

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Appellant Case No. 2015-002048

RECEIVED
MAY 12 2016
SC Court of Appeals

Marjorie E. Temple.....Respondent,
v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Petitioners.

APPENDIX

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INDEX

Notice of Appeal.....	1
Order Transferring Case to SC Court of Appeals.....	20
Initial Brief of Appellant.....	21
Motion to Dismiss.....	42
Motion for Extension.....	71
Reply to Motion to Dismiss.....	75

Order on Motion for Extension.....	96
Motion to Take Judicial Notice.....	97
Respondents Reply to Memorandum.....	100
Order on Motion to Dismiss.....	103
Petition for Rehearing.....	105
Order on Petition for Rehearing.....	110
Petition for Writ of Certiorari.....	111

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Case No. 2011-CP-32-01781

COPY

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SEP 30 2015

S.C. Supreme Court

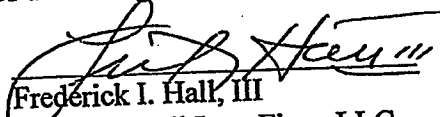
Marjorie E. Temple.....Respondent,
v.
Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

NOTICE OF APPEAL

Charles E. Strickland, et al, appeals the order (judgment) of the Honorable James O. Spence dated June 4, 2015. Appellant received written notice of entry of this order (judgment) on June 16th. Thereafter, a timely Motion to Alter or Amend the Judgment of the Court and/or For Reconsideration was filed pursuant to S.C.R. C.P: 59 (e). Written Notice of the Entry the Judgment Denying the Motion For Rule 59 (e) relief was received on September 16, 2015.

Appellant files this Notice of Appeal in the South Carolina Supreme Court pursuant to Rule 203(d) (1) (A) (ii) S.C.A.C.R. because it involves a challenge to the constitutionality of a state law.

September 28, 2015


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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Case No. 2011-CP-32-01781

Marjorie E. Temple.....Respondent,
v.
Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

CERTIFICATE OF SERVICE

The undersigned paralegal to The Rick Hall Law Firm, LLC does hereby certify that she has served a true copy of the Notice of Appeal this 28th day of September 2015 by sending a copy via U.S. Mail to the person(s) at the address(es) listed below:

Lexington County Clerk of Court
Beth Carrigg, Clerk of Court
205 East Main Street
Lexington, SC 29072

And courtesy copies sent to:

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Attorneys for Respondent

Kate A. Johnson
Kate A. Johnson
Paralegal to Frederick I. Hall, III

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COPY S.C. Supreme Court

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
CASE #: 2011-CP-32-1781

Charles E. Strickland, III,
Latisha Strickland, and
Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant.

COPY

**ORDER
(ATTORNEY FEES)**

Marjorie E. Temple,

Third Party Plaintiff,

vs.

Russell Koivu,
ERA Wilder Realty, Inc.,
Gary A. Pickren,
Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third Party Defendants.

FILED
2015 JUN -4 A 11:16
CLERK OF COURT
LEXINGTON SC

While this court earlier terminated the underlying Conditional Sales Contract/Bond for Title because the Defendant admitted that she had not made sufficient payments to create a right of equitable redemption the property, Plaintiffs' claim for a separate award of attorney fees under two theories: 1) the contract provides for attorney fees and 2) the Defendant's Rule 11 violations entitled the Plaintiffs to sanctions was held in abeyance pending submission of memos by respective parties.

FACTS: PROCEDURAL HISTORY

May 10, 2011 Plaintiff files an Action to Foreclose on Equitable interest in real property and or terminate a conditional sales agreement and bond for title. Attached to the complaint was a recorded fourteen (14) page Conditional Sales Agreement/Bond for Title containing language that Attorney represented the Seller, and that Purchase could obtain attorney, independent title search etc.

Defendant responded with eleven (11) count Answer, Counterclaim and Third Party Complaint against Real Estate Agents and Law Firm involved in closing.

The Complaint, Answer and other pleadings detail how the Plaintiffs and Defendant entered into their agreement on April 6, 2009. The property was sold "as-is." The agreement noted that there was a pond and dam on the property. The first payment was to be May, 2009. One of Defendant's responses was that the (1) property had a dam on it (2) the Association which was to manage the pond was defunct (3) Defendant had told Plaintiffs that Defendant wanted to build or locate a home on the property. (4) That a significant portion of the property was subject to flood plain which meant a home could not be built or placed there,

Hearing testimony and a review of case history reveals that extensive discovery, discovery motions and dispositive motions, mediation and other process occurred. (See attached CMS Case History Screen Shot)

May 28, 2013 the Order referring the case to the Office of Master-in-Equity was filed.

June 20, 2013 the Order was submitted to the Master-in-Equity Office with a request for a hearing.

July 3, 2014 the case was heard pursuant to agreed date between attorneys and court. Plaintiffs argue that the Circuit Court grant of Summary Judgment and Defendant's failure to withdraw claims timely pursuant to Plaintiffs 'demand, warrant a court imposition of sanctions. Defendant's counsel responds that he had duty to represent client, fully investigate, conduct discovery etc and that all delays in case were not directly caused by Defendant. Defendant also claims that Plaintiff has failed to prove case law specific six (6) factors entitling them to award of attorney fees or if so entitled, the attorney fees are not a separate award, but simply added to the debt.

August 5, 2014, Order entered terminating contract and finding no equity.

ISSUES

- I. Contractual Attorney Fee Claim
- II. Rule 11 Attorney Fee Claim

LAW/ ANALYSIS

I. Contractual Attorney Fees Issue

Plaintiff argues that they are entitled to attorney fees because there is a contractual provision in the contract that states " Purchaser agrees to pay all costs and expenses, including a reasonable sum for attorney's fees incurred by Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all rights of the terms of this Agreement, and in

appropriate judicial proceedings, if any or initiated to establish(ed) or maintain Seller's right or title to, and possession of said property after breach by Purchaser." Contract Page 6.

This clause is a similar clause to those routinely found in promissory notes and mortgages—that is the Plaintiff is entitled to a reasonable attorney fees for the cost of foreclosing the specific lien.

Once it is determined that there is a contractual right to attorney fees, the court must make a determination that the fees are reasonable according to a six factor test. "When determining what constitutes a "reasonable" attorney's fee, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

Consideration should be given by the trial court to all six factors; none of the factors is controlling. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

The Court must make a finding on all six factors. When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in Collins [v. Collins], 239 S.C. 170, 122 S.E.2d 1 (1961)]." Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). (The Honorable Judge Ralph King Anderson, 2010 South Carolina Master-in-Equity Bench /Bar Seminar 6-25 (10-41 2010)).

Plaintiff has submitted three (3) attorney fees affidavits and an affidavit by Attorney John Koon to support their attorney fee claim. A review of the case file, the affidavits, the court's knowledge of these actions and fees charges, and the trial testimony dictates that attorney fees be awarded because (a) Defendant did not contest nor choose to cross examine Plaintiff counsel about the hours worked or claimed to have been worked, and (b) Plaintiff submitted affidavits satisfying the six factor attorney reasonableness test.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

As noted above the pleadings, CMS status report, and counsels hearing arguments indicate that this was a well-contested case about the sale of property that contained a pond. There were counterclaims, defenses, third party claims etc, extensive discovery, mediations, motions filed and argued before various trial courts.

