3 PM 12:30
Cheryl Parker
CLERK OF COURT
DORCHESTER COUNTY

TO: Tenant, Timothy Troy Tillman and Crystal Tillman at 526 West Butternut Road, Summerville, South Carolina.

Your rental agreement provides for payment of your rent on the 1st day of each month. Your rent is delinquent unless paid within five days from the date due. It is now the 19th day of June, 2014, and your rent has not been paid. **You are currently delinquent in the payment of rent in the amount of \$79,038.12.**

The South Carolina Residential Landlord Tenant Act, S.C. Code Section 27-40-710(B) provides for termination of a tenant's rental agreement and eviction in court unless your rent is paid in full within five days from the delivery of this notice to you. Unless you comply with this Code section and your rental agreement by paying the delinquent amount of rent to me within such five-day period, it is my intent to terminate your rental agreement without further notice to you and require you to vacate your rental unit to avoid an eviction proceeding and action for possession being filed in court against you.

Date: June 19, 2014

Toni L. Tillman
Toni L. Tillman as Landlord

Notice delivered to tenant on June 19, 2014, at 1:00 p.m. o'clock by
Cheryl Parker (Cheryl Parker)

State of South Carolina
County of Dorchester

Toni Lynn Tillman

Plaintiff

IN THE COURT OF
Common Pleas

Case NO. 2014-CF-18-
1284

V

Timothy Troy Tillman and
Crystal Tillman

2014-06-05 PM 5:07

To answer Summons and Complaint. Application
for ejectment, and to Counter claim
against plaintiff. ~~Defendants~~ Defendants request
a jury trial and extension to
attempt to hire legal assistance to
assist in ~~Self representation~~ ^{representing} themselves.
~~We~~ We have very little financial resources and
are still attempting to obtain counsel or

~~Partial Contract~~

The plaintiff Tom Lym Tillman has ~~committed~~ ^{filed} False charges against defendants and has misrepresented herself as Land lord and defendants as renters. There has Never been any verbal or written agreement ~~stating~~ that proves there was any discussion of renting. The ~~to~~ We entered into a verbal agreement as Co-owners of the said property 526 W. Butterant. Ms. Tillman did not purchase the home as an Investment property nor has she ever had ^{home} insurance with the property being listed as a rental property. Ms. Tillman has

Never been given a set of keys to
~~the~~ property, not even at closing.

Ms. Tillman has never hired or
made repairs to property, ~~the~~

Ms. Tillman has not paid or had a

write land on property in her

name. Ms. Tillman ~~payed herself~~

~~on stand and has been ~~the~~~~

~~the law and continues to misrepresent~~

the ^{day} facts of this case and her verbal
agreement with the defendants. ~~It is in fact~~

~~and can be documents~~ Ms. Tillman is in fact
the party who ~~has~~ is in fault of Breach of

Contract and should not ~~be~~ be allowed to
continue to present false facts. It is a

fact Ms. Tillman breached the verbal
agreement with defendants when she never

As her attorney has yet to produce
any true documents to reflect

that ms. Sullivan ever loaned or
has any lenders agreement with

defendant. The fact a court has

already found that the defendant
in fact has an equitable investment
in the home. This is our home, that

we have worked on week by week,
paychecks by paycheck one sweat muscle
after another. We have way more
than just a financial, equitable
investment in this home. We
have an emotional family investment.

cl beg the Court to see the truth and
dismiss all Claims of Relief, Partition
By Sale, Application for ejectment and
any and all financial obligation to
Ms. Tillman from the defendants for
lack of evidence false information,
and instead find in favor that
Ms. Tillman hold ~~to~~ true to the
Original Verbal Agreement and put the
Tillmans on the deed of the property
to purchase home within one year of
the date and stops the legal procedure,
Immediately. The Tillmans (Defendants)

CounterClaim that Ms. Tillman ~~has~~ ^{CT}
~~has~~ ^{CT} remove loan from 526 West Butternut
and put back on family home in ~~CT~~ ^{CT} that

Enclosed please find document for 4041
extension Request

Sincerely,

Crystal Tillman

tctillman600@gmail.com

843.801.2487

VIA E-MAIL ONLY

Kenneth Peck, Esq.
The Peck Firm
2040 Ewall Street
Suite G
Mount Pleasant, SC 29464

Re: *Toni Lynn Tillman v. Timothy Troy Tillman and Crystal Tillman*
Civil Case No: 2014-CP-18-1284

Mr. Peck,

We understand we were served with the Summons and Complaint for the above action on July 7, 2014 after 5:00 p.m.. We respectfully request a 30-day extension in which to Answer, move or otherwise plead, as we are attempting to obtain counsel at this time.

If you are willing to grant this extension, please sign the acknowledgment below showing your consent and email it to me at kenneth@thepeckfirm.com. I appreciate your consideration in this matter.

Kindly,

Troy and Crystal Tillman
Defendants

The undersigned, as counsel for Plaintiff Toni Lynn Tillman, hereby grants a thirty (30) day extension to Defendants Troy and Crystal Tillman to answer or otherwise plead to the Summons and Complaint in the matter of Tillman v. Tillman, 2014-CP-18-1284. The extension is granted until_____.

Kenneth Peck, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO. 2014-CP-1801284
	)	
TONI LYNN TILLMAN	)	
	)	
PLAINTIFF	)	MOTION FOR DEFAULT JUDGMENT
	)	AGAINST TIMOTHY TROY TILLMAN
v.	)	REGARDING
	)	FIFTH, SEVENTH, AND EIGHTH
TIMOTHY TROY TILLMAN and	)	CLAIMS FOR RELIEF
CRYSTAL TILLMAN	)	
	)	
DEFENDANTS	)	
	)	

The Plaintiff Toni Lynn Tillman, by and through her undersigned counsel, moves this Court for: (a) the entry of a default against the Defendant Timothy Troy Tillman regarding the Plaintiff's Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Claims for Relief; (b) the entry of a default judgment against the Defendant Timothy Troy Tillman regarding the non-monetary relief sought by the Plaintiff in her prayer for relief concerning only her Fifth, Seventh, and Eighth Claims for Relief; and (c) such other relief as the Court deems appropriate and just in these circumstances.

The Plaintiff does not seek at this time a judgment for any purpose – non-monetary, economic, damages, attorney's fees, and/or costs – regarding her remaining claims (1-3, 4, 6, 9, and 10). The Plaintiff reserves her right to pursue judgment on her remaining claims and to pursue an award of economic damages, attorney's fees, costs, and other relief on all claims to the extent to which such relief is not specifically sought herein.

This Motion for Default Judgment is supported by the Plaintiff's Affidavit and the papers filed previously with this Court.

As grounds for granting the requested relief, the Plaintiff states as follows:

THE PARTIES

1. The Plaintiff Toni Lynn Tillman is a citizen and resident of Charleston County, South Carolina.
2. The Plaintiff initiated this action by filing her Complaint with this Court on July 3, 2014.
3. The Defendant Timothy Troy Tillman is a citizen and resident of Dorchester County, South Carolina.
4. The Defendant Timothy Troy Tillman is not a minor, an incapacitated person, an officer of the State of South Carolina, or in the military service.

PERSONAL JURISDICTION OVER THE DEFENDANTS

5. The Plaintiff properly caused a Summons and copy of the Complaint in this action to be served on the Defendant Timothy Troy Tillman on July 7, 2014, at his residence in Dorchester County, South Carolina.
6. On July 15, 2014, the Plaintiff filed with this Court the original copy of the Affidavit of Service on the Defendant Timothy Troy Tillman.
7. More than 30 days have passed since the Defendant Timothy Troy Tillman was served with the Summons and Complaint in this action.
8. The Plaintiff's counsel has made a diligent search of this Court's computerized record and examined the paper file in this case.
9. The computerized record and the paper file in this case do not contain any paper or other entry that the Defendant Timothy Troy Tillman has pled or otherwise defended against any of the Claims in this action.
10. On July 15, 2014, this Court entered an Order of Reference to the Master in Equity concerning the Plaintiff's First, Second, and Third Claims for Relief. Consequently, this Motion for Default Judgment addresses only the Plaintiff's other claims for relief, which remain before this

Court – i.e. the Plaintiff's Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Claims in this case.

11. The Plaintiff specifically requests that the Court enter against the Defendant Timothy Troy Tillman a default concerning the Plaintiff's Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Claims and a default judgment regarding only the Plaintiff's non-monetary prayer for relief, as stated in the Fifth, Seventh, and Eighth Claims for Relief in the Plaintiff's Complaint.

SUBJECT MATTER JURISDICTION AND VENUE

12. This case concerns claims that involve application of certain principles of the South Carolina common law and various South Carolina statutes, including (but not limited to) S.C. Code §§ 15-53-20 and -30, § 15-61-10, §§ 27-39-210, -220, -240, and -270, and §§ 27-40-710, -750, -770, and -790. This Court also has subject matter jurisdiction for the claims asserted herein under the provisions of S.C. Code §§ 27-39-40 and 29-5-120 and Rule 57 of the South Carolina Rules of Civil Procedure.

13. Venue is proper with this Court. This case concerns certain real estate and improvements, which are located in Dorchester County, South Carolina and which are legally described as: Lot 3, Maplevue Place as shown on that certain plat entitled LOTS 1, 2, 3, 4, & 15, MAPLEVIEW PLACE, DEVELOPED BY PERCY D. KNIGHT JR. DORCHESTER, S.C. and recorded in Plat Book D at Page 391 in the RMC Office for Dorchester County, South Carolina a/k/a 526 Butternut Road a/k/a 530 West Butternut, Summerville, SC 29483 (herein "the subject property").

14. This is an action in which the Plaintiff seeks in part a determination of the respective rights (if any) of the parties in the subject property and to quiet title to the subject property.

15. In the Complaint, the Plaintiff set forth a lengthy and detailed prayer for relief for her Fifth, Seventh, and Eighth Claims for Relief. Such lengthy prayer for relief was sufficient to provide the

Defendant Timothy Troy Tillman with adequate notice of the non-monetary relief that the Plaintiff sought with regard to the Fifth, Seventh, Eighth Claims for Relief.

16. As reflected in the Court's file for this case, the Defendant Timothy Troy Tillman has not pled or otherwise defended against any of the Claims in this action within the 30 days provided by law.

17. Since the Defendant Timothy Troy Tillman has not timely pled or otherwise defended against of the Claims in this action, this Court should enter a default against the Defendant Timothy Troy Tillman each of those Claims (Fourth through Tenth) that are before this Court, as contrasted with the First, Second, and Third Claims that are before the Master in Equity.

18. Since the Defendant Timothy Troy Tillman has not timely pled or otherwise defended against the Fifth, Seventh, and Eighth Claims in this action, this Court should enter a default judgment against the Defendant Timothy Troy Tillman for the non-monetary relief, which the Plaintiff requested in the prayer for relief in her Complaint concerning her Fifth, Seventh, and Eighth Claims for Relief.

19. The Plaintiff sets forth below and in the proposed Judgment (which is filed simultaneously herewith) the non-monetary relief that the Plaintiff requested in the prayer for relief in her Complaint concerning her Fifth, Seventh, and Eighth Claims for Relief.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment in the proposed form that is attached and specifically:

- a. Enter a Default against the Defendant Timothy Troy Tillman regarding the Plaintiff's Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Claims for Relief;
- b. On the Plaintiff's Fifth Claim for rescission, enter a default judgment in favor of the Plaintiff and against the Defendant Timothy Troy Tillman, as requested in the prayer for relief, to

- i. rescind the alleged oral contract between the parties,
 - ii. set aside the alleged oral conveyance of an equitable interest in the subject property to the Defendant Timothy Troy Tillman, and
 - iii. find that the Plaintiff is the owner of the subject property, free and clear of any claim, lien, option, interest, or right of any kind, which the Defendant Timothy Troy Tillman may assert that he may have in the subject property.
- c. On the Plaintiff's Seventh Claim for a declaratory judgment, enter a declaratory judgment that
 - i. the Defendant Timothy Troy Tillman forfeited – by his material breach of the alleged oral contract between the parties – any right, interest, claim, lien, or option of any kind, which he may have had to purchase the subject property and/or to any compensation for their role (if any) in negotiating the purchase price of the subject property and/or releasing any lien that he may have filed previously against the prior owner of the subject property, and
 - ii. the Plaintiff is the owner of the subject property, free and clear of any encumbrance, equitable claim, equitable lien, mechanic's lien, or other claim, lien, option, interest, or right of any kind, which the Defendant Timothy Troy Tillman may assert that he has in the subject property.
- d. On the Plaintiff's Eighth Claim for quiet title, enter a quiet title judgment
 - i. declaring that, to the extent that the Defendant Timothy Troy Tillman filed a mechanic's lien against the subject property, the mechanic's lien of the Defendant Timothy Troy Tillman has been dissolved, and
- e. quieting title to the subject property in the Plaintiff free and clear of any encumbrance, equitable claim, equitable lien, mechanic's lien, or other claim, lien,

option, interest, or right of any kind, which the Defendant Timothy Troy Tillman may assert that he has in the subject property.

- f. Permitting the Plaintiff to file subsequently a motion for judgment regarding any claim for relief or any request in any claim for an award of damages, attorney's fees, and/or costs, which is not specifically addressed in this Motion for Default Judgment or the Judgment that the Court enters; and
- g. Grant the Plaintiff such other and further relief as the Court deems appropriate and just in these circumstances.

Dated: August 7, 2014.

Respectfully submitted,
The Peck Law Firm, L.L.C.

Kenneth E. Peck
2040 eWall Street
Suite G
Mount Pleasant, South Carolina 29464
Telephone: (843) 284-1016
kenpeck@thepeckfirm.com
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No.: 2014-CV-08-01284
TONI LYNN TILLMAN	)	
	)	NOTICE OF MOTION AND
Plaintiff,	)	MOTION TO SET ASIDE
	)	CLERK'S ENTRY OF DEFAULT
v.	)	AND STAY PLAINTIFF'S MOTION
	)	<u>FOR DEFAULT</u>
TIMOTHY TROY TILLMAN and	)	
CRYSTAL TILLMAN,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that upon the Affidavit of Timothy Troy Tillman, sworn to August 27, 2014, defendant Timothy Troy Tillman will move this Court at such time as may be convenient to the Court for an Order, pursuant to Rule 55(c) of the Federal Rules of Civil Procedure, setting aside the Clerk's Certificate noting the default of defendant Timothy Troy Tillman for failure to move or plead against the Summons and Complaint. The grounds for this Motion are that defendant has shown "good cause," as required by Rule 55(c) in accordance of applicable law to be permitted to defend the plaintiff's claims on the merits in this action.

WHEREFORE, defendant Timothy Troy Tillman prays for an Order vacating the Clerk's Entry of Default against the defendant Timothy Troy Tillman and permitting the defendant to file an Answer to the plaintiff's Complaint.

Dated: August 27, 2014

WILLIAM B. JUNG, ESQ.
Attorney for the Defendants


William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

Proof of Service

I, William B. Jung, Esq., certify under penalty of perjury that on August 27, 2014, I caused a copy of the defendant's Notice of Motion and Motion to Set Aside Default, as well as, the affidavits of Crystal Tillman and Timothy Troy Tillman, sworn to August 27, 2014 to be emailed and mailed to plaintiff's counsel:

Kenneth Peck, Esq.
kenpeck@thepeckfirm.com

Kenneth Peck, Esq.
2040 eWall Street, Ste. G
Mount Pleasant, S.C. 29464

Dated: August 27, 2014



William B. Jung, Esq.
Attorney for the Defendants

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

)
)
)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No.: 2014-CV-08-01284

TONI LYNN TILLMAN

)
)
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)

Plaintiff,

v.

TIMOTHY TROY TILLMAN and
CRYSTAL TILLMAN,

Defendants.

**AFFIDAVIT IN SUPPORT OF
MOTION TO SET ASIDE
CLERK'S CERTIFICATE OF
DEFAULT OF TIMOTHY TROY
TILLMAN AND IN OPPOSITION TO
MOTION FOR DEFAULT JUDGMENT**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ss. :

TIMOTHY TROY TILLMAN, being duly sworn, deposes and says:

1. I am a co-defendant in the above-captioned action. I submit this Affidavit in support of my Motion to Set Aside the Clerk's Certificate of Default entered against me. I have personal knowledge of the following averments and if present before the Court, I would testify to the same.

2. I received personal service of one copy of the Summons and Complaint on July 7, 2014 from a process server. I did not receive any copy of the pleadings for my wife Crystal. Within a week of receiving service of process, I telephoned plaintiff's attorney, Kenneth Peck, Esq., and left a message on his voicemail asking for an extension of time to retain counsel to defend this action. I never received a response to my voicemail to Mr. Peck. In July, I called a number of attorneys. We were referred to a number of pro bono attorneys and also worked with the VA office in attempt to retain counsel. All of the private attorneys we spoke with requested retainers of \$5,000.00 to \$7,000.00, which we could not afford.

3. On August 5, 2014, which is within the 30 day time period required to answer a pleading, I emailed Mr. Peck, again requesting an extension of time to retain counsel. A copy of my email is attached as Exhibit "1." Again, Mr. Peck did not reply to my August 5, 2014 email requesting an extension.

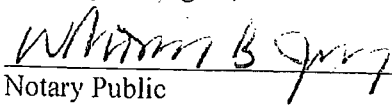
4. On August 6, 2014, my wife, Crystal, when to the Clerk's Office in St. George to file an Answer and a Motion for an Extension of time. A copy of the Answer and Motion for an Extension is attached as Exhibit "2." This pleading repeatedly states that my wife and I, as "defendants," dispute the allegations made against us in the Complaint. It clearly states that we have a counterclaim against the plaintiff.

5. I understand that plaintiff's counsel has obtained a Clerk's Certificate of Default. I believe this occurred because my wife did not also sign my name to the Answer and Motion for an extension which we timely filed on August 6, 2014. I was not aware that I had to sign the Answer and Motion. I believe that the plaintiff's attorney is well aware that both my wife and I seek to defend this action, and I believe that plaintiff's counsel is taking undue advantage of non-lawyer based on a technical default so as to preclude our opportunity to defend this case on the merits. I respectfully request that I be afforded the opportunity to defend this suit on the merits and that this Court grant this motion to set aside the Clerk's Certificate of Default.

THE AFFIANT FURTHER SAYETH NAUGHT.


TIMOTHY TROY TILLMAN

Sworn to before me this
27th Day of August, 2014.


Notary Public

My Commission Expires:

WILLIAM B. JUNG, ESQ.
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES OCTOBER 20, 2020 2

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

TONI LYNN TILLMAN

Plaintiff,

v.

TIMOTHY TROY TILLMAN and
CRYSTAL TILLMAN,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
) Case No.: 2014-CV-08-01284

) **SUPPLEMENTAL AFFIDAVIT**
) **OF TROY TILLMAN IN SUPPORT**
) **OF MOTION TO SET ASIDE**
) **CLERK'S CERTIFICATE OF**
) **DEFAULT**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) ss. :
)
)

TIMOTHY TROY TILLMAN, being duly sworn, deposes and says:

1. I am a co-defendant in the above-captioned action. I submit this Affidavit in further support of my Motion to Set Aside the Clerk's Certificate of Default entered against me. I have personal knowledge of the following averments and if present before the Court, I would testify to the same.

2. I have a meritorious defense to the claims which my sister, the plaintiff, has made against me in this action.

3. By way of background, my mother, Mildred Craven Tillman, died on December 27, 1991. Under the terms of her Last Will and Testament, executed August 19, 1991 four (4) months before her death, I was disinherited from any share of my mother's Estate in favor of my two sisters, the plaintiff Toni Lynn Tillman and Tamara Susan Tillman. At the time of my mother's death and long before she signed a Will in August of 1991, she was suffering from cancer and was on so much pain medication that she could not recognize or remember me as her

son when I visited her. I believe that my sisters exerted undue influence on my mother to favor themselves as sole beneficiaries of her estate to the exclusion of myself and my brother. I did not challenge my mother's Will in Probate Court because, until a year ago, I had never seen my mother's Will, and I never received service of the documents opening probate. At the time of my mother's death, I was 24 and serving in the military and stationed in Mississippi. My sisters, who were the co-personal representative of my mother's estate, listed their residence as my mailing address; hence, I never received the probate documentation. Until approximately 18 months ago, I understood and believed that I had a one-fourth share in my mother's residence. I raise these facts not to challenge the probate in this proceeding but to provide background for what transpired between us thereafter.

4. In 2008, my wife and I became aware of the property that is the subject of this litigation. At the time, the owners of this property had run short of funds to complete construction of a residence located on said property in Summerville, S.C. My wife and I entered into a contract with then owner, Charles and Mary Sloan, to purchase the home within a year. However, because the Sloans did not have sufficient funds to complete construction, they allowed my wife and I to complete the construction from our own funds. The Sloans gave us a mortgage against the property to protect our investment in the construction costs. After the construction was complete, we lacked the additional funds to meet the purchase price, and, as a consequence, we approached my sister about receiving funds out of my share of my mother's residence, which I understood to be my inheritance. My sister transferred \$55,000.00 to an account in her name, which she advised me would given to me at closing to assist in meeting the purchase the Sloan property. When it came to close on the Sloan property in 2011, our lender advised us that, because of our existing mortgage on the property, the title to the property and a

mortgage of approximately \$210,000.00 should be in my sister's name and that she would thereafter deed title to me. My sister agreed to do this, and we agreed to make the payments on said mortgage, as well as, to pay the county taxes and insurance. I received emails between my sister and her lawyers which lead me to believe that she had deeded the property to me as agreed. Copies of these emails are attached as Exhibit "1." At the time, I was advised that I would be able to refinance the existing \$210,000 mortgage loan in my sister's name after one year's time.

