

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 28, 2012

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
409 Magnolia St.
Spartanburg, SC 29303

John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
Kenison, Dudley & Crawford
704 East McBee Ave.
Greenville, SC 29601

Nathan A. Earle, Esquire
Nathan A. Earle, Attorney at Law
PO Box 1714
Travelers Rest, SC 29690-1714

Re: DeShields Grading v. Ford Trust

Dear Counsel:

This is to advise that the title in the above matter has been changed to read as follows:

DeShields Grading, Inc.,

Respondent,

v.

Ford Trust; Maurice Andre Smith and Perry S. Luthi, Sr.,
as co-trustees of Ford Trust dated April 8, 2010; Maurice
Andre Smith, Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc, d/b/a First Palmetto Trust; Investments
One, LLC; Reserve Woodfin HOA and Elite Concrete
Construction, LLC,

Defendants,

of whom Luthi Mortgage Co., Inc., d/b/a First
Palmetto Trust is

Appellant,

and Elite Concrete Construction, LLC, is

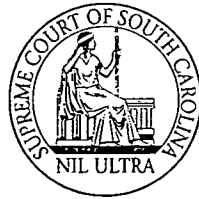
Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

Daniel D. Shearouse
CLERK *DS*

DES/lda



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 27, 2012

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
409 Magnolia St.
Spartanburg, SC 29303

John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
Kenison, Dudley & Crawford
704 East McBee Ave.
Greenville, SC 29601

Nathan A. Earle, Esquire
Nathan A. Earle, Attorney at Law
P.O. Box 1714
Travelers Rest, SC 29690-1714

Re: DeShields Grading v. Ford Trust

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant 10 minutes

Respondents 10 minutes

Appellant in Reply 5 minutes

This case is scheduled for hearing on Thursday, April 6, 2012 at 10:00 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M Hopkins

Administrative Assistant

DES/dmh

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

February 23, 2012

The South Carolina Supreme Court
Hon. Daniel E. Shearouse
Clerk of Court
Post Office Box 11330
Columbia, SC 29211

Re: DeShields Grading, Inc. vs. Ford Trust, et al.
Case No.: 2011-CP-42-00135

Dear Mr. Shearouse:

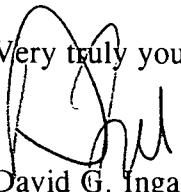
I am writing in response to your memorandum of February 17, 2012, regarding scheduling the above-referenced case. Please note that we have the following hearings scheduled:

April 3, 2012 at 3:00 p.m. -Fortenberry v Blackwell, Spartanburg County Probate Court

April 4, 2012 at 10:00 a.m., Davis v Heirs of Mays, Spartanburg County Probate Court
(This hearing is pursuant to notice by publication.)

If you have any questions, please let me know.

Very truly yours,


David G. Ingalls
Attorney at Law

DGI/mec

RECEIVED

FEB 27 2012

S.C. SUPREME COURT



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17 and 18. Please notify this office in writing prior to February 24, 2012 as to any scheduling conflicts for the April term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

DeShields Grading v. Ford Trust



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17 and 18. Please notify this office in writing prior to February 24, 2012 as to any scheduling conflicts for the April term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

DeShields Grading v. Ford Trust

The Supreme Court of South Carolina

DeShields Grading, Inc., Respondent,

v.

Ford Trust; Maurice Andre
Smith and Perry S. Luthi, Sr.,
as co-trustees of Ford Trust
dated April 8, 2010; Maurice
Andre Smith, Individually;
Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc, d/b/a
First Palmetto Trust;
Investments One, LLC;
Reserve at Woodfin HOA; and
Elite Concrete Construction,
LLC,

Defendants,

Of whom Luthi Mortgage Co.,
Inc. d/b/a First Palmetto Trust
is

Appellant.

The Honorable Gordon G. Cooper
Spartanburg County
Trial Court Case No. 2011-CP-42-00135

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court. Upon receipt of this order, the Court of Appeals is hereby directed to

forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

February 16, 2012

cc: David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
The Honorable Tanya Gee

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.....Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust.....Appellant.

RECORD ON APPEAL

David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

John T. Crawford, Jr., Esq. (SC Bar No. 69682)
Townes Johnson, III, Esq. (SC Bar No. 75412)
Crawford & Johnson, LLC
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorneys for Respondent

Nathan A. Earle, Esq.
Mann Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864) 242-4995

Attorney for Elite Concrete Construction, LLC

SC Court of Appeals

SEP 19 2011

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Caption
No date on
POS
Remove Counsel

KEVEN K. KENISON
Practicing Attorney in South Carolina and Georgia
THOMAS E. DUDLEY, III
Practicing Attorney in South Carolina and North Carolina
JOHN T. CRAWFORD, JR.
Practicing Attorney in South Carolina
M. STOKELY HOLDER
Practicing Attorney in South Carolina
TOWNES B. JOHNSON, III
Practicing Attorney in South Carolina
F. LEE PRICKETT, III
Practicing Attorney in South Carolina

December 20, 2011

Hon. Tanya Gee
Clerk of the Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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SC COURT OF APPEALS

Re: DeShields Grading, Inc., Plaintiff/Respondent, v. Luthi Mortgage Co., Inc.
d/b/a First Palmetto Trust, Defendant/Appellant
Case No.: 2011-CP-42-00135

Dear Ms. Gee:

Enclosed please find the original and fifteen (15) copies of Respondent's Final Brief, the original and one (1) copy of Respondent's Certificate of Counsel that the Final Brief complies with Rule 211(b), the original and one (1) copy of Respondent's Certificate of Counsel that the Final Brief complies with the Supreme Court's Order of August 13, 2007, and the original and one (1) copy of Respondent's Proof of Service in the above-referenced matter. Please file the originals and forward the remaining filed copy of the Proof of Service to our office in the enclosed self address stamped envelope.

By copy of this letter, we are serving three (3) copies of the same upon counsel for Appellants. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC


Townes B. Johnson III

Enclosures

cc: David G. Ingalls, Esq., *via regular mail*

GREENVILLE
704 East McBee Avenue ▪ Greenville, South Carolina 29601
Phone 864.242.4899 ▪ Fax 864.242.4844

COLUMBIA
1201 Main Street ▪ Suite 1980 ▪ Columbia, South Carolina 29201
Phone 803.748.1329 ▪ Fax 803.748.1248

CHARLESTON
534 B Oristo Ridge ▪ Edisto Beach, South Carolina 29438
Phone 843.869.1000

ATLANTA
1130 Hurricane Shoals Road ▪ Suite 600 ▪ Lawrenceville, Georgia 30043
Phone 770.513.6400 ▪ Fax 770.518.6577

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

November 30, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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DEC 01 2011
SC Court of Appeals

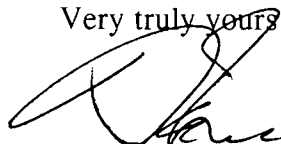
Re: DeShields Grading, Inc. v Ford Trust
Case Number: 2011192906

Dear Ms. Gee:

Enclosed please find 14 bound and one unbound copy of the Supplement to Record on Appeal, Certificate of Counsel and Certificate of Service in regard to the above-referenced case.

Please let me know if you need anything further.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

cc: John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
Kenison & Dudley, LLC
704 E. McBee Avenue
Greenville, SC 29601



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 21, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
409 Magnolia St.
Spartanburg, SC 29303

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

We have received the Appellant's Final Brief in the above matter. However, according to Rule 267 of the South Carolina Appellate Court Rules, if staples or clasps are used to bind the volumes, the spines of the volumes shall be bound with heavy tape.

Within ten days of the date of this letter, please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A Brown Building to make the required corrections. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

November 9, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

VIA UPS OVERNIGHT MAIL

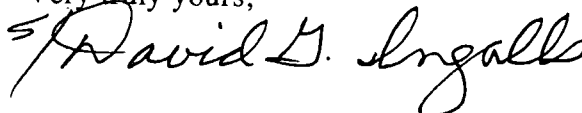
Re: DeShields Grading, Inc. v Ford Trust
Case Number: 2011192906

Dear Ms. Gee:

Enclosed please find 14 bound and one unbound copy of the Appellant's Final Brief, Certificate of Counsel and Certificate of Service in regard to the above-referenced case.

Please let me know if you need anything further.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

cc: John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
Kenison & Dudley, LLC
704 E. McBee Avenue
Greenville, SC 29601

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NOV 10 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

-November 7, 2011

John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
Kenison, Dudley & Crawford
704 East McBee Ave.
Greenville, SC 29601

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

The following Order has been endorsed on your Motion for Supplemental Record on Appeal in the above entitled case on appeal.

"Granted.

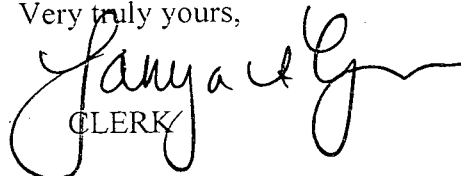
John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

November 07, 2011."

Please be advised the Appellant must serve and file the Supplemental Record on Appeal no later than December 2, 2011. All Final Briefs will be due within 20 days after the Supplemental Record on Appeal has been served.

Very truly yours,


CLERK

TAG/laf

cc: David G. Ingalls, Esquire
Paul A. McKee, III, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 20 2011
SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

Ford Trust; Maurice Andre Smith
and Perry S. Luthi, Sr., as co-trustees
of Ford Trust dated April 8, 2010;
Maurice Andre Smith, Individually;
Peggy D. Taylor; Individually;
Luthi Mortgage Co., Inc. d/b/a First
Palmetto Trust; Investments One, LLC;
Reserve @ Woodfin HOA; Butler, Means,
Evins, & Browne, P.A.; and Elite Concrete
Construction, LLC,Defendants,

Of whom Luthi Mortgage Co., Inc.
d/b/a First Palmetto Trust is Appellant.

MOTION FOR SUPPLEMENTAL RECORD ON APPEAL

Pursuant to South Carolina Appellate Court Rules Rule 212, the undersigned attorney, counsel for Respondent, hereby moves this Court to order Appellant to supplement the Record on Appeal to include the items Respondent proposed in its Designation of Matter to be Included in the Record on Appeal.

On or about August 1, 2011, pursuant to South Carolina Appellate Court Rules Rule 209, Respondent served its Designation of Matter to be Included in the Record on Appeal

("Designation of Matter") to Appellant's counsel of record, Mr. David G. Ingalls, Esq. A copy of Respondent's Designation of Matter is attached hereto and incorporated herein as "Exhibit A". Pursuant to the Designation of Matter, Respondent proposed that the following items be included in the Record on Appeal:

- 1. DeShields Grading, Inc.'s Complaint;
2. DeShields Grading, Inc.'s Pre-Hearing Brief;
3. March 15, 2011 Order of Reference;
4. The Honorable J. Mark Hayes' February 8, 2011 Order

Although the Respondent properly designated the foregoing items to be included in the Record on Appeal pursuant to South Carolina Appellate Court Rules Rule 209, Appellant failed to include them pursuant to South Carolina Appellate Court Rules Rule 210(c). Accordingly, Respondent now requests that the Court order the Appellant to supplement the Record on Appeal to include those foregoing items.

Respectfully submitted this 19th day of October 2011,

[Handwritten signature of John T. Crawford, Jr.]

John T. Crawford, Jr. (SC Bar# 69682)
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844
Attorneys for Respondent DeShields Grading Inc.

Greenville, South Carolina

Other Counsel of Record:

David G. Ingalls, Esq.
Paul A. Kckee III, Esq.
PO Box 2196
Spartanburg, SC 29304
(864) 573-5149
Attorney for Appellant

Nathan A. Earle, Esq.
Attorney at Law
819 E. North St.
Greenville, SC 29601
Attorney for Elite Concrete Construction, LLC

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: [Handwritten signature]
(Clerk) (Deputy Clerk)

FILED

11/7/11 [Handwritten mark]

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

Ford Trust; Maurice Andre Smith
and Perry S. Luthi, Sr., as co-trustees
of Ford Trust dated April 8, 2010;
Maurice Andre Smith, Individually;
Peggy D. Taylor; Individually;
Luthi Mortgage Co., Inc. d/b/a First
Palmetto Trust; Investments One, LLC;
Reserve @ Woodfin HOA; Butler, Means,
Evins, & Browne, P.A.; and Elite Concrete
Construction, LLC,Defendants,

Of whom Luthi Mortgage Co., Inc.
d/b/a First Palmetto Trust is Appellant.