2. The Time and Labor Necessarily Devoted to the Case

Plaintiff documented time. Defendant did not cross Plaintiff about time allocations contained on affidavit nor argue that he believed Plaintiff had not worked the time he claimed on affidavit.

3. The Professional Standing of Counsel.

Plaintiff counsel's affidavits and attorney John Koon's affidavit noted his work experience, his length of practice, various trial and appellate work, legal associations and his Martindale-Hubbard AV attorney rating.

4. The Contingency of Compensation.

Not applicable since this was not a contingency case.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

The various affidavits contained the fee contract and hourly rates of \$200.00 etc. The court has reviewed nine years of attorney fee hourly rates from attorneys in this geographical area for not only foreclosures, but actions to foreclose on bonds for title, equitable mortgages, contracts for deeds, installment sales contracts etc. There is no question in this judge's mind that the court's knowledge plus matters contained in affidavits confirm that the fees based on a \$200 hourly rate satisfies this criteria for such a case and an experienced attorney.

6. The Beneficial Results Obtained.

Plaintiff won. He successfully prosecuted his action; defended against defenses and counterclaims through discovery, and filed and argued motions.

While Plaintiff had demonstrated both a contractual right to attorney fees and that the fees are reasonable, the attorney fee claim is not a separate damage award.

The underlying action was to terminate any equitable interest Defendant had in the property, not to obtain a money or damage award. An Installment Land Contract has been described as the "poor man's mortgage." The two main cases governing these contracts are Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006).

These cases make it clear that the purchaser in an Installment Land Contract may have an equity of redemption in the property after there is a default in payment. After the default, the Court must pursuant to case law and Rule 71, SCRPC determine if there is the Defendant has equity in the property. The first step in this analysis is for the court to determine the debt owned just like in a standard mortgage foreclosure. The principle, interest, allowable attorney fees and cost, escrows if applicable are calculated. Here, as in a mortgage foreclosure, the attorney fees are simple part of the debt calculation, not an independent damage award.

After the debt is calculated and the other factors such as property value, any defendant improvement or property are examined, case law and various legal journals basically explain that there are three possible fact scenarios: (a) if defendant has no equity in property, then proper remedy is to terminate equitable interest. (b) if some equity, then a 30 day (or some time period)

is granted to defendant to redeem or tender a full pay-off. (c) if substantial equity, then a court could order a public sale as in the case of a legal foreclosure. (See Andrew S. Radeker, Esq." 2008 South Carolina Master-in-Equity Bench /Bar Seminar 45-49 (08-41 2008).

The foreclosure of the Installment Land Contract is most closely related to the mortgage foreclosure process in which the Plaintiff does not seek a deficiency judgment. While S.C. Code § 29-3-660 (1976 as amended) allows a Mortgagee the right to seek a deficiency judgment, there is no similar statute or case law which would allow a Plaintiff to obtain a separate judgment for attorney fees in an action to foreclosure an Installment Land Contract.

I further note that this argument, granting a separate award of attorney fees or an assignment of the attorney fees award from client to law firm has been made and universally rejected by our state trial courts over the last nine years.

II. RULE 11 Attorney Fee Claim

Plaintiff's argument that attorney fees as sanctions should be imposed against defendant because the counsel raised or continued to prosecute improper defenses, failed to dismiss them after demand, and ultimately had summary judgment granted against them, is not persuasive.

While Plaintiff's case law does allow for sanctions in certain cases, I do not believe the facts and actions in this matter warrant sanctions under any Plaintiff theory.

Plaintiffs and Defendant both made a business decision to enter into this Conditional Sales Contract/Bond for Title. This arrangement often referred to as 'Owner-financing' results in the buyer paying the seller payments of a fixed period of time pursuant to the payment agreements of the sales document. The benefit to the Seller/Owner is that the seller, if all goes according to plan, will receive a long stream of interest and principal payments of a period of time. The benefit to the purchaser is that the purchaser who is often unable to afford conventional financing, can purchase the home and pay less closing cost type fees.

However, there is always the risk of non-payment which then requires a law suit in circuit court to foreclose the lien. Each decision made thereafter by both attorneys can, and often does, delay the trial date.

The parties could have filed no discovery and simply have waited until the case came up on the court administration benchmark (six months) and asked for a trial before a circuit court judge. Each decision to (1) file discovery or (2) Motions had to be carefully weighed by each attorney, in consultation with their respective clients, to best serve their case.

Trial delays generally can result from things such as (1) 7 month discovery time allowance (2) Attorney or court conflicts while establishing a scheduling Order (3) delays in court time scheduling, hearing and ruling on discovery motions (4) delay in court time scheduling, hearing and ruling on SJM (5) mediations (6) attorney generated request for continuances (7) Court conflict rules-which trial does first if conflict between courts etc.

As noted above, the Action page from the CMS system is attached. This list does not include discovery filed but not requiring court action (ie. Interrogatories, Request to Admit, Produce, etc.)

Rule 407 and the comments reflect the tension between the attorney's responsibility to represent his clients interest and his duty to the not use the legal system improperly. The rules discuss that a lawyer has responsibilities to (a) his client (b) to the legal system and to (3) the lawyer & firm's interest. These rules are designed to provide guideposts advising such things as:

Attorney must have basis in law and fact to plead or act.

Attorney has duty to use the legal procedure for the fullest benefit of the clients cause but also a duty not to abuse the legal system.

Comment 2 notes that an action is not frivolous even if lawyer doesn't believe his client will ultimately win so long as layer can in good faith believes law can by changed or modified, but cautions that attorney can't do things just for delay.

Comments to Rule 3.3 regarding duty to expedite litigation does not seem to indicate that defense attorney has duty to push case forward, but rather that attorney cannot do overt/improper acts to delay. Normally, a lawyer does not have an obligation to dismiss a claim or to quit based upon a request by another lawyer. Trials exist so that parties can argue their case before a judge and or jury to receive a decision pursuant to rules of law, evidence and procedure.

While Plaintiffs claim certain defense were not proper, defendant points out that the failure to raise possible defense could well have been malpractice. Defendant did file a Third Party Complaint against multiple Third Party Defendants which did complicate the case. Several of the Third Party Defendants paid the Defendant sums to settle the claims made against them.

The evidence does not support Plaintiff's claim that Defendant improperly or wrongful delayed court action required to impose sanctions.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.