5. For at least fourteen (14) months after the closing with the Sloans, my wife and I paid the mortgage, the taxes and insurance on the property. When we ready to refinance, I discovered that the plaintiff had never signed a quit claim deed to me as we previously agreed and upon which my wife and I had relied. At this time, I also discovered that my sister was attempting to obtain a HELOC loan against the property. When my wife and I confronted my sister about this, she demanded that she be taken off the loan immediately, which I advised her was impossible without me having title to the property. No bank would lend funds to me if I was not in title. I advised her if she would only quit claim the property to my name as agreed, I would refinance the loan and she would no further obligation. In response, my sister refused to have further communication with me. I continued to attempt to have discussions with her to resolve the matter, but she responded by filing actions in landlord tenant court seeking to evict my family from our residence. My wife and I have an equitable interest in the real property that is the subject of this litigation. We have defenses to my sister's claims and counterclaims against my sister for her aforestated misconduct. I respectfully request the opportunity to defend this action by allowing me to file an Answer to the Complaint.

THE AFFIANT FURTHER SAYETH NAUGHT.

s/Timothy Troy Tillman
TIMOTHY TROY TILLMAN

Sworn to before me this
8th Day of October, 2014.

s/William D. Teng
Notary Public
My Commission Expires:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO. 2014-CP-1801284
	)	
TONI LYNN TILLMAN	)	
	)	
PLAINTIFF	)	
	)	
v.	)	MOTION TO STRIKE OR FOR
	)	MORE DEFINITE STATEMENT OF
	)	AUGUST 6, 2014 FILING OF THE
TIMOTHY TROY TILLMAN and	)	DEFENDANT CRYSTAL TILLMAN
CRYSTAL TILLMAN	)	
	)	
DEFENDANTS	)	
	)	

The Plaintiff Toni Lynn Tillman, by and through her undersigned counsel, moves this Court for an Order under Rule 12 to strike or require a more definite statement of the immaterial, impertinent, improper, irrelevant, and slanderous filing, which the Defendant Crystal Tillman filed with this Court on August 6, 2014. The Plaintiff files this Motion pursuant to the provision of Rules 7, 8, 9, 10, 11, and 12 of the South Carolina Rules of Civil Procedure. As grounds for striking the August 6 filing of the Defendant Crystal Tillman and/or making a more particular statement, the Plaintiff states:

1. The Defendant Crystal Tillman is a pro se litigant and, therefore, the requirement of Rule 11 for consultation with opposing counsel prior to the filing of a motion does not apply to this motion.
2. The South Carolina Rules of Civil Procedure set forth certain procedural requirements regarding the form, substance, and content of papers that are filed with this Court. The filing provisions of the Rules apply equally to a pro se party or an attorney, who files

papers with this Court on behalf of a client.

3. The August 6 filing of the Defendant Crystal Tillman should be stricken because that filing violates – at a minimum – the following requirements of Rules 7 and 10:
 - a. The August 6 filing does not contain a designation as required by Rules 7(a) and 10(a).
 - b. In violation of Rule 10(b), the August 6 filing does not contain separately numbered-paragraphs, separate statements of limited sets of circumstances and/or denials, separately stated and numbered defenses, and mixes multiple pleading concepts and principles in an internally inconsistent, unintelligible, pointless, rambling rant that is not consistent with or permitted by the pleading requirements of the Rules.
 - c. In violation of Rule 10(c), the August 6 filing includes other documents without explanation of why they were filed and without a statement incorporating them into or relating them to the August 6 filing.
 - d. In violation of Rule 10(d), the August 6 filing is not plainly written (strikeovers, poor handwriting, misspellings, and errata make much of the filing illegible and impossible to understand), lacks adequate spacing between lines, and does not have the proper blank margin on the left.
4. To the extent to which the Defendant Crystal Tillman may have intended to assert one or more claims in the August 6 filing, the Defendant has violated the requirement of Rule 8(a) that she provide: (a) a short and plain statement of the grounds, including the facts and statutes upon which the court's jurisdiction depends; (b) provide a short and plain statement of the facts showing the pleader is entitled to relief; and (c) a prayer or

demand for judgment.

5. To the extent to which the Defendant Crystal Tillman may have intended in the August 6 filing to defend against one or more of the Plaintiff's claims, the Defendant has violated the requirement of Rule 8(b) that she provide: (a) a short and plain statement of the facts constituting her defenses to each cause of action; and (b) an admission or denial of the averments upon which she relies.
6. To the extent to which the Defendant Crystal Tillman may have intended in the August 6 filing to assert one or more affirmative defenses to one or more of the Plaintiff's claims, the Defendant has violated the requirement of Rule 8(c) that she set forth such defenses.
7. The Defendant Crystal Tillman violated the requirement of Rule 8(e) that each averment of a pleading shall be simple, concise, and direct. To the extent to which the Defendant has asserted legal conclusions in her August 6 filing, she has failed to satisfy this pleading requirement.
8. Since South Carolina requires detailed Code Pleading, the August 6 filing fails to satisfy those pleading requirements and the Court should strike or require a more definite statement of the August 6 filing under Rule 12.
9. In the alternative, to the extent to which the Court may find that the Defendant Crystal Tillman intended in the August 6 filing to file an Answer to one or more of the Plaintiff's claims, she has failed under Rule 8(d) to properly deny the averments contained in the Complaint and the Court should rule that the Defendant Crystal Tillman has admitted all of the factual allegations of the Complaint.
10. The Defendant Crystal Tillman referenced directly and indirectly the concept/principle

of fraud at various points in her August 6 filing. To the extent to which the Defendant may have been attempting to assert a claim or defense of fraud against the Plaintiff in such statements, she has failed to satisfy the requirement of Rule 9(b) to plead fraud with particularity.

11. The Defendant Crystal Tillman also violated throughout her August 6 filing the requirement of Rule 9(c) that denial of a performance or occurrence shall be made specifically and with particularity.

12. The August 6 filing also violates in two respects the requirement of Rule 11(a) that papers should not be filed with the Court for the purposes of delay.

a. The Defendant has attempted to delay this case by referencing a closed Charleston probate case concerning a person that died in 1991. The Defendant was not an heir of the decedent or a blood relative in that case and has no legal standing under any conceivable legal theory to attempt to interject into this case a probate case that was closed 22 years ago in the Ninth Circuit Court.

b. By her rambling narrative and series of personal attacks, the Defendant Crystal Tillman has transparently attempted to file something with the Court that will delay these proceedings and prevent this Court from entering a judgment against her, quieting title in the Plaintiff, and ejecting the Defendant from the residence where she has been illegally squatting for several years.

13. To the extent to which the Defendant Crystal Tillman has requested a "change of venue" in her August 6 filing, she has failed to comply with the requirements of Rule 12 for requesting a change of venue and such request should be stricken.

14. Since the August 6 filing of the Defendant Crystal Tillman did not conform to the

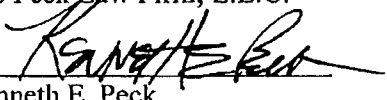
requirements of Rules 7, 8, 9, 10, 11, and 12 for the form in which papers must appear and lacks the necessary content, this Court should strike and/or require a more definite statement of the August 6 filing of the Defendant Crystal Tillman under the provisions of Rules 11(a) and 12.

15. The Court should award the Plaintiff reasonable attorney's fees and costs under Rule 11(a) for the cost of filing this Motion because the Defendant Crystal Tillman lacked at the time of composition a good ground to file it and the document was filed for the purpose of delay.

WHEREFORE, the Plaintiff respectfully requests that this Court enter an Order to strike and/or require a more definite statement of the August 6, 2014 filing of the Defendant Crystal Tillman and award the Plaintiff her reasonable attorney's fees under Rule 11. In the alternative, if the Court deems the August 6 filing to constitute an Answer to the Plaintiff's Complaint, the Plaintiff requests that this Court enter an Order that the Defendant is deemed to have admitted each factual averment contained in the Complaint. Likewise, to the extent to which the Defendant has attempted to make a request for change of venue, the Court should strike that request for failure to comply with the requirements of Rule 12. Further, the Plaintiff requests that this Court grant the Plaintiff such other and further relief as this Court deems to be appropriate and necessary in these circumstances.

Dated: August 10, 2014.

Respectfully submitted,
The Peck Law Firm, L.L.C.


Kenneth E. Peck
2040 eWall Street
Suite G
Mount Pleasant, South Carolina 29464
Telephone: (843) 284-1016
kenpeck@thepeckfirm.com
Attorney for the Plaintiff

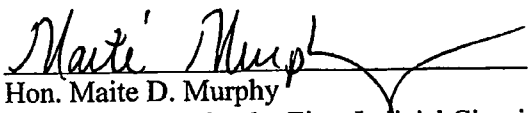
Motion for entry of a Default Judgment against defendant Timothy Troy Tillman is CONTINUED.

In accordance with Rule 15(a) of the South Carolina Rules of Civil Procedure, defendant Crystal Tillman is entitled to amend her pleading "once as a matter of course ... at any time before or within 30 days after it is served." *Id.* Accordingly, defendant Crystal Tillman is entitled to amend her Answer by September 5, 2014, which is within 30 days of the August 6, 2014 original filing date of her Answer. Counsel for defendant Crystal Tillman has represented that he will file an Amended Answer for Crystal Tillman in a timely manner and is granted leave to make such a filing. Accordingly, plaintiff's Motion to Strike defendant Crystal Tillman's August 6, 2014 Answer is premature and therefore DENIED.

Counsel for the defendants appeared on August 27, 2014 and, at such time, filed a Motion to set aside the entry of clerk's certificate of default against defendant Timothy Troy Tillman. This Court finds that defendant's Motion to set aside the default of defendant Timothy Troy Tillman should be properly heard in advance of plaintiff's Motion for Default Judgment against defendant Timothy Troy Tillman. Accordingly, plaintiff's Motion for entry of a Default Judgment against defendant Timothy Troy Tillman is hereby CONTINUED.

AND IT IS SO ORDERED:

Dated: September 29, 2014


Hon. Maite D. Murphy
Presiding Judge for the First Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No.: 2014-CV-18-01284
TONI LYNN TILLMAN,	)	
	)	ORDER GRANTING MOTION TO
Plaintiff,	)	SET ASIDE CLERK'S ENTRY OF
	)	DEFAULT AGAINST TIMOTHY
v.	)	<u>TROY TILLMAN</u>
	)	
TIMOTHY TROY TILLMAN and	)	
CRYSTAL TILLMAN,	)	
	)	
Defendants.	)	

A hearing on co-defendant Timothy Troy Tillman's ('Troy Tillman' or Defendant) motion to set aside a clerk's entry of default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure came before this Court on October 9, 2014. Defendant Troy Tillman appeared and was represented by his attorney, William B. Jung, Esq. of Mount Pleasant, S.C. Plaintiff appeared and was represented by her attorney, Kenneth Peck, Esq. of Mount Pleasant, S.C. For the reasons set forth therein, defendant's Motion is **GRANTED.**

Findings of Fact and Conclusions of Law

Plaintiff Toni Lynn Tillman (plaintiff) filed this action on July 3, 2014 against her brother and sister-in-law, co-defendants Troy and Crystal Tillman, seeking ejectment, payment of rent by predistress and other relief related to determining the title to a property located in Dorchester County in which all parties claim an interest. On July 7, 2014, Troy Tillman received service of process. Shortly after receiving service of process, Troy Tillman, according to his affidavit testimony, contacted plaintiff's counsel by telephone and email requesting an extension of time to retain counsel to defend the

Complaint. The defendants also stated that they contacted defense counsel within the 30 day time period after receiving service of process; however, they were not able to retain counsel. Defendants' attempt to gain an extension to time to retain counsel also included preparation of a proposed Stipulation emailed to plaintiff's counsel on August 5, 2014.

The defendants did not receive a response from plaintiff's counsel to their messages about an extension of time to retain counsel with the 30 day time period after service of process. As a consequence, co-defendant Crystal Tillman timely filed a handwritten Answer to the Complaint on August 6, 2014, wherein she repeated used the designation, "Defendants," to plead against the Complaint. This Answer expressly included a statement that "Defendants request as jury trial and an extension to attempt to hire legal assistance in representing themselves." August 6, 2014 Crystal Tillman Answer.

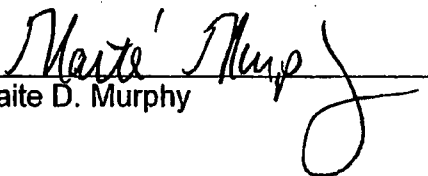
Crystal Tillman's Answer was not signed by co-defendant Troy Tillman. According to his affidavit testimony, Troy Tillman was not aware of the signature requirements for pleadings provided under Rule 11 of the South Carolina Rules of Civil Procedure. This violation of Rule 11's requirements prompted plaintiff's counsel to seek entry of a Clerk's Certificate of Default against Troy Tillman on August 7, 2014. On August 27, 2014, defendants retained counsel to defend this action and immediately filed a motion on behalf of defendant Troy Tillman to set aside the entry of Clerk's entry of default on that same day, August 27, 2014.

In pertinent part, Rule 55(c) of the South Carolina Rules of Civil Procedure provides: "For good cause shown the court may set aside entry of default ...". *Id.*

Under South Carolina law, the decision of whether to relieve a party of a clerk's entry of default is addressed to the sound discretion of trial court. *Beckman Concrete Contractors, Inc. v. United Fire and Cas. Co.*, 350 S.C. 127, 600 S.E.2d 76 (Ct. App. 2004). In interpreting Rule 55(c), appellate courts have stated, "This section is liberally construed to promote justice and dispose of cases on the merits. However, the decision whether or not to grant relief from entry of default is solely within the discretion of the trial judge." *Dixon v. Besco Engineering, Inc.*, 326 S.C. 174, 463 S.E.2d 636, 638 (Ct. App. 2004). Courts have further held that in considering whether to relieve a party of a default, a trial court shall consider the following factors: (1) the timing of the motion; (2) whether the moving party has a meritorious defense; and (3) the degree of prejudice to the non-moving party. *Top Value Homes, Inc. v. Harden*, 319 S.C. 302, 460 S.E.2d 427, 429 (Ct. App. 1995).

In consideration of the affidavit testimony of Troy Tillman and Crystal Tillman and the arguments of counsel, it is the judgment of this Court that defendant Troy Tillman has demonstrated sufficient good cause to set aside the Clerk's August 7, 2014 entry of his default for failing to plead against the Summons and Complaint. Accordingly, defendant Troy Tillman's motion to set aside the August 7, 2014 Clerk's entry of his default is hereby **GRANTED**.

AND IT IS SO ORDERED:


Maite D. Murphy

This 27 day of October, 2014
St. George, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-

TONI LYNN TILLMAN

TIMOTHY TROY TILLMAN

PLAINTIFF(S)

CRYSTAL TILLMAN

DEFENDANT(S)

Submitted by: William B. Jung, Esq.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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 (formal order to follow) ☐ Statement of Judgment by the Court: Defendant Timothy Troy Tillman's Motion to Set Aside Clerk's Entry of Default Is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

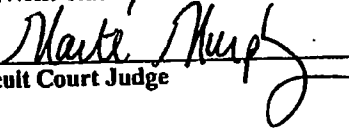
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2166
Judge Code

10/27/14
Date

STATE SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESER	)	CASE NO.: 14-CP-18-1284
TONI LYNN TILLMAN,	)	
	)	ANSWER AND COUNTERCLAIMS
Plaintiff,	)	OF CO-DEFENDANT TIMOTHY
	)	<u>TROY TILLMAN</u>
vs.	)	<u>JURY TRIAL DEMANDED</u>
	)	
CRYSTAL TILLMAN and TIMOTHY	)	
TROY TILLMAN,	)	
	)	
Defendants.	)	

Co-defendant, Timothy Troy Tillman ("defendant"), appearing by his attorney, William B. Jung, Esq., as and for his (i) Amended Answer to the Complaint and (ii) Counterclaims against plaintiff Toni Lynn Tillman ("plaintiff"), alleges the following:

1. Defendant admits the allegations of paragraph 1 of the Complaint.
2. Defendant admits the allegations in Paragraph 2 of the Complaint.
3. Defendant admits the allegations of paragraph 3 of the Complaint.
4. Defendant denies the allegations in Paragraph 4 of the Complaint.
5. Defendant admits the allegations in Paragraph 5 of the Complaint.
6. Defendant admits that the allegations in Paragraph 6 of the Complaint involve one property in Dorchester County but denies that said property is the only property related to this action.
7. Defendant denies that plaintiff is entitled to the relief described in Paragraph 7 of the Complaint and demands strict proof thereof.
8. Defendant denies that plaintiff is entitled to the relief described in Paragraph 8 of the Complaint and demands strict proof thereof.
9. Defendant admits the allegations contained in Paragraph 9 of the Complaint.

10. Defendant admits the allegations contained in Paragraph 10 of the Complaint.
11. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 11 of the Complaint.
12. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 12 of the Complaint.
13. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 13 of the Complaint.
14. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 14 of the Complaint.
15. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 15 of the Complaint.
16. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 16 of the Complaint.
17. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 17 of the Complaint but admits that she has not filed any appeal.
18. Plaintiff admits that the property is titled in plaintiff's name, but denies the plaintiff is the owner of the property.
19. Plaintiff admits that the property is titled in plaintiff's name, but denies the plaintiff is the owner of the property.
20. Defendant denies the allegations of par. 20 of the Complaint and demands strict proof at trial.
21. Defendant denies the allegations of par. 21 of the Complaint and demands strict proof at trial.

22. No response is required to par. 22 of the Complaint.

23. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 23 of the Complaint.

24. Defendant admits that he and his family have resided at the property for a period of time but denies the allegations of par. 24 of the Complaint that he or his wife are tenants or that plaintiff is a landlord and demands strict proof at trial.

25. Defendant denies the allegations of par. 25 of the Complaint and demands strict proof at trial.

26. Defendant denies the allegations of par. 26 of the Complaint and demands' strict proof at trial.

27. Defendant denies the allegations of par. 27 of the Complaint and demands strict proof at trial.

28. Defendant denies the allegations of par. 28 of the Complaint and demands strict proof at trial.

29. Defendant denies the allegations of par. 29 of the Complaint and demands strict proof at trial.

30. Defendant denies the allegations of par. 30 of the Complaint and demands strict proof at trial.

31. Defendant denies the allegations of par. 31 of the Complaint and demands strict proof at trial.

32. Defendant denies the allegations of par. 32 of the Complaint and demands strict proof at trial.

33. Defendant denies the allegations of par. 33 of the Complaint and demands strict proof at trial.
34. Defendant denies the allegations of par. 34 of the Complaint and demands strict proof at trial.
35. Defendant denies the allegations of par. 35 of the Complaint and demands strict proof at trial.
36. Defendant denies the allegations of par. 36 of the Complaint and demands strict proof at trial.
37. Defendant denies the allegations of par. 37 of the Complaint and demands strict proof at trial.
38. Defendant denies the allegations of par. 38 of the Complaint and demands strict proof at trial.
39. Defendant denies the allegations of par. 39 of the Complaint and demands strict proof at trial.
40. Defendant denies the allegations of par. 40 of the Complaint and demands strict proof at trial.
41. No response is required to par. 41 of the Complaint.
42. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 42 of the Complaint.
43. Defendant denies the allegations of par. 43 of the Complaint and demands strict proof at trial.
44. Defendant denies the allegations of par. 44 of the Complaint and demands strict proof at trial.

45. Defendant denies the allegations of par. 45 of the Complaint and demands strict proof at trial.
46. No response is required to par. 46 of the Complaint.
47. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 47 of the Complaint.
48. Defendant denies the allegations of par. 48 of the Complaint and demands strict proof at trial.
49. Defendant denies the allegations of par. 49 of the Complaint and demands strict proof at trial.
50. Defendant denies the allegations of par. 50 of the Complaint and demands strict proof at trial.
51. Defendant denies the allegations of par. 51 of the Complaint and demands strict proof at trial.
52. Defendant denies the allegations of par. 52 of the Complaint and demands strict proof at trial.
53. No response is required to par. 53 of the Complaint.
54. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 54 of the Complaint.
55. Defendant denies the allegations of par. 55 of the Complaint and demands strict proof at trial.
56. Defendant denies the allegations of par. 56 of the Complaint and demands strict proof at trial.

57. Defendant denies the allegations of par. 57 of the Complaint and demands strict proof at trial.
58. No response is required to par. 58 of the Complaint.
59. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 59 of the Complaint.
60. Defendant admits defendants have an equitable interest in the property but denies the allegations of par. 55 of the Complaint and demands strict proof at trial.
61. Defendant denies the allegations of par. 61 of the Complaint and demands strict proof at trial.
62. Defendant denies the allegations of par. 62 of the Complaint and demands strict proof at trial.
63. Defendant denies the allegations of par. 63 of the Complaint and demands strict proof at trial.
64. Defendant denies the allegations of par. 64 of the Complaint and demands strict proof at trial.
65. Defendant denies the allegations of par. 65 of the Complaint and demands strict proof at trial.
66. No response is required to par. 66 of the Complaint.
67. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 67 of the Complaint.
68. Defendant denies the allegations of par. 68 of the Complaint and demands strict proof at trial.