PROOF OF SERVICE

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OCT 20 2011
SC Court of Appeals

Comes now Townes B. Johnson III, and certifies that a copy of Respondent's Motion for Supplemental Record on Appeal was served on the opposing party on this ~~12th~~ day of October 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: PO Box 2196, Spartanburg, South Carolina 29304.



Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

Nathan A. Earle, Esq.
Attorney at Law
819 E. North St.
Greenville, SC 29601
Attorney for Elite Concrete Construction, LLC

KEVEN K. KENISON
Practicing Attorney in South Carolina and Georgia
THOMAS E. DUDLEY, III
Practicing Attorney in South Carolina and North Carolina
JOHN T. CRAWFORD, JR.
Practicing Attorney in South Carolina
M. STOKELY HOLDER
Practicing Attorney in South Carolina
TOWNES B. JOHNSON, III
Practicing Attorney in South Carolina
F. LEE PRICKETT, III
Practicing Attorney in South Carolina

October 19, 2011

Hon. Tanya Gee
Clerk of the Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: DeShields Grading, Inc., Plaintiff/Respondent, v. Luthi Mortgage Co., Inc.
d/b/a First Palmetto Trust, Defendant/Appellant
Case No.: 2011-CP-42-00135


Dear Ms. Gee:

Enclosed for filing, please find the original and six (6) copies of the Respondent's Motion for Supplemental Record on Appeal and a filing fee in the amount of Twenty-Five and 0/100ths Dollars.

By copy of this letter, we are serving same upon counsel for the Appellant and Counsel for Elite Concrete Construction. Please do not hesitate to contact our office if you have any questions.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC



Townes B. Johnson III

Enclosures

cc: David G. Ingalls, Esq., *via regular mail and email*
Nathan A. Earle, Esq.

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OCT 20 2011
SC Court of Appeals

GREENVILLE
704 East McBee Avenue ▪ Greenville, South Carolina 29601
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Phone 843.869.1000

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The South Carolina Court of Appeals

TANYA A. GEE
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V. CLAIRE ALLEN
DEPUTY CLERK

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October 21, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
409 Magnolia St.
Spartanburg, SC 29303

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

The following Order has been endorsed on your Motion to File Out of Time in the above entitled case on appeal.

“Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

October 21, 2011.”

Please be advised the Record on Appeal has been accepted and filed. All Final Briefs must be served and filed no later than November 10, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.,

Respondent,

v.

Ford Trust; Maurice Andre Smith and Perry
S. Luthi, Sr. as co-trustees of Ford Trust,
dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust; Investments One, LLC; Reserve @
Woodfin HOA; and Elite Concrete
Construction, LLC,

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OCT 17 2011
SC Court of Appeals

Defendants,

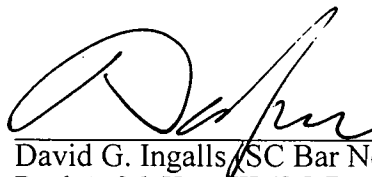
Of whom Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust is

Appellant.

AMENDED PROOF OF SERVICE

I, David G. Ingalls, do hereby certify that on the 16th day of September, 2011, the Motion to File Out of Time in the above-captioned case has been duly served on the Respondent, by placing the same in an envelope, with adequate prepaid postage affixed thereto, addressed to the attorney of record as listed below, and depositing a copy of same in the United States Mail.

John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorney for Respondent



David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

October 14, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

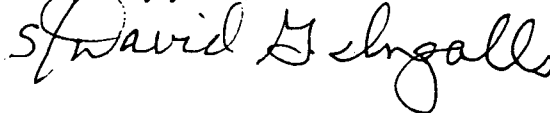
Re: DeShields Grading, Inc. (Respondent) vs. Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust (Appellant)
Case Number: 2011-CP-42-00135

Dear Ms. Gee:

Enclosed please find the Amended Proof of Service in the above case. By copy of this letter,
copies of same are being provided to opposing counsel.

Please let me know if you need anything further.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

cc; John T. Crawford, Jr., Esq.
Townes B. Johnson, III, Esq.

RECEIVED
OCT 17 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 11, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
PO BOX 2196
409 Magnolia St.
Spartanburg, SC 29304-2196

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

In our letter dated September 21, 2011, we requested you provide an Amended Proof of Service for your Motion to File Out of Time the Record on Appeal. As of today's date we have not received any further information

Please provide an Amended Proof of Service within ten days of the date of this letter,

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 12, 2011

John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
Kenison, Dudley & Crawford
704 East McBee Ave.
Greenville, SC 29601

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

We have received your letter dated October 7, 2011 in the above case. However, if you wish to seek relief with the Court, you will need to file a Motion as required by Rule 240 in the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: David G. Ingalls, Esquire
Paul A. McKee, III, Esquire

KEVEN K. KENISON
Practicing Attorney in South Carolina and Georgia
THOMAS E. DUDLEY, III
Practicing Attorney in South Carolina and North Carolina
JOHN T. CRAWFORD, JR.
Practicing Attorney in South Carolina
M. STOKELY HOLDER
Practicing Attorney in South Carolina
TOWNES B. JOHNSON, III
Practicing Attorney in South Carolina
F. LEE PRICKETT, III
Practicing Attorney in South Carolina

October 7, 2011

Via Regular Mail and Facsimile

Hon. Tanya Gee
Clerk of the Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: DeShields Grading, Inc., Plaintiff/Respondent, v. Luthi Mortgage Co., Inc.
d/b/a First Palmetto Trust, Defendant/Appellant

Case No.: 2011-CP-42-00135

Dear Ms. Gee:

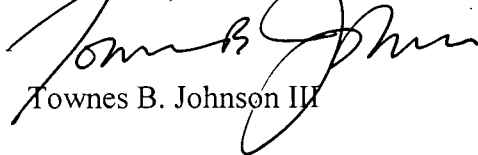
Enclosed, please find a copy of the Respondent's Designation of Matter which was sent for filing to the Court and served on Mr. David G. Ingalls, Esq. on August 1, 2011. Unfortunately, none of the items the Respondent designated were included in the Record on Appeal provided by the Appellant.

Please advise how the Court would like to proceed in order for the Respondent to be able to submit its final brief.

By copy of this letter, we are serving same upon counsel for the Appellants and Counsel for Elite Concrete Construction. Please do not hesitate to contact our office if you have any questions.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC


Townes B. Johnson III

RECEIVED

OCT 10 2011

Enclosures

cc: David G. Ingalls, Esq., *via regular mail and email*
Nathan A. Earle, Esq.

SC Court of Appeals

GREENVILLE
704 East McBee Avenue ▪ Greenville, South Carolina 29601
Phone 864.242.4899 ▪ Fax 864.242.4844

COLUMBIA
1201 Main Street ▪ Suite 1980 ▪ Columbia, South Carolina 29201
Phone 803.748.1329 ▪ Fax 803.748.1248

CHARLESTON
534 B Oristo Ridge ▪ Edisto Beach, South Carolina 29438
Phone 843.869.1000

ATLANTA
1130 Hurricane Shoals Road ▪ Suite 600 ▪ Lawrenceville, Georgia 30043
Phone 770.513.6400 ▪ Fax 770.518.6577

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,..... Respondent,

v.


Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

**RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

In addition to Appellants' designated items, Respondent proposes the following be included in the Record on Appeal:

1. DeShields Grading, Inc.'s Complaint;
2. DeShields Grading, Inc.'s Pre-Hearing Brief;
3. March 15, 2011 Order of Reference;
4. The Honorable J. Mark Hayes' February 8, 2011 Order

Respectfully submitted this 1st day of August 2011,



John T. Crawford, Jr. (SC Bar# 69682)
Townes B. Johnson III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Respondent DeShields Grading
Inc.

Greenville, South Carolina

RECEIVED

OCT 10 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,..... Respondent,

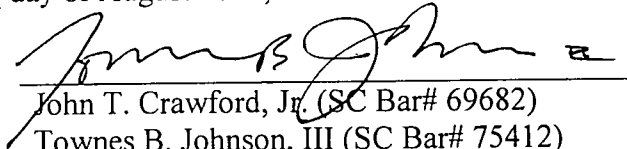
v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

CERTIFICATE OF COUNSEL

The undersigned certifies that the Designation of Matter contains no matter which is irrelevant to the appeal.

Respectfully submitted this 1st day of August 2011,



John T. Crawford, Jr. (SC Bar# 69682)
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Respondent DeShields Grading
Inc.

Greenville, South Carolina

RECEIVED

OCT 10 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

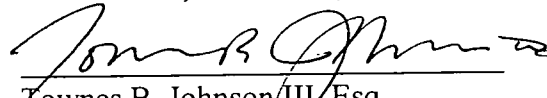
DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

PROOF OF SERVICE

Comes now Townes B. Johnson III, and certifies that a copy of his Designation of Matter was served on the opposing party on this 1st day of August 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: 819 E. North St., Greenville, South Carolina 29601.



Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

Nathan A. Earle, Esq.
Attorney at Law
819 E. North St.
Greenville, SC 29601
Attorney for Elite Concrete Construction, LLC

RECEIVED

OCT 10 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 21, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
PO BOX 2196
409 Magnolia St.
Spartanburg, SC 29304-2196

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

We have received your Motion to File Out of Time in the above case. However the Proof of Service must reflect the date you served the motion on opposing counsel. Your Proof of Service bears no date.

Within ten days of the date of this letter, please provide an Amended Proof of Service.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.....Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust.....Appellant.

MOTION TO FILE OUT OF TIME

The undersigned herein Moves before the Court for permission to file out of time. The Appellant's Record on Appeal was to be served and filed by August 31, 2011. The undersigned requests an extension to file said Record on Appeal on or before September 19, 2011.

Respectfully submitted,



David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

SC Court of Appeals

SEP 19 2011

RECEIVED

FILED

10/2/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

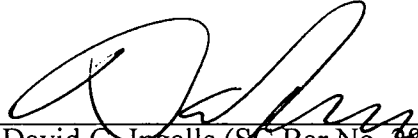
DeShields Grading, Inc.....Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that this Motion to File Out of Time complies with Rule 267, SCACR.


David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

John T. Crawford, Jr., Esq. (SC Bar No. 69682)
Townes Johnson, III, Esq. (SC Bar No. 75412)
Kenison Dudley & Crawford, LLC
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorneys for Respondent

Nathan A. Earle, Esq.
Temple Mann Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864) 242-4995
Attorney for Elite Concrete Construction, LLC

RECEIVED
SEP 19 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.....Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust.....Appellant.


PROOF OF SERVICE

I, David G. Ingalls, do hereby certify that the Motion to File Out of Time in the above-captioned case has been duly served on the Respondents, by placing the same in an envelope, with adequate prepaid postage affixed thereto, addressed to the attorney of record as listed below, and depositing a copy of same in the United States Mail.

John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorney for Respondent

Nathan A. Earle, Esq.
Temple Mann Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864) 242-4995
Attorney for Elite Concrete Construction, LLC

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SEP 19 2011
SC Court of Appeals


David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

September 16, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

VIA OVERNIGHT MAIL

Re: DeShields Grading, Inc. (Respondent) vs. Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust (Appellant)
Case Number: 2011-CP-42-00135

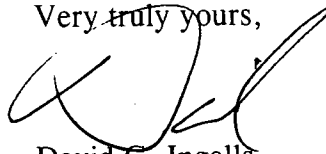
Dear Ms. Gee:

Enclosed please find the original and six (6) copies of my Motion to File Out of Time,
\$25.00 filing fee, Certificate of Counsel, and Proof of Service in regard to the above-referenced case.