James O. Spence
James O. Spence
Master in Equity for Lexington County

June 4, 2015



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 LEXINGTON SC

6-

Master in Equity

CASE HISTORY FOR CASE 2011CP3201781

Charles E Strickland III , plaintiff, et al VS Marjorie E Temple , defendant, et al

STATUS: Dismissed

FILED DATE: 5/28/2013

CASE TYPE: CP/Foreclosure 420

JUDGE: Spence, James O

CASE PARTIES:

Plaintiff Strickland, Charles E III

Plaintiff Attorney Hall, Frederick Ivey III
PO Box 1898, Lexington, SC 29071

Defendant Temple, Marjorie E

Plaintiff Strickland, Latisha D

Plaintiff Dillon, Justin R

Defendant Koivu, Russell

Defendant ERA Wilder Realty

Defendant Pickren, Gary A

Defendant Casterline, Rex

Defendant Harvey Casterline & Vallini LLP

Defendant Attorney Greenburg, Rolland E. III
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PO Box 7403, Columbia, SC 292027403Defendant Attorney Peace, M. Alan
PO Box 11656, Columbia, SC 292111656Defendant Attorney Mack, Francis Marion
1900 Barnwell St., Columbia, SC 29201Defendant Attorney Peace, Taylor Anthony
1331 Elmwood Avenue, Columbia, SC 292011656

ASE HISTORY FOR CASE 2011CP3201781

Strickland, Charles E III

Age: Unknown
DL#:

Appendix 11
DOB: Unknown
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
------	----------	-------------	-----------	--------------

Total:

DATE	TIME	EVENT DESCRIPTION
5/11/2011	10:07 AM	Filing recorded: Lis Pendens Filed
5/11/2011	10:03 AM	Filing recorded: Summons & Complaint
6/3/2011	12:00 AM	Filing recorded: Acceptance Of Service for M Temple
7/28/2011	12:00 AM	Filing recorded: Answer Counterclaim & 3rd Party Sums & Comp
8/18/2011	12:00 AM	Filing recorded: Service/Acceptance Of Service
8/25/2011	12:00 AM	Filing recorded: Acceptance Of Service/Reg Agt for Harvey Casterling etc
9/9/2011	12:00 AM	Filing recorded: Answer/Wilder & R Koivu to 3rd party Comp
9/22/2011	9:24 AM	Filing recorded: Reply to Answer and Counterclaim
9/15/2011	12:00 AM	Filing recorded: Amended/Amended Certificate of Service
12/30/2011	12:54 PM	Motion/Motion Filing Fee
1/19/2012	3:11 PM	Order/Form 4
1/23/2012	12:00 AM	Filing recorded: AmendReply to Answ & Counter Claim and Third Party Compliant
10/31/2012	3:29 PM	Order/Form 4
11/21/2012	3:49 PM	Motion/Motion Filing Fee
1/4/2013	4:43 PM	Order/Order
1/22/2013	12:00 AM	Filing recorded: Affidavits in Support of Motion
1/22/2013	12:00 AM	Filing recorded: Memo in Support
2/7/2013	12:00 AM	Filing recorded: Affidavit of Charles Strickland III
1/30/2013	12:00 AM	Order/Protective Order
3/13/2013	10:18 AM	Order/Form 4
3/22/2013	4:41 PM	Motion/Motion Filing Fee
3/18/2013	9:50 AM	Order/Form 4
5/17/2013	2:10 PM	Filing recorded: Stipulation Of Dismissal of 3 3rd party defendants
5/20/2013	12:00 AM	Order Grantin SJ on Def Count Claim/Refer to Master
5/28/2013	12:00 AM	Order/Referred to Master
12/16/2011	11:40 AM	Notice of Motion Roster Publication Sent
12/30/2011	12:00 AM	Motion/Compel
5/7/2012	3:53 PM	Notice of Motion Roster Publication Sent
10/2/2012	10:49 AM	Notice of Motion Roster Publication Sent
11/13/2012	10:10 AM	Notice of Motion Roster Publication Sent

Print Date: 06/04/2015
Print Time: 11:14:18AM
Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

CASE HISTORY FOR CASE 2011CP3201781

Date	Time	Event
11/21/2012	12:00 AM	Motion/Summary Judgment
1/11/2013	11:37 AM	Notice of Motion Roster Publication Sent
2/25/2013	3:17 PM	Notice of Motion Roster Publication Sent
4/4/2013	1:15 PM	Notice of Motion Roster Publication Sent
2/8/2013	3:30 PM	Motion/Motion Filing Fee
5/21/2013	2:28 PM	Motion/Motion Filing Fee
5/21/2013	12:00 AM	Motion/Summary Judgment
8/20/2012	4:03 PM	Motion/Motion Filing Fee
1/14/2014	12:32 PM	Motion/Motion Filing Fee
3/26/2014	12:52 PM	ADR/Mediation Results Report
3/26/2014	12:52 PM	Filing recorded: ADR/Mediation Results Report/Filing
4/17/2014	3:27 PM	Motion/Motion Filing Fee
7/15/2014	10:30 AM	Filing recorded: Amended/Amended
7/15/2014	4:33 PM	Filing recorded: Memo/Memo in Support
7/15/2014	4:35 PM	Filing recorded: Affidavit/Attorney Fees
7/29/2014	10:08 AM	Filing recorded: Memo/Memo in Opposition
8/5/2014	1:44 PM	Order/Order
10/20/2014	12:04 PM	Filing recorded: Affidavit of John Koon
10/13/2014	12:05 PM	Filing recorded: Plt Reply Memo in Support of Motion to Award Fees and Sancti
10/23/2014	1:32 PM	Motion/Motion Filing Fee
10/13/2014	3:46 PM	Filing recorded: Certificate of Service
10/23/2014	4:28 PM	Plaintiffs Motion for Expedited Hearing
11/10/2014	10:33 AM	Filing recorded: Notice of Hearing
3/17/2015	3:45 PM	Filing recorded: Reply/Reply
12/11/2014	10:42 AM	Filing recorded: Transcript of Motion Hearing (original filed)
3/31/2015	8:52 AM	Filing recorded: Proof of Mailing
3/26/2015	2:36 PM	Filing recorded: Letter from Judge Spence to Parties
8/9/2013	12:00 AM	CMAY recorded the following Case Note: Case created via Master In Equity Case Transfer from agency 32002: Common Pleas
1/20/2012	12:00 AM	CMAY recorded the following Case Note: Motion to Make More Definate and Certain is granted by consent of the parties
11/2/2012	12:00 AM	CMAY recorded the following Case Note: Defendant Motion for Protective order is continued to the next term of court.
1/14/2013	12:00 AM	CMAY recorded the following Case Note: Case not to be called for trial before April 1, 2013.
1/22/2013	12:00 AM	CMAY recorded the following Case Note: Summary Judgement
1/22/2013	12:00 AM	CMAY recorded the following Case Note: Motion for Summary Judgement
3/13/2013	12:00 AM	CMAY recorded the following Case Note: Motion to Compel is granted.
3/29/2013	12:00 AM	CMAY recorded the following Case Note: Plaintiffs Motion for sj against the defendant is granted.
5/17/2013	12:00 AM	CMAY recorded the following Case Note: Dismissal of ALL CLAIMS OF 3RD PARTY DEFENDANTS Gary Pickren, Rex Casterline and Harvey Casterline & Vanilli LLP
2/1/2013	12:00 AM	CMAY recorded the following Case Note: Moved to 2/07/2013 @ 2:00 p.m.
8/9/2013	12:00 AM	CMAY recorded the following Case Note: Costs rect & disb before August 1, 2013
1/14/2014	12:00 AM	WHENSON recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
3/26/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "ADRRPT" - ADR/Mediation Results Report for associated case 2011CP3201781 in court agency 32002
3/26/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "ADRMRS" - ADR/Mediation Results Report/Filing for associated case 2011CP3201781 in court agency 32002