69. Defendant denies the allegations of par. 69 of the Complaint and demands strict proof at trial.
70. Defendant denies the allegations of par. 70 of the Complaint and demands strict proof at trial.
71. No response is required to par. 71 of the Complaint.
72. Defendant denies knowledge and information sufficient to form a belief as to the truth of paragraph 72 of the Complaint.
73. Defendant denies the allegations of par. 69 of the Complaint, requests full opportunity for discovery and demands strict proof at trial.
74. Defendant admits the allegations of par. 74 of the Complaint
75. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 75 of the Complaint.
76. Defendant admits the allegations of par. 76 of the Complaint and states that plaintiff should not have any interest in the property, legal or equitable.
77. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 77 of the Complaint.
78. Defendant denies the allegations of par. 78 of the Complaint and demands strict proof at trial.
79. Defendant denies the allegations of par. 79 of the Complaint and demands strict proof at trial.
80. Defendant denies the allegations of par. 80 of the Complaint and demands strict proof at trial.

81. Defendant denies the allegations of par. 81 of the Complaint and demands strict proof at trial.

82. Defendant denies the allegations of par. 82 of the Complaint and demands strict proof at trial.

83. Defendant denies the allegations of par. 83 of the Complaint and demands strict proof at trial.

84. Defendant denies the allegations of par. 84 of the Complaint and demands strict proof at trial.

85. Defendant denies the allegations of par. 85 of the Complaint and demands' strict proof at trial.

86. No response is required to par. 86 of the Complaint.

87. Defendant admits the allegations in paragraph 87 of the Complaint.

88. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 88 of the Complaint.

89. Defendant admits the allegations in paragraph 89 of the Complaint.

90. Defendant admits the allegations in paragraph 90 of the Complaint.

91. Defendant admits the allegations in paragraph 91 of the Complaint.

92. Defendant denies the allegations of par. 92 of the Complaint and demands strict proof at trial.

93. Defendant denies the allegations of par. 93 of the Complaint and demands strict proof at trial.

94. Defendant denies the allegations of par. 94 of the Complaint and demands strict proof at trial.

95. Defendant denies that any judicial relief is necessary to dissolve an expired Mechanics Lien and demands strict proof thereof.

96. Defendant denies the allegations of par. 96 of the Complaint and demands strict proof at trial.

97. No response is required to par. 97 of the Complaint.

98. Defendant denies knowledge and information sufficient to form a belief as to the truth of paragraph 98 of the Complaint.

99. Defendant admits the allegations in paragraph 99 of the Complaint.

100. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 100 of the Complaint.

101. Defendant admits the allegations in paragraph 101 of the Complaint.

102. Defendant admits the allegations in paragraph 102 of the Complaint.

103. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 103 of the Complaint.

104. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 104 of the Complaint.

105. Defendant denies the allegations in par. 105 of the Complaint.

106. Defendant denies the allegations in par. 106 of the Complaint.

107. Defendant denies the allegations in par. 107 of the Complaint.

108. Defendant denies the allegations in par. 108 of the Complaint.

109. Defendant denies the allegations in par. 109 of the Complaint.

110. No response is required to par. 110 of the Complaint.

111. Defendant denies the allegations in par. 111 of the Complaint.

112. Defendant denies the allegations in par. 112 of the Complaint.

AFFIRMATIVE DEFENSES

113. Plaintiff has failed to state any claims upon which relief can be granted against defendants.

114. Plaintiff's claims are barred under the applicable Statute of Limitations in South Carolina.

115. Plaintiff has unclean hands and should not be afforded any relief in equity.

116. Plaintiff's claims are barred by application of the doctrines of estoppel, equitable estoppel and promissory estoppel.

117. Plaintiff's claims are barred by application of the doctrines of waiver and laches.

118. Plaintiff's claims are barred under the application of the South Carolina Statute of Frauds.

190. Plaintiff committed an antecedent breach of contract; therefore, plaintiff is not entitled to relief on her breach of contract claims.

191. Plaintiff's breach of contract claims are barred by reason of a failure of a condition precedent to defendant's obligations.

192. Plaintiff's breach of contract claims are barred by plaintiff's commission of fraud to induce defendant's assent to the agreements upon which plaintiff's breach of contract claims are based.

AS AND FOR A FIRST COUNTERCLAIM

(Declaratory Judgment)

193. Defendant repeats and re-alleges each and every allegation in paragraphs 1 through 192 as if restated here at length.

194. There exists an actual controversy between plaintiff and defendant as to whether plaintiff has any interest, legal, equitable or otherwise, in the land and improvements known as 526 West Butternut Road, Summerville, S.C. 29483; TMS 135-00-00-090 (the "Property"). Specifically, defendant alleges that he and his wife, co-defendant, Crystal Tillman, are the sole owners of said property to the exclusion of the plaintiff by virtue of an agreement between the parties and from the equity and capital investment made by the defendants in said property. Defendant contends that he and Crystal Tillman should be declared to the legal and equitable owners in fee simple of the property.

195. Defendant further contends that plaintiff has improperly and wrongfully claimed an ownership interest in the Property to justify her intent to deprive the defendant and Crystal Tillman of their legal and equitable interests and to deprive Timothy Troy Tillman of his inheritance in his parent's estate.

196. The defendant further contends that he is entitled to an Order and Judgment providing that he and Crystal Tillman are the lawful owners of the Property as opposed to the plaintiff.

197. The plaintiff disputes all of defendant's contentions and contends to the contrary. Accordingly, defendant seeks a declaration as to the respective rights and interests of the parties with respect to the title and ownership of the Property.

AS AND FOR A SECOND COUNTERCLAIM

(Claim to Remove Plaintiff's Cloud on Defendant's Title)

198. Defendant re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

199. Plaintiff has disparaged defendant's ownership of the Property by and through the preparing, posting, publishing, and recording actions in which plaintiff maintains to be the legal and equitable owner of the Property and denying that defendant and Crystal Tillman have any ownership interest in the Property.

200. Plaintiff knew or should have known that she has no valid or lawful claim to the title or to any interest in the Property. The plaintiff's claim to have an ownership interest in the Property is naturally and commonly interpreted as denying, disparaging, and casting doubt upon defendant's ownership of the Property. By posting, publishing, and recording a claim to title of the Property, plaintiff has disparaged defendant's legal title to the Property to the world at large.

201. Defendant is informed and believes that she is entitled to an Order and Judgment finding that the plaintiff has no lawful or legitimate legal or equitable interest in the ownership of the Property.

202. As a direct and proximate result of the actions of the plaintiff in maintaining that she is the legal or equitable owner of the Property, defendant has suffered actual and special damages in an amount to be determined at trial.

AS AND FOR A THIRD COUNTERCLAIM

(Fraud and Misrepresentation)

203. Defendant re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

204. The mother of plaintiff and defendant, Mildred Craven Tillman, died on December 27, 1991 and executed a Last Will and Testament approximately three and a half months previously on August 9, 1991.

205. At the time of her execution of her August 9, 1991 Last Will and Testament, Mildred Craven Tillman was incompetent such that she could not recognize or understand the objects of her affection or nature of her property.

206. Plaintiff exercised undue influence upon Mildred Craven Tillman and abused the confidence which Mildred Craven Tillman had placed in the plaintiff to cause a last will and testament to be prepared for plaintiff's signature which excluded defendant and his brother from any share in their mother's estate.

207. Defendant never received proper and contemporaneous service of the documentation that plaintiff prepared to probate their mother's August 9, 1991 Last Will and Testament and thereafter administer her estate.

208. The failure of the plaintiff to serve legal notice upon the defendant of the terms of their mother's August 9, 1991 Last Will and Testament was accomplished by fraudulent and dishonest means in failing to apprise the Probate Court of the defendant's address and/or falsely reporting to the Probate Court and/or attorney for the plaintiff, as personal representative of the Estate of Mildred Craven Tillman, that defendant had received service of the estate proceedings and/or had no objection to the same.

209. As a direct and proximate consequence of plaintiffs' fraudulent and dishonest conduct, as well as, undue influence of and abuse of confidence upon Mildred Craven Tillman, the only substantial asset of the Estate of Mildred Craven Tillman, title to her residential real property located at 1342 New Castle, Charleston, South Carolina, passed by deed of distribution to the plaintiff and defendant's sister, Tamara Susan Tillman, to the exclusion of the defendant and his brother.

210. For years after the settlement of the estate of Mildred Craven Tillman, plaintiff falsely represented to defendant that defendant had a one-fourth share in the property known as 1342 New Castle, Charleston, South Carolina, which plaintiff stated to defendant was his share of his late mother's estate. Plaintiff further represented to defendant that plaintiff would convey title to the property known as 526 West Butternut Road, Summerville, S.C. immediately after defendant informed the plaintiff that defendant and Crystal Tillman were ready to refinance said property by obtaining new loan against said property which would satisfy the existing mortgage on said property which was in plaintiff's name.

211. The aforesaid representations that plaintiff made to defendant concerning his one-fourth interest in the property known as 1342 New Castle, Charleston, South Carolina and her agreement and willingness to convey title to property known as 526 West Butternut Road, Summerville, S.C. to the defendant were all false.

212. The aforesaid representations that plaintiff made to defendant concerning his one-fourth share in the property known as 1342 New Castle, Charleston, South Carolina were material defendant's decision not to investigate the probate proceedings of his mother's estate and subsequent state of the title to the property known as 1342 New Castle, Charleston, South Carolina. The aforesaid representations that plaintiff made concerning her agreement and willingness to convey title to the property known as 526 West Butternut Road, Summerville, S.C. were material to defendant's agreement to have the title to said property placed in the plaintiff's name at the closing of a purchase agreement for said property previously made between Charles and Mary Sloan and the defendant and Crystal Tillman.

213. The representations made by the plaintiff concerning the properties known as 1342 New Castle, Charleston, South Carolina and 526 West Butternut Road, Summerville, S.C. were made by plaintiff with actual knowledge of the falsity of those representations or with reckless disregard for the truth or falsity of those representations.

214. At all relevant times, plaintiff intended that defendant would rely on the truth of plaintiff's representations concerning defendant's interest in the property known as 1342 New Castle, Charleston, South Carolina and willingness and agreement to convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant.

215. At all relevant times, defendant was ignorant of the falsity of plaintiff's representations and relied on truth of those representations.

216. Defendant reasonably relied on the truthfulness of plaintiff's representations and, as a direct and proximate consequence thereof, suffered damages in an amount to be proven at trial.

217. Defendant is informed and believe that he is entitled to recover, in addition to actual damages, punitive damages against the plaintiff and demands such damages and relief.

As and For a Fourth Cause of Action

(Constructive Trust - 1342 New Castle, Charleston, South Carolina)

218. Defendant repeats and re-alleges paragraphs 1 through 217 as if restated here at length.

219. Plaintiff made false and fraudulent representations to the defendant that defendant had a one-fourth share in the property known as 1342 New Castle, Charleston, South Carolina, which plaintiff stated to defendant was his share of his late mother's estate.

220. At all relevant times, plaintiff owed a fiduciary duty to the defendant to ensure that defendant received a one-fourth intestate share of their mother's estate following the incompetence of their mother, Mildred Craven Tillman, when she was no longer able to recognize the objects of her affection and/or nature of her bounty. At all relevant times, plaintiff was in a confidential relationship with her mother, Mildred Craven Tillman, over time before her death when she became incompetent due to the effects of pain medications prescribed to alleviate her suffering from the effects of terminal cancer.

221. Plaintiff has acquired title to 1342 New Castle, Charleston, South Carolina by means of fraud, bad faith, undue influence upon Mildred Craven Tillman, abuse of confidence placed in the plaintiff by Mildred Craven Tillman and violations of fiduciary duties, all perpetuated by the plaintiff at the expense of and against the defendant.

222. Defendant is informed and believe that a constructive trust should be imposed on plaintiff's title to the real property known as 1342 New Castle, Charleston, South Carolina such that defendant receive a one fourth share of title to said property from the one-half interest in said property which is currently titled in the name of the plaintiff.

As and For a Fifth Cause of Action

(Constructive Trust - 526 West Butternut Road, Summerville, S.C. 29483)

223. Defendant repeats and re-alleges paragraphs 1 through 222 as if restated here at length.

224. Plaintiff made false and fraudulent representations to the defendant that plaintiff would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to defendant once defendant was prepared to obtain a new mortgage loan and refinance said property to satisfy the existing loan in the plaintiff's name on said property.

225. At all relevant times, defendant relied upon plaintiff's promise and agreement to convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant as a condition for permitting plaintiff to receive title from the previous owners, Charles and Mary Sloan.

226. At all relevant times, plaintiff owed a fiduciary duty to the defendant and was in a confidential relationship with the defendant to ensure that defendant received title to the property known as 526 West Butternut Road, Summerville, S.C. once defendant informed plaintiff that he and his wife were ready to refinance said property by obtaining new loan against said property which would satisfy the existing mortgage on said property which was in plaintiff's name.

227. Plaintiff has acquired title to 526 West Butternut Road, Summerville, S.C. by means of fraud, bad faith, abuse of confidence placed in the plaintiff by defendant and Crystal Tillman and violations of fiduciary duties, all perpetuated by the plaintiff at the expense of and against the defendant.

228. Defendant is informed and believe that a constructive trust should be imposed on plaintiff's title to the real property known as 526 West Butternut Road, Summerville, S.C. such that defendant receive title to said property from the plaintiff.

As and For a Sixth Cause of Action

(Promissory Estoppel)

229. Defendant repeats and re-alleges paragraphs 1 through 222 as if restated here at length.

230. Plaintiff made a promise and agreement with the defendant that plaintiff would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant once defendant and his wife informed plaintiff that they were ready obtain a new mortgage loan

on said property and refinance said property to satisfy the existing loan in the plaintiff's name on said property.

231. Defendant reasonably and justifiably relied upon the plaintiff's promise that she would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant once he informed plaintiff that he and wife were ready to obtain a new mortgage loan on said property in permitting and authorizing title to said property to be placed in the plaintiff's name at the closing of a purchase agreement for said property previously made between Charles and Mary Sloan and the defendant and Crystal Tillman.

232. Defendant has been damaged as a direct and proximate result of the plaintiff's breach of her promise and agreement that she would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant once he informed plaintiff that he and wife were ready to obtain a new mortgage loan on said property

233. Defendant is informed and believe that he is entitled to the equitable enforcement of plaintiff's promise and agreement to convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant, and defendant demands such relief.

WHEREFORE, having answered plaintiff's Complaint and having alleged his Counterclaims against plaintiff, defendant Timothy Troy Tillman prays that the Honorable Court grant the following relief:

1. Dismiss the plaintiff's Complaint; and
2. Declare that plaintiff has no legal or equitable interest in the property known as 526 West Butternut Road, Summerville, S.C. 29483;
3. Award defendant judgment against the plaintiff for defendant's damages on his counterclaims against the plaintiff;

4. Impose a constructive trust on plaintiff's interest in the property known as 1342 New Castle, Charleston, South Carolina such that defendant be granted a one-fourth interest in title to said property, said interest coming from plaintiff's current interest in said property;

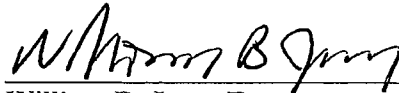
5. Impose a constructive trust on plaintiff's interest in the property known as 526 West Butternut Road, Summerville, S.C. such that defendant be granted exclusive and full title to said property from and by the plaintiff;

6. Award defendant recovery of his costs, disbursements and a reasonable attorney's fee to the extent allowable under South Carolina law.

7. Grant such other and further relief as is just and proper.

Dated: October 16, 2014

WILLIAM B. JUNG, ESQ.



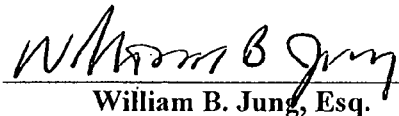
William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

Attorney for Defendant Timothy Troy
Tillman

Demand for Jury Trial

Defendant demands trial by jury on all such issues properly tried to a jury.

Dated: October 16, 2014



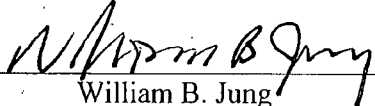
William B. Jung, Esq.

Proof of Service

I, William B. Jung, Esq., served a copy of defendant Timothy Troy Tillman's Answer and Counterclaims on October 16, 2014 by mailing a true and complete copy to the following person(s), first class U.S. Postal Service postage paid by the undersigned:

Kenneth E. Peck, Esq.
The Peck Law Firm
2040 Ewall Street
Mount Pleasant, S.C. 29464

Dated: October 16, 2014



William B. Jung

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) CASE NO. 2014-CP-1801284
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TONI LYNN TILLMAN)

PLAINTIFF)

v.)

TIMOTHY TROY TILLMAN and)
CRYSTAL TILLMAN)

DEFENDANTS)

**MOTION TO DISMISS THIRD,
FOURTH, FIFTH, AND SIXTH
CAUSES OF ACTION OF TIMOTHY
TROY TILLMAN**

The Plaintiff, by and through her undersigned attorney, files this Motion to Dismiss the Third, Fourth, Fifth and Sixth Causes of Action of the Defendant Timothy Tillman (herein "the Defendant"). The Plaintiff requests such relief pursuant to relevant provisions of the South Carolina Rules of Civil Procedure, our South Carolina statutes, and South Carolina law, including:

- (1) Rule 9(b) – failure to state fraud with particularity;
- (2) Rule 12(b)(1) and Section 62-1-302 – lack of subject matter jurisdiction;
- (3) Rule 12(b)(3) and Section 62-1-303 – improper venue;
- (4) Rule 12 (b) (6) – failure to state a claim because of the expiration of the applicable statutes of limitation and assertion of a cause of action (constructive trust) which is not recognized in South Carolina;
- (5) Rule 12(b)(7) and Rule 19 – failure to join indispensable party;
- (6) The equitable doctrine of laches; and
- (7) The doctrines of collateral estoppel in res judicata.

If the Court is not inclined to dismiss the Third, Fourth, and Fifth Causes of Action for the reasons set forth herein, the Plaintiff requests that the Court require the Defendant to make a more definite statement of such fraud-based Causes of Action pursuant to Rule 12(e). Further, in the alternative, the Court should issue an order requiring the Defendant to add the person's name below has third-party counterclaim defendants.

As grounds for granting this Motion, the Plaintiff states as follows.

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION TO CONSIDER THE DEFENDANT'S THIRD AND FOURTH CAUSES OF ACTION.

1. The Defendant alleges in his Third Cause of Action that the Plaintiff exercised undue influence on the Mother of the Plaintiff and the Defendant (herein "the Decedent") in the preparation of the Decedent's will. Further, the Defendant alleges that the Plaintiff failed to provide him with proper legal notice of the terms of the Decedent's will as part of the Charleston County Probate case concerning the Decedent's will. Counterclaim of Timothy Troy Tillman, ¶¶ 206-08.

2. In his Fourth Cause of Action, the Defendant asserts that, in association with the Charleston County Probate Court proceeding, the Plaintiff "owed a fiduciary duty to defendant to ensure that defendant received a one-fourth intestate share of their mother's estate following the incompetence of their mother." Counterclaim of Timothy Troy Tillman, ¶¶ 220.

3. South Carolina's law vests exclusive subject matter jurisdiction with the probate court over "all subject matter related to (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents" S.C. Code Ann. § 62-1-302(a) (1).

4. Since it is undisputed that the Charleston County Probate Court previously entered certain orders regarding the enforceability of the Decedent's will and the beneficiaries of the estate of the

Decedent, the Charleston County Probate Court had exclusive subject matter jurisdiction regarding the Decedent's estate and has continuing exclusive subject matter jurisdiction to consider the matters raised by the Defendant's Third and Fourth Causes of Action.

5. The time for the Defendant to challenge the decisions of the Charleston Probate Court under Rule 60 through this Court or to appeal the decisions of the Charleston Probate Court expired many years ago.

6. This Court should find that it lacks subject matter jurisdiction to consider the Defendant's Third and Fourth Causes of Action; and this Court should dismiss those Causes of Action with prejudice.

II. VENUE IS NOT PROPER FOR THIS COURT TO HEAR THE DEFENDANT'S THIRD AND FOURTH CAUSES OF ACTION.

7. South Carolina's Probate Code strictly limits venue concerning estate matters.

8. The applicable South Carolina venue statute provides that: "the court in which the proceeding is first commenced has the exclusive right to proceed." S.C. Code Ann. 62-1-303.

9. It is undisputed that proceedings concerning the estate of the Decedent were commenced in Charleston County Probate Court almost 23 years ago. Consequently, the Charleston County Probate Court has the exclusive right and venue to proceed with any matter concerning the Decedent's estate.

10. This Court should dismiss the Defendant's Third and Fourth Causes of Action because venue is improper with this Court.

III. THE DEFENDANT HAS FAILED TO JOIN TWO INDISPENSABLE PARTIES.

11. The Defendant has failed to name as Counterclaim Third-Party Defendants two persons who are indispensable third parties.