By separate cover, I am sending you the Record on Appeal.

Please let me know if you need anything further.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

cc; John T. Crawford, Jr., Esq.
Townes B. Johnson, III, Esq.
Nathan A. Earle, Esq.

RECEIVED
SEP 19 2011
SC COURT OF APPEALS



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 20, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
PO BOX 2196
409 Magnolia St.
Spartanburg, SC 29304-2196

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

We have received the Record on Appeal in the above case. However the Proof of Service must show the date you served the record on opposing counsel.

Furthermore, the caption should read as follows:

DeSheilds Grading, Inc.,

v.

Respondent,

Ford Trust; Maurice Andre Smith and Perry
S. Luthi, Sr., as co-trustees of Ford Trust
dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc, d/b/a First
Palmetto Trust; Investments One, LLC;
Reserve @ Woodfin HOA; and Elite
Concrete Construction, LLC,

Defendants,

Of whom Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust is

Appellant.

Additionally, only the counsel of record to the appeal should be listed on the record.

Within ten days of the date of this letter, please provide an Amended Proof of Service and arrange for a representative from your office to come to the Court of Appeals filing desk on the

1st floor of the Edgar A. Brown Building, 1205 Pendleton Street, Columbia, SC to make the required corrections to the caption and to remove the additional counsel on the record. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

September 16, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

VIA OVERNIGHT MAIL

Re: DeShields Grading, Inc. (Respondent) vs. Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust (Appellant)
Case Number: 2011-CP-42-00135

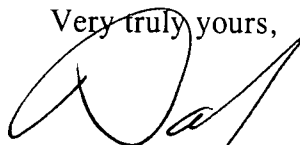
Dear Ms. Gee:

Enclosed please find fifteen (15) bound copies of the Record on Appeal, one (1) unbound copy, Certificate of Counsel, and Proof of Service in the above case. By copy of this letter, copies of same are being provided to opposing counsel.

By separate cover, I am sending you my Motion to File Out of Time

Please let me know if you need anything further.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

cc; John T. Crawford, Jr., Esq.
Townes B. Johnson, III, Esq.
Nathan A. Earle, Esq.

RECEIVED
SEP 19 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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September 9, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
PO Box 2196
409 Magnolia St.
Spartanburg, SC 29304-2196

Re: . . . DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

Our records indicate that the Record on Appeal in the above case should have been served on the opposing party by August 31, 2011 and proof of service filed with this Court. You must file the proof of service plus a Motion to Serve and File Out of Time within ten (10)-days of this letter or your appeal will be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf
cc: John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 16, 2011

David G. Ingalls, Esquire
Paul A. McKee, III, Esquire
PO Box 2196
409 Magnolia St.
Spartanburg, SC 29304-2196

John T. Crawford, Jr., Esquire
Townes B. Johnson III, Esquire
Kenison, Dudley & Crawford
704 East McBee Ave.
Greenville, SC 29601

Re: DeShields Grading v. Ford Trust
2011192906

Dear Counsel:

Upon review, the caption should read as follows:

DeSheilds Grading, Inc.,

v.

Respondent,

Ford Trust; Maurice Andre Smith and Perry
S. Luthi, Sr., as co-trustees of Ford Trust
dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc, d/b/a First
Palmetto Trust; Investments One, LLC;
Reserve @ Woodfin HOA; and Elite
Concrete Construction, LLC,

Defendants,

Of whom Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust is

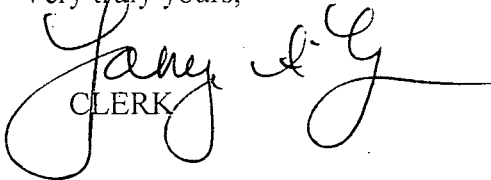
Appellant.

Any future filings by any party to this appeal must feature the above caption.

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,


CLERK

TAG/laf

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust,Appellant.

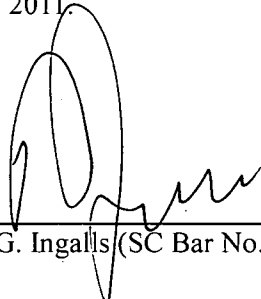
NOTICE OF RECEIPT OF TRANSCRIPT

On June 6, 2011, Appellant Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust received the transcript of the Hearing before the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County. The Hearing was held on April 19, 2011.

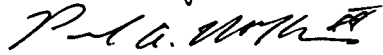
RECEIVED

AUG 05 2011

SC Court of Appeals



David G. Ingalls (SC Bar No. 2888)



Paul A. McKee, III (SC Bar No. 77926)
PO Box 2196
409 Magnolia Street
Spartanburg, SC 29304-2196
Telephone: (864)-573-5149
Facsimile: (864)-948-1403

ATTORNEYS FOR APPELLANT

Spartanburg, South Carolina
August 3, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust,Appellant.

APPELLANT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Appellant Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust proposes the following matter to be included in the Record on Appeal in this Matter:

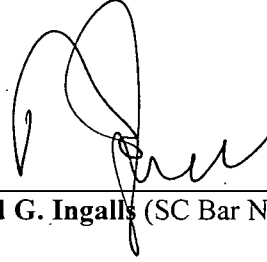
1. Transcript of Record, April 19, 2011
2. Order and Judgment, September 9, 2009
3. Warranty Deed, February 2, 2010
4. Title to Real Estate, February 11, 2010
5. Mortgage of Real Estate, February 11, 2010
6. Title to Real Estate, May 6, 2010
7. Mortgage of Real Estate, May 6, 2010
8. Subordination of Judgment, April 28, 2010 (DeShields)
9. Subordination of Judgment, April 28, 2010 (Elite)
10. Mortgage of Real Estate, February 11, 2010
11. Order and Judgment, April 26, 2011

RECEIVED

AUG 05 2011

SC Court of Appeals

I certify that this designation contains no matter which is irrelevant to this appeal.



David G. Ingalls (SC Bar No. 2888)



Paul A. McKee, III (SC Bar No. 77926)

PO Box 2196

409 Magnolia Street

Spartanburg, SC 29304-2196

Telephone: (864)-573-5149

Facsimile: (864)-948-1403

ATTORNEYS FOR APPELLANT

Spartanburg, South Carolina
August 3, 2011

RECEIVED

AUG 05 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust,Appellant.

CERTIFICATE OF SERVICE

I, Melinda Cantrell, an employee with the Law Office of David G. Ingalls hereby certify that I served a copy of the **Notice of Receipt of Transcript and Appellant's Designation of Matter to be Included in the Record on Appeal (certification)** in the above-captioned case on the following individuals by placing the same in the United States Mail, with sufficient first-class postage affixed and addressed as follows:

John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
Kenison Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, SC 29601

Nathan A. Earle, Esq.
Temple, Mann, Briggs, & Hill
819 E. North Street
Greenville, SC 29601

RECEIVED

AUG 05 2011

SC Court of Appeals

Melinda Cantrell

Melinda Cantrell
Paralegal

Spartanburg, South Carolina
August 3, 2011

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864)-573-5149

FAX (864)-585-2744

August 3, 2011

VIA: US Mail

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: DeSheilds Grading v. Ford Trust
2011192906

RECEIVED

AUG 05 2011

SC Court of Appeals

Dear Claire,

Enclosed are the Notice of Receipt of Transcript and Certified Designation of Matter for the above-captioned case. Please contact me should you have any questions. Thank you very much.

Sincerely,



David G. Ingalls,
Attorney at Law

DGI/pam
Enclosures

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED

AUG 02 2011

The Honorable Gordon G. Cooper

SC Court of Appeals

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,..... Respondent,

v.


Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

**RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

In addition to Appellants' designated items, Respondent proposes the following be included in the Record on Appeal:

1. DeShields Grading, Inc.'s Complaint;
2. DeShields Grading, Inc.'s Pre-Hearing Brief;
3. March 15, 2011 Order of Reference;
4. The Honorable J. Mark Hayes' February 8, 2011 Order

Respectfully submitted this 1st day of August 2011,


John T. Crawford, Jr. (SC Bar# 69682)
Townes B. Johnson III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Respondent DeShields Grading
Inc.

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 02 2011

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,..... Respondent,

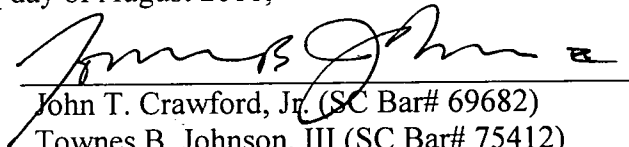
v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

CERTIFICATE OF COUNSEL

The undersigned certifies that the Designation of Matter contains no matter which is irrelevant to the appeal.

Respectfully submitted this 1st day of August 2011,



John T. Crawford, Jr. (SC Bar# 69682)
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Respondent DeShields Grading
Inc.

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

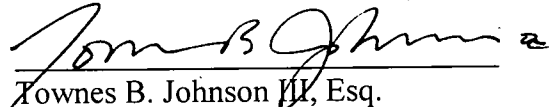
DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

PROOF OF SERVICE

Comes now Townes B. Johnson III, and certifies that a copy of his Initial Brief was served on the opposing party on this 1st day of August 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: 819 E. North St., Greenville, South Carolina 29601.



Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

Nathan A. Earle, Esq.
Attorney at Law
819 E. North St.
Greenville, SC 29601
Attorney for Elite Concrete Construction, LLC

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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The Honorable Gordon G. Cooper

SC Court of Appeals

Case No.: 2011-CP-42-00135

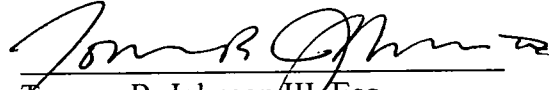
DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

PROOF OF SERVICE

Comes now Townes B. Johnson III, and certifies that a copy of his Designation of Matter was served on the opposing party on this 1st day of August 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: 819 E. North St., Greenville, South Carolina 29601.


Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

Nathan A. Earle, Esq.
Attorney at Law
819 E. North St.
Greenville, SC 29601
Attorney for Elite Concrete Construction, LLC

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SPARTANBURG COUNTY AUG 02 2011
Court of Common Pleas

The Honorable Gordon G. Cooper

SC Court of Appeals

Case No.: 2011-CP-42-00135

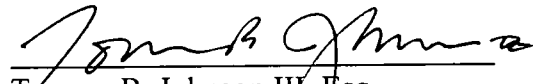
DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

PROOF OF SERVICE

Comes now Townes B. Johnson III, and certifies that a copy of his Designation of Matter was served on the opposing party on this 15 day of August 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: PO Box 2196, Spartanburg, South Carolina 29304.


Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

David G. Ingalls, Esq.
Paul A. Kckee III, Esq.
PO Box 2196
Spartanburg, SC 29304
(864) 573-5149
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper

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AUG 02 2011

Case No.: 2011-CP-42-00135

SC Court of Appeals

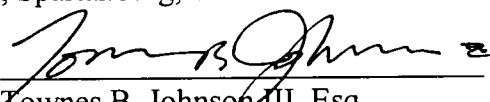
DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

PROOF OF SERVICE

Comes now Townes B. Johnson III, and certifies that a copy of his Initial Brief was served on the opposing party on this 1st day of August 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: PO Box 2196, Spartanburg, South Carolina 29304.


Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

David G. Ingalls, Esq.
Paul A. Kckee III, Esq.
PO Box 2196
Spartanburg, SC 29304
(864) 573-5149
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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The Honorable Gordon G. Cooper

SC Court of Appeals

Case No.: 2011-CP-42-00135

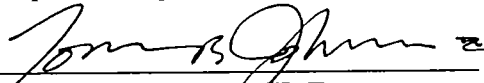
DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

PROOF OF SERVICE

Comes now Townes B. Johnson III, and certifies that a copy of his Initial Brief was served on the opposing party on this 1st day of August 2011, via email and by placing the same in the U. S. Mail with sufficient postage affixed to Appellant's Counsel of Record, David G. Ingalls, Esq. at the following address: PO Box 2196, Spartanburg, South Carolina 29304.