CASE HISTORY FOR CASE 2011CP3201781

4/17/2014	12:00 AM	WHENSON recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
7/17/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "AMENDA" - Amended/Amended for associated case 2011CP3201781 in court agency 32002
7/18/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MEMSUP" - Memo/Memo in Support for associated case 2011CP3201781 in court agency 32002
7/18/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "AFFFEE" - Affidavit/Attorney Fees for associated case 2011CP3201781 in court agency 32002
8/7/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MEMOPP" - Memo/Memo in Opposition for associated case 2011CP3201781 in court agency 32002
8/8/2014	12:00 AM	PBENTON recorded the following Case Note: Creation of this action was triggered by the add of action "ORDER" - Order/Order for associated case 2011CP3201781 in court agency 32002
10/20/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "AFFDVT" - Affidavit of John Koon for associated case 2011CP3201781 in court agency 32002
10/20/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "REPREP" - Plt Reply Memo in Support of Motion to Award Fees and Sancti for associated case 2011CP3201781 in court agency 32002
10/23/2014	12:00 AM	JMARSHALL recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
10/23/2014	12:00 AM	CFREE recorded the following Case Note: Creation of this action was triggered by the add of action "CERTSERV" - Certificate of Service for associated case 2011CP3201781 in court agency 32002
10/28/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MOTMOT" - Plaintiffs Motion for Expedited Hearing for associated case 2011CP3201781 in court agency 32002
11/13/2014	12:00 AM	CFREE recorded the following Case Note: Creation of this action was triggered by the add of action "NOTICE" - Notice of Hearing for associated case 2011CP3201781 in court agency 32002
3/17/2015	12:00 AM	CROSA recorded the following Case Note: Creation of this action was triggered by the add of action "REPREP" - Reply/Reply for associated case 2011CP3201781 in court agency 32002
3/27/2015	12:00 AM	CEDWARDS recorded the following Case Note: Creation of this action was triggered by the add of action "TRANSR" - Transcript of Motion Hearing (original filed) for associated case 2011CP3201781 in court agency 32002
4/1/2015	12:00 AM	CEDWARDS recorded the following Case Note: Creation of this action was triggered by the add of action "SPROOFC" - Proof of Mailing for associated case 2011CP3201781 in court agency 32002
5/12/2015	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "LETTER" - Letter from Judge Spence to Parties for associated case 2011CP3201781 in court agency 32002

SEP102015

Appendix 14

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201781

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

Charles E Strickland III
Justin R Dillon

Latisha D Strickland

2015 SEP - 1

FILED
VETNA A. DALLAGE
CLERK OF COURT
LEXINGTON SC

Marjorie E Temple
ERA Wilder Realty
Reo Casterline

Russell Koivu
Gary A Pickren
Harvey Casterline &
Vallini LLP

PLAINTIFF(S)

DEFENDANT(S)

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

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information. ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 43(k), SCRPC (Settled); ☐ Other: ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ 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:
ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

James O. Spence
Circuit Court Judge

3068
Judge Code

9/1/2015
Date

SEP102015

For Clerk of Court Office Use Only

11th Sept 2015

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer M Cooper 301 Gibson Road Lexington, SC 29072

Rolland E. Greenburg III 712 Calloun St., Ste. D
Columbia, SC 29201
Spencer Andrew Syrett PO Box 7403 Columbia, SC 29202-7403
M. Alan Peace PO Box 11656 Columbia, SC 29211-1656
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Taylor Anthony Peace PO Box 11656 Columbia, SC 29211-1656

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg /mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

SEP102015

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,
Latisha Strickland, and
Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant.

ORDER DENYING RULE 59(e) MOTION

2011-CP-32-1781

Marjorie E. Temple,

Third Party Plaintiff,

vs.

Russell Koivu,
ERA Wilder Realty, Inc.,
Gary A. Pickren,
Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third Party Defendants.

LEITH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2015 SEP - 1 P 1:09

FILED

This matter came before the Court on Plaintiffs' Motion to Reconsider this Court's Order dated June 4, 2015. For the reasons set forth below, the Court denies the Motion.

TIMELINESS

The Defendant argued that the Plaintiffs' motion was not timely. The Court rejects this argument.

The Court signed the Order on June 4, 2015, and clocked the order in the Clerk's Office on June 4, 2015. Although this Court sent out a courtesy copy (without a filed Form 4) of the clocked Order to counsel on June 4, 2015, this courtesy copy was not notice of the entry of the judgment. The Clerk's Office notified the parties of the entry of

the Order on June 16, 2015. Judgments are entered pursuant to Rule 58, SCRPC:

(2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to Interrogatories, the court shall promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

The Plaintiffs' Motion to reconsider was timely served and filed.

DENIAL OF RULE 11 SANCTIONS

The Plaintiffs assert that the Court's Order fails to set forth the "good grounds" which support the Defendant's Answer and Counterclaim. The Court has reviewed the Order and finds that it adequately addresses the issue.

ATTORNEY FEES ISSUES

IMPAIRMENT OF THE OBLIGATIONS OF CONTRACT

Plaintiffs claim that the Court's order impairs the obligations of contract in violation of the Constitutions of the United States and South Carolina.

The Court has reviewed the record in the case and does not find any prior trial presentation of this argument to the Court. The court did not understand this claim to be at issue at trial and did not request that the parties brief the issue in their respective post trial memos. Thereafter, the issue was not addressed in the (a) post trial memos (b) court's decision memorandum (c) Plaintiff's letter addressing perceived shortcomings in Defendant's proposed Order. The issue was first clearly raised in Plaintiff's Rule 59 Motion. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Cl. App. 1995).

SEP102015

HOW ATTORNEY FEES AFFECT DEBT IN FORECLOSURE ACTIONS

Although the Plaintiffs claim that the Order is a denial of an award of attorney fees, the Court awarded the fees that Plaintiffs sought.

While Plaintiff pled two causes of action, both requested termination of the defendant's equitable interest in the property. This action is a foreclosure of an equitable mortgage of real estate. Although based on a contract, it is not a breach of contract action. A plaintiff in this type of action cannot change the equitable mortgage into a simple lease agreement. The Supreme Court has made it clear that foreclosure is only proper way to adjudicate this issue. Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002); Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006)

In order to foreclose a lien, the Plaintiff must first establish the amount of the debt. Rule 71(a), SCRCP. The Rule requires the Court to determine the total debt:

Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53. In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due upon default, the rate of interest and interest from date of default to hearing date, any other relevant interest charged, any amounts due or to be credited on escrow items, the taxable costs of collection prior to hearing, and the amount of allowable attorneys fees due and anticipated through conclusion of the action.

As set forth in the cases described above, in the foreclosure of an installment land contract, a court should examine various factors to determine the appropriate remedy. A court may compare the amount of the debt with the value of the property. If the property is worth more than the amount of the debt, then the property may be sold by the Court. If the property is worth less than the amount of the debt, the Court may terminate the contract and any equity of redemption. Or, if there is some equity, allow a time period for the Defendant to pay the debt and redeem the property. Plaintiff did not

SEP102015

claim nor plead any right to a deficiency judgment in this foreclosure of an installment land contract.

Once the principal, debt, interest, attorney fees etc. were considered, the Defendant conceded, and Plaintiff did not contest, that there is no equity in the property. Just as a Plaintiff in a traditional mortgage foreclosure must plead and prove it's entitlement to attorneys fee, the attorney fees in this case were not a separate damage award, but these fees are, as described above, elements of the debt that must be established to determine the debt, so as to determine the proper remedy which was terminating the equitable interest in the property.

Therefore the appropriate relief in this case, as plead, and argued, is termination of the Contract.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

September 1 2015

FILED
2015 SEP - 1 P 1:09
JIM A. VAHREN
CLERK OF COURT
LEXINGTON SC

The Supreme Court of South Carolina

Charles E. Strickland, III, Latisha D. Strickland and
Justin R. Dillon, Appellants.