12. The indispensable third parties are the Defendant's sister Tamara Susan Tillman and his

brother Trenton T. Tillman, Jr.

13. As referenced in the Counterclaim, the Defendant's sister Tamara Susan Tillman and the Plaintiff obtained title to the Decedent's residence by means of a deed of distribution issued as part of the Charleston County Probate case. Counterclaim of Timothy Troy Tillman, ¶¶ 209.

14. Since the rights of Tamara Susan Tillman in the Decedent's estate would necessarily be affected by a decision that the Decedent died intestate (as the Defendant asserts in paragraph 220), Tamara Susan Tillman is a necessary and indispensable party whom the Defendant has failed to join as part of his Counterclaim.

15. As referenced in the Counterclaim, the Defendant's brother Trenton T. Tillman, Jr. was also excluded from the Decedent's will. Counterclaim of Timothy Troy Tillman, ¶¶ 206.

16. Since the rights of Trenton T. Tillman, Jr. in the Decedent's estate would necessarily be affected by a decision that the Decedent died intestate (as the Defendant asserts in paragraph 220), Trenton T. Tillman, Jr. is a necessary and indispensable party whom the Defendant has failed to join as part of his Counterclaim.

17. Since the Defendant has failed to join two indispensable parties under Rule 19, the Court should dismiss the Defendants Third and Fourth Causes of Action or enter an order requiring the Defendant to join such persons as third-party Counterclaim Defendants. In the alternative, this Court should issue an order requiring the Defendant to join his brother and sister as Counterclaim Defendants in this proceeding.

IV. THE DEFENDANT'S THIRD AND FOURTH CAUSES OF ACTION ARE BARRED BY THE EQUITABLE DOCTRINE OF LACHES.

18. The Decedent died in 1991. Counterclaim of Timothy Troy Tillman, ¶¶ 203.

19. The Decedent's estate was filed with the Charleston Probate Court in 1992.

20. The Defendant has asserted two Causes of Action (Third and Fourth) which concern and

arise from the Decedent's estate.

21. Our Supreme Court has applied the equitable doctrine of laches to bar a claim where a party waited seven years to assert the claim.

22. In applying the doctrine of laches, the court wrote in *Eldridge v. Eldridge*, 398 S.C. 113, 728 S.E.2d 24 (S.C. 2012).

The equitable defense of laches follows the equitable maxim: "Equity aids the vigilant, not those who slumber on their rights." *Hemingway v. Mention*, 228 S.C. 211, 89 S.E.2d 369 (1955). Laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Chambers of S.C., Inc. v. County Council for Lee Cty.*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Thus, the predicate for laches is an unreasonable and unexplained delay. The equitable defense of laches follows the equitable maxim: "Equity aids the vigilant, not those who slumber on their rights." *Hemingway v. Mention*, 228 S.C. 211, 89 S.E.2d 369 (1955). Laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations

or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Chambers of S.C., Inc. v. County Council for Lee Cty.*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Thus, the predicate for laches is an unreasonable and unexplained delay.

23. The Defendant has unreasonably waited more than 23 years (as measured from the date of the Decedent's will) to assert his Causes of Action regarding the competency of the Decedent and other matters relating to the manner in which the Decedent's estate was administered. Counterclaim of Timothy Troy Tillman, ¶¶ 204-05

24. The Defendant has not offered a reasonable explanation for why now – *suddenly* almost 23 years after the death of his Mother – he has discovered that his Mother was "incompetent" or any other matter on which he bases his Third and Fourth Causes of Action.

25. While the Defendant has slept on his rights for more than 23 years, the Plaintiff and the Defendant's other siblings (whom he has not named as parties) have detrimentally changed their positions.

26. Consequently, this Court should dismiss the Defendant's Third and Fourth Causes of Action under the doctrine of laches.

V. THE DEFENDANT'S THIRD AND FOURTH CAUSES OF ACTION ARE BARRED BY THE DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA.

27. As summarized in *Catawba Indian Nation v. State*, Case No. 2012-212118 (S.C. 2014), the doctrine of collateral estoppel provides that "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim."

28. The Defendant was part of the Charleston County Probate Court case and since the Charleston Probate Court determined previously that the Decedent was competent and that the Plaintiff should receive a one-half interest in her Mother's residence, the Defendant is precluded from raising those issues here as his Third and Fourth Causes of Action.

29. The doctrine of res judicata prohibits a litigant from raising in a subsequent case a claim that was litigated in a previous case or which could have been litigated in a previous case. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826, 835 (1997).

30. The Defendant seeks in his Third and Fourth Causes of Action to litigate claims that were litigated in the Charleston Probate Court case or which could have been litigated in the Charleston Probate Court. Consequently, the doctrine of res judicata bars the Defendant from attempting to litigate such claims in this case as his Third and Fourth Causes of Action.

VI. THE APPLICABLE STATUTE OF LIMITATION BARS THE THIRD, FOURTH, AND FIFTH CAUSES OF ACTION.

31. The South Carolina statute of limitations for a fraud claim is three years. S.C. Code Ann. § 15-3-530(7).

32. The Defendant's Third, Fourth, and Fifth Causes of Action are fraud-based claims.

33. Since more than three years have passed subsequent to the events on which the Defendant bases his Third, Fourth, and Fifth Causes of Action, those fraud claims are barred by the applicable statute of limitation and should be dismissed with prejudice.

VII. THE APPLICABLE STATUTE OF LIMITATION BARS THE SIXTH CAUSE OF ACTION.

34. The Defendant asserts a promissory estoppel claim as his Sixth Cause of Action.

35. A claim for promissory estoppel is essentially a claim for breach of an oral contract. A cause of action for breach of contract arises upon a party's failure to do the thing at the time contracted.

36. The South Carolina statute of limitations for a breach of contract action is three years. S.C. Code Ann. § 15-3-530(1).

37. Since more than three years have passed since the events on which the Defendant bases his promissory estoppel claim, the Defendant's Sixth Cause of Action is barred by the applicable statute of limitation and should be dismissed with prejudice.

VIII. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR "CONSTRUCTIVE TRUST."

38. The Defendant has asserted a claim for "Constructive Trust" as his Fourth Cause of Action and his Fifth Cause of Action.

39. South Carolina does not recognize a cause of action in law or equity for "constructive trust." *Hale v. Finn*, 388 S.C. 79, 694 S.E.2d 51 (Ct. App. 2010). A constructive trust is an equitable *remedy*, not a *cause of action*. *Ibid*.

40. Since South Carolina does not recognize a cause of action for "constructive trust," this Court should dismiss the Defendant's Fourth and Fifth Causes of Action with prejudice.

IX. THE DEFENDANT HAS ASSERTED THREE FRAUD-BASED CAUSES OF ACTION.

41. The Defendant has asserted three fraud-based Causes of Action against the Plaintiff as part of the Defendant's Counterclaim. Those are the Defendant's Third, Fourth, and Fifth Causes of Action.

42. Each of the Defendant's fraud-based Causes of Action arises from events associated with the making of the Decedent's will and the Decedent's estate.

43. The Decedent died December 27, 1991 in Charleston County, South Carolina. Counterclaim of Timothy Troy Tillman, ¶ 204. In January of 1992, an informal probate case (Case No. 92-ES-10-79) was opened regarding the Decedent's estate with the Charleston County Probate Court with the Plaintiff and her sister (Tamara Susan Tillman) serving as the personal

representatives under their Mother's Will. On March 8, 1996, the Charleston County Probate Court entered a certificate of discharge to release the Plaintiff and her sister from their duties as fiduciaries for the estate.

44. In the Defendant's Third Cause of Action, the Defendant asserted a claim of fraud and misrepresentation. Counterclaim of Timothy Troy Tillman, ¶¶ 203-217. The Defendant bases the Third Cause of Action on allegedly fraudulent acts that the Plaintiff performed in association with Charleston County Probate case no. 92-ES-10-79.

45. In the Defendant's Fourth Cause of Action, the Defendant alleges that the Plaintiff exercised undue influence upon the Decedent and abused the confidence of the Decedent and, thereby, defrauded the Defendant of his inheritance from the Decedent. Counterclaim of Timothy Troy Tillman, ¶¶ 203-217.

46. In the Defendant's Fifth Cause of Action, the Defendant alleges the Plaintiff made false and fraudulent statements to the Plaintiff and, thereby, defrauded the Defendant when the Plaintiff purchased a residence which is commonly known as the "Butternut home." Counterclaim of Timothy Troy Tillman, ¶¶ 203-217.

47. THE DEFENDANT HAS FAILED TO PLEAD FRAUD WITH PARTICULARITY IN HIS THIRD CAUSE OF ACTION.

48. Rule 9(b) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

49. To satisfy the requirements of Rule 9(b), a party asserting a fraud claim must set out clearly the facts and circumstances which constitute the alleged fraud. *Bookhart et al. v. Central Electric Co-op., Inc.*, 222 S.C. 289, 72 S.E.2d 576 (1951). *Cited with approval Tommy L. Griffin Plumping & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 463 S.E.2d 85, 320 S.C. 49 (S.C. 1994). The party must allege facts which would afford a basis upon which a jury could properly find support

for each of the elements of a fraud claim. *Gordon v. Fidelity & Cas. Co. of NY*, 120 S.E.2d 509, 238 S.C.438, 444 (1961). If the party fails in the claim to allege facts to support any one of the elements of fraud, the claim is fatally defective and should be dismissed. *Able v. Equitable Life Assur. Society of United States*, 195 S.E. 652 (S.C.1938) and *Warr v. Carolina Power & Light Co.*, 115 S.E.2d 799, 802, 237 S.C. 121, 126-27 (1960).

50. The Court in *Kiriakides v. Atlas Food Systems & Serv.*, 527 S.E.2d 371, 338 S.C. 572, 586 (S.C. Ct. App. 2000) set forth the nine elements, which must be shown to establish a fraud claim. Those elements are: "1) a representation or nondisclosure of a material fact, 2) its falsity, 3) its materiality, 4) either knowledge of its falsity or a reckless disregard of its truth or falsity, 5) intent that the representation be acted upon, 6) the hearer's ignorance of its falsity, 7) the hearer's reliance on its truth, 8) the hearer's right to rely thereon, and 9) the hearer's consequent and proximate injury. See *Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120 (1978); *Lawson v. Citizens and Southern National Bank of South Carolina*, 259 S.C. 477, 193 S.E.2d 124 (1972); *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601 (1967); *Hurst v. Sandy*, 329 S.C. 471, 482, 494 S.E.2d 847, 853 (Ct.App.1997). The '[f]ailure to prove any element of fraud is fatal to the action.' *Sorin Equipment Co. v. The Firm*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct.App.1996) (citing *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984))."

51. In his Third Cause of Action, the Defendant failed to state with particularity the following required elements of his fraud and misrepresentation claim:

- a. The Defendant does not allege a representation or a nondisclosure of a material fact by the Plaintiff to the Defendant – the Defendant admits that he was aware of his Mother's death in 1991 and he fails to explain how the Plaintiff's alleged exercise of undue influence on the decedent constituted a misrepresentation or nondisclosure to him. See Counterclaim of Timothy Troy Tillman, ¶¶ 204-06.

- b. The Defendant does not allege that such representation or nondisclosure of a material fact was false – the Defendant alleges only that the Plaintiff misrepresented his mailing address to the Probate Court and, therefore, any such Cause of Action must necessarily be heard by the Probate Court.
- c. The Defendant does not allege that such misrepresentation or nondisclosure was material -- the Defendant does not explain why any representation or nondisclosure alleged in the Third Cause of Action was allegedly “material.”
- d. The Defendant does not allege that the Plaintiff made such representation or nondisclosure with a reckless disregard of its truth or falsity – the Defendant does not address this matter in his Third Cause of Action.
- e. The Defendant does not allege that the Plaintiff made such alleged representation or nondisclosure with the intent that the Defendant act upon it – the Defendant does not address this matter in his Third Cause of Action.
- f. The Defendant does not allege that he was ignorant of the alleged misrepresentation or nondisclosure -- quite the contrary, the Defendant acknowledges in paragraph 204 his awareness of the death of his Mother in 1991, which gave him actual notice of his legal rights regarding her estate in 1991.
- g. The Defendant does not allege in his Third Cause of Action that he relied on any representation or nondisclosure by the Plaintiff.
- h. The Defendant does not allege in his Third Cause of Action that he had a right to rely on the alleged representation or nondisclosure by the Plaintiff – like the plaintiff in *Reid v. George Washington Life Ins. Co.*, 109 S.E.2d 577, 578, 234 S.C. 599, the Defendant failed to take advantage of the opportunity and means that she had during had 23 years after the death of his Mother to inspect public records and discover the fraud that he

alleges regarding ownership of the New Castle property and the will of the Decedent.

- i. The Defendant does not allege in his Third Cause of Action the specific damages, which he allegedly suffered as a consequence of the matters alleged in that Cause of Action.

52. Many of the necessary elements of a fraud claim are not even mentioned within the Third Cause of Action. "Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

53. Since the Defendant has failed to state the necessary fraud elements as part of his Third Cause of Action, the Court should dismiss such Cause of Action with prejudice. *Mut. Sav. And Loan Ass'n v. McKenzie*, 274 S.C. 630, 266 S.E.2d 423, 425 (S.C. 1980).

54. THE DEFENDANT HAS FAILED TO PLEAD FRAUD WITH PARTICULARITY IN HIS FOURTH CAUSE OF ACTION.

55. The Defendant bases his Fourth Cause of Action on the same premise as his Third Cause of Action.

56. In paragraph 221 of his Counterclaim, the Defendant asserts only that the Plaintiff acquired title to the Decedent's residence through the Charleston Probate Court proceedings by means of "fraud, bad faith, undue influence upon [the Decedent], abuse of confidence placed in the plaintiff by [the Decedent], and violations of fiduciary duties, all perpetuated by the plaintiff at the expense of and against the defendant."

57. The Fourth Cause of Action is devoid of any allegations regarding the necessary elements of a fraud claim. Consequently, this Court should dismiss the Fourth Cause of Action with prejudice. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

58. THE DEFENDANT HAS FAILED TO PLEAD FRAUD WITH PARTICULARITY IN HIS FIFTH CAUSE

OF ACTION.

59. In his Fifth Cause of Action, the Defendant alleges that the "Plaintiff made false and fraudulent representations to the defendant that plaintiff would convey title to the property known as 526 W. Butternut Road. . . ." Counterclaim of Timothy Troy Tillman, ¶ 224.

60. The Defendant did not allege the following necessary elements of this fraud-based cause of action:

- a. The Defendant did not assert that the alleged false representations were material.
- b. The Defendant did not allege that the Plaintiff made such representation or nondisclosure with a reckless disregard of its truth or falsity.
- c. The Defendant did not allege that the Plaintiff made such alleged representation or nondisclosure with the intent that the Defendant act upon it.
- d. The Defendant did not allege that he was ignorant of the alleged misrepresentation or nondisclosure.
- e. The Defendant did not allege in his Fifth Cause of Action that he had a right to rely on the alleged representation or nondisclosure by the Plaintiff.

61. Significantly, the Defendant admits in his Fifth Cause of Action that the Plaintiff was not obligated under the Defendant's theory of the claim to convey title to the Butternut property until the "defendant was prepared to obtain a new mortgage loan and refinance said property to satisfy the existing loan in the plaintiff's name on said property." Counterclaim of Timothy Troy Tillman, ¶ 224.

62. The Defendant does not allege in the Fifth Cause of Action that the Defendant was ever prepared or able to refinance the existing loan on the Butternut property. Consequently, the Defendant could not and did not allege that the Plaintiff made the statements, which were attributed to her in paragraph 224 of the Counterclaim, with a reckless disregard for the truth or falsity of

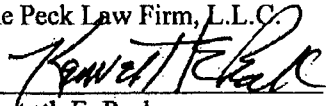
such statements.

63. Since the Defendant has failed to state such necessary fraud elements as part of his Fifth Cause of Action, the Court should dismiss such Cause of Action with prejudice.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment in her favor and against the Defendant Timothy Troy Tillman dismissing with prejudice the Defendant's Third, Fourth, Fifth, and Sixth Causes of Action, awarding the Plaintiff her reasonable attorney's fees and costs, and granting such other and further relief as the Court deems appropriate in these circumstances. In the alternative to dismissal of the Defendant's Third, Fourth, and Fifth Causes of Action, the Court should enter an Order requiring the Defendant with seven days to make a more definite statement of his Third, Fourth, and Fifth Causes of Action.

Dated: November 17, 2014.

Respectfully submitted,
The Peck Law Firm, L.L.C.


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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
TONI LYNN TILLMAN,)
Plaintiff,)
v.)
TIMOTHY TROY TILLMAN and)
CRYSTAL TILLMAN,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No.: 2014-CV-18-1284

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Crystal Tillman
CLERK OF COURT
DORCHESTER COUNTY

**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS
COUNTS III, IV, V AND VI OF TROY TILLMAN'S COUNTERCLAIMS**

Defendant Timothy Troy Tillman ("Troy Tillman" or "defendant"), by his attorney, William B. Jung, Esq., respectfully submits this Memorandum in opposition to the Motion to Dismiss certain counterclaims (plead as Counts III, IV, V and VI) against plaintiff Toni Lynn Tillman ("plaintiff") in defendant's Answer and Counterclaims, dated October 16, 2014 and filed on October 17, 2014. A copy of defendant's Answer and Counterclaims are hereto attached as Exhibit "1."

Summary of Plaintiff's Claims

Plaintiff file this action against her brother, Troy Tillman and his wife, co-defendant Crystal Tillman, alleging nine (9) causes action all related to family disputes over ownership of a residential property known as 526 West Butternut Road, Summerville, S.C. (the "Property") located in Dorchester County where defendants and their five children currently reside.

Originally, defendants were parties to a contract to purchase this Property from a third party seller, who was in the process of constructing a residence thereupon.

However, the third party seller failed to complete construction of said residence. This prompted defendants to complete the construction by investing their own funds into the Property, for which the third party seller gave defendants a mortgage as security after defendants had filed a Mechanic's Lien against the Property.

When construction was complete enough for the bank to agree to close, plaintiff and defendants agreed that defendant Troy Tillman would receive approximately \$50,000.00 taken against what he understood was a one-fourth interest in his late mother's residence at 1342 New Castle, Charleston, S.C., to be paid toward the purchase price of the Property. Plaintiff and defendant also agreed that plaintiff would take out the mortgage loan on the Property in her name and that defendants would satisfy their mortgage on the Property so the plaintiff's mortgagee bank would have priority. Thereafter, the parties agreed plaintiff would deed title to the Property to defendants, who, in turn, would refinance plaintiff's mortgage, leaving defendants as the sole mortgagors and the sole persons in legal title over the Property.

Notwithstanding this agreement, plaintiff subsequently refused to transfer title and instead brought eviction proceedings against defendants in landlord tenant court. After the magistrate ruled that defendants had an equitable interest in the property which precluded eviction in summary landlord-court¹, plaintiff filed this action.

Summary of Defendant's Counterclaims

The defendant's counterclaims seek a declaratory judgment over the parties' respective rights and interests in the Property, as well as, equitable enforcement (via claims for promissory estoppel and constructive trust) of plaintiff's agreement to

¹ A copy of the June 28, 2013 Decision of Magistrate P. Brandt Shelbourne was attached as Exh. "1" to plaintiff's Complaint and a copy is attached hereto as Exh. "2."

convey title to the Property to defendants after defendants satisfied their then existing mortgage, allowing plaintiff to receive title at closing. Defendant seeks to quiet the alleged title to the Property asserted by the plaintiff. Defendant has also asserted that plaintiff committed fraud and misrepresentations in falsely promising to convey title to the Property to defendants as a condition to inducing defendants to remove their lien against the Property, thereby allowing the title to close in only the plaintiff's name.

After plaintiff's refusal to convey title to defendants and filing of eviction proceedings, defendant investigated the circumstances of his late mother's estate and discovered that his mother had signed a will immediately before her death which disinherited defendant and his brother in favor of plaintiff and her sister. It is the stated allegation of defendant's pleading that his mother lacked capacity or was under undue influence of the plaintiff at the operative time. Again, defendant only discovered that plaintiff perpetrated fraud against him with respect to their mother's estate in 1991 within a year of October 2014. October 8, 2014 Affidavit of Troy Tillman (Filed October 9, 2014), par. 3.

Consequently and contrary to what plaintiff had represented to defendant for over 20 years, defendant did not have a one-fourth (1/4th) interest of his mother's former residence at 1342 New Castle, Charleston, S.C., which he had been advised the sole property of her estate. Because plaintiff's false representations that his receipt of approximately \$50,000.00 used toward the purchase of the Property was in partial satisfaction of defendant's inheritance rights are interwoven with other false representations made by the plaintiff with respect to an agreement to convey title to the

Property to the defendants (Count III of Troy Tillman's Answer), said misrepresentations are included in defendant's claim for fraud (Count III of Tillman Answer).

Plaintiff raises over 60 paragraphs of argument points, and defendant will attempt to address the subject matter of plaintiff's arguments in order as presented by plaintiff without unnecessarily repetitive.