Townes B. Johnson III, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Phone (864) 242-4899
Attorney for the Respondent

Other Counsel of Record:

David G. Ingalls, Esq.
Paul A. Kckee III, Esq.
PO Box 2196
Spartanburg, SC 29304
(864) 573-5149
Attorney for Appellant

KENISON, DUDLEY & CRAWFORD, LLC

A T T O R N E Y S A T L A W

KEVEN K. KENISON
Practicing Attorney in South Carolina and Georgia

THOMAS E. DUDLEY, III
Practicing Attorney in South Carolina and North Carolina

JOHN T. CRAWFORD, JR.
Practicing Attorney in South Carolina

M. STOKELY HOLDER
Practicing Attorney in South Carolina

TOWNES B. JOHNSON, III
Practicing Attorney in South Carolina

F. LEE PRICKETT, III
Practicing Attorney in South Carolina

JAMES C. BLAKELY, JR.
of Counsel
Practicing Attorney in South Carolina

August 1, 2011
RECEIVED
AUG 02 2011

SC Court of Appeals

Hon. Tanya Gee
Clerk of the Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: DeShields Grading, Inc., Plaintiff/Respondent, v. Luthi Mortgage Co., Inc.
d/b/a First Palmetto Trust, Defendant/Appellant
Case No.: 2011-CP-42-00135

Dear Ms. Gee:

Enclosed, please find an original and one (1) copy of the Respondent's Initial Brief with Proof of Service and Respondent's Designation of Matter with Proof of Service in the above referenced matter.

By copy of this letter, we are serving same upon counsel for the Appellants and Counsel for Elite Concrete Construction. Please do not hesitate to contact our office if you have any questions.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC



Townes B. Johnson III

Enclosures

cc: David G. Ingalls, Esq.
Nathan A. Earle, Esq.

GREENVILLE

704 East McBee Avenue ■ Greenville, South Carolina 29601
Phone 864.242.4899 ■ Fax 864.242.4844

CHARLESTON

534 B Oristo Ridge ■ Edisto Beach, South Carolina 29438
Phone 843.869.1000

ATLANTA

2775 Cruse Road ■ Suite 201 ■ Lawrenceville, Georgia 30044
Phone 770.923.9609 ■ Fax 770.638.3239



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 28, 2011

David G. Ingalls, Esquire
P.O. Box 2196
Spartanburg, SC 29304

Re: DeShields Grading v. Ford Trust
2011192906

Dear Mr. Ingalls:

In our letter dated July 11, 2011, we requested you provide the date the transcript was received and the Certificate of Counsel for the Designation of Matter in the above case. As of today's date, we have not received any further information. Within seven days, please provide the date the transcript was received and the Certificate of Counsel, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr, Esquire
Townes Boyd Johnson, III, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 11, 2011

David G. Ingalls, Esquire
P.O. Box 2196
Spartanburg, SC 29304

Re: DeShields Grading v. Ford Trust
2011192906

Dear Mr. Ingalls:

We have received the Appellant's Initial Brief and Designation of Matter in the above matter. However, we have not received notification of the transcript being received. Additionally, you must provide a Certificate of Counsel according to Rule 209 of the South Carolina Appellate Court Rules. Please provide the date the transcript was received and the Certificate of Counsel within ten days of the date of this letter.

Furthermore, the caption should read as follows:

DeSheilds Grading, Inc.,

v.

Respondent,

Ford Trust; Maurice Andre Smith and Perry S. Luthi, Sr.,
as co-trustees of Ford Trust dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually; Luthi Mortgage Co.,
Inc, d/b/a First Palmetto Trust; Investments One, LLC; Reserve
@ Woodfin HOA; and Elite Concrete Construction, LLC,

Defendants,

Of whom Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust is

Appellant.

Any future filings by any party to this appeal must feature the above caption.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: John T. Crawford, Jr, Esquire
Townes Boyd Johnson, III, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

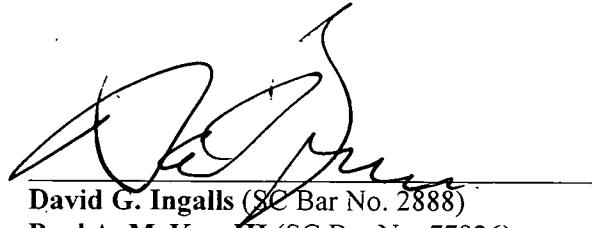
Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust,Appellant.

APPELLANT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Appellant Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust proposes the following matter to be included in the Record on Appeal in this Matter:

1. Transcript of Record, April 19, 2011
2. Order and Judgment, September 9, 2009
3. Warranty Deed, February 2, 2010
4. Title to Real Estate, February 11, 2010
5. Mortgage of Real Estate, February 11, 2010
6. Title to Real Estate, May 6, 2010
7. Mortgage of Real Estate, May 6, 2010
8. Subordination of Judgment, April 28, 2010 (DeShields)
9. Subordination of Judgment, April 28, 2010 (Elite)
10. Mortgage of Real Estate, February 11, 2010
11. Order and Judgment, April 26, 2011

RECEIVED
JUL 05 2011
SC Court of Appeals



David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
PO Box 2196
409 Magnolia Street
Spartanburg, SC 29304-2196
Telephone: (864)-573-5149
Facsimile: (864)-948-1403

ATTORNEYS FOR APPELLANT

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

July 1, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

SUBJECT: DeShields v. Luthi Mortgage 2011-CP-42-00135

Dear Tanya,

Enclosed please find a copy of Luthi Mortgage/First Palmetto Trust's Initial Brief and Designation of Matter to be Included in the Record on Appeal for the above captioned case. Please feel free to contact me at the above number should you have any questions.

Respectfully,



David G. Ingalls

DGI:pam

RECEIVED
JUL 05 2011
SC Court of Appeals

MASTER-IN-EQUITY
SPARTANBURG COUNTY JUDICIAL CENTER
180 MAGNOLIA STREET, ROOM 901 (29306)
POST OFFICE BOX 5666 (29304)
SPARTANBURG, SOUTH CAROLINA

GORDON G. COOPER
JUDGE

Telephone (864) 596-2501
FAX (864) 596-2078

June 1, 2011

*Suma \$104.00
6/6/11 cle #
3468*

David G. Ingalls, Esquire
Attorney at Law
Post Office Box 2196
Spartanburg, South Carolina 29304

Re: DeShields Grading, Inc. -vs- Ford Trust; Maurice Andre Smith, et. al.
C. A. No.: 2011-CP-42-0135

Dear Mr. Ingalls:

Pursuant to your request, I have prepared the Transcript of Record for the hearing held April 19, 2011 in the above referenced case. Please make your check in the amount of \$104.00 payable to me. You may pick up the transcript at your convenience, or I can mail it if you prefer.

If you have any questions or if I can be of further service, do not hesitate to let me know.

Very truly yours,

Dorothy L. Huntsinger

Dorothy Huntsinger
Court Reporter

dh
cc: John T. Crawford, Jr., Esquire
Townes B. Johnson, III, Esquire
Nathan A. Earle, Esquire

RECEIVED
JUN 15 2011
SC Court of Appeals

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

May 31, 2011

Mrs. Dottie Huntsinger
Court Reporter
Office of Master in Equity
180 Magnolia St.
Spartanburg, SC 29306

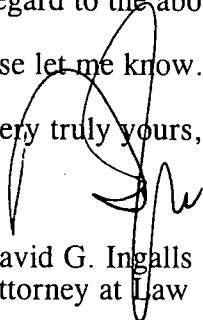
Re: DeShields Grading, Inc. vs. Ford Trust, et al.
Case No.: 2011-CP-42-0135

Dear Mrs. Huntsinger:

Please prepare a transcript in regard to the above-referenced case.

If you have any questions, please let me know.

Very truly yours,


David G. Ingalls
Attorney at Law

DGI/mec

RECEIVED
JUN 15 2011
SC Court of Appeals

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
POST OFFICE BOX 2196
SPARTANBURG, SOUTH CAROLINA 29304

TELEPHONE (864) 573-5149

FAX (864) 585-2744

June 10, 2011

The Honorable Tanya A. Gee
Clerk of Court
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

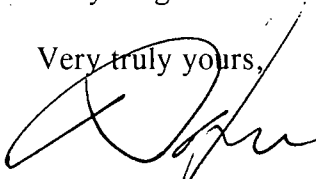
Re: DeShields Grading, Inc. (Respondent) vs. Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust (Appellant)
Case Number: 2011-CP-42-00135

Dear Ms. Gee:

Enclosed please find the originals and one copy each of the correspondence concerning the transcript in the above case. By copy of this letter, copies of same are being provided to opposing counsel and the Office of Court Administration.

Please let me know if you need anything further.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

cc; Office of Court Administration
John T. Crawford, Jr., Esq.
Townes B. Johnson, III, Esq.
Nathan A. Earle, Esq.

RECEIVED
JUN 15 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

June 7, 2011

David G. Ingalls, Esquire
P.O. Box 2196
Spartanburg, SC 29304

Re: DeShields Grading v. Ford Trust
Case Tracking #: 2011192906

Dear Mr. Ingalls:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: John T. Crawford, Jr, Esquire
Townes Boyd Johnson, III, Esquire
The Honorable M. Hope Blackey



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

June 7, 2011

David G. Ingalls, Esquire
P.O. Box 2196
Spartanburg, SC 29304

Re: DeShields Grading v. Ford Trust
Case Tracking #: 2011192906

Dear Mr. Ingalls:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

V. Claire Allan, Deputy

Tanya A. Gee
CLERK

TAG/ec

cc: John T. Crawford, Jr, Esquire
Townes Boyd Johnson, III, Esquire
The Honorable M. Hope Blackey

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.....Respondent,

v.

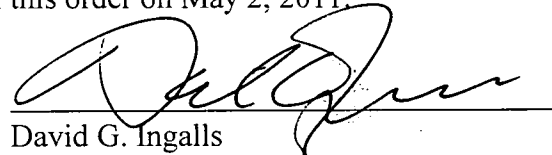
Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust.....Appellant.

NOTICE OF APPEAL

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust appeals the order of the Honorable Gordon G. Cooper dated April 26, 2011.

Appellant received written notice of entry of this order on May 2, 2011.

May 25, 2011



David G. Ingalls
409 Magnolia St.
Spartanburg, SC 29303
(864) 573-5149
Attorney for Appellant

Other Counsel of Record:

John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorney for Respondent

Nathan A. Earle, Esq.
Temple Mann Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864) 242-4995
Attorney for Elite Concrete Construction, LLC

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MAY 27 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.....Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust.....Appellant.


PROOF OF SERVICE

I, David G. Ingalls, do hereby certify that the Respondent's Notice of Appeal in the above-captioned case has been duly served on the Respondent, by placing the same in an envelope, with adequate prepaid postage affixed thereto, addressed to the attorneys of record as listed below, and depositing a copy of same in the United States Mail.

John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorney for Respondent

Nathan A. Earle, Esq.
Temple Mann Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864) 242-4995
Attorney for Elite Concrete Construction, LLC

May 25, 2011



David G. Ingalls
409 Magnolia St.
Spartanburg, SC 29303
(864) 573-5149
Attorney for Appellant

RECEIVED
MAY 27 2011
SC Court of Appeals

DAVID G. INGALLS
ATTORNEY AT LAW
409 MAGNOLIA STREET
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May 25, 2011

The Honorable Kenneth A. Richstad
Clerk of Court
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: DeSheilds Grading, Inc. (Respondent) vs. Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust (Appellant)
Case Number: 2011-CP-42-00135

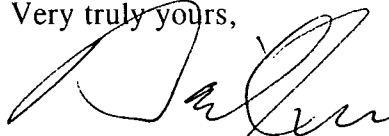
Dear Mr. Richstad:

Enclosed please find the original and one copy of the notice of appeal in the above case for filing. I am also enclosing the following:

1. Proof of service of the notice of appeal on the respondent;
2. A copy of the order which is to be challenged on appeal;
3. A filing fee of \$100;

Please file the enclosed and return file-stamped copies to me in the enclosed self-addressed, stamped envelope.