OCT 19 2015

v.

Marjorie E. Temple, Respondent,

Appellate Case No. 2015-002048

ORDER

Pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, this appeal is hereby transferred to the South Carolina Court of Appeals.



C.J.
FOR THE COURT

Columbia, South Carolina
October 15, 2015

cc: Frederick Ivey Hall, III, Esquire
Spencer Andrew Syrett, Esquire
Rolland E. Greenburg, III, Esquire
The Honorable Jenny Abbott Kitchings

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

James O. Spence, Master-In-Equity Judge

Case No. 2011-CP-32-01781

Marjorie E. Temple.....Respondent,

v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

[INITIAL] BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Facts.....	1
Arguments	
I. The Master-in-Equity Erred in Failing to Award Attorney Fees Which Were Specifically Provided for in the Parties' Contract in the Event of an Action to Enforce its Provisions, Including Termination. Attorney Fees are Recoverable in an Action for Injunctive Relief if There is a Contract or Statute Which Permits Recovery.....	4
II. The Master Impaired the Parties' Contract by Finding That Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract Because They Could Only Be Awarded as Part of the Debt, and Not as a Separate Damage Award. This Finding Violates the South Carolina and United States Constitutions.....	8
III. The Master Erred in Failing to Grant Rule 11 Sanctions and Attorney Fees Against the Defendant and Her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices. The Circuit Court Found That There Was No Basis in Fact or Law for Bringing These Claims. Therefore Sanctions Should Have Been Entered.	10
A. The Standard of Review.....	10
B. The Plaintiffs Are Entitled to Recover From Counsel All of Their Attorney Fees and Costs As a Sanction For Frivolous Litigation.....	11

IV. The Master Failed to Make Sufficient Findings of Fact to Enable the Appellate Court to Ascertain What the Basis Was For Denying Rule 11 Sanctions.....13

Conclusion.....16

TABLE OF AUTHORITIES

CASES

<i>Atkinson v. Atkinson</i> , 279 S.C. 454, 309 S.E.2d 14 (S.C.App., 1983).....	7
<i>Baron Data Systems, Inc. v. Loter</i> , 297 S.C. 382, 377 S.E.2d 296 (1989).....	5,7
<i>Blumberg v. Nealco, Inc.</i> , 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993).....	5
<i>Collins v. Collins</i> , 239 S.C. 170, 122 S.E.2d 1 (1961).....	5
<i>Ex parte Gregory</i> , 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008).....	13
<i>Federal Land Bank of Columbia v. Garrison</i> , 185 S.C. 255, 193 S.E. 308, 311 (1937).....	9
<i>Glasscock v. Glasscock</i> , 403 S.E.2d 313 (S.C. 1991).....	7
<i>Hegler v. Gulf Ins. Co.</i> , 270 S.C. 548, 243 S.E.2d 443 (1978).....	5
<i>Holmes v. Haynsworth, Sinkler & Boyd</i> , 408 S.C. 620, 760 S. E.2d 399 (2014)....	10
<i>Lewis v. Premium Investment Corp.</i> , 351 S.C. 167 (2002), 568 S.E2d 36.....	7
<i>Mathis v. Brown & Brown of S. Carolina, Inc.</i> , 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010).....	15
<i>Nienow v. Nienow</i> , 268 S.C. 161, 232 S.E.2d 504 (1977).....	7
<i>Seabrook Island Property Owner's Association v. Berger</i> , 365 S.C. 234, 616 S.E.2d 431 (2005).....	5,7
<i>Stokes-Craven v. Robison</i> , No. 27572 (S.C. filed Sept. 9, 2015).....	10

STATUTES

S.C. Code Ann. § 14-3-320 (Supp. 2012).....	10
---	----

OTHER AUTHORITIES

Rule 1.5, RPC, Rule 407, SCACR	6
Rule 11, SCRCPP.....	10,11
Rule 1, SCRCPP.....	16
Rule 3.1, RPC, Rule 407, SCACR.....	14
S.C. Const. Art. I, §4.....	8
U.S. Const. Art. I, § 10	9

Statement of Issues

- I. Did the Master-In-Equity Err in Failing to Award Attorney Fees to the Plaintiffs When the Contract Provided for Recovery of Attorney Fees for Enforcement of the Contract and Attorney Fees are Recoverable in an Action for Injunctive Relief if Allowed by the Contract?**
- II. Did the Master Impair the Parties' Contract When He Found the Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract in Violation of the South Carolina and U. S. Constitutions?**
- III. Did the Master Err in Failing to Grant Rule 11 Sanctions Against the Defendant and her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices and the Circuit Court Found No Basis in Fact or Law for These Claims?**
- IV. Did the Master Err in Failing to Make Sufficient Findings of Fact and Conclusions of Law to Enable the Appellate Court to Ascertain What the Basis was for Denying Rule 11 Sanctions Against the Defendant and her Counsel?**

Statement of the Case

This is an appeal from an order of the Master in Equity for Lexington County denying the Appellant's Motion for Rule 11 Sanctions and Request for Attorney Fees after the court terminated the Respondent's interest in an installment land sale contract (Bond for Title). The master found that the Respondent, Marjorie

Temple, had no equitable interest in the property based upon her concession and agreement that no equity existed.

The Appellant, Charles Strickland, et al, filed this action on May 11, 2011 in the Circuit Court of Lexington County seeking foreclosure of a Bond for Title or installment land sale contract (hereafter the Agreement) or, in the alternative, termination of the Agreement and any equitable interest Temple may have had in the property. Strickland also requested attorney fees and costs in the pleadings.

Temple served an Answer, Counterclaim and Third Party Complaint on July 26, 2011, alleging defenses and causes of action for unconscionability, rescission, negligent misrepresentation, fraud and unfair trade practices.¹ Temple alleged in the counterclaims and defenses that Strickland had failed to disclose the existence of a dam and pond on the property, as well as the fact that a portion of the property was in a wetlands, despite the fact that all of these matters were disclosed in writing in the Agreement, which Temple acknowledged she read. In addition, she walked and viewed the property prior to purchasing it.

The circuit court issued an order granting summary judgment on May 20, 2013 as to all of Temple's counterclaims and defenses, and referred the underlying breach of contract action to the master in equity for purpose of determining

¹ The matters raised in the Third Party Complaint are not at issue in this appeal.

whether Temple had any equitable interest in the property and for final judgment. The Court signed an Order of Reference on May 23, 2013.

Strickland filed a Motion for Rule 11 Sanctions and Attorney Fees on April 17, 2014 on the basis that Temple's counterclaims were filed in bad faith; that there were no good grounds to bring the claims; and that the circuit court found there was no basis in fact or law to support the allegations.

The master issued a final order without a hearing on August 5, 2014 terminating the Agreement and any alleged equitable interest in the property, which consisted of a mobile home and lot, on the grounds that Temple conceded there was no equity the property and that the contract had been breached. The master further ordered that Temple vacate the property by August 29, 2014 and reserved for determination the issue of attorney fees and costs in his final order.

Strickland requested attorney fees and costs in the amount of \$19, 236. 82 under the Agreement and Rule 11, SCRCF from Temple and her counsel. He also sought a monetary fine.