I. This Court has Subject Matter Jurisdiction over Plaintiff's Counterclaims

That a probate court has exclusive jurisdiction over "all subject matter related to: (1) the estate of decedents, including contest of wills ..." is undisputed. S.C. Code Ann. § 62-1-302(a). However, defendant's counterclaims do not involve any claims for relief which would cause this Court to impinge upon the exclusive jurisdiction of Charleston County Probate Court. Defendant is not seeking a determination in this Court that plaintiff committed fraud or other misconduct involving their mother's estate administration or last will and testament. While allegations that this occurred are alleged as background matter (Pars. 204-209 to Tillman Answer), these allegations are secondary to the false representations that defendant alleges constitute fraud on the part of the plaintiff in inquiring legal title to the Property at issue in this action.

Specifically, defendant has alleged that plaintiff falsely represented to him that approximately \$50,000.00, which plaintiff took from a HELOC against his late mother's residence and used toward the purchase of the Property, was a partial distribution of what plaintiff had been telling defendant for over 20 years was his inheritance from their mother's estate. This was a false statement because, as defendant only recently discovered, he never had any interest at all in his mother's estate. Defendant relied upon plaintiff's false statement that her payment of

approximately \$50,000.00 toward the Property was part payment of defendant's inheritance. This false statement, coupled with the false promise that plaintiff would convey title to the Property to the defendant, was reason that defendant released his mortgage on the Property and allowed the plaintiff to come into legal title to the Property. Tillman Answer, pars. 210-217.

The alleged misrepresentations made by plaintiff to defendant related to status of the present title to his mother's former residence are only background to the false statements by which defendant contends plaintiff fraudulently obtained legal title to the Property at issue. Defendant is entitled to assert a claim for fraud against the plaintiff under these circumstances, and said claim is properly before this Court. This Court, as a court of general jurisdiction, is not barred from hearing defendant's fraud against the plaintiff simply because one of many misrepresentations which defendant claims constitute fraud involve false statements that plaintiff made to defendant for many years and used to induce defendant to allow plaintiff to receive legal title to the Property at issue. Even if allegations related to falsely reporting the status of title to his late mother's former residence were not part of defendant's fraud claim, defendant still has alleged a prima facie claim for fraud. Accordingly, plaintiff's motion to dismiss Count III and IV for lack of subject matter should be denied.

II. Venue is Proper in Dorchester County

Plaintiff filed this action in Dorchester County, which is where defendants reside and where the Property that is the subject matter of this action is situated. As set forth in response to plaintiff's argument concerning lack of subject matter, the relief which the defendant's counterclaims address concerning determining title and other

equitable remedies affecting the Dorchester County Property. Assuming, *arguendo*, that defendant sought relief in this action which would involve reopening their mother's estate, proper venue would be a probate court located in Charleston County. Since defendant seeks no such relief, plaintiff's argument that defendant's counterclaims must be dismissed for improper venue has no merit.

III. There is No Failure to Join Indispensable Parties

As stated above, plaintiff's argument only the Charleston County Probate Court can hear the subject of defendant's counterclaims is based on a mischaracterization of the relief that defendant seeks. By the counterclaims asserted in this action, defendant is not seeking to reopen his late mother's estate or to challenge her Last Will and Testament. Therefore, the argument that defendant's counterclaims should be dismissed by cause he did not name two non-parties - his other sister and brother - in a Third Party Complaint is disingenuous at the least. Defendant's counterclaims are against the plaintiff for her misconduct with respect to the circumstance by which she came into legal title to the Property and thereafter refused to honor her agreement to transfer title to the defendant. Defendant's other sister and brother are not alleged at this time to have committed the misconduct at issue.

IV. Latches has No Role in Determining Defendant's Counterclaims

It is black letter law that to apply the doctrine of latches against a party's subsequent ability to assert a right, that party must make a **knowing** waiver or unreasonable delay in exercising rights to the detriment of another. *Chambers of S.C., Inc. v. County Council for Lee County*, 315 S.C. 418, 421 (1993). The defendant's counterclaims clearly state that because plaintiff intentionally failed to serve defendant

with the probate and estate administration filings, defendant had no knowledge that his mother's Last Will and Testament disinherited him or that defendant had not received an inheritance as plaintiff lead him to believe for years. Tillman Ans., pars. 207-08. When deciding a motion to dismiss, a court must take a true the well-plead allegations as true. Therefore, the doctrine of latches is inapplicable to the determination of plaintiff's Motion to Dismiss. Furthermore, since plaintiff has not filed a Reply to defendant's Counterclaims raising Latches as an affirmative defense, plaintiff's argument citing latches as a reason to grant a Motion to Dismiss has no merit.

V. Collateral Estoppel and Res Judicata have No Role with respect to Defendant's Counterclaims

Similar to the fact that defendant did not participate in the proceedings to administer his late mother's estate because plaintiff false reported his residence as her own in purportedly serving required notices, such as, a copy of the Last Will and Testament, plaintiff did not appear in his mother's probate administration to contest said instrument. No such issues which plaintiff seeks to apply against defendant as constituting res judicata or collateral estoppel were ever litigated or determined in the previous administration of their mother's Estate. Therefore, the doctrines of collateral estoppel and res judicata are inapplicable to the determination of plaintiff's Motion to Dismiss. Furthermore, since plaintiff has not filed a Reply to defendant's Counterclaims raising collateral estoppel and/or res judicata as affirmative defenses, plaintiff's argument citing collateral estoppel and/or res judicata as reasons to grant a Motion to Dismiss has no merit.

VI. The Statute of Limitations is No Bar to Defendant's Counterclaims

It is well established that the statute of limitations "begins to run when the underlying cause of action reasonably ought to have been discovered." *Martin v. Companion Health Care Corp.*, 357 S.C. 570, 575, 593 S.E.624, 627 (Ct.App. 2004). "Under the discovery rule, the three-year clock begins ticking on the date that the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Holly Woods Association of Residential Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787 (Ct.App. 2004) (Quoting, *Martin v. Companion Health Care*, *supra*). The test for whether the injured party knew or should have known about the cause of action is objective rather than subjective. *Id.* Therefore, the test before the trial court is "whether the circumstances of the case would have put a person of common knowledge on notice that "some right of his has been invaded or that some other claim against another party might exist. *Holly Woods Association v. Hiller*, *Id* at 183-84, *citing Young v. S.C. Dept. of Corrs.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

In the case at bar, plaintiff offers no evidence to support her conclusory statement that "more than three years have passed since the events on which defendant bases his promissory estoppel claim." Plaintiff's Motion, par. 37. Indeed, since plaintiff only filed to evict defendants from the Property in June 2013 (Exhibit "2"), it is only reasonable to conclude that defendants knew or should have know by June 2013 that plaintiff was not going to honor her agreement. This action was file in June 2014. Three years have not passed before defendant knew or should have known of

his claims against the plaintiff². Therefore, the statute of limitations is inapplicable as a defense to defendant's counterclaims. Furthermore, since plaintiff has not filed a Reply raising the statute of limitations as an affirmative defense, plaintiff's argument citing the same as reason to grant a Motion to Dismiss has no merit.

VI. Constructive Trust is Recognized as a Claim and Remedy in South Carolina

Plaintiff makes argument that defendant's claims for constructive trust should be dismissed because South Carolina law does not recognize such a claim. This argument is false. In 2012, the Supreme Court discussed at length the elements of a valid constructive trust claim in *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1 (2012) and specifically noted: "An action to declare a constructive trust is in equity... and will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title". *Id*, 400 S.C. at 6-7. Indeed, the case of *Hale v. Finn*, 388 S.C. 79, 694 S.E.2d 51 (Ct. App. 2010), cited by plaintiff for the proposition that South Carolina law does not recognize a constructive trust claim and therefore Counts III and IV of defendant's counterclaims should be dismissed, provides: "We disagree, however, with his argument that the special referee lacked authority to base an award on quantum meruit. Such an award was proper to

² Even if defendant's claims for fraud arose sometime before July 2013, the doctrine of equitable tolling may also be applicable to defendant's claims under the facts of this case. In *Magnolia North Property Owner's Association v. Heritage Communities, Inc.*, this Court held that a defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that would otherwise give operation to the statute has been induced by the defendant's conduct." *Id*, 397 S.C.2d 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012). In *Magnolia North*, this Court further commented that the doctrine of "equitable tolling is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's *intentional* misrepresentation, *but* deceit is not an essential element of estoppel." *Id* at 373 (Emphasis in the original).

enforce a constructive trust.” *Id.*, 694 S.E.2d at 56. Accordingly, plaintiff’s arguments against defendant’s claims for imposition of a constructive trust remedy have no merit.

VII. Defendants Plead Fraud Sufficiently under Rule 9(b) of the SCRC

Plaintiff has a host of objections alleging that plaintiff’s one claim for fraud in Count III of defendant’s Answer is plead in violation of Rule 9(b) of the S.C.R.C.P. These allegations have no merit. Defendant’s fraud pleading states with particularity what specific statements made by the plaintiff to the defendant are alleged to be false, i.e., those statements that (i) defendant was receiving a share of his inheritance when plaintiff used approximately \$50,000.00 taken against a HELOC on their late mother’s residence to be used toward the plaintiff’s purchase the Property and (ii) that plaintiff would deed title to the property back to the defendant so defendant could remortgage the property in the name of defendants and thereby satisfy the plaintiff’s mortgage on the property. It is difficult to conceive what additional specificity or particularity is sought by the plaintiff.

The myriad of conclusory objections made by plaintiff, such as defendant does not alleged materiality, reliance by the defendant, falsity, ignorance by the defendant, etc. are simply untrue and misstate the actual pleading made by the defendant. All of the requisite elements of a valid fraud claim are found in Count III of the Complaint. Exh. “1,” pars. 211 to 217. Insofar as pleading that plaintiff’s fraudulent misconduct make it inequitable that a plaintiff retain title to property set forth in Counts IV and V of the Tillman Answer, defendant references his previous argument that such circumstances have been more than adequately plead and must be taken as true in consideration of a motion to dismiss.

Furthermore, defendant respectfully submits it is highly improper at the least to misrepresent to a court that a party's pleading is something completely in opposite to what is actually found in that party's pleading in order to manufacture grounds to seek dismissal of an opposing party's pleading. *Compare* plaintiff's Motion, par. 51(g) ("The Defendant does not allege in his Third Cause of Action that he relied on any representation by the Plaintiff") *with* Tillman Answer, par. 216 ("Defendant reasonably relied on the truthfulness of the plaintiff's representations ...").

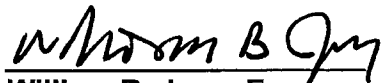
Conclusion

Based on the foregoing, defendant Troy Tillman respectfully requests that plaintiff's Motion to Dismiss be denied in its entirety. However, if it is the determination that any claim in Counts III, IV, V and VI of defendant's Counterclaims should be dismissed, defendant respectfully submits and requests that dismissal should be without prejudice. Additionally, if it is the determination of the Court that defendant's pleadings are insufficient in any respect, then defendant requests that he be granted leave to file an amended pleading without prejudice to the assertion of any claim.

Respectfully submitted,

Dated: January 28, 2014

WILLIAM B. JUNG, ESQ.
Attorney for the Defendants



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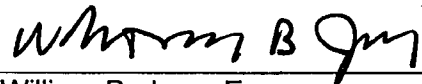
Proof of Service

I, William B. Jung, Esq., certify under penalty of perjury that on January 28, 2015, I caused a copy of the defendant's Memorandum and Exhibits in opposition to plaintiff's Motion to Dismiss to be emailed to plaintiff's counsel and I certify I will deliver a filed copy to plaintiff's counsel on January 29, 2015 to:

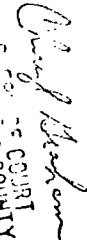
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Mount Pleasant, S.C. 29464

Dated: January 28, 2015



William B. Jung, Esq.
Attorney for the Defendants



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1 STATE OF SOUTH CAROLINA) EIGHTEENTH JUDICIAL CIRCUIT
 2 COUNTY OF DORCHESTER) CASE NO. 2014-CP-18-0124
 3 TONI LYNN TILLMAN,)
 4 Plaintiff,) Transcript of Record
 5 vs.)
 6 TIMOTHY TROY TILLMAN,) Date: January 29, 2015
 7 ET. AL,)
 Defendants.

* * * * *

B E F O R E:

The Honorable Diane S. Goodstein

A P P E A R A N C E:

KENNETH ELDON PECK, ESQUIRE
 Attorney for the Plaintiff

WILLIAM B. JUNG, ESQUIRE
 Attorney for the Defendants

* * * * *

Denise J. Lauder, RPR
 Ninth Judicial Circuit

 **COPY**

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8

9 INDEX OF EXHIBITS

10

11 (No exhibits were offered or
12 marked for identification.)

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1 (The following proceedings were held
2 January 29, 2015, @3:11 p.m., Dorchester County,
3 South Carolina.)

4 THE COURT: Tillman V Tillman. All
5 right. This is a motion to dismiss triple cause of
6 action, third, fourth, fifth and six.

7 MR. PECK: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. PECK: My name is Kenneth Peck; I'm
10 here on behalf of the Plaintiff, Ms. Toni Tillman,
11 who is here. Let me, if I can, provide you with
12 some background in the case and then walk through
13 the essence of the motion.

14 THE COURT: Okay.

15 MR. PECK: As we're here today, four
16 years and eight days ago to be exact, Ms. Tillman
17 bought a house in Summerville. Her brother,
18 Mr. Troy Tillman, and his wife moved into that
19 house. The agreement was that they would pay her
20 an amount equal to the rent -- I mean, the mortgage
21 payments until such time as they were able to
22 refinance the property. All of that was a very
23 long counterclaim -- I mean, claim, I'm narrowing
24 down for you.

25 In that four years and eight days, if

1 we add it all up, the monthly payments are around
2 -- they've gone up with taxes and stuff -- around
3 \$1900. If we add all of that up, they have made
4 fewer than five payments. They are squatters.
5 They squatted on the people before them. That's
6 how we got Ms. Toni Tillman being a nice sister
7 bailing them out, buying the house in the first
8 place. That's the basic background. Their game is
9 delay, delay, delay, delay.

10 We filed the Complaint last June. The
11 last possible day, Ms. Crystal Tillman filed
12 something that was imaginative, to put it politely,
13 if you look in the file. It's a handwritten thing
14 with all sorts of name-calling, scratch-throughs
15 and everything else. We filed a motion to dismiss
16 that for very obvious reasons that we set forth at
17 length.

18 The Court ruled they would have an
19 opportunity to file it, again. In fact, she had
20 filed it in an ambiguous way where it appeared she
21 had only filed on behalf of herself, not her
22 husband. The Court had actually -- the clerk had
23 entered a default against him. So, procedurally,
24 Defendant's Counsel filed a motion to set aside
25 default and said we'll get it right. That's why,

1 if you look at the pleadings, we've got two
2 counterclaims going here.

3 Need to explain that. Ms. Crystal
4 Tillman filed a counterclaim that was restricted to
5 the issues -- we're going to get to this in a
6 minute -- of a house that's known as Butternut in
7 Summerville. No question that's in Dorchester
8 County. We don't agree with her claims, but she's
9 gotten close enough.

10 Her husband, in contrast, filed a
11 separate counterclaim after getting very stern
12 warnings from the Court to get it right. They
13 didn't. What we have now, if you look at their
14 counterclaim, we have a few claims that deal with
15 Butternut. Okay.

16 Now, let me give you the background as
17 set forth in our motion.

18 THE COURT: Okay.

19 MR. PECK: Coming from the other side,
20 they have asserted claims 3, 4, 5, and 6. Those
21 claims are largely based on -- and I'll walk you
22 through the counterclaim here in a moment, largely
23 based on -- I'm in disbelief when I tell you
24 this -- allegations regarding the death of their
25 mother in Charleston in 1991 and an estate that was

1 handled in 1992.

2 For example, we look at their third
3 claim, fraud and misrepresentation, paragraph 204.
4 Ms. Toni Tillman's alleged to have exercised fraud
5 regarding the death and Last Will of the mother in
6 1991. 205, mother was incompetent at the time she
7 allegedly made the Will. And it goes on and on and
8 on. She committed fraud on the probate court,
9 that's paragraph 208. He never received proper
10 notice of the probate proceedings, paragraph 207.
11 She committed fraud over and over regarding the
12 probate claim. That's the third claim, it's in
13 Charleston.

14 Charleston is where the probate case
15 is. If he wants to base a claim on fraud regarding
16 the probate case, as far as I understand, this is a
17 different county, a different courthouse and a
18 different type of court. We're in the wrong place.
19 That claim should go out.

20 If we go on further, he says that she
21 allegedly -- this is interesting. Now get where I
22 am, 1992, the Will was done, probate court
23 finished, for 22 years somehow he thought -- he
24 didn't realize he didn't own a share of his
25 mother's house. That's the claim.

1 THE COURT: Yeah.

2 MR. PECK: And so he should be entitled
3 in this proceeding, in this courthouse, to go back
4 and allege his mother was incompetent and she
5 exercised undue influence to deprive him in the
6 Will of getting an interest in the house. I don't
7 think venue, subject matter, statute of frauds, name
8 -- any of the number of ways we approached this
9 that that claim survives.

10 Counsel, on the other side, artfully
11 realizes he's got a problem. So what does he do in
12 his reply and his brief? And I will address the
13 claims, but I want to draw your attention to this.
14 Your Honor, I have marked on my thing -- this is a
15 brief. Do you see the blue markings? If I can
16 approach just a little bit closer just to direct
17 your attention.

18 THE COURT: Uh-huh.

19 MR. PECK: Do you see where I have
20 drawn arrows? All of those things say, not in
21 counterclaim. Not in counterclaim. Over and over.
22 He has tried to rewrite the counterclaim again.
23 Now, instead of talking about the estate, although
24 he doesn't want to take those claims out, he says,
25 oh, we don't want to reopen the proceedings. We

1 want to make that background information. That's
2 the only thing he's specific about in his complaint
3 of fraud.

4 And I would direct -- I'll get into
5 specifics and direct your attention on that, but he
6 has shifted where now he's talking about a HELOC,
7 \$50,000 that was placed on a Charleston home to
8 permit Ms. Toni Tillman to loan him more money,
9 \$50,000. Somehow there was fraud with that. We
10 don't know how. Why? It's not in his
11 counterclaim.

12 Now that's the ultimate are you going
13 to believe me or your lying eyes sort of pleading.
14 Oh, I got caught over here on the estate claim, so
15 now for the third time answering the Complaint and
16 asserting a counterclaim, I'm going to bring
17 something in. And, oh, by the way, if I haven't
18 done it enough, in his last line Counsel says, I
19 would like to amend again. Your Honor, we've been
20 going since June. We're here in January. It's
21 time to hold them to the pleadings.

22 If we go on down through the Complaint,
23 we've made these arguments, that there's no
24 supporting -- over and over in his memorandum,
25 Counsel throws in all sorts of facts that

1 supposedly happened, but they're not in the
2 counterclaim. And without them being in the
3 counterclaim, he's failed to plead fraud with
4 particularity. As I indicated, venue is improper
5 here.

6 He also acknowledges, again with regard
7 to the estate, with regard to the Charleston house,
8 that there's two other siblings, who are here in
9 the courtroom today, that were -- one of whom was
10 included as a beneficiary of the estate and the
11 other one, the other brother, wasn't either. He
12 doesn't think -- neither one of them have been
13 joined as parties on his claims, so we're going to
14 go reopen the estate. We've got two indispensable
15 parties, the other two siblings, that need to be
16 joined.

17 Are they offering or requesting
18 permission to do that? No. Because, as the Court
19 knows, 1992 probate cases, at best, you better go
20 back to Charleston and do that one. Amazing,
21 amazing argument.

22 We suggested latches was a problem.
23 Their answer was, gee whiz, until you tried to
24 evict us from the house in Summerville, which I
25 said is identified as Butternut and is the real

1 object of this case, in 2013, I didn't think to
2 maybe check into that house in Charleston;
3 therefore, latches don't apply to me, even though
4 that was 21 years ago, and the three-year statute
5 of limitations don't apply to me. Imaginative
6 pleading. That's not what I call being vigilant.

7 With regard to the -- they've also
8 asserted in various ways as promissory estoppel and
9 fraud, if you look at their brief, a basic theme.
10 I need to explain this to you. The theme is this,
11 their theory of the case, Your Honor, that Ms. Toni
12 Tillman bought the house. There is no dispute
13 about whose name is on the deed. The reason she
14 bought the house was because they couldn't qualify
15 for a mortgage.

16 Their theory is -- and you know how
17 families sometimes do this, usually they wind up in
18 the courthouse, like this one. I've had a few of
19 these. I'm sure you've had more than you want to
20 recount. You wind up in a situation where they
21 were supposed -- they were going to refinance and
22 get their credit right and finance the property.
23 That was the theory in the case.

24 The thing that's missing from the
25 counterclaim because they can't plead it, they

1 never got their credit right; four years,
2 eight days ago, we're still waiting. And there is
3 absolutely no allegation in the counterclaim that
4 they did.

5 They're alleging promissory estoppel,
6 fraud, an imaginative thing called constructive
7 trust, which everybody knows is an equitable
8 remedy, not a claim. Counsel didn't assert -- he
9 cites cases. Didn't bother to read the cases
10 apparently, because in those two cases it
11 specifically says that it's a remedy for things
12 like quantum meruit and other types of claims of
13 that nature.

14 So there is no predicate even alleged
15 in their Complaint for their claims of fraud and
16 promissory estoppel. Very deficient claims, Your
17 Honor.