Very truly yours,



David G. Ingalls
Attorney at Law

DGI/mec

Enclosures

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SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
)
 DeShields Grading Inc.,) C. A. No.: 2011-CP-42-135
)
 Plaintiff,)
)
 v.)

ORDER AND JUDGMENT

Ford Trust; Maurice Andre Smith and)
 Perry S. Luthi, Sr., as co-trustees of Ford)
 Trust dated April 8, 2010; Maurice)
 Andre Smith, Individually; Peggy D.)
 Taylor; Individually; Luthi Mortgage)
 Co., Inc. d/b/a First Palmetto Trust;)
 Investments One, LLC; Reserve @)
 Woodfin HOA; and Elite Concrete)
 Construction, LLC,)
)
 Defendants.)

This matter came before the Court on April 19, 2011 on Plaintiff DeShields Grading, Inc. (hereinafter "DeShields")'s petition for declaratory judgment, pursuant to *South Carolina Code Ann.* § 15-53-10, *et seq.* and Rule 57 of the *South Carolina Rules of Civil Procedure*. Present at the hearing were David G. Ingalls, Esq. on behalf of Defendants Ford Trust, Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010, and Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust; Nathan A. Earle, Esq. on behalf of Elite Concrete Construction, LLC; and John T. Crawford, Jr. and Townes B. Johnson III on behalf of DeShields. Upon consideration of the pleadings, the documents of record, the depositions of the parties, the testimony and oral arguments presented in open court, the Court finds as follows:

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I. FACTS AND PROCEDURAL HISTORY

In 2008, DeShields and Defendant Elite Concrete Construction, LLC (hereinafter "Elite") provided certain labor and materials to Defendant Investments One, LLC (hereinafter

"Investments One") for use on a certain project in the Flightline Estates Subdivison located in Spartanburg County, South Carolina. Despite invoicing Investment One for the amounts due and owing, Investment One failed and refused to pay DeShields and Elite the amounts due and owing them. Accordingly, on September 30, 2009, DeShields and Elite received judgments against Investments One in the amounts of Nine-Eight Thousand, Seven Hundred Fifty-Seven and 75/100ths Dollars (\$98,757.75) and Twenty-Four Thousand, Seven Hundred Fifteen and 25/100ths Dollars (\$24,715.25), respectively. Such judgments are recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2008-CP-42-03281.

On February 11, 2010, Investments One acquired from non-party Barry A. Tweed certain real property located in Spartanburg County at 504 Chattooga Road, Roebuck, South Carolina (hereinafter "Subject Property"). The deed to Investments One was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Deed Book 95-P at Page 287. Therewith, Investments One gave MCN Enterprises, LLC (hereinafter "MCN") a purchase money mortgage in the principal amount of One Hundred Forty-Five Thousand and 0/100ths Dollars (\$145,000.00). The mortgage given to MCN was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4322 at Page 147 (hereinafter "MCN Mortgage") and satisfied of record on July 1, 2010 record at Mortgage Book 4364 at Page 590.

On May 12, 2010, Investments One, through its principal Defendant Maurice Andre Smith, Individually (hereinafter "Smith"), conveyed the Subject Property to Defendant Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010 (hereinafter "Ford Trust")¹. The deed to Ford Trust was filed for record in the Register of Deeds Office for

¹ Smith, along with being the principal of Investments One, the grantor of the Subject Property to Ford Trust, is also the co-trustee of the Ford Trust.

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Spartanburg County on May 12, 2010 at 2:51:57 PM at Deed Book 96-P at Page 709. Simultaneously with the conveyance of the Subject Property to Ford Trust, Ford Trust gave Defendant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust (hereinafter "First Palmetto")² a purchase money mortgage (hereinafter "the First Palmetto Mortgage") in the principal amount of One Hundred Seventy-One Thousand, Six Hundred Twenty-Six and 90/100ths Dollars (\$171,626.90). The mortgage given to First Palmetto was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:52:31 PM at Mortgage Book 4348 at Page 439 (hereinafter "First Palmetto Mortgage"). Additionally therewith, on May 12, 2010, subordination of judgments were filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4348 at Page 446 and Page 447 purporting to subordinate DeShields and Elite's judgments, respectively (collectively hereinafter "the Subordination of Judgments"), in favor of the First Palmetto Mortgage.

In December 2010, Steven A. McLain and Vicky McLain (hereinafter "McLains") approached Ford Trust regarding purchasing the Subject Property. Upon learning of the Subordination of Judgments, on or about January 13, 2011, DeShields filed this action to, among other things, determine the validity of the Subordination of Judgments and declare the respective priorities of the parties to the Subject Property or the proceeds of any sale thereof. By stipulation of the parties, on February 8, 2011, the Court ordered: (1) that in conjunction with the sale and closing of the Subject Property, the First Palmetto Mortgage would be satisfied and the Register of Deeds Office for Spartanburg County would be directed to cancel said mortgage; (2) that in conjunction with the sale and closing of the Subject Property, the Subject Property is released from any and all liens and encumbrances held by any judgment creditor or party not mentioned

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² Perry S. Luthi, Sr., along with being a co-trustee of the Ford Trust, the mortgagor, is also the principle of Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust, the mortgagee.

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herein; and (3) that the proceeds of any sale of the Subject Property, less the transactional costs as authorized by the Court in a subsequent Order, would be deposited into this Court, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*, for a determination of the parties' priority to same and an Order disbursing same.

On February 17, 2011, Ford Trust conveyed the Subject Property to the McLains. The deed to the McLains was filed for record in the Register of Deeds Office for Spartanburg County on February 18, 2011 at 10:48:44 AM at Deed Book 97-W at Page 586. Pursuant to this Court's February 8, 2011 Order and Rule 22 of the *South Carolina Rules of Civil Procedure*, the proceeds from the sale, less the authorized transactional costs, in amount of Two Hundred Four Thousand, One Hundred Sixty Two and 98/100ths Dollars (\$204,162.98) were deposited into this Court (hereinafter "Interpled Monies") for a determination of the parties' priority thereto and an Order disbursing same.

II. LAW AND ANALYSIS

As stipulated by the parties at hearing and from the testimony proffered, this Court finds that the Subordination of Judgments were fraudulently manufactured, executed, witnessed, acknowledged and filed by and through Smith, the principal of Investment One and co-trustee of the Ford Trust. Accordingly, as a result of the Subordination of Judgments being fraudulently manufactured, executed, witnessed, acknowledged and filed by and through Smith, the Subordination of Judgments, recorded in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4348 at Page 446 and Page 447, constitute a nullity and are void *ab initio*. See *e.g. Spence v. Spence*, 368 S.C. 106, 125, 628 S.E.2d 869, 879 (2006) (holding that a fraudulent deed is void *ab initio* and constitutes a nullity). Priority to the Subject Property and substituted Interpled Monies, therefore, is a matter of recordation between the

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competing instruments of record as if the Subordination of Judgments had never been filed. *Id.* and See South Carolina Code Ann. § 30-7-10.

On September 30, 2009, DeShields and Elite received judgments against Investments One and such judgments were recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2008-CP-42-03281. On that same date, therefore, pursuant to South Carolina Code Ann. § 15-35-810, DeShields and Elite's judgments created a lien upon the real estate of Investments One in Spartanburg County for a period of ten years. See South Carolina Code Ann. § 15-35-810.

On February 12, 2010, MCN loaned Investments One One Hundred Forty-Five Thousand and 0/100ths Dollars (\$145,000.00) in order for Investments One to acquire the Subject Property from non-party Barry A. Tweed. The deed from non-party Barry A. Tweed conveying the Subject Property to Investments One was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Deed Book 95-P at Page 287 and the MCN Mortgage was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4322 at Page 147. Pursuant to *Hursey v. Hursey*, therefore, as a result of its purchase money mortgage, MCN is accorded priority over all other claims or liens arising through Investments One, the mortgagor; including DeShields and Elite judgment liens, which attached to the Subject Property upon Investments One's acquisition of that real property. See e.g. *Hursey v. Hursey*, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct. App. 1985). Accordingly, on February 12, 2010, MCN had first priority to the Subject Property, followed by DeShields and Elite. *Id.* and See South Carolina Code Ann. § 30-7-10.

On May 12, 2010, First Palmetto loaned Ford Trust One Hundred Seventy-One Thousand, Six Hundred Twenty-Six and 90/100ths Dollars (\$171,626.90) in order for Ford Trust

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to acquire the Subject Property from Investments One. The deed from Investments One conveying the Subject Property to Ford Trust was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:51:57 PM at Deed Book 96-P at Page 709 and the First Palmetto Mortgage was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4348 at Page 439. The satisfaction of the MCN Mortgage was filed for record in the Register of Deeds Office for Spartanburg County on July 1, 2010 at Mortgage Book 4364 at Page 590.

With the satisfaction of the MCN Mortgage, DeShields and Elite's judgment liens became the oldest instruments of record, followed by First Palmetto Mortgage. Likewise, without any device affording First Palmetto special priority over DeShields and Elite, DeShields and Elite's judgment liens would have priority to the Subject Property and substituted Interpled Monies in front of First Palmetto Mortgage. See *South Carolina Code Ann.* § 30-7-10. First Palmetto argues that it is afforded special priority through its purchase money mortgage. Pursuant to *Hursey*, First Palmetto is accorded priority over all other claims or liens arising through its mortgagor, Ford Trust. See e.g. *Hursey*, 326 S.E.2d 178, 180. Accordingly, since DeShields and Elite's judgment liens arose through Investments One and not Ford Trust, First Palmetto is not entitled to a special priority against DeShields and Elite through its purchase money mortgage.

First Palmetto further argues that it is afforded special priority through the doctrine of equitable subrogation. A party may be equitably subrogated to the rights of an earlier creditor if (1) the party claiming subrogation has paid the debt owed to the earlier creditor; (2) the party was not a volunteer but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; and (4) no injustice will be done to

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the other party by the allowance of the equity. See *Dodge City of Spartanburg, Inc. v. Jones*, 317 S.C. 491, 494 454 S.E.2d 918, 920 (Ct. App. 1995) citing *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992); *Pee Dee State Bank v. Prosser*, 295 S.C. 229, 367 S.E.2d 708 (Ct.App.1988), *overruled in part on other grounds, United Carolina Bank v. Caroprop, Ltd.*, 316 S.C. 1, 446 S.E.2d 415 (1994). Additionally, the party claiming subrogation must not have actual knowledge of any intervening lien creditors. *Id.*, citing *Strickland*, 414 S.E.2d at 136.

In the matter at hand, First Palmetto's debtor was Ford Trust and MCN's debtor was Investments One; likewise, MCN is not an earlier creditor of Ford Trust. Moreover, by virtue of the Subordination of Judgments, there can be no doubt that First Palmetto had both constructive and actual knowledge of DeShields' and Elite's judgment liens. For these reasons, First Palmetto is not entitled to be equitably subrogated into MCN's priority.

III. CONCLUSION

For the foregoing reasons, priority to the Subject Property and substituted Interpled Monies is a matter of recordation between DeShields and Elite's judgment liens and First Palmetto's mortgage interest. See *South Carolina Code Ann.* § 30-7-10. DeShields and Elite's judgment liens, attaching to the Subject Property on February 12, 2010, by virtue of their September 30, 2009 judgments, are first in time and, likewise, first in right, ahead of the May 12, 2010 mortgage interest of First Palmetto.