The master heard Strickland's Motion for Rule 11 Sanctions and Request for Attorney Fees on December 11, 2014 and issued an order denying the requested relief on June 4, 2015 from which Strickland appeals. The Court's Order was entered on June 15, 2015 and thereafter Strickland filed a timely Motion To Alter Judgement of the Court's Denying of Attorney's Fees and Rule 11 Sanctions

pursuant to Rule 59 (e), SCRCP. The master issued an Order Denying the Rule 59 (e) motion on September 1, 2015, written notice of which was received on September 16, 2015.

Strickland filed Notice of Appeal on September 28, 2015.

Argument

I. The Master-in-Equity Erred in Failing to Award Attorney Fees Which Were Specifically Provided for in the Parties' Contract in the Event of an Action to Enforce its Provisions, Including Termination. Attorney Fees are Recoverable in an Action for Injunctive Relief if There is a Contract or Statute Which Permits Recovery.

Strickland and Temple entered into a legally binding Agreement, which provided, among other things that:

Purchaser agrees to pay all costs and expenses, including reasonable attorney fees incurred by the Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all terms of this Agreement, and in appropriate judicial proceedings, if any are initiated to established (sic) or maintain Seller's right, title to, and possession of said property after breach by the Purchaser.
(Agreement at p. 6) (emphasis added)

The Complaint in this action sought foreclosure of the property or, in the alternative, termination of the contract and possession of the property. (See Complaint at p. 3) Strickland also prayed for a determination of attorney fees and costs. (Id. at p. 3) The master accepted Temple's concession that she had no equity in the property, found that the contract had been breached, and that

Strickland was entitled to termination of the contract. (See Final Order Terminating Conditional Sales Agreement and Bond for Title of August 5, 2014)

The master found that attorney fees in this case could only be awarded, as they are in a mortgage foreclosure, as part of the debt and not as a separate award (Order of June 4, 2015, p. 4). This was error because Strickland elected the remedy of termination and possession and Strickland's right to attorney fees under the contract was not only for foreclosure, but also termination. Thus, Strickland has a contractual right to attorney fees, which the master erred in failing to award.

Where a court grants injunctive relief and there is a corresponding contractual right to attorney fees, they are recoverable as a matter of law. *Seabrook Island Property Owner's Association v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (2005) (holding where trial court awarded attorney fees in conjunction with enforcement of residential covenants and restrictions that it did not abuse its discretion in awarding attorney fees and that the attorney fees were contractual in nature under the restrictive covenants) The same analysis applies here.

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961)). "In South Carolina, the authority to

award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees."

Seabrook Island Property Owners' Ass'n v. Berger, supra.

In this case, the Agreement specifically allows for the recovery of attorney fees and costs. "Purchaser agrees to pay all of Seller's reasonable attorneys' fees and court costs incurred by the Seller in her (Sic) enforcement of the contract. See Agreement at p. 4. And so, there is no dispute that Strickland had a legal basis for asserting a claim to attorney fees. The only issue for the court was the reasonableness of those fees. And the master found the fees to be reasonable. Strickland claimed attorney fees and costs in the amount of \$19,236.82. Included in the amount of costs were filing costs, service costs for subpoenas, costs for depositions, and the like.

Strickland submits the fees sought are entirely reasonable as this litigation has been unnecessarily been drawn out by Temple and her attorneys while she remained in the property- "rent free." Strickland's counsel wrote the defense attorneys early in the litigation on two occasions and requested that defense counsel drop the counterclaims for fraud and unfair trade practices. (Motion for Attorney Fees and Sanctions at p. 2, par. 4) Defense counsel and/or the defendant refused.

The Court should, and indeed must, examine the following factors in making an award of attorney fees.

The South Carolina Rules of Professional Responsibility govern in part the factors to be considered. Rule 407, SCACR, 1.5 of the Rules of Professional Conduct, contains the factors that must be considered in an award of attorney fees. The following cases also set forth these factors. See *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) ; *Nienow v. Nienow*, 268 S.C. 161, 232 S.E.2d 504 (1977) and *Atkinson v. Atkinson*, 279 S.C. 454, 309 S.E.2d 14 (S.C.App., 1983), and *Glasscock v. Glasscock*, 403 S.E.2d 313 (S.C. 1991) concerning the factors and criteria which should be considered in the setting of attorney's fees, which include in the discretion of the court, the amount of fees, the court's file, the court's knowledge of the litigation between the parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, whether the fee is fixed or contingent, the professional standing of counsel, the fees customarily charged in this area for similar legal services, and the amount of time spent.

The master examined all of these factors and found that the fees and costs were reasonable. (Order of June 4, 2015 at p. 4)

While the underlying action was equitable in nature as an action to terminate the contract, Strickland's claim to attorney fees is a matter of law. *Lewis v.*

Premium Investment Corp., 351 S.C. 167 (2002), 568 S.E2d 361 (2002) and *Seabrook Island Property Owner's Ass'n v. Berger*, supra. Because the master erred as a matter of law in his determination that attorney fees were only recoverable as a part of the debt, this Court should reverse the decision and require an entry of judgment in the amount of attorney fees and costs requested.

II. The Master Impaired the Parties' Contract by Finding That Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract Because They Could Only Be Awarded as Part of the Debt, and Not as a Separate Damage Award. This Finding Violates the South Carolina and United States Constitutions.

Both the South Carolina and the U. S. Constitutions prohibit a court from impairing a private legal contractual arrangement between parties. Art. I. § 4 of the South Carolina Constitution provides in pertinent part that:

No bill of attainder, ex post facto law, law impairing the obligation of contracts... shall be passed, and no conviction shall work a corruption of blood or forfeiture of estate.

S.C. Const. Art. I, § 4 (emphasis added)

The South Carolina Supreme Court has explained the importance of privately binding legal contracts and the constitutional prohibition against impairment of these obligations:

In speaking of the constitutional provision forbidding the enactment of any law impairing the obligation of a contract, in *Martin v. Saye*, 147 S.C. 433, 145 S.E. 186, 191, the court said: "The obligation of a contract consists in

its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act on the remedy, is directly obnoxious to the provisions of the Constitution.' *McCracken v. Hayward*, 2 How. [608] 612, 11 L.Ed. 397. 'The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing or accelerating the performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation.'"

Federal Land Bank of Columbia v. Garrison, 185 S.C. 255, 193 S.E. 308, 311 (1937) (emphasis added)

The master's refusal to award attorney fees for termination of the contract impairs the parties' legally enforceable obligations and violates the S.C. Constitution.

Likewise, Art. I § 10 of the U. S. Constitution prohibits any law impairing the obligation of contract. It states in part:

No state shall... pass any law impairing the obligation of contracts, or grant any title of nobility.

The master equated the Agreement in this case - an installment land sale contract - to be equivalent to a "poor man's mortgage." (Order of June 4, 2015 at p. 4) This analogy, however, does not permit the alteration or disregarding of the parties' contractual obligations pertaining to enforcement or termination. In *Garrison*, the S.C. Supreme Court held that an act passed during the Great Depression to provide relief from large deficiency judgments could not alter the terms of a mortgage which had been executed prior to passage of the law.

The master's order of June 4, 2015 denying Strickland's prayer for attorney fees, which is consistent with the terms of the contract between the parties, violates the U. S. and South Carolina Constitutions and it should be reversed.

III. The Master Erred in Failing to Grant Rule 11 Sanctions and Attorney Fees Against the Defendant and Her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices. The Circuit Court Found That There Was No Basis in Fact or Law for Bringing These Claims. Therefore Sanctions Should Have Been Entered.