18 THE COURT: Okay.

19 MR. PECK: We also have the issue of
20 collateral estoppel in the res judicata because of
21 what happened in Charleston. So to the extent that
22 anything may relate to the probate case, we would
23 ask the Court to eliminate all of that in this
24 case.

25 With regard to fraud with

1 particularity, as I say, here's the things that are
2 missing, just to get to the high points. There's
3 no allegation they ever had the capacity to
4 refinance. How can you say you took -- for
5 promissory estoppel or fraud that someone defrauded
6 you or breached a promise if you didn't form the
7 condition necessary, which is present and ready to
8 refinance. It's not in there. So we argue that
9 all of those claims go away.

10 And so we're left with the first and
11 second claims only, which are very much similar to
12 what Ms. Tillman, the wife of the Defendant,
13 asserted as her counterclaim. Your Honor, if you
14 look at the specific allegations, there's nothing
15 in these claims except broad generalizations
16 without any specifics on a specific date.

17 You know, Rule 9, for fraud, you have
18 to plead it with particularity, which means on this
19 date so and so said this or wrote this; I believed
20 it and I did the following acts in reliance on it.
21 If you look at their fraud claims, it's not there.
22 And so all the fraud claims go away, the
23 constructive trust, whatever that means, goes away
24 because there is no such thing. The promissory
25 estoppel goes away because there's no promise it's

1 been broken; they haven't offered to perform.

2 So we ask Your Honor to dismiss claims
3 3, 4, 5, and 6 in the counterclaim, and because we
4 have gone so long playing this pleading game, you
5 deny this last line request to submit yet another
6 amended counterclaim so we can buy more time for
7 these people who have already had four years and
8 eight days of paying virtually nothing to be in a
9 very nice house while this client's financial
10 situation is being wrecked.

11 THE COURT: Thank you. Yes, sir.

12 MR. JUNG: Morning -- good afternoon,
13 Your Honor. I filed a memorandum just between --
14 when there was a Court break. I sent it to Your
15 Honor's law clerk. I know you haven't had a chance
16 to look at it, but I'd like to hand it up.

17 THE COURT: Thanks.

18 MR. JUNG: Thank you. Judge, this is a
19 motion to dismiss, and we all know what the
20 standard for that is, that if the allegations are
21 well pled, they're deemed true. I have pled
22 allegations based on fraud, based on a couple of
23 misrepresentations. There's only two of them and
24 they are very specifically stated.

25 The first one was that the parties had

1 an agreement; specifically, that after Plaintiff
2 Tillman took title to the property in her name, she
3 was going to deed it back to my clients so they
4 could refinance and then they would be able to pay
5 off my client's mortgage.

6 This was discussed when they attempted
7 to evict my client. And our colleague, Brent
8 Shelbourne, Magistrate, you know, ruled that this
9 -- there is well-documented evidence that there was
10 an agreement, that my people had relied on that
11 agreement, had put in money into the property, had
12 an equitable interest and, therefore, they couldn't
13 be evicted. So that was in June of 2013. They
14 waited a year and then they filed this lawsuit, but
15 it's -- somehow the delay is on my clients. I
16 don't think so.

17 But, essentially, that was the
18 agreement that we said was a misrepresentation,
19 that she would deed the property back to my clients
20 so that they could refinance it. Instead, she
21 decided she wanted to keep the property. Whether
22 that's true or not is for a trial, for a jury
23 trial, but for purposes of a Rule 12(b)(6) motion,
24 it's deemed true.

25 The other allegation is that for

1 20-some-odd years, the Plaintiff told my client,
2 her brother, that he had an interest in a house
3 that mom had died and left to the whole entire
4 family. It was not until sometime, I want to say,
5 2013, I don't know that it's important, but the
6 allegation -- and this is in an affidavit that
7 Mr. Tillman filed on October 9th. There's a
8 previous affidavit when we were vacating his
9 default where he said, I was misled, my sister lied
10 to me, she told me I had an interest in the house.
11 I later got the Will. I found out that she had
12 essentially had mom do a new Will and had left
13 everything to her and her sister.

14 He got nothing. He didn't know that he
15 had been disinherited. He was in the service in
16 Jackson, Mississippi and he never got any of the
17 papers. She mailed the papers for him of the
18 estate proceedings to herself, in care of Troy
19 Tillman. She knew he was in Jackson, Mississippi.

20 But the point is, I'm not trying to
21 reopen the estate in this proceeding. Obviously,
22 this is not the appropriate venue to do. That
23 would be the Charleston Probate Court. We're
24 merely alleging this took place regarding the fraud
25 that was perpetuated to him on what he thought was

1 his interest in his mother's estate. That's
2 background as to how in the heck we got her into
3 title on this property in Dorchester County.

4 But let me assume -- let's assume that
5 -- that my client does want to go into Charleston
6 County Probate Court. Section 62106 says that you
7 have two years from the date of discovery of any
8 kind of fraud that took place in an estate
9 proceeding to reopen it.

10 So my client, if he chooses to do so,
11 will go to Charleston County Probate Court and we
12 can litigate that there, but we're not seeking
13 anything from this Court about reopening her
14 probate case. So it's a bit of a red herring to
15 say my client is trying to go back and open a
16 23-year--old estate proceeding. Obviously we're
17 not.

18 The whole issue is over the title to a
19 house and the counterclaims all pertain to that.
20 I've addressed them in particular -- Your Honor, I
21 don't want to take the Court's time, I know it's
22 been a very long day, but each of the arguments
23 that has been made is addressed specifically in my
24 memorandum, and I would ask Your Honor to take
25 reference to that.

1 There's a couple of things that I find
2 to be very troubling. For instance, Counsel takes
3 the position that there's no thing as constructive
4 trust in South Carolina. I mean, come on. We all
5 know that there is such a thing. It's an equitable
6 remedy and it's designed to protect, to undo, when
7 title is in possession of somebody that doesn't
8 deserve to have it because they've used fraud.
9 That's what a true constructive trust is, and
10 that's what we're trying to do with regard to this
11 house in Butternut.

12 Counsel says I didn't allege that the
13 Defendant relied on misrepresentation. It's right
14 in the pleading. I mean, I don't know how you make
15 that representation to the Court, that black is
16 white. I just don't understand it.

17 None of these claims are really ripe
18 right now. There's factual issues, you can hear
19 that in Counsel's argument. There's so many facts
20 in dispute, I don't think this case can even be
21 decided on summary judgment, much less a motion to
22 dismiss, Your Honor.

23 I believe that's all I have, Your
24 Honor.

25 MR. PECK: If I could respond briefly.

1 I believe that Magistrate Shelbourne's order is
2 significantly more conservative than what you heard
3 from Counsel. And the Order essentially says, I
4 don't have jurisdiction to hear this claim because
5 they have asserted they have an equitable claim.
6 I'm dismissing without prejudice, take it to
7 circuit court. That's what the Order said.

8 Now with specific reference, you notice
9 they're willing to take away, it seems, all the
10 fraud things. So I think Your Honor should
11 certainly strike the third claim, fourth claim, and
12 fifth claim to the extent that they deal -- any
13 allegations in there with regard to the Charleston
14 property, those fraud claims go away.

15 Now, with regard to the interest in the
16 house, Your Honor, he says -- very interesting
17 information about this Charleston house and what
18 Mr. Troy Tillman allegedly said in the affidavit.
19 What's interesting about that, Your Honor, is I
20 presume Counsel prepared that affidavit. He filed
21 that affidavit with this Court and then after the
22 Court ruled on that motion to allow him to amend
23 the counterclaim, he apparently forgot about those
24 allegations because they're not in the
25 counterclaim.

1 And you can't bootstrap them in now and
2 say, oh, well, we have an affidavit and that's part
3 of the counterclaim. That's not the way we plead
4 in South Carolina. You don't just kind of make
5 something up just as we have -- and I've indicated,
6 there's this substantial argument that they're
7 trying to bootstrap in now about this HELOC for
8 \$5,000. First time we've heard about it. It's not
9 in the counterclaim.

10 That's the way this case has gone all
11 along. Once we nail down object A, we squirrel
12 over and do object B, and then object C with the
13 ultimate purpose being delay and live in the house
14 without paying anything for it.

15 With regard to the probate case, we
16 agree they should go there. I'm glad to hear
17 counsel admit that constructive trust is a remedy
18 and not a claim. So I presume, based on that, he
19 is willing for the Court to dismiss his two claims
20 which are titled constructive trust, because he has
21 not alleged any elements of a claim otherwise that
22 would give him a right to a constructive trust.
23 Those elements would be something like, as I said,
24 quantum meruit or another theory.

25 It's not my job to plead his case for

1 him, but constructive trust is not a claim. You
2 can ask for that as a remedy, but before you get to
3 that remedy you've got to allege facts that entitle
4 him to that relief. He has not alleged those
5 facts, so those claims should go away.

6 THE COURT: Got it.

7 Here we go to it. In your third
8 counterclaim, show me where you have pled the
9 required elements of fraud; representation, its
10 falsity, intent to lie.

11 MR. JUNG: It's -- Your Honor, it is
12 page 14.

13 THE COURT: All right. So where is the
14 representation?

15 MR. JUNG: Paragraph 210, Your Honor.
16 Plaintiff further represented to Defendant the,
17 Plaintiff would convey title to the property, known
18 as Butternut, Summerville, South Carolina,
19 immediately after Defendant informed the Plaintiff
20 that Defendant and Crystal Tillman were ready to
21 refinance. That's what she represented and that's
22 what we're saying was false. That is a false
23 representation. And if you go through it, all of
24 the elements of fraud are set forth in the
25 paragraphs that follow.

1 THE COURT: All right. There's your
2 representation.

3 MR. JUNG: Yes, ma'am.

4 THE COURT: And the representation is
5 that she would convey title to the property known
6 as Butternut immediately after the Defendant
7 informed the Plaintiff that the Defendants were
8 ready to refinance.

9 MR. JUNG: Right.

10 THE COURT: All right. So that's the
11 representation.

12 MR. JUNG: Yes, ma'am. I said in
13 paragraph 211 -- says it was false. Paragraph 212
14 says it was material.

15 THE COURT: Whoa. What was false?

16 MR. JUNG: That representation.

17 THE COURT: That she would convey the
18 title once they told them that they had refinanced
19 -- that they were ready to refinance the property?

20 MR. JUNG: Yes, ma'am.

21 THE COURT: Okay.

22 MR. JUNG: 212 says it was material to
23 their decision to allow her to come into title to
24 this property. This was a material representation,
25 it was important to them. 213 says that she knew

1 what she was saying was false. 214 said that she
2 intended us to rely on the truth of all that. It's
3 there, Your Honor.

4 THE COURT: Okay. Do you allege that
5 they, in fact, notified her that they were now
6 credit worthy and wanted to have the property
7 transferred?

8 MR. JUNG: We were ready to go, Your
9 Honor.

10 THE COURT: Huh?

11 MR. JUNG: Yes, Your Honor. We were
12 ready to go, and instead of allowing us to
13 refinance --

14 THE COURT: Is that in here or is it
15 alleged?

16 MR. JUNG: It might be background, Your
17 Honor.

18 THE COURT: Look and see for me.

19 MR. JUNG: Excuse me?

20 THE COURT: Just tell me where it is.

21 MR. PECK: Your Honor, I can save the
22 Court time; it's not in there.

23 THE COURT: That doesn't help, but
24 thank you.

25 MR. JUNG: Well, Your Honor, I don't

1 think it's a material point. It's basically that
2 we were relying on her representation that we would
3 get the title back so we could refinance it.
4 Obviously, they didn't give us the title back or we
5 wouldn't be here. Obviously, they sought to evict
6 us.

7 THE COURT: Well, that makes it fraud,
8 though, you see.

9 MR. JUNG: Yes, Your Honor.

10 THE COURT: So if you will, there's a
11 condition precedent to it being fraud, and that is
12 that your folks -- I mean, I didn't plead it, you
13 did. It says -- it says that -- well, here's what
14 it says. Plaintiff further represented to
15 Defendant that Plaintiff would convey title to the
16 property immediately after the Defendant informed
17 the Plaintiff that Defendant and Crystal Tillman
18 were ready to refinance said property by obtaining
19 new loan against said property which would satisfy
20 the existing mortgage on said property which was in
21 Plaintiff's name.

22 Where is the allegation that that
23 occurred, that condition precedent?

24 MR. JUNG: I don't know that there is
25 one, Your Honor.

1 THE COURT: Okay.

2 MR. JUNG: It's implicit to the whole
3 pleading that they didn't have the opportunity to
4 refinance it. That's why title's in her name. If
5 that's a material point, Your Honor, it can
6 certainly be remedied by a sentence. I mean, I
7 think we're here for notice pleading. I think
8 Defendant knows -- Plaintiff knows exactly why, you
9 know, there's a fraud claim against her, because
10 she lied about something and my people relied on
11 it.

12 And, essentially what I've asked for,
13 if there's defect to my pleading, I think it's only
14 proper that I'm entitled to amend it.

15 THE COURT: Let's move to the fourth cause
16 of action, constructive trust.

17 MR. JUNG: Yes, ma'am.

18 THE COURT: Plaintiff has -- Plaintiff
19 made false and fraudulent representations to the
20 Defendant that the Defendant had a one fourth share
21 in the property known as 1342 New Castle,
22 Charleston, South Carolina, which Plaintiff said to
23 Defendant was his share of his late mother's
24 estate.

25 Did she have a Will?

1 MR. JUNG: She did.

2 THE COURT: Was the Will probated?

3 MR. JUNG: Yes, ma'am.

4 THE COURT: What does the probaton of
5 the Will say?

6 MR. JUNG: The Will disinherited my
7 client in favor of the Plaintiff and her sister.

8 THE COURT: Okay.

9 MR. JUNG: Again, this is why it's a
10 misrepresentation, because the Plaintiff had told
11 my client for 23 years, you've got a one fourth
12 interest in that property. And in reliance of
13 that, he assumed that that was the case. He didn't
14 see to upset the apple cart.

15 The reason that the issue of the
16 inheritance is relevant is because when it came
17 time to purchase the house, he asked his sister to
18 take out some funds from the residence, the
19 mother's residence, that he could use towards the
20 purchase of the property. They took out those
21 funds and those funds went into the purchase of
22 Butternut. That's why it's relevant. It's part of
23 a continuing fraud that -- it's relevant because
24 this is how they achieved her having title to the
25 property. It was never going to be her property.

1 It was going to be my client's property. And
2 that's what we're here to argue about.

3 THE COURT: Okay. So for the fifth
4 cause of action.

5 MR. JUNG: Again, it's a constructive
6 trust that over the property known as Butternut.
7 This is like --we're saying that the way that she
8 ended up in title was fraudulent, it was -- she
9 misrepresented, and she refused to do what she
10 promised to do.

11 THE COURT: Are you talking about
12 Butternut?

13 MR. JUNG: Butternut now.

14 MR. PECK: Your Honor, if I could just
15 interrupt with regard -- because we're still in
16 Charleston on the fourth claim. If I could help
17 Counsel out with his pleading, I think paragraph
18 220, he alleges, without saying why, that somehow
19 my client owed a fiduciary duty and somehow he lied
20 about a fiduciary duty. There's no allegations.
21 He just throws the term out, and as Your Honor's
22 aware, to plead a claim --

23 THE COURT: That's not proper; it's his
24 argument.

25 Okay.

1 MR. JUNG: So, again, what we're here
2 to do is -- I think a constructive trust is proper
3 where somebody has used fraudulent or dishonest or
4 inequitable means to acquire title to property and
5 it would be unjust for that property to remain in
6 that person's name. That's what a constructive
7 trust is for. I mean, if he would rather -- he
8 would rather me strike the Complaint or the cause
9 of action for constructive trust, and then he
10 says -- and then I can't bring it up later at
11 trial. I mean, we're here because of notice
12 pleading. He knows what we're looking for.

13 THE COURT: Okay.

14 MR. JUNG: And then promissory estoppel
15 is, essentially, we relied on the promise that she
16 was going to convey the title to my people so that
17 we could refinance and get her off the debt.
18 Instead, she chose to take the -- that's her
19 property, she tried to evict the family, and we're
20 here to basically let a jury determine that.

21 There's a lot of evidence -- and I'm
22 going to represent to the Court, there's a lot of
23 evidence that this agreement existed, the papers
24 were -- they had a lawyer go so far as to prepare a
25 deed and send it over to Ms. Tillman: Ms. Tillman,

1 this is the deed to get the property back to your
2 brother. And then she refused to sign it. We
3 didn't find out about that, that she hadn't done it
4 until we get evicted in June of 2013.

5 THE COURT: Okay. Proposed orders in
6 30 days please.

7 MR. PECK: Thank you.

8 THE COURT: Thank you very much.

9 (The deposition was concluded at 3:41
10 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this ^ day of ^, 2008 at Charleston,
13 Charleston County, South Carolina.

14
15
16
17
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No.: 2014-CV-18-01284
TONI LYNN TILLMAN,	)	
	)	ORDER GRANTING IN PART AND
Plaintiff,	)	DENYING IN PART MOTION TO
	)	DISMISS COUNTS III, IV, V AND VI
v.	)	OF DEFNDANT TROY TILLMAN'S
	)	<u>COUNTERCLAIMS</u>
TIMOTHY TROY TILLMAN and	)	
CRYSTAL TILLMAN,	)	
	)	
Defendants.	)	

On November 17, 2014, plaintiff Toni Lynn Tillman ("plaintiff" or "Toni Tillman") filed a motion to dismiss the Third, Fourth, Fifth and Sixth Counterclaims asserted by co-defendant Timothy Troy Tillman ("defendant" or "Troy Tillman") in his Answer filed on October 17, 2014. A hearing was held before this Court on plaintiff's motion on January 29, 2015. Defendant Troy Tillman appeared and was represented by his attorney, William B. Jung, Esq. of Mount Pleasant, S.C. Plaintiff Toni Tillman appeared and was represented by her attorney, Kenneth Peck, Esq. of Mount Pleasant, S.C. For the reasons set forth therein, plaintiff's motion to dismiss is **GRANTED IN PART¹ AND DENIED IN PART.**

Summary of the Parties' Pleadings and Plaintiff's Motion to Dismiss

On July 3, 2014, Toni Tillman filed this action against her brother, Troy Tillman and his wife, co-defendant Crystal Tillman, alleging nine (9) causes action all

¹ On February 24, 2015, defendant's counsel advised this Court and plaintiff's counsel that defendant T. Troy Tillman would voluntarily dismiss without prejudice his Fourth Counterclaim, which sought to impose a constructive trust over the property known as 1342 New Castle Street, Charleston, S.C. in favor of pursuing such remedies in proceedings before the Charleston County Probate Court. Accordingly, defendant's Fourth Counterclaim is hereby dismissed without prejudice on defendant's consent.

related to claiming legal and equitable title to a residential property located in Dorchester County known as 526 West Butternut Road, Summerville, S.C. (the "Property"), where defendants and their five children currently reside. Plaintiff seeks, *inter alia*, defendants' payment of rent to plaintiff or, alternatively, the ejectment and eviction of the defendants from the Property, as well as, a determination and declaratory judgment that plaintiff is the sole legal and equitable owner of the Property and to quiet any claim of title to the Property by defendants or, alternatively, the partition of the Property between the parties.

Defendant Troy Tillman's Answer alleged six (6) Counterclaims against the plaintiff, including and relevant to this Motion, claims for (i) Fraud and Misrepresentation (Count III of defendant's Counterclaims), (ii) imposition of a Constructive Trust over the Property (Count V of defendant's Counterclaims) and (iii) for Promissory Estoppel (Count VI of defendant's Counterclaims). The plaintiff's motion to dismiss seeks of Counts III, V and VI of defendant Troy Tillman's Counterclaims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCR").

Allegations of Defendant's Counterclaims

Both parties admit that legal title to the Property is presently in the name of plaintiff Toni Tillman from a January 21, 2011 recorded deed in plaintiff's name. Complaint at pars. 18 and 19, Troy Tillman Answer, pars. 18 and 19. With respect to defendant's counterclaim for fraud and applicable to his subsequent claims for imposition of a constructive trust and promissory estoppel, Troy Tillman contends that plaintiff made a representation to defendant she would convey title to the Property to defendants in advance of defendants seeking to refinance the existing mortgage on the

Property in plaintiff's name in favor of a new mortgage in defendants' names. Troy Tillman Answer, par. 210. Defendant contends that plaintiff's representation and promise to convey title to defendants in advance of defendants' seeking a new mortgage loan on the Property was false. Answer, par. 211. Defendant also contends that plaintiff's representations concerning her agreement and willingness to give defendants a deed to the Property in advance of defendants' mortgage refinance application was material to the defendants' decision to have title to the Property placed in plaintiff's name, as opposed to their own, when defendants Troy and Crystal Tillman closed on a contract they had to purchase the Property from a Charles and Mary Sloan. Answer, par. 212.