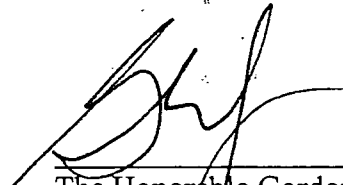
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THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. DeShields and Elite's judgment liens have first priority to the monies interpled with this Court on February 8, 2011.
2. First Palmetto's mortgage interest has second priority to the monies interpled with this Court on February 8, 2011.
3. The Two Hundred Four Thousand, One Hundred Sixty Two and 98/100ths Dollars (\$204,162.98) interpled with this Court on February 8, 2011 will be disbursed as follows:
 - a. Twenty-Seven Thousand, Four Hundred Ninety-Three and 85/100ths Dollars (\$27,493.85) disbursed to Elite Concrete Construction, LLC;
 - b. One Hundred Nine Thousand, Eight Hundred Sixty and 56/100ths Dollars (\$109,860.56) disbursed to DeShields Grading Inc.; and
 - c. The balance disbursed to Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust.

IT IS SO ORDERED.



The Honorable Gordon G. Cooper
Master-In-Equity for Spartanburg County

Spartanburg, South Carolina
Dated April 26, 2011

M. Hope Blackley

CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]* D.C.
DATED 4/29/11

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FORM 4

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
IN THE COMMON PLEAS COURT)

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 - CP - 42 - 0135

Table with 2 columns: Plaintiff (DeShields Grading Inc.) and Defendant (Ford Trust; Maurice Andre Smith and Perry S. Luthi, Sr., as co trustees of Ford Trust dated April 8th, 2010; Maurice Andre Smith, Individually; Peggy D. Taylor; Individually; Luthi Mortgage co., Inc. d/b/a First Palmetto Trust; Investments One, LLC; Reserve @ Woodfin HOA; Elite Concrete Const.)

PLAINTIFF(S)

DEFENDANT(S)

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/hearing and the issues have been tried/heard and decision rendered.
ACTION DISMISSED (CHECK REASON): Rule 12(b), S.C.R.C.P.; Rule 41(a), S.C.R.C.P. (Vol. Non-suit); Rule 43(k), S.C.R.C.P. (Settled); Other
ACTION STRICKEN (CHECK REASON): Rule 40(j), S.C.R.C.P.; 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:

Dated at Spartanburg, South Carolina, this 26th day of April, 2011.

GORDON G. COOPER
Master In Equity for Spartanburg County

This judgment was entered on the 29 day of April, 2011, and a copy mailed first class this 29 day of April, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Table with 2 columns: Plaintiff Attorney (Townes Johnson, III, Esq., 704 E. McBee Ave., Greenville, SC 29601) and Defendant Attorney (David G. Ingalls, Esq., P.O. Box 2196, Spartanburg, SC 29304)

Attorney for the Plaintiff(s)

Attorney for the Defendant(s)

M. Hope Blackley
CLERK OF COURT

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Gordon G. Cooper

Case No.: 2011-CP-42-00135

DeShields Grading, Inc.,..... Respondent,

v.

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust,..... Appellant,

INITIAL BRIEF OF RESPONDENT

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Townes B. Johnson III, Esq.
KENISON, DUDLEY & CRAWFORD, LLC
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Greenville, SC 29601
(864) 242-4899
Attorneys for the Respondent

Other Counsel of Record:

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(864) 573-5149
Attorney for Appellant

Nathan A. Earle, Esq.
Attorney at Law
819 E. North St.
Greenville, SC 29601
Attorney for Elite Concrete Construction, LLC

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STATEMENT OF ISSUES ON APPEAL

- I. **RESPONDENTS' JUDGMENT LIENS DID NOT ARISE THROUGH THE MORTGAGOR; THE MASTER-IN-EQUITY'S FINDING THAT RESPONDENTS' JUDGMENT LIENS HAD PRIORITY OVER APPELLANT'S MORTGAGE, THEREFORE, WAS NOT AN ERROR OF LAW**
- II. **APPELLANT NOT ENTITLED TO EQUITABLE SUBROGATION; THE MASTER-IN-EQUITY'S FINDING THAT RESPONDENTS' JUDGMENT LIENS HAD PRIORITY OVER APPELLANT'S MORTGAGE, THEREFORE, WAS NOT AN ERROR OF LAW**
- III. **APPELLANT ABANDONED ITS ARGUMENT THAT PERRY S. LUTHI, SR., IN HIS CAPACITY AS CO-TRUSTEE FOR FORD TRUST, HAD NO NOTICE OF THE FRAUDULENT SUBORDINATIONS OF JUDGMENT**

STATEMENT OF THE CASE

On January 13, 2011, Plaintiff/Respondent DeShields Grading Inc. brought this action against defendants Ford Trust; Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010; Maurice Andre Smith, Individually; Peggy D. Taylor; Individually; Appellant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust; Investments One, LLC; Reserve @ Woodfin HOA; and Respondent Elite Concrete Construction, LLC, seeking, among other things: 1) an injunction against Defendant/Appellant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust to prevent Defendant/Appellant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust from being disbursed the proceeds from the sale of certain real property in which it held a mortgage interest; 2) an order directing those sale proceeds to be deposited with the Clerk of the Circuit Court, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*; and 3) a judgment declaring that certain subordination of judgments were fraudulent, and thus void, and declaring that Plaintiff/Respondent DeShields Grading Inc. and Defendant/Respondent Elite Concrete Construction, LLC had priority to any proceeds from the sale of that certain real property by virtue of their respective judgment liens. (*See Complaint*). On or about April 13,

Defendant/Appellant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust filed its Answer and Counterclaim seeking a judgment declaring it had priority to any proceeds from the sale of that certain real property by virtue of its mortgage lien.

On February 8, 2011, a consent Order was filed wherein all parties with any interest in that certain property stipulated and agreed that: 1) the property should be sold; 2) the proceeds there from would be deposited with the Clerk of the Circuit Court; and 3) that upon the deposit of the proceeds into the Court, all the interested parties would release any and all claims each had against the property. (*See February 8, 2011 Order*). Accordingly, on or about February 17, 2011, the property was sold, the proceeds of Two Hundred Four Thousand, One Hundred Sixty Two and 98/100ths Dollars (\$204,162.98) were deposited with the Clerk of the Circuit Court, and all the interested parties released their claims against the property. (*See February 8, 2011 Order and See April 29, 2011 Order*).

On March 15, 2011, a consent Order of Reference was filed, referring this matter to the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County, to take testimony and evidence and make findings of fact and conclusions of law regarding all claims and counterclaims regarding priority to the funds deposited with the Clerk of the Circuit Court. (*See March 15, 2011 Order*). The bench trial of this matter was heard before Judge Cooper on April 19, 2011 and on April 29, 2011, Judge Cooper issued an Order determining that, based the parties' stipulation that the certain subordination of judgments were fraudulently manufactured and thus void, Plaintiff/Respondent DeShields Grading Inc. and Defendant/Respondent Elite Concrete Construction, LLC had priority to the monies deposited with the Clerk of the Circuit Court. (*See April 29, 2011 Order*). Accordingly, those monies were disbursed as follows: Twenty-Seven Thousand, Four Hundred Ninety-Three and 85/100ths Dollars (\$27,493.85) to

Defendant/Respondent Elite Concrete Construction, LLC, One Hundred Nine Thousand, Eight Hundred Sixty and 56/100ths Dollars (\$109,860.56) to Plaintiff/ Respondent DeShields Grading Inc., and the remaining balance to Defendant/Appellant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust. (*See April 29, 2011 Order*).

STATEMENT OF FACTS

On September 30, 2009, Plaintiff/Respondent DeShields Grading Inc. (“DeShields”) and Defendant/Respondent Elite Concrete Construction, LLC (hereinafter “Elite”) (collectively hereinafter “Respondents”) received judgments against Defendant Investments One, LLC (hereinafter “Investments One”) in the amounts of Nine-Eight Thousand, Seven Hundred Fifty-Seven and 75/100ths Dollars (\$98,757.75) and Twenty-Four Thousand, Seven Hundred Fifteen and 25/100ths Dollars (\$24,715.25), respectively, and such judgments are recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2008-CP-42-03281. (*See Plaintiff’s Trial Exhibit 1: September 30, 2009 Order*).

On February 11, 2010, Investments One acquired from non-party Barry A. Tweed certain real property located in Spartanburg County at 504 Chattooga Road, Roebuck, South Carolina (hereinafter “Subject Property”). (*See Plaintiff’s Trial Exhibit 3: Title to Real Estate*). The deed to Investments One was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Deed Book 95-P at Page 287. (*Id.*). Therewith, Investments One gave MCN Enterprises, LLC a purchase money mortgage (hereinafter “MCN Mortgage”) in the principal amount of One Hundred Forty-Five Thousand and 0/100ths Dollars (\$145,000.00). (*See Plaintiff’s Trial Exhibit 4: Mortgage of Real Estate*). The MCN Mortgage was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4322 at Page 147 and, subsequently, satisfied of record on July 1, 2010, recorded at

Mortgage Book 4364 at Page 590. (*Id.* and *See Plaintiff's Trial Exhibit 9: Satisfaction of Mortgage of Real Estate*). At the time of Barry A. Tweed's conveyance of the Subject Property to Investments One, Respondents' judgments attached to and became an encumbrance on the Subject Property. South Carolina Code Ann. § 15-35-810.

On May 12, 2010, Investments One, by and through its principal, Defendant Maurice Andre Smith, conveyed the Subject Property to Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010 (hereinafter "Ford Trust"). (*See Plaintiff's Trial Exhibit 5: Title to Real Estate*). The deed to Ford Trust was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:51:57 PM at Deed Book 96-P at Page 709. (*Id.*). With this conveyance, Defendant Maurice Andre Smith, the principal of Investments One, conveyed the Subject Property to a trust in which he was a co-trustee. (Tr. p. 6, lines 15-17).

Simultaneously with the conveyance of the Subject Property to Ford Trust, Ford Trust gave Defendant/Appellant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust (hereinafter "Appellant") a purchase money mortgage (hereinafter "Luthi Mortgage") in the principal amount of One Hundred Seventy-One Thousand, Six Hundred Twenty-Six and 90/100ths Dollars (\$171,626.90). (*See Plaintiff's Trial Exhibit 6: Mortgage of Real Estate*). The Luthi Mortgage was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:52:31 PM at Mortgage Book 4348 at Page 439. (*Id.*). With the grant of the Luthi Mortgage from Ford Trust to Appellant, Perry S. Luthi, Sr., Ford Trust's other co-trustee, gave his own mortgage company, Appellant, the mortgage on the Subject Property. (Tr. p. 18, lines 8-11).

Additionally, on May 12, 2010, therewith the Luthi Mortgage, subordination of judgments were filed for record in the Register of Deeds Office for Spartanburg County on

February 12, 2010 at Mortgage Book 4348 at Page 446 and Page 447 purporting to subordinate Respondents' judgments, respectively (collectively hereinafter "the Subordination of Judgments"), in favor of the Luthi Mortgage. (*See Plaintiff's Trial Exhibit 7: Subordination of Judgment and Plaintiff's Trial Exhibit 8: Subordination of Judgment*). Respondents and Appellant stipulated, however, that the Subordination of Judgments were fraudulently manufactured, executed, witnessed, acknowledged and filed by and through Defendant Maurice Andre Smith, the principal of Investments One and co-trustee of Ford Trust. (Tr. p. 7, lines 20-23). Accordingly, the Court found that the Subordination of Judgments were void *ab initio* and constituted a nullity. (*See April 29, 2011 Order*).

On February 17, 2011, pursuant to the Circuit Court's February 8, 2011 Order, Ford Trust conveyed the Subject Property to Steven A. McLain and Vicky McLain. (*See February 8, 2011 Order*). The deed to the McLains was filed for record in the Register of Deeds Office for Spartanburg County on February 18, 2011 at 10:48:44 AM at Deed Book 97-W at Page 586. The proceeds from this conveyance, less the authorized transactional costs, were deposited into the Circuit Court, pursuant to this Court's February 8, 2011 Order and Rule 22 of the *South Carolina Rules of Civil Procedure*. (*Id.* and *See April 29, 2011 Order*). With the deposit of the Two Hundred Four Thousand, One Hundred Sixty Two and 98/100ths Dollars (\$204,162.98) into the Circuit Court (hereinafter "Interpled Monies"), the Luthi Mortgage was satisfied of record on February 18, 2011, recorded at Mortgage Book 4440 at Page 329.