A. The Standard of Review

The award of attorney fees or sanctions under Rule 11, SCRCP [or refusal to award them] is a matter sounding in equity and this Court may take its own view of the evidence in deciding whether or not sanctions are appropriate. *Holmes v. Haynsworth, Sinkler & Boyd*, 408 S.C. 620, 760 S. E.2d 399 (2014) *overruled on other grounds by Stokes-Craven v. Robison*, No. 27572 (S.C. filed Sept. 9, 2015),

citing *Father v. S.C. Department of Social Services*, 353 S.C. 254, 578 S.E.2d 11 (2003). *See also*, S.C. Code Ann. § 14-3-320 (Supp. 2012). However, the abuse of discretion standard does play a role in the appellate review process of a sanctions award where the appellate court agrees with the trial courts findings of fact and the court will review the decision to award sanctions under an abuse of discretion standard, as well as the terms. (Id., 760 S.E.2d at 410)

B. The Plaintiffs Are Entitled to Recover From Counsel All of Their Attorney Fees and Costs as a Sanction for Frivolous Litigation.

As the Court can see from an examination of facts in this case, the record on appeal, as well as the detailed findings of the circuit court in its Order Granting Summary Judgment as to All of the Defendant's Counterclaims and Defenses of May 14, 2013, this litigation was unnecessarily protracted by defense counsel's failure to reasonably investigate the facts of the case as it pertains to the claims of fraud, unfair trade practices, negligent misrepresentation, and unconscionability. Plaintiffs' counsel wrote to defense counsel twice advising them if these claims were not withdrawn, a motion for sanctions would be filed under the Rule 11.

Rule 11 provides in part as follows: "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."

A clear reading of the Circuit Court's Order Granting Summary Judgment of May 14, 2013 indicates that the defendant did not have good grounds to assert claims of fraud, misrepresentation, rescission, unfair trade practices or unconscionability. Ms. Temple is an educated woman who read and initialed the contract in this case and, if she had paid attention would, or did see, that the contract specifically disclosed the existence of the pond and the dam on the property. She and her defense counsel's continued insistence on litigating claims which had no basis in fact or law and which were not supported by good grounds are sufficient reason for this Court to enter an award of attorney fees and costs, as well as other appropriate sanctions, and to reverse the master's decision which denied this relief. The failure of the master to grant sanctions in this case, on these facts, was an abuse of discretion and should be reversed.

Moreover, defense counsel are educated and seasoned members of the bar, who, had they read the Agreement, could have, and no doubt did, see what the Defendant herself should have seen, which is that the dam, pond and wetlands were clearly disclosed in writing. Additionally, Plaintiffs' counsel brought to defense counsel's attention the lack of good grounds in writing in the two letters attached to the Rule 11 Motion. Any reasonable investigation into the facts would have revealed what the contents of the Agreement did reveal: the property had a dam and pond on the premises which were disclosed in writing and were in plain

view. The Defendant had also been given a plat showing that a portion of the property was in wetlands. However, despite all of Plaintiffs' counsel's efforts, Defendant's counsel persisted with frivolous claims.

The case law provides:

Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.* A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed. *Id.*

Ex parte Gregory, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008)

For the above reasons, this Court should reverse the master's Order of June 4, 2015 which denied sanctions and enter an award which it deems appropriate, to include the attorney fees and costs, which the master found to be reasonable, or in an amount this Court finds appropriate in accordance with its view of the facts. In the alternative, the Court should remand this matter to the master with instructions to enter appropriate sanctions.

IV. The Master Failed to Make Sufficient Findings of Fact to Enable the Appellate Court to Ascertain What the Basis Was for Denying Rule 11 Sanctions.

The master's Order Denying Rule 11 Sanctions and Request for Attorneys Fees fails to address in any meaningful way what facts supported the assertion of Defendant's claims for fraud, negligent misrepresentation, rescission, unconscionability and unfair trade practices. Rather, the master's order discusses the nature of the business relationship, and associated risks of entering into such a "business decision." (Order of June 4, 2015 at p. 5.) The master discusses a litany of issues —not facts— including the "risk of non-payment," decisions regarding discovery, the tactical decision to file discovery or wait until the hearing, motions, scheduling conflicts, continuances, and the like to "best serve [the client's] case." (Id., p. 5) Nowhere does the master make any findings of fact regarding the grounds for the claims of fraud, misrepresentation, and unfair trade practices. While the master suggests it could have been malpractice not to assert these claims, there is no evidence in the record to support such an inference. Rather, when the record is examined, it only supports the opposite conclusion, which is that the counterclaims and defenses asserted by Temple and her counsel were without merit or evidentiary support and could only have been filed in bad faith. There were no good grounds for filing these claims, which is essentially what the circuit court found when it granted summary judgment, noting that there was "no

basis in law or in fact” for bringing these claims. (Order Granting Summary Judgment of May 14, 2013 at p. 11)

Indeed, the master in his order acknowledges an attorney must have a basis in law and fact to file a claim, citing SCACR 407, Rule 3.1, which states in pertinent part that: “A lawyer shall not bring or defend a proceeding or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.” Rule 3.1, RPC, Rule 407, SCACR. However, the master does not address in any fashion what grounds the Defendant Temple and her counsel had for making her claims. Indeed there were no good grounds.

It is axiomatic that a court must make sufficient findings of fact for an appellate court to conduct an adequate review. The Supreme Court has noted:

The requirement for appropriately detailed findings “is designed ... to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.” *Id.* at 132, 568 S.E.2d at 343, citing *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C.1980). A lower court is not required to set out findings on all the myriad factual questions arising in a particular case, but the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. *Id.*

Mathis v. Brown & Brown of S. Carolina, Inc., 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010)

Rule 11 and the premise upon which it is based, which is that good grounds must exist for an attorney or a party to file a lawsuit, including a counterclaim, do

not exist in a vacuum. While good legal strategy and the obligation to represent a client zealously within the bounds of the law is the obligation of every lawyer, the filing of meritless claims is not. The facts in this case demonstrate only one reasonable inference. There was no basis in law or in fact to support the claims made by Temple and her lawyers, as found by the circuit court.

Rule 1 of the South Carolina Rules of Civil Procedure requires that the Rules be interpreted “to secure the just, speedy and inexpensive determination of every action.” This Court should take its own view of the facts and reach the conclusion in this case that sanctions must be imposed in this instance to protect parties from frivolous claims. At a minimum, the Court should remand with instructions to address what facts allegedly supported the bringing of Temple’s claims of fraud and the like. There are none in the record, as the Court will see.

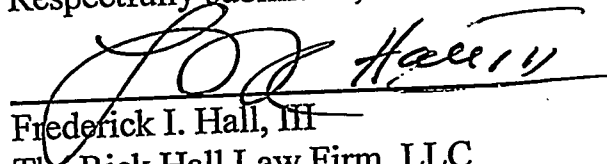
V. Conclusion

Because the master erred as a matter of law in failing to award attorney fees in his Order of June 4, 2015 and because his Order denying recovery of attorney fees violates the South Carolina and U. S. Constitutions, this Court should reverse the decision of the master-in equity with instructions to enter judgment in the amount of the attorney fees and costs requested. Additionally, the Court should find from its own examination of the record and the evidence that Temple and her counsel violated Rule 11, SCRCP and that an award of sanctions should issue in an

amount commensurate with the attorney fees and costs requested, together with a fine for filing and continuing to litigate frivolous claims. At a minimum the Court should remand and require the master to make appropriate findings of fact and conclusions of law.