Defendant further alleges that plaintiff made the representation that she would convey title to the Property to defendants after closing with the knowledge that said representation and promise was false at the time of its making. Answer at par. 213. Defendant alleges that plaintiff intended him to rely on the truth of her representation concerning her promise to convey title to the Property to defendants (Answer, par. 214), that defendant was ignorant at all times of the falsity of plaintiff's representations (Answer, par. 215), that defendant's reliance of the truthfulness of plaintiff's representation was reasonable (Answer, par. 216) and that the defendant proximately suffered damage a consequence of plaintiff's false representations. Id. Furthermore, defendant alleges that plaintiff acquired title to the Property through bad faith, abuse of confidence, breach of fiduciary duty and from false and fraudulent statements to the defendants, all to induce defendants into allowing title to Property to

be in plaintiff's name at the closing on the defendants' contract to purchase the Property from the sellers, Charles and Mary Sloan. Answer, pars. 226-27.

Standard to Determination of a Motion to Dismiss

In deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the trial court must consider only the allegations set forth on the face of plaintiff's Complaint. *Stiles v. Onorato*, 318, S.C. 297, 300, 457 S.E.2d 601, 602 (1995). "A 12(b)(6) motion should not be granted if 'facts alleged and inferences reasonably deducted therefrom, would entitle the plaintiff to any relief on any theory of the case.'" *Phyler v. Burns*, 373 S.C. 637, 647 S.E.2d 188, 192 (2007), *citing Stiles v. Onorato, supra*. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in favor of his behalf, the complaint states any valid claim for relief. *Id, citing Troussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Id*.

DISCUSSION

Defendant's Claim for Fraud and Misrepresentation

A cause of action for fraud and misrepresentation has the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either the defendant's knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Kahn Construction Co. v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

The third counterclaim in defendant Troy Tillman's Answer has plead each of the requisite nine factual elements necessary to sustain a cause of action for fraud and misrepresentation. Troy Tillman Answer, pars. 210-217. Moreover, Troy Tillman is certainly also entitled to any "inferences reasonably deduced" from these factual allegations (*Stiles v. Onorato, supra*), including the inference that plaintiff refused to convey title to the Property upon notification of defendant's readiness to seek a mortgage refinance, which is not explicitly plead in cause of action for fraud but is plead explicitly in his subsequent cause of action for promissory estoppel. Troy Tillman Answer, par. 232. Because Troy Tillman has met his burden of pleading facts and is entitled any reasonable inferences therefrom to sustain a cause of action for fraud and misrepresentation, plaintiff's motion to dismiss defendant's Third Counterclaim for fraud and misrepresentation is DENIED.

Defendant's Claim for Imposition of a Constructive Trust of the Property

Plaintiff's motion to dismiss argues that defendant's claims for constructive trust should be dismissed because South Carolina law does not recognize such a claim. This argument is false. In 2012, the Supreme Court discussed at length the elements of a valid constructive trust claim in *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1 (2012) and specifically noted: "An action to declare a constructive trust is in equity... and will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title". *Id*, 400 S.C. at 6-7; *see also, Hale v. Finn*, 388 S.C. 79, 694 S.E.2d 51, 56 (Ct. App. 2010) ("We disagree, however, with his argument that the special referee lacked authority to base an award on quantum meruit. Such an award was proper to enforce a constructive trust."

The allegations of Troy Tillman's counterclaims are that plaintiff used inequitable, dishonest and deceitful means, including, but not limited to, falsely and fraudulently promising that she would convey title to the Property in advance of defendants' refinancing the mortgage on the Property, as well as, abusing the trust, confidence and a fiduciary relationship that defendants had entrusted in plaintiff, to allow plaintiff to have legal title to the Property to the exclusion of the defendants. Answer, par. 226-27. As referenced in the June 28, 2013 Decision of Magistrate P. Brandt Shelbourne on a previous application for ejectment filed by plaintiff against defendants (attached and incorporated as Exhibit "1" to plaintiff's Complaint, par. 12), defendants voluntarily released and marked as satisfied a lien in excess of \$100,000.00 that defendants had against the sellers, Charles and Mary Sloan, in alleged reliance on the plaintiff's promise to convey title to the Property to defendants in advance of a mortgage refinance application.

The allegations in the defendant's Counterclaims provide sufficient notice to plaintiff that defendants are claiming it is inequitable that title to the Property be in the plaintiff's name as opposed to defendants. *E.g., Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title."). As this Court must accept the well-plead allegations of Troy Tillman's Answer as true and grant Troy Tillman the benefit of every reasonable inference from those allegations, *Stiles v. Onorato*, *supra*, plaintiff's motion to dismiss defendant's cause of action to impose a constructive trust over the Property is DENIED.

Defendant's Claims for Promissory Estoppel

A cause of action for promissory estoppel has the following elements: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise by the party to whom it was made; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. *Powers Construction Co., Inc. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984).

In his Answer, Troy Tillman alleges that plaintiff promised to convey title to the Property in advance of his seeking a mortgage refinance loan (Answer at par. 230); that he relied upon this promise as a condition to permitting title to be in plaintiff's name at closing (Id at par. 231); that his reliance upon said promise was justified (Id at par. 231) and that he was damaged by plaintiff's refusal to honor her promise after defendant "informed plaintiff that he and his wife were ready to obtain a new mortgage on said property." Answer, par. 232. With respect to the element of a claim for promissory estoppel that the speaker intend the promise to be relied upon, defendant Troy Tillman plead and incorporated by reference his allegation that "plaintiff intended that defendant would rely upon the truth of plaintiff's representations concerning ... her willingness and agreement to convey title to the property known as 526 W. Butternut to the defendant." Answer, par. 214.

Accordingly, as Troy Tillman has plead the requisite facts and is entitled any reasonable inferences therefrom to plead a cause of action for promissory estoppel and this Court must accept the well-plead allegations of Troy Tillman's Answer as true and grant Troy Tillman the benefit of every reasonable inference from those allegations,

Stiles v. Onorato, supra, plaintiff's motion to dismiss defendant's cause of action for promissory estoppel is DENIED.

This Court has Subject Matter Jurisdiction over Defendant's Counterclaims

There is no dispute that a probate court has exclusive jurisdiction over "all subject matter related to: (1) the estate of decedents, including contest of wills ..." is undisputed. S.C. Code Ann. § 62-1-302(a). However, defendant's counterclaims do not involve any claims for relief which would cause this Court to impinge upon the exclusive jurisdiction of Charleston County Probate Court. Defendant is not seeking a determination in this Court that plaintiff committed fraud or other misconduct involving their mother's estate administration or her last will and testament. While statements concerning Troy Tillman's belief about his share of his late mother's estate are included in his counterclaims, such statements are background matter (Pars. 204-209 to Tillman Answer) to the allegations how title to the Property was recorded in plaintiff's name. The representation that defendant relies upon to support his counterclaim for fraud is only that plaintiff falsely represented her agreement to convey title to the Property to defendants in advance of defendants seeking to refinance the Property.

The Statute of Limitations is No Bar to Defendant's Counterclaims

It is well established that the statute of limitations "begins to run when the underlying cause of action reasonably ought to have been discovered." *Martin v. Companion Health Care Corp.*, 357 S.C. 570, 575, 593 S.E.624, 627 (Ct.App. 2004). "Under the discovery rule, the three-year clock begins ticking on the date that the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Holly Woods Association of*

Residential Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787 (Ct.App. 2004) (Quoting, *Martin v. Companion Health Care*, *supra*). The test for whether the injured party knew or should have known about the cause of action is objective rather than subjective. *Id.* Therefore, the test before the trial court is "whether the circumstances of the case would have put a person of common knowledge on notice that "some right of his has been invaded or that some other claim against another party might exist." *Holly Woods Association v. Hiller*, *Id* at 183-84, citing *Young v. S.C. Dept. of Corrs.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

In the case at bar, plaintiff offers no evidence to support her conclusory statement that "more than three years have passed since the events on which defendant bases his promissory estoppel claim." Plaintiff's Motion, par. 37. Indeed, since plaintiff only filed to evict defendants from the Property in June 2013 (Exhibit "2"), it is only reasonable to conclude that defendants only knew or should have known that plaintiff was not going to honor her agreement starting in June 2013. Plaintiff filed this action in July 3, 2014. Less than three years have passed since defendant knew or should have known of his claims against the plaintiff². Therefore, the statute of limitations is inapplicable as a defense to defendant's counterclaims. Furthermore,

² Even if defendant's claims for fraud arose sometime before July 2013, the doctrine of equitable tolling may also be applicable to defendant's claims under the facts of this case. In *Magnolia North Property Owner's Association v. Heritage Communities, Inc.*, this Court held that a defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that would otherwise give operation to the statute has been induced by the defendant's conduct." *Id.*, 397 S.C.2d 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012). In *Magnolia North*, this Court further commented that the doctrine of "equitable tolling is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's *intentional* misrepresentation, *but* deceit is not an essential element of estoppel." *Id* at 373 (Emphasis in the original).

since plaintiff has not filed a Reply raising the statute of limitations as an affirmative defense, plaintiff's argument citing the same as reason to grant a Motion to Dismiss has no merit.

Accordingly, plaintiff's remaining arguments to dismiss Counts III, V and VI of defendant Troy Tillman's Counterclaims are DENIED.

AND IT IS SO ORDERED:

Dated: _____, 2015

Hon. Diane S. Goodstein
Judge of the First Judicial Circuit

Proof of Service

I, William B. Jung, Esq., certify under penalty of perjury that on March 2, 2015, I caused a copy of the defendant Troy Tillman's proposed Order in reference to plaintiff's November 17, 2014 Motion to Dismiss to be emailed and mailed to plaintiff's counsel on March 2, 2015:

Kenneth Peck, Esq.
kenpeck@thepeckfirm.com

Kenneth Peck, Esq.
The Peck Law Firm
2040 Ewall Street, Ste. G
Mount Pleasant, S.C. 29464

Dated: March 2, 2015

William B. Jung, Esq.
Attorney for the Defendants

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No.: 2014-CV-18-01284

Defendants.

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF ORDER
DISMISSING COUNTS III, V AND VI
OF DEFNDANT TROY TILLMAN'S
COUNTERCLAIMS**

1. It was error for the Court to conclude that it lacks subject matter jurisdiction over Count V of Defendant's Counterclaims which seeks to impose a constructive trust over title to the property known as 526 Butternut Road aka 530 West Butternut Road, Summerville, S.C. (the "Butternut Property"). Defendant's cause of action for a constructive trust over the Butternut Property do not involve any issues of fact or law over which the Charleston County Probate Court has exclusive jurisdiction. "An action to

declare a constructive trust is in equity... and will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title". *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 6-7; see also, *Hale v. Finn*, 388 S.C. 79, 694 S.E.2d 51, 56 (Ct. App. 2010). The allegations of Defendant's cause of action for a constructive trust over the Butternut Property are that plaintiff used inequitable, dishonest and deceitful means, including, but not limited to, falsely and fraudulently promising that she would convey title to the Property in advance of defendants' refinancing the mortgage on the Property, as well as, abusing the trust, confidence and a fiduciary relationship that defendants had entrusted in plaintiff, to allow plaintiff to have legal title to the Property to the exclusion of the defendants. Answer, par. 226-27. As referenced in the June 28, 2013 Decision of Magistrate P. Brandt Shelbourne on a previous application for ejectment filed by plaintiff against defendants (attached and incorporated as Exhibit "1" to plaintiff's Complaint, par. 12), defendants voluntarily released and marked as satisfied a lien in excess of \$100,000.00 that defendants had against the sellers, Charles and Mary Sloan, in alleged reliance on the plaintiff's promise to convey title to the Property to defendants in advance of a mortgage refinance application. All of the necessary elements to support a claim for constructive trust are met in the allegations plead in Defendant's Counterclaims.

The allegations in the defendant's Counterclaims provide sufficient notice to plaintiff that defendants are claiming it is inequitable that title to the Property be in the plaintiff's name as opposed to defendants. *E.g., Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title."). As this Court should accept the well-plead allegations of Defendant's Answer as true and grant Defendant the benefit of every reasonable

inference from those allegations, *Stiles v. Onorato*, 318 S.C. 297, 300 (1995), it was error for the Trial Court to conclude that Defendant cannot maintain a cause of action to impose a constructive trust over the Butternut Property.

2. It was error for the Trial Court to grant Plaintiff's Rule 12(b)(6) Motion to Dismiss and denying the Defendant opportunity to re-plead those cause of action which the Court found insufficient. *Dockside Ass'n v. Detyens, Simmons, et al.*, 297 S.C. 91, 95, 314 S.E.2d 907, 909 (Ct. App. 1988) ("[W]here complaint is dismissed under Rule 12(b)(6), plaintiff should be granted leave to file an amended pleading.").

3. The Trial Court's Findings of the Fact and Conclusions of Law mischaracterizes the Defendant's actual pleadings and fail to afford the Defendant the benefit of the "facts alleged and inferences reasonably deducted therefrom," to which Defendant is entitled to rely upon "to recover any relief on any theory of the case." *Phyler v. Burns*, 373 S.C. 637, 647 S.E.2d 188, 192 (2007), citing *Stiles v. Onorato*, *supra*. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in favor of his behalf, the complaint states any valid claim for relief. *Id.* citing *Troussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Id.* For such reason, the Trial Court has failed to apply the proper standard of review applicable to a motion to dismiss a pleading filed under S.C.R.C.P. Rule 12(b)(6).

4. The Trial Court's Conclusions of Law misstate the applicable law regarding the Defendant's claims for fraud and promissory estoppel. All of the necessary elements to support a claim for fraud and constructive trust are met in the allegations plead in Defendant's Counterclaims.

5. The Trial Court's decision improperly relies upon matters outside the pleadings when the moving Plaintiff submitted no matters outside of the pleadings in moving for relief under S.C.R.P.C. Rule 12.

6. The Trial Court's finding that the Plaintiff would be prejudiced by allowing the Defendant to amend his counterclaims is not supported by the evidence or the procedural history of this action and is further contrary to principles and law of the South Carolina jurisprudence and procedural rules.

Dated: Mount Pleasant, S.C.
May 11, 2015

Respectfully submitted,



William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 576-4200

PROOF OF SERVICE

I, William B. Jung, Esq., certify under penalty of perjury that on May 11, 2015, I emailed and mailed a copy of defendant's Notice of Motion and Motion for Reconsideration to the following counsel for the plaintiff:

Kenneth Peck, Esq.
kenpeck@thepeckfirm.com

Kenneth Peck, Esq.
The Peck Law Firm
2040 Ewall Street, Ste. G
Mount Pleasant, S.C. 29464

Dated: May 11, 2015



William B. Jung, Esq.
Attorney for the Defendants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2014-CP-18-1284

TONI LYNN TILLMAN,	)
	)
Respondent,	)
	)
vs.	)
	)
TIMOTHY TROY TILLMAN and CRYSTAL	)
TILLMAN,	)
	)
Appellants.	)

NOTICE OF APPEAL

Defendant/Appellant Timothy Troy Tillman ("appellant") hereby appeals the Order of the Hon. Diane S. Goodstein, dated June 12, 2015, which denied appellant's Motion for Reconsideration of the previous Order of the Hon. Diane S. Goodstein, dated April 27, 2015 and filed on April 29, 2015 which dismissed certain counterclaims brought by appellant against the respondent. Appellant received notice of the June 12, 2015 Order denying appellant's Motion for Reconsideration Order on June 12, 2015.

(Remainder of this page intention blank)

Dated: June 15, 2015

Respectfully submitted,

WILLIAM B. JUNG, ESQ.



William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mt. Pleasant, S.C. 29464
(843) 576-4200

Attorney for the Defendant/Appellant
Timothy Troy Tillman

Proof of Service

I, William B. Jung, Esq., under penalty of perjury, certify that on June 15, 2015, I served a copy of defendants' Notice of Appeal by emailing and mailing a true and accurate complete copy thereto to the following counsel of record for the plaintiff:

Kenneth Peck, Esq.
kenpeck@thepeckfirm.com

Kenneth Peck, Esq.
The Peck Law Firm
2040 Ewall Street, Ste. G
Mount Pleasant, S.C. 29464

Attorney for the Plaintiff



William B. Jung, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CERTIFIED COPY

2015 JUN 26 PM 2:21

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-18-1284

TONI LYNN TILLMAN,

Plaintiff,

vs.

TIMOTHY TROY TILLMAN, et al.,

Defendants.

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

**NOTICE OF MOTION AND MOTION
TO FILE AN AMENDED ANSWER
BY DEFENDANT TIMOTHY TROY
TILLMAN**

TO: PLAINTIFF AND KENNETH PECK, ESQ., COUNSEL FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that co-defendant Timothy Troy Tillman by its undersigned attorney will move before the Court of Common Pleas for Dorchester County upon ten (10) days notice or as soon as counsel may be heard for an Order, pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and the June 15, 2015 Order of the Hon. Diane S. Goodstein, granting co-defendant Tillman leave to file an Amended Answer in the form attached as Exhibit "1" on the grounds that "leave to amend shall be freely given when justice so requires and does not prejudice any other party." S.C.R.C.P. 15(a). The movant may file a memorandum of law and/or affidavits in advance of the hearing date and present argument in support of this motion.

Dated: June 25, 2015

WILLIAM B. JUNG, ESQ.

William B. Jung
William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 576-4200

Attorney for the Co-Defendant

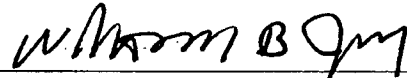
Proof of Service

I, William B. Jung, Esq., under penalty of perjury, certify that on June 25, 2015, I served a copy of defendant Timothy Troy Tillman's Motion to File Amended Answer by emailing and mailing a true and accurate complete copy thereto to the following counsel of record for the plaintiff:

Kenneth Peck, Esq.
kenpeck@thepeckfirm.com

Kenneth Peck, Esq.
The Peck Law Firm
2040 Ewall Street, Ste. G
Mount Pleasant, S.C. 29464

Attorney for the Plaintiff



William B. Jung, Esq.

CERTIFIED COPY
2015 JUN 26 PM 2:22
William B. Jung
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT "1"

CERTIFIED COPY
2015 JUN 26 PM 2:22
Carol Blackman
CLERK OF COURT
BROCHESTER COUNTY

STATE SOUTH CAROLINA
COUNTY OF DORCHESTER

2015 JUN 26 PM 2:22

TONI LYNN TILLMAN, *Cheryl Blackman*
CLERK OF COURT)
DORCHESTER COUNTY)
Plaintiff,)

vs.)

CRYSTAL TILLMAN and TIMOTHY)
TROY TILLMAN,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 14-CP-18-1284

**AMENDED ANSWER AND
COUNTERCLAIMS OF CO-
DEFENDANT TROY TILLMAN**

JURY TRIAL DEMANDED

Co-defendant, Timothy Troy Tillman ("defendant"), appearing by his attorney, William B. Jung, Esq., as and for his (i) Amended Answer to the Complaint and (ii) Amended Counterclaims against plaintiff Toni Lynn Tillman ("plaintiff"), alleges the following:

1. Defendant admits the allegations of paragraph 1 of the Complaint.
2. Defendant admits the allegations in Paragraph 2 of the Complaint.
3. Defendant admits the allegations of paragraph 3 of the Complaint.
4. Defendant admits the allegations in Paragraph 4 of the Complaint.
5. Defendant admits the allegations in Paragraph 5 of the Complaint.
6. Defendant admits that the allegations in Paragraph 6 of the Complaint involve one property in Dorchester County, S.C.
7. Defendant denies that plaintiff is entitled to the relief described in Paragraph 7 of the Complaint and demands strict proof thereof.
8. Defendant denies that plaintiff is entitled to the relief described in Paragraph 8 of the Complaint and demands strict proof thereof.
9. Defendant admits the allegations contained in Paragraph 9 of the Complaint.

10. Defendant admits the allegations contained in Paragraph 10 of the Complaint.
11. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 11 of the Complaint.
12. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 12 of the Complaint.
13. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 13 of the Complaint.
14. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 14 of the Complaint.
15. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 15 of the Complaint.
16. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 16 of the Complaint.
17. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 17 of the Complaint but admits that defendant has not filed any appeal.
18. Defendant admits that the property is titled in plaintiff's name, but denies the plaintiff is or ought to be declared the legal or equitable owner of the property.
19. Defendant admits that the property is titled in plaintiff's name, but denies the plaintiff is or ought to be declared the legal or equitable owner of the property.
20. Defendant denies the allegations of par. 20 of the Complaint and demands strict proof at trial.
21. Defendant denies the allegations of par. 21 of the Complaint and demands strict proof at trial.

22. No response is required to par. 22 of the Complaint.
23. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 23 of the Complaint.
24. Defendant admits that he and his family have resided at the property for a period of time but denies the allegations of par. 24 of the Complaint that he or his wife are tenants or that plaintiff is a landlord and demands strict proof at trial.
25. Defendant admits that there was an oral agreement regarding defendant's payment of certain mortgage(s), taxes and insurance but maintains that there were other terms of an oral agreement between the parties which plaintiff breached.
26. Defendant denies the allegations of par. 26 of the Complaint that defendant agreed to pay rent and demands strict proof at trial.
27. Defendant denies the allegations of par. 27 of the Complaint that defendant agreed to pay rent and demands strict proof at trial.
28. Defendant denies the allegations of par. 28 of the Complaint and demands strict proof at trial.
29. Defendant denies the allegations of par. 29 of the Complaint and demands strict proof at trial.
30. Defendant denies the allegations of par. 30 of the Complaint and demands strict proof at trial.
31. Defendant denies the allegations of par. 31 of the Complaint and demands strict proof at trial.
32. Defendant denies the allegations of par. 32 of the Complaint and demands strict proof at trial.