Pursuant to the Circuit Court's April 29, 2011 Order, the Interpled Monies were disbursed as follows: Twenty-Seven Thousand, Four Hundred Ninety-Three and 85/100ths Dollars (\$27,493.85) to Elite, One Hundred Nine Thousand, Eight Hundred Sixty and 56/100ths Dollars (\$109,860.56) to DeShields, and the balance to Appellant. (*See April 29, 2011 Order*).

STANDARD OF REVIEW

An action to establish lien priority is an action in equity. Fibkins v. Fibkins, 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct. App. 1990). The Appellate Court's standard of review in equitable matters is [its] own view of the preponderance of the evidence. Williams v. Williams, 349 S.C. 336, 339-40, 536 S.E.2d 320, 322 (2002).

ARGUMENT

I. RESPONDENTS' JUDGMENT LIENS DID NOT ARISE THROUGH THE MORTGAGOR; THE MASTER-IN-EQUITY'S FINDING THAT RESPONDENTS' JUDGMENT LIENS HAD PRIORITY OVER APPELLANT'S MORTGAGE, THEREFORE, WAS NOT AN ERROR OF LAW

With the parties' stipulation and the Court's finding that the Subordination of Judgments were fraudulent and thus void *ab initio*, Respondents were properly entitled to priority to the Interpled Monies. (Tr. p. 7, lines 20-23). Pursuant to *South Carolina Code Ann.* § 15-35-810, on September 30, 2009, the date Respondents received judgments against Investments One, Respondents' judgments automatically created a lien upon any real estate of Investments One in Spartanburg County for a period of ten years. South Carolina Code Ann. § 15-35-810. Accordingly, when Investments One acquired the Subject Property on February 12, 2010, Respondents' judgments automatically attached to and became an encumbrance on the Subject Property that day. *Id.* Appellant's interest in the Subject Property, on the other hand, did not arise until Investments One's conveyance of the Subject Property to Ford Trust and Ford Trust's giving the Luthi Mortgage to Appellant on May 12, 2010, three months later. (*See Plaintiff's Trial Exhibit 6: Mortgage of Real Estate*).

Pursuant to *South Carolina Code Ann.* § 30-7-10, priority in South Carolina is determined by the time of filing for record. South Carolina Code Ann. § 30-7-10. Accordingly, unless there was some legal device that granted Appellant special priority, Respondents, being

first in time, were also first in right to the Interpled Monies. Id. Appellant contends it is entitled to priority over all other creditors as a result of having a purchase money mortgage interest in the Subject Property. Purchase money mortgages are recognized at common law and in equity and occur when a purchaser of land executes a mortgage to secure the purchase money contemporaneous with its acquisition of the legal title or afterward as a part of the same transaction. Hursey v. Hursey, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct.App.1985). Purchase money mortgages are “accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage.” Id. “The rationale for this special priority is that the mortgagor's interest in the property is made possible by the purchase money loan, so that the mortgage should come ahead of other interests that attach merely because the mortgagor acquires the property.” South Carolina Federal Sav. Bank v. San-A-Bel Corp., 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct.App.1992). Moreover, Courts have also cited that “[t]he reason most frequently advanced for the rule giving preference to purchase-money mortgages over outstanding interests acquired through the mortgagor is that the execution of the deed and the mortgage are simultaneous acts, so that no claim or lien arising through the mortgagor can attach before the mortgage.” Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306, 257 S.E.2d 496, 498 (1979) *citing* 55 *Am.Jur.2d, Mortgages*, s 349, p. 409.

In the matter at hand, Appellant is not entitled to this special priority over Respondents for two reasons. First, purchase money mortgages are “accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage.” Hursey, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct.App.1985) (*emphasis added*). The mortgagor under the Luthi Mortgage was Ford Trust. (*See Plaintiff's*

Trial Exhibit 6: Mortgage of Real Estate). Appellant's special priority, therefore, is over all claims or liens arising through Ford Trust. Id. and Crystal Ice Co. of Columbia, Inc. 273 S.C. 306, 257 S.E.2d 496, 498 (1979). Respondents' judgments, however, are against Investments One, the conveyor of the Subject Property to Ford Trust, not Ford Trust itself. (*See Plaintiff's Trial Exhibit 1: September 30, 2009 Order*). Pursuant to *Hursey and Crystal Ice Co. of Columbia, Inc.*, therefore, Appellant would not have special priority over Respondents. Id. Moreover, since Respondents' judgments are against Investments One, their interests in the property were not made possible by Appellant's loan to Ford Trust and Ford Trust's acquisition of the Subject Property. Pursuant to *South Carolina Federal Sav. Bank v. San-A-Bel Corp.*, therefore, there is no rationale for Appellant to have special priority over Respondents. South Carolina Federal Sav. Bank, 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct.App.1992).

Secondly, since Perry S. Luthi is both the co-trustee of Ford Trust and the principal of Appellant, Ford Trust's interest in the Subject Property was not made possible by Appellant's purchase money loan. (Tr. p. 18, lines 8-11). Instead, the entities were used simply as a protective device against other potential creditors. Similarly, therefore, the rationale for Appellant to have special priority over Respondents is not present. Id.

For the foregoing reasons, the Luthi Mortgage's purchase money mortgage status is not a device that grants Appellant special priority against Respondents. Accordingly, Respondents, being first in time, were also first in right to the Interpled Monies. South Carolina Code Ann. § 30-7-10.

II. APPELLANT NOT ENTITLED TO EQUITABLE SUBROGATION; THE MASTER-IN-EQUITY'S FINDING THAT RESPONDENTS' JUDGMENT LIENS HAD PRIORITY OVER APPELLANT'S MORTGAGE, THEREFORE, WAS NOT AN ERROR OF LAW

In addition to Appellant not being entitled to a special priority over Respondents as a result of the Luthi Mortgage's purchase money mortgage status, Appellant is likewise not entitled to equitably subrogate into the MCN Mortgage's purchase money mortgage status to assert a special priority over Respondents.

A party may be equitably subrogated to the rights of an earlier creditor if: (1) the party claiming subrogation has paid the debt owed to the earlier creditor; (2) the party was not a volunteer but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; and (4) no injustice will be done to the other party by the allowance of the equity. Dodge City of Spartanburg, Inc. v. Jones, 317 S.C. 491, 494 454 S.E.2d 918, 920 (Ct. App. 1995). Additionally, the party claiming subrogation must not have actual knowledge of any intervening lien creditors. Id.

In the matter at hand, Appellant's debtor was Ford Trust and MCN Enterprises, LLC's debtor was Investments One. (*See Plaintiff's Trial Exhibit 4: Mortgage of Real Estate and See Plaintiff's Trial Exhibit 6: Mortgage of Real Estate*). Likewise, MCN Enterprises, LLC is not an earlier creditor of Ford Trust and Appellant has not paid the debt owed to an earlier creditor. Similarly, since Appellant and MCN Enterprises, LLC had different debtors, at the closing of the sale of the Subject Property from Investments One to Ford Trust, Investments One, by and through the closing agent, was liable to pay off the obligations of MCN Enterprises, LLC not Appellant. Accordingly, therefore, Appellant was not secondarily liable for the debt or for the discharge of the MCN Mortgage. Lastly, by virtue of the Subordination of Judgments being filed, there can be no doubt that Appellant Palmetto had both constructive and actual knowledge

of Respondents' judgment liens. Pursuant to *Dodge City of Spartanburg, Inc.*, therefore, by failing to meet the first, third, and fourth requirements in order to be entitled to equitable subrogation, Appellant is not entitled to be equitably subrogated into MCN Enterprises, LLC's priority, . Id.

Moreover, Appellant is also not equitably entitled to priority as a result of its imputed knowledge of the fraudulent nature of the Subordination of Judgments as a result of it and Ford Trust's agent, Defendant Maurice Andre Smith. (Tr. p. 18, lines 8-11). As stated in *Crystal Ice Co. of Columbia, Inc.*:

"The relation of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. The law creates the relationship of principal and agent if the parties, in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency."

Crystal Ice Co. of Columbia, Inc., 273 S.C. 306, 257 S.E.2d 496, 497 (1979).

"It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority." Id. "An equally well-recognized exception to this general rule exists in situations where the agent is acting fraudulently against his principal or for any other reason has an interest in concealing his acquired knowledge from his principal." Id. at 498. "However, the view has been expressed that an agent's fraud cannot alter the effect of his knowledge to his principal with respect to third persons who had no connection with the fraud." Id. at 498.

In the matter at hand, the Subordination of Judgments were fraudulently manufactured, executed, witnessed, acknowledged and filed by and through Defendant Maurice Andre Smith, co-trustee of Ford Trust along with Perry S. Luthi, the principal of Appellant. (*See April 29,*

2011 Order). Pursuant to *Crystal Ice Co. of Columbia, Inc.*, Defendant Maurice Andre Smith, as a co-trustee of Ford Trust, was an agent for Perry S. Luthi, Ford Trust and Appellant. *Id.* at 497. Accordingly, Defendant Maurice Andre Smith's knowledge of the perpetrated fraud was imputed by law to Perry S. Luthi, Ford Trust and Appellant with respect to third persons who had no connection with the fraud. *Id.* at 498. Therefore, regardless of Defendant Maurice Andre Smith's concealment of his fraud and acquired knowledge from Perry S. Luthi, Ford Trust, and Appellant, Appellant can not alter the effect of its constructive knowledge with respect to Respondents. *Id.* Accordingly, Ford Trust and Appellant took their interests in the Subject Property subject to Respondents' judgments against Investments One which had previously attached to the Subject Property.

For the foregoing reasons, the Appellant is not entitled to equitably subrogate into the MCN Mortgage's purchase money mortgage status to assert a special priority over Respondents. Accordingly, pursuant to *South Carolina Code Ann.* § 30-7-10, Respondents, being first in time, were also first in right to the Interpled Monies. *South Carolina Code Ann.* § 30-7-10

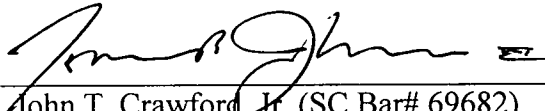
III. APPELLANT ABANDONED ITS ARGUMENT THAT PERRY S. LUTHI, SR., IN HIS CAPACITY AS CO-TRUSTEE FOR FORD TRUST, HAD NO NOTICE OF THE FRAUDULENT SUBORDINATIONS OF JUDGMENT

The first step in preserving an issue for appellate review is to actually raise it to the lower Court. *Wilder Corp v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). Next, the lower Court must also rule upon the issue for it to be presented for review. *Id.* In the matter at hand, the lower Court never ruled upon the issue of whether Perry S. Luthi, Sr., in his capacity as co-trustee of Ford Trust, had notice that the Subordination of Judgments were forged. Likewise, this issue has been abandoned on appeal. *Id.*

CONCLUSION

For the foregoing reasons, the Master-in-Equity's conclusions of law were not clearly influenced or controlled by errors of law and the Master-in-Equity's ruling, therefore, should not be disturbed on appeal.

Respectfully submitted this 1st day of August 2011,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

DeShields Grading, Inc.,Respondent,

v.

Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust,Appellant.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. THE MASTER-IN-EQUITY ERRED IN FAILING TO FIND THAT APPELLANT'S PURCHASE MONEY MORTGAGE HOLDS PRIORITY OVER ALL OTHER CLAIMS OR LIENS.
- II. THE MASTER-IN-EQUITY ERRED IN FAILING TO FIND THAT APPELLANT'S PURCHASE MONEY MORTGAGE IS EQUITABLY SUBROGATED TO MCN ENTERPRISES, LLC'S MORTGAGE.
- III. THE MASTER-IN-EQUITY ERRED IN FAILING TO ACKNOWLEDGE THAT PERRY S. LUTHI, SR., IN HIS CAPACITY AS CO-TRUSTEE FOR FORD TRUST, HAD NO NOTICE OF THE FRAUDULENT SUBORDINATIONS OF JUDGMENT.

STATEMENT OF THE CASE

The action was commenced by service of a Summons and Complaint, Civil Action Number 2011-CP-42-00135, filed on January 13, 2011. The property that is the subject of this action is located in Spartanburg County and was sold pursuant to an Order of the Court. Plaintiff filed this action as a declaratory judgment seeking priority status of a judgment and the interpled surplus funds, held by the Clerk of Court. Additionally, Plaintiff sought a satisfaction of a mortgage held by Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust. Defendant Ford Trust by and through its Trustees filed an Answer and Counterclaim on April 13, 2011, similarly seeking priority status over the Plaintiff and Co-Defendant Elite Construction, LLC.

The Matter was heard April 19, 2011 by the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County, by consent, and with direct appeal. The Order was filed April 29, 2011, ruling that Plaintiff and Defendant Elite Construction, LLC had priority to the surplus funds as judgment creditors. Notice of Appeal was filed May 31, 2011 and Appellant received the transcript of the hearing on June 6, 2011.

STATEMENT OF THE FACTS

The Plaintiff, DeShields Grading, Inc., (hereinafter, "DeShields"), together with Defendant Elite Concrete Construction, LLC, (hereinafter, "Elite"), were recorded judgment creditors of the Defendant Investments One, LLC, in the Clerk of Court for Spartanburg County in Judgment Roll No. 2008CP4203281, DeShields for the face amount of \$98,757.75 and Elite for \$24,715.25. (Tr. p. 6, lines 3-7). Investments One, LLC purchased a lot with improvements from Barry A. Tweed for \$10.00 consideration on February 11, 2010 and the deed was recorded in Deed Book 95-P, Page 287 on February 12, 2010 in the Office of Register of Deeds for Spartanburg County (hereinafter, "subject property.") (Tr. p. 23, lines 16-25). Simultaneous with this transaction, Investments One, LLC gave to MCM Enterprises, LLC a purchase money mortgage in the amount of \$145,000.09. The mortgage to MCM Enterprises, LLC was recorded February 12, 2010 in Mortgage Book 4322, Page 147 in the Office of Register of Deeds for Spartanburg County. (Tr. p. 6, lines 11-12).

On May 24, 2010, Investments One LLC, through its principal, Maurice Andre Smith, conveyed the subject property to the Defendant Maurice Andre Smith and Perry S. Luthi, Sr. as co-trustees of Ford Trust, dated April 8, 2010. The deed to Ford Trust was recorded in the Office of Register of Deeds for Spartanburg County on May 12, 2010 in Deed Book 96-P, Page 709. (Tr. p. 6, lines 12-17). Simultaneous with the conveyance of the subject property to Ford Trust, Ford Trust gave Defendant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust, a purchase money mortgage in the principal amount of \$171,626.90, recorded May 12, 2010 in Mortgage Book 4348, Page 439 in the Office of Register of Deeds for Spartanburg County. (Tr. p. 6, lines 17-22). A portion of these funds directly paid off the mortgage to MCM Enterprises, LLC. (Tr. p. 7, lines 15-20; p. 28, lines 17-22;

The parties stipulated that Ford Trust's interest was a purchase money mortgage. (Tr. p. 18, line 24; p. 19 line 1). Subordinations of the judgment, purportedly on behalf of DeShields and Elite, were filed, subordinating the judgments. (Tr. p. 6, lines 22-25; p. 7, lines 1-2). The subordinations of judgment were forged. (Tr. p. 18, lines 17-21).

After hearing the matter, the Master-in-Equity found the judgments of DeShields and Elite were superior to Appellant's mortgage by virtue of the South Carolina recording statute. Appellant appealed this matter to the Court of Appeals.

ARGUMENT

STANDARD OF REVIEW

An action to establish lien priority is an action in equity. Fibkins v. Fibkins, 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct. App. 1990). The Appellate Court's standard of review in equitable matters is [its] own view of the preponderance of the evidence.

Williams v. Williams, 349 S.C. 336, 339-40, 536 S.E.2d 320, 322 (2002).

I. THE MASTER-IN-EQUITY ERRED IN FAILING TO FIND THAT APPELLANT'S PURCHASE MONEY MORTGAGE HOLDS PRIORITY OVER ALL OTHER CLAIMS OR LIENS.

The Master-in-Equity should have ruled that Appellant's mortgage had purchase money priority over Respondent's judgments. Because Appellant's mortgage was senior to the interests of judgment creditors, Appellant should be entitled to at least \$171,000.00 of the surplus funds.

"A purchase money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of the legal title or afterward, but as a part of the same transaction, executes a mortgage to secure the purchase money." SunTrust Bank v. Bryant, 392 S.C. 264, 268, 708 S.E.2d 821, 823, (Ct. App. 2011), (citing Hursey v. Hursey, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct. App. 1985)). "It is accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage." Id. "The rationale for this special priority is that the mortgagor's interest in the property is made possible by the purchase money loan, so that the mortgage should come ahead of other interests that attach merely because the mortgagor acquires the property." SunTrust Bank 392 S.C. at 268, 708 S.E.2d at 823 (citing South Carolina Federal Sav. Bank v. San-A-Bel Corp., 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct. App. 1992)).

In SunTrust Bank v. Bryant, this court found that Appellant SunTrust's purchase

money mortgage was entitled to priority over a pre-existing judgment as to the proceeds in a Tax Sale. This court reversed the Master-in-Equity's ruling that Appellant failed to foreclose its mortgage after ample opportunity to do so. The Master reasoned that in failing to foreclose, SunTrust lost its priority to the proceeds from the tax sale, and was entitled to only one-half of the proceeds, to be divided equally with the judgment creditor. SunTrust Bank, 392 S.C. at 267, 708 S.E.2d at 822. This court found that the Master-in-Equity erroneously ruled that SunTrust lost its purchase money priority, as "purchase money mortgages are accorded priority over all other liens arising through the mortgagor." SunTrust Bank, 392 S.C. at 269, 708 S.E.2d at 823, *citing* Hursey, 284 S.C. at 327, 326 S.E.2d at 180.

In the instant case, Appellant contends that its mortgage should be given purchase money priority and that the Master-in-Equity erred in finding that Appellant's mortgage was secondary to Respondents' judgments by virtue of the recording statute and the fraudulent subordinations of judgment. Appellant paid \$171,626.90 to MCN Enterprises, LLC effectuating a transfer of purchase money status to Appellant at the time the money was tendered. The Master found that the subordinations of judgment filed with the Register of Deeds were fraudulent and in effect, were void *ab initio*. As both were deemed a nullity, the fraudulent nature of the subordinations of judgment could not be substantially considered in ruling in favor of the judgment creditors.

Additionally, the fact that Appellant brought new money to the transaction should not affect purchase money status and that Appellant should be afforded the protections provided by the status of the MCN Enterprises, LLC mortgage, the original transaction arising from the mortgagor.

Appellant requests that this court reassert its purchase money priority to \$171,626.90 of the interpled funds and accordingly grant priority over Respondents'

judgments.

II. THE MASTER-IN-EQUITY ERRED IN FAILING TO FIND THAT APPELLANT'S PURCHASE MONEY MORTGAGE IS EQUITABLY SUBROGATED TO MCN ENTERPRISES, LLC'S MORTGAGE.

The Master-in-Equity should have found that Appellant subrogated to the purchase money mortgage of MCN Enterprises, LLC, the mortgage which Appellant directly paid off.

The requirements a mortgagee must meet to qualify for equitable subrogation are set forth in Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992). They are: (1) the party claiming subrogation has paid the debt; (2) the party was not a volunteer, but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; (4) no injustice will be done to the other party by the allowance of equitable subrogation; and (5) the party asserting the doctrine did not have actual notice of the prior mortgage. Dedes, 307 S.C. at 158, 414 S.E.2d at 136.

Equitable subrogation is a remedy favored by the courts, and it is to be liberally and expansively applied. So. Bank and Trust Co. v. Harrison Sales Co., Inc., 285 S.C. 50, 328 S.E.2d 60 (1985). The doctrine is founded on the fictional premise that an obligation extinguished by a payment made by a third person is to be treated as still subsisting for the benefit of such third person, whereby he is substituted to the rights of the creditor when he has made such payment. St. Paul Mercury Indem. Co. v. Donaldson, 225 S.C. 476, 83 S.E.2d 159 (1954) (citing Aetna Life Ins. Co. of Hartford v. Town of Middleport, 124 U.S. 534 (1888)). "The purpose of subrogation is to prevent a junior lien holder from converting the mistake of the lender into a magical gift for himself." U.S. v. Baron, 996 F.2d 25 (2nd Cir. 1993).

In this case, Appellant has satisfied the first and second elements of the Dedes test. Appellant paid the principal and interest of MCN Enterprises, LLC mortgage in full,

and had a direct interest in the discharge of the prior purchase money mortgage. Considering the third element, Appellant was secondarily liable for the discharge of the MCN Enterprises, LLC, lien. No further injustice or harm could be done to the junior judgment creditors as they were already owed approximately \$145,000.00. Finally, Appellant believed that in satisfying the MCN Enterprises, LLC mortgage, that its interest would be senior to any existing junior judgment creditors.

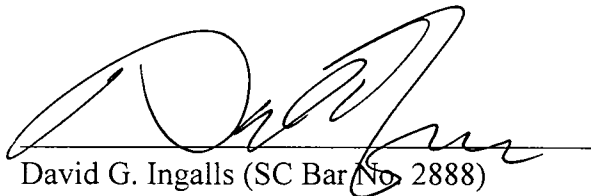
Appellant contends that even construed "liberally and expansively" it should be equitably subrogated to the MCN Enterprises, LLC mortgage. So. Bank and Trust Co., 285 S.C. at 52, 328 S.E.2d at 67.

III. THE MASTER-IN-EQUITY ERRED IN FAILING TO ACKNOWLEDGE THAT PERRY S. LUTHI, SR., IN HIS CAPACITY AS CO-TRUSTEE FOR FORD TRUST, HAD NO NOTICE OF THE FRAUDULENT SUBORDINATIONS OF JUDGMENT.

The Master-in-Equity should have acknowledged and considered that Perry S. Luthi, Sr., in his capacity as co-trustee of Ford Trust had no notice that the subordinations of judgment were forged. Co-Trustee Luthi paid \$171,626.90 in good faith to Investments One, LLC as evidenced by the deed and mortgage associated with the transaction. Respondent presented no evidence that co-trustee Luthi had any knowledge, constructive or actual, of the fraudulent nature of the subordinations of judgment.

CONCLUSION

For the reasons set forth above, Appellant asserts that it should be granted purchase money priority to the interpled funds in the amount of \$171,626.90. In the alternative, Appellant should be equitably subrogated to the \$145,000.00 mortgage of MCN Enterprises, LLC. Appellant requests that the verdict of the Master-in-Equity be reversed and the matter remanded for new trial.



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July 1, 2011
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

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DeShields Grading, Inc.,Respondent,

v.

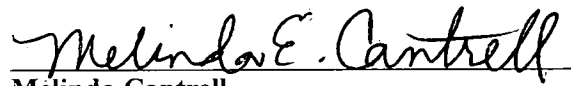
Luthi Mortgage Co., Inc., d/b/a First Palmetto Trust,Appellant.

CERTIFICATE OF SERVICE

I, Melinda Cantrell, an employee with the Law Office of David G. Ingalls hereby certify that I served a copy of the **Appellant's Initial Brief** and **Appellant's Designation of Matter to be Included in the Record on Appeal** in the above-captioned case on the following individuals by placing the same in the United States Mail, with sufficient first-class postage affixed and addressed as follows:

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July 1, 2011