33. Defendant denies the allegations of par. 33 of the Complaint and demands strict proof at trial.

34. Defendant denies the allegations of par. 34 of the Complaint and demands strict proof at trial.

35. Defendant denies the allegations of par. 35 of the Complaint and demands strict proof at trial.

36. Defendant denies the allegations of par. 36 of the Complaint and demands strict proof at trial.

37. Defendant denies the allegations of par. 37 of the Complaint and demands strict proof at trial.

38. Defendant denies the allegations of par. 38 of the Complaint and demands strict proof at trial.

39. Defendant denies the allegations of par. 39 of the Complaint and demands strict proof at trial.

40. Defendant denies the allegations of par. 40 of the Complaint and demands strict proof at trial.

41. No response is required to par. 41 of the Complaint.

42. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 42 of the Complaint.

43. Defendant denies the allegations of par. 43 of the Complaint and demands strict proof at trial.

44. Defendant denies the allegations of par. 44 of the Complaint and demands strict proof at trial.

45. Defendant denies the allegations of par. 45 of the Complaint and demands strict proof at trial.

46. No response is required to par. 46 of the Complaint.

47. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 47 of the Complaint.

48. Defendant denies the allegations of par. 48 of the Complaint and demands strict proof at trial.

49. Defendant denies the allegations of par. 49 of the Complaint and demands strict proof at trial.

50. Defendant denies the allegations of par. 50 of the Complaint and demands strict proof at trial.

51. Defendant denies the allegations of par. 51 of the Complaint and demands strict proof at trial.

52. Defendant denies the allegations of par. 52 of the Complaint and demands strict proof at trial.

53. No response is required to par. 53 of the Complaint.

54. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 54 of the Complaint.

55. Defendant denies the allegations of par. 55 of the Complaint and demands strict proof at trial.

56. Defendant denies the allegations of par. 56 of the Complaint and demands strict proof at trial.

57. Defendant denies the allegations of par. 57 of the Complaint and demands strict proof at trial.

58. No response is required to par. 58 of the Complaint.

59. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 59 of the Complaint.

60. Defendant admits defendants have an equitable interest in the property but denies the allegations of par. 55 of the Complaint and demands strict proof at trial.

61. Defendant denies the allegations of par. 61 of the Complaint and demands strict proof at trial.

62. Defendant denies the allegations of par. 62 of the Complaint and demands strict proof at trial.

63. Defendant denies the allegations of par. 63 of the Complaint and demands strict proof at trial.

64. Defendant denies the allegations of par. 64 of the Complaint and demands strict proof at trial.

65. Defendant denies the allegations of par. 65 of the Complaint and demands strict proof at trial.

66. No response is required to par. 66 of the Complaint.

67. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 67 of the Complaint.

68. Defendant denies the allegations of par. 68 of the Complaint and demands strict proof at trial.

69. Defendant denies the allegations of par. 69 of the Complaint and demands strict proof at trial.

70. Defendant denies the allegations of par. 70 of the Complaint and demands strict proof at trial.

71. No response is required to par. 71 of the Complaint.

72. Defendant denies knowledge and information sufficient to form a belief as to the truth of paragraph 72 of the Complaint.

73. Defendant denies the allegations of par. 73 of the Complaint, requests full opportunity for discovery and demands strict proof at trial.

74. Defendant admits the allegations of par. 74 of the Complaint

75. Defendant admits the allegations of Paragraph 75 of the Complaint.

76. Defendant admits the allegations of par. 76 of the Complaint and states that plaintiff should not have any interest in the property, legal or equitable.

77. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 77 of the Complaint.

78. Defendant denies the allegations of par. 78 of the Complaint and demands strict proof at trial.

79. Defendant denies the allegations of par. 79 of the Complaint and demands strict proof at trial.

80. Defendant denies the allegations of par. 80 of the Complaint and demands strict proof at trial.

81. Defendant denies the allegations of par. 81 of the Complaint and demands strict proof at trial.

82. Defendant denies the allegations of par. 82 of the Complaint and demands strict proof at trial.

83. Defendant denies the allegations of par. 83 of the Complaint and demands strict proof at trial.

84. Defendant denies the allegations of par. 84 of the Complaint and demands strict proof at trial.

85. Defendant denies the allegations of par. 85 of the Complaint and demands strict proof at trial.

86. No response is required to par. 86 of the Complaint.

87. Defendant admits the allegations in paragraph 87 of the Complaint.

88. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 88 of the Complaint.

89. Defendant admits the allegations in paragraph 89 of the Complaint.

90. Defendant admits the allegations in paragraph 90 of the Complaint.

91. Defendant denies the allegations in paragraph 91 of the Complaint.

92. Defendant denies the allegations of par. 92 of the Complaint and demands strict proof at trial.

93. Defendant denies the allegations of par. 93 of the Complaint and demands strict proof at trial.

94. Defendant denies the allegations of par. 94 of the Complaint and demands strict proof at trial.

95. Defendant denies that any judicial relief is necessary to dissolve an expired Mechanics Lien and demands strict proof thereof.

96. Defendant denies the allegations of par. 96 of the Complaint and demands strict proof at trial.

97. No response is required to par. 97 of the Complaint.

98. Defendant denies knowledge and information sufficient to form a belief as to the truth of paragraph 98 of the Complaint.

99. Defendant admits the allegations in paragraph 99 of the Complaint.

100. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 100 of the Complaint.

101. Defendant admits the allegations in paragraph 101 of the Complaint.

102. Defendant admits the allegations in paragraph 102 of the Complaint.

103. Defendant admits the allegations in Paragraph 103 of the Complaint.

104. Defendant denies knowledge and information sufficient to form a belief as to the truth of Paragraph 104 of the Complaint.

105. Defendant denies the allegations in par. 105 of the Complaint.

106. Defendant denies the allegations in par. 106 of the Complaint.

107. Defendant denies the allegations in par. 107 of the Complaint.

108. Defendant denies the allegations in par. 108 of the Complaint.

109. Defendant denies the allegations in par. 109 of the Complaint.

110. No response is required to par. 110 of the Complaint.

111. Defendant denies the allegations in par. 111 of the Complaint.

112. Defendant denies the allegations in par. 112 of the Complaint.

AFFIRMATIVE DEFENSES

113. Plaintiff has failed to state any claims upon which relief can be granted against defendants.

114. Plaintiff's claims are barred under the applicable Statute of Limitations in South Carolina.

115. Plaintiff has unclean hands and should not be afforded any relief in equity.

116. Plaintiff's claims are barred by application of the doctrines of estoppel, equitable estoppel and promissory estoppel.

117. Plaintiff's claims are barred by application of the doctrines of waiver and laches.

118. Plaintiff's claims are barred under the application of the South Carolina Statute of Frauds.

119. Plaintiff committed an antecedent breach of contract; therefore, plaintiff is not entitled to relief on her breach of contract claims.

120. Plaintiff's breach of contract claims are barred by reason of a failure of a condition precedent to defendant's obligations.

121. Plaintiff's breach of contract claims are barred by plaintiff's commission of fraud to induce defendant's assent to the agreements upon which plaintiff's breach of contract claims are based.

STATEMENT OF FACTS COMMON TO ALL COUNTERCLAIMS

122. In 2008, defendant and his wife, co-defendant Crystal Tillman, had entered into a written contract to purchase the premises known as 526 West Butternut Road, Summerville, S.C. (the "Property") from owners, Charles and Mary Sloan. At the time the parties entered into said contract, the residence on the Property was in a substantially unfinished condition.

123. In the time period before a closing could be scheduled on the defendants' purchase of the Property, defendants expended and provided substantial labor, services and materials into the Property at defendants' expense in effort to render the completion of the Property over 90% finished, which was a condition before a lender would agree to provide a mortgage loan for the purchase of the Property. In order to protect their equitable interest made in improving the Property prior to closing, defendants received an equitable lien on the Property in excess of \$100,000.00.

124. In December 2010 and January 2011, the defendants' lender was prepared to provide a mortgage loan for the purchase of the Property. At that time, it was agreed between the plaintiff and defendants that, to accommodate defendants' mortgage lender's preference that title to the Property be initially placed in the plaintiff's name, defendants would issue a Satisfaction of their lien issued against the Property for no monetary consideration so that the lender's mortgage covering the net purchase price of the Property, less the value of defendant's existing lien on the Property, would have priority of recording as a first mortgage. At this time, plaintiff and defendants agreed that after the closing of title to the Property, plaintiff would deed title to the Property to defendants, which was a precondition to defendants' ability to refinance the Property and satisfy the mortgage in plaintiff's name. While the mortgage loan and legal title to the Property remained in plaintiff's name, the parties further agreed that defendants would pay the mortgage on the Property which included escrow payments for property insurance and property taxes.

125. In reliance of these representations, defendants provided a Satisfaction of their lien, and the closing of the sale of the property under the defendants' contract with Charles and

Mary Sloan occurred on or about January 21, 2011, whereby plaintiff received a deed in her name to the Property.

126. Following the January 21, 2011 closing, defendants made the plaintiff's mortgage payments on the Property. Subsequently, defendants notified plaintiff that they wished to refinance of the existing mortgage loan so to remove the plaintiff's name from any mortgage loan on the Property. At this time, as the parties had previously agreed, defendants sought and called upon the plaintiff to issue defendants a deed to the Property in defendants' name, which was a condition of a lender to defendants' ability to apply for a refinanced mortgage loan.

127. At this time, the plaintiff refused to execute said deed. Upon discovering the refusal to execute a deed to title to the Property to the defendants, defendants objected to making mortgage payments to the plaintiff. The instant dispute and a previous petition for eviction filed by the plaintiff against the defendants thereafter arose.

AS AND FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

128. Defendant repeats and re-alleges each and every allegation in paragraphs 1 through 127 as if restated here at length.

129. There exists an actual controversy between plaintiff and defendants as to whether plaintiff has any interest, legal, equitable or otherwise, in the land and improvements known as 526 West Butternut Road, Summerville, S.C. 29483; TMS 135-00-00-090 (the "Property"). Specifically, defendant alleges that he and his wife, co-defendant, Crystal Tillman, are the owners of said property to the exclusion of the plaintiff by virtue of an agreement between the parties and from the equity and capital investment made by the defendants in said property.

Defendant contends that he and Crystal Tillman should be declared to the legal and equitable owners in fee simple of the property.

130. Defendant further contends that plaintiff has improperly and wrongfully claimed an ownership interest in the Property to justify her intent to deprive the defendant and Crystal Tillman of their legal and equitable interests in the Property.

131. The defendant further contends that he is entitled to an Order and Judgment providing that he and Crystal Tillman are the lawful owners of the Property as opposed to the plaintiff.

132. The plaintiff disputes all of defendant's contentions and contends to the contrary. Accordingly, defendant seeks a declaration as to the respective rights and interests of the parties with respect to the title and ownership of the Property.

AS AND FOR A SECOND COUNTERCLAIM

(Claim to Remove Plaintiff's Cloud on Defendant's Title)

133. Defendant re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

134. Plaintiff has disparaged defendant's ownership of the Property by and through the preparing, posting, publishing, and recording actions in which plaintiff maintains to be the legal and equitable owner of the Property and denying that defendant and Crystal Tillman have any ownership interest in the Property.

135. Plaintiff knew or should have known that she has no valid or lawful claim to the title or to any interest in the Property. The plaintiff's claim to have an ownership interest in the Property is naturally and commonly interpreted as denying, disparaging, and casting doubt upon

defendant's ownership of the Property. By posting, publishing, and recording a claim to title of the Property, plaintiff has disparaged defendant's legal title to the Property to the world at large.

136. Defendant is informed and believes that he is entitled to an Order and Judgment finding that the plaintiff has no lawful or legitimate legal or equitable interest in the ownership of the Property.

137. As a direct and proximate result of the actions of the plaintiff in maintaining that she is the legal or equitable owner of the Property, defendant has suffered actual and special damages in an amount to be determined at trial.

AS AND FOR A THIRD COUNTERCLAIM

(Fraud and Misrepresentation)

138. Defendant re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

139. The plaintiff made representations to defendant that she would re-convey title to the Property to defendant and his wife upon request and notification that defendants were ready to seek the refinance of the existing mortgage loan on the Property out of the plaintiff's name. The plaintiff further represented to defendant that she would not claim any legal or equitable ownership interest in the Property and would hold title to the Property in trust for the defendant and his wife pending their readiness to refinance the loan existing on the Property.

140. The representations made by the plaintiff to the defendant relating to (i) her agreement and willingness to transfer and deed title to the Property to the defendant and his wife so that defendants could refinance of the existing mortgage loan on the Property; and (ii) that plaintiff would never claim any legal or equitable ownership interest in the Property and would hold title in trust for the defendants were false.

141. The representations made by the plaintiff to the defendant relating to (i) her agreement and willingness to transfer and deed title to the Property to the defendant and his wife so that defendants could refinance of the existing mortgage loan on the Property and (ii) that plaintiff would never claim any legal or equitable ownership interest in the Property and would hold title in trust for the defendants were material to the defendants' agreement to issue a Satisfaction of their lien on the Property prior to or at the January 21, 2011 closing of title from Charles and Mary Sloan to the plaintiff and agreement to allow title to pass into the name of the plaintiff under the defendants' purchase contract with Charles and Mary Sloan

142. The representations made by the plaintiff to the defendant relating to (i) her agreement and willingness to transfer and deed title to the Property to the defendant and his wife so that defendants could refinance of the existing mortgage loan on the Property and (ii) that plaintiff would never claim any legal or equitable ownership interest in the Property and would hold title in trust for the defendants were made by the plaintiff with knowledge of the falsity of said representation or were otherwise made with reckless disregard for the truth or falsity of said representations.

143. At all relevant times, plaintiff intended that defendant would rely and act upon the truth of plaintiff's representations regarding (i) her agreement and willingness to transfer and deed title to the Property to the defendant and his wife so that defendants could refinance of the existing mortgage loan on the Property and (ii) agreement that plaintiff would never claim any legal or equitable ownership interest in the Property and would hold title in trust for the defendants

144. At all relevant times, defendant was ignorant of the falsity of plaintiff's representations and relied on truth of those representations.

145. Defendant reasonably relied upon and had a right to reasonably rely upon the truthfulness of plaintiff's representations.

146. As a direct and proximate consequence of the defendant's reliance upon the truth of plaintiff's representations, defendant has suffered damages in an amount to be proven at trial.

147. Defendant is informed and believes that he is entitled to recover, in addition to actual damages, pre-judgment interest, punitive damages against the plaintiff and demands such damages and relief.

AS AND FOR A FOURTH COUNTERCLAIM

(Constructive Trust - 526 West Butternut Road, Summerville, S.C. 29483)

148. Defendant repeats and re-alleges paragraphs 1 through 147 as if restated here at length.

149. Plaintiff made false and fraudulent representations to the defendant that plaintiff would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to defendant and his wife so defendant could refinance said property to satisfy the existing loan in the plaintiff's name on said property.

150. At all relevant times, defendant relied upon plaintiff's promise and agreement to convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant as a condition for permitting plaintiff to receive title from the previous owners, Charles and Mary Sloan under defendant's purchase contract with the Sloans.

151. At all relevant times, plaintiff owed a fiduciary duty to the defendant and was in a confidential relationship with the defendant to ensure that defendant received title to the property known as 526 West Butternut Road, Summerville, S.C. once defendant informed plaintiff that he

and his wife were ready to refinance said property by obtaining new loan against said property which would satisfy the existing mortgage on said property which was in plaintiff's name.

152. Plaintiff has acquired title to 526 West Butternut Road, Summerville, S.C. by means of fraud, bad faith, abuse of confidence placed in the plaintiff by defendant and Crystal Tillman in violation of fiduciary duties, all perpetuated by the plaintiff at the expense of and against the defendant.

153. Defendant is informed and believe that a constructive trust should be imposed on plaintiff's title to the real property known as 526 West Butternut Road, Summerville, S.C. such that defendant receive title to said property from the plaintiff.

As and For a Fifth Cause of Action

(Promissory Estoppel)

154. Defendant repeats and re-alleges paragraphs 1 through 153 as if restated here at length.

155. Plaintiff made a promise and agreement with the defendant that plaintiff would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant once defendant and his wife informed plaintiff that they were ready obtain a new mortgage loan on said property and refinance said property to satisfy the existing loan in the plaintiff's name on said property.

156. Defendant reasonably and justifiably relied upon the plaintiff's promises that she would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant and his wife after the closing with the Sloans in permitting and authorizing title to said property to be placed in the plaintiff's name at the closing of a purchase agreement for said

property previously made between Charles and Mary Sloan and the defendant and Crystal Tillman.

157. At all relevant times, it was reasonable and foreseeable by the plaintiff that defendant would rely upon the promises and representations made by plaintiff to defendant that plaintiff would convey title to the Property to defendant and his wife and never claim an ownership interest in the Property.

158. Defendants called upon the plaintiff to issue a deed to the defendants; however, plaintiff refused to convey title to the Property to the defendants in breach of her promise to do so.

159. Defendant has been damaged as a direct and proximate result of the plaintiff's breach of her promise and agreement that she would convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant upon his advice that he and wife were ready to obtain a new mortgage loan on said property

160. Defendant is informed and believes that he is entitled to the equitable enforcement of plaintiff's promise and agreement to convey title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendant, and defendant demands such relief.

As and For a Sixth Cause of Action

(Breach of Contract)

161. Defendant repeats and re-alleges paragraphs 1 through 160 as if restated here at length.

162. Plaintiff and defendant made a valid and binding agreement and contract whereby that plaintiff agreed to convey a deed and title to the property known as 526 West Butternut Road, Summerville, S.C. to the defendants so that upon receipt of defendants' notice that

defendants could refinance the plaintiff's mortgage loan in exchange for defendants' agreement to issue a Satisfaction for a their lien held by the defendants on the Property, as well as, defendants' agreement to pay the monthly mortgage payments due under plaintiff's mortgage loan on the Property.

163. The mutual covenants, terms and obligations due to each party under the terms of their contract and agreement constitutes good, valuable, sufficient and mutual consideration to said contract and agreement.

164. The defendant and his wife fully performed all terms, conditions and obligations required of them under the parties' contract and agreement.

165. Defendants notified the plaintiff that they were ready to refinance the existing mortgage in plaintiff's name on the Property; however, plaintiff refused to convey title to the Property to the defendants in breach of the parties contract and agreement.

166. Defendant has been damaged as a direct and proximate result of the plaintiff's breach of the agreement and contract between the parties.

167. Defendant is informed and believes that he is entitled to recover actual damages proximately caused by the plaintiff's breach of contract, as well as, prejudgment interest, and defendant demands such relief.

WHEREFORE, having answered plaintiff's Complaint and having alleged his Counterclaims against plaintiff, defendant Timothy Troy Tillman prays that the Honorable Court grant the following relief:

1. Dismiss the plaintiff's Complaint; and
2. Declare that plaintiff has no legal or equitable interest in the property known as 526 West Butternut Road, Summerville, S.C. 29483;

3. Award defendant judgment against the plaintiff for defendant's damages on his counterclaims against the plaintiff;

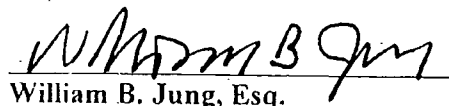
4. Impose a constructive trust on plaintiff's interest in the property known as 526 West Butternut Road, Summerville, S.C. such that defendant be granted exclusive and full title to said property from and by the plaintiff;

5. Award defendant recovery of his costs, pre-judgment interest, disbursements and a reasonable attorney's fee to the extent allowable under South Carolina law.

6. Grant such other and further relief as is just and proper.

Dated: June 25, 2015

WILLIAM B. JUNG, ESQ.



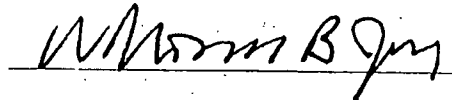
William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

Attorney for Defendant Timothy Troy
Tillman

Demand for Jury Trial

Defendant demands trial by jury on all such issues properly tried to a jury.

Dated: June 26, 2015



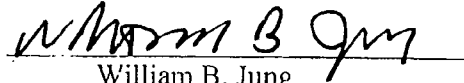
William B. Jung, Esq.

Proof of Service

I, William B. Jung, Esq., served a copy of defendant Timothy Troy Tillman's Answer and Counterclaims on June 26, 2015 by emailing and mailing a true and complete copy to the following person(s), first class U.S. Postal Service postage paid by the undersigned:

Kenneth E. Peck, Esq.
The Peck Law Firm
2040 Ewall Street
Mount Pleasant, S.C. 29464

Dated: June 26, 2015

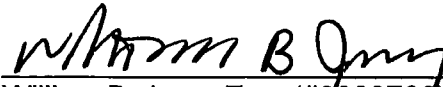

William B. Jung

CERTIFICATION

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: Mount Pleasant, S.C.
October 23, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William B. Jung", is written over a horizontal line.

William B. Jung, Esq. (#0068788)
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 576-4200

Attorney for the Appellant T. Troy Tillman

CERTIFICATION

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: Mount Pleasant, S.C.
October 26, 2015

Respectfully submitted,



William B. Jung, Esq. (#0068788)
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 576-4200

Attorney for the Appellant T. Troy Tillman

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