October 20, 2015

Respectfully submitted,



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S.C. Bar No. 2591
Attorney for Appellant

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY**

CASE NO. 2011-CP-32-1781

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,

Appellants

v.

Marjorie E. Temple,

Respondent,

**MOTION TO DISMISS APPEAL
AND
MOTION TO ENLARGE TIME TO FILE RESPONDENT'S INITIAL BRIEF**

Rolland E. Greenburg, III
712 Calhoun Street, Suite D
Columbia, SC 29201
803-256-4408

Spencer Andrew Syrett
P.O. Box 7403
Columbia, SC 29202

Attorneys for Respondent

The Respondent hereby moves for an Order to dismiss the Appeal and to enlarge the time for the Respondent to file her Initial Brief pending a decision on this motion.

This Motion is based upon the following:

HISTORY OF THE CASE

This is an action to foreclose an Installment Land Contract.

In July, 2014, the Respondent conceded that there was no equity in the property. Pursuant to Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006)., on August 5, 2014, the Master signed an Order terminating the Respondent's interest in the Contract because there was no equity in the property.

On April 17, 2014, the Appellants filed a motion seeking a separate award of attorneys fees as a money judgment.

On June 4, 2015, the Master signed and filed an Order stating that pursuant to Rule 70, SCRCP, the attorney fees must be added to the contractual debt to determine whether there is equity in the property. The Master ruled that the Appellants were not entitled to a separate judgment for an award of attorneys and in addition, there was no right to obtain a deficiency judgment.

The Master e-mailed a copy of the order to each of the attorneys of record on June 4, 2015. (see attached)

On June 16, 2015, the Clerk of Court e-mailed another clocked copy of the Order together with the Judgment Cover Sheet to each of the attorneys of record. (see attached)

On June 24, 2015, the Appellants served a motion to alter or amend the Judgment (Rule 59(e), SCRCP). The Appellants filed this Motion on June 26, 2015. On July 27, 2015, the Respondent filed a return to the Motion in which she asserted that the Motion to Alter or Amend was not timely served or filed.

On September 1, 2015, the Master signed and filed an order denying the Appellants' Motion to Alter or Amend but finding that the Motion was timely filed.

On September 28, 2015, the Respondents filed this appeal.

ARGUMENT

On August 26, 2015, this Court issued its order dismissing the appeal in the case

of Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, et al. (Case No. 2015-000157).

The fact situation in Wells Fargo are essentially indistinguishable from this case.

In Wells Fargo, the Master e-mailed the order sought to be appealed to the parties and then subsequently mailed a copy of the order. The appeal was served 31 days after the email was sent but only 28 days after the Appellants received the mailed order. This Court dismissed the appeal for failure to timely file the appeal.

In this case, the motion to alter or amend was served 20 days after the Master sent the Order by email but only 10 days after the Clerk sent the same order by email.

Neither the Master nor the Clerk of Court in Lexington County use the U.S. Postal Service to deliver copies of filed orders and any other notices (trial rosters, roster meetings, and trial dates, for example) to the attorneys of record. Both the Master and Clerk exclusively deliver all notices by e-mail. The order being appealed was not served by the U.S. Postal Service.

Because the Motion to Alter or Amend was not served within ten days after receipt of the order, the Motion was not timely. Because the motion was not timely served, the time for filing the appeal should have run from the date of the Master's email which was sent June 4, 2015. Therefore the appeal should have been served no later than July 6, 2015. The appeal was not served until September 28, 2015.

As stated in Wells Fargo:

Receipt of written notice is the critical event under Rule 203(b)(1), and Appellants received written notice on December 15, 2014—the date of the e-mail. Appellants failed to timely serve the notice of appeal "within thirty . . . days after receipt of written notice." Rule 203(b)(1). Therefore, this court lacks appellate jurisdiction, and we were required to dismiss the appeal.

The Respondent in this case actually raised the timeliness issue to the Master before this Court issued its Order in Wells Fargo. The Master declined to adopt the Wells reasoning with regard to the timeliness of the motion. This was error.

CONCLUSION

The Appellants failed to timely file this appeal. Adopting the language from Wells

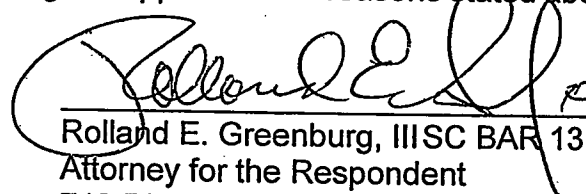
to this case, the Court should rule as follows:

Receipt of written notice is the critical event under Rule 203(b)(1), and Appellants received written notice on June 4, 2015—the date that the Master sent the Order by e-mail. Appellants failed to timely serve the Motion to Alter or Amend within ten days after receipt of the written notice. Since the Appellants failed to timely serve the motion, they were required to serve notice of appeal "within thirty . . . days after receipt of written notice." Rule 203(b)(1). They failed to do so. Therefore, this court lacks appellate jurisdiction, and we were required to dismiss the appeal.

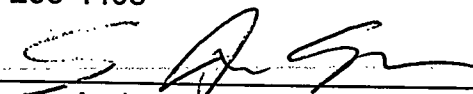
The Respondent should not be required to file her Initial brief until the Court rules on this motion.

WHEREFORE, the undersigned requests:

1. That the Court extend the time to file the Respondent's Initial Brief pending a decision on this Motion
2. That the Court issue its Order dismissing the appeal for the reasons stated above.



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October 22, 2015

Subject: Strickland vs. Temple 2011-CP-32-01781

From: "Shealy, Leslie" <LShealy@lex-co.com>

Date: 6/4/2015 2:43 PM

To: "Rick Hall" <rick@sctrialattorneys.com>, "Andy" <syrettlaw@sc.rr.com>

Please find attached the Order for the above referenced matter.

Thanks!

Leslie

Leslie M. Shealy
Court Assistant III
Lexington County
Master-In-Equity Court
205 E. Main St., Suite 204
Lexington, SC 29072
Phone: (803) 785-8291
Fax: (803) 785-0609
E-mail: lshealy@lex-co.com

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— Attachments: —

Strickland v. Temple Order.pdf

698 KB

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
CASE #: 2011-CP-32-1781

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)
Plaintiffs,)

vs.)

Marjorie E. Temple,)
Defendant.)

ORDER
(ATTORNEY FEES)

Marjorie E. Temple,)
Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)
Third Party Defendants.)

LETH A. CARRISG
CLERK OF COURT
LEXINGTON SC

2015 JUN -4 A 11:16

FILED

While this court earlier terminated the underlying Conditional Sales Contract/Bond for Title because the Defendant admitted that she had not made sufficient payments to create a right of equitable redemption the property, Plaintiffs' claim for a separate award of attorney fees under two theories: 1) the contract provides for attorney fees and 2) the Defendant's Rule 11 violations entitled the Plaintiffs to sanctions was held in abeyance pending submission of memos by respective parties.

FACTS: PROCEDURAL HISTORY

May 10, 2011 Plaintiff files an Action to Foreclose on Equitable interest in real property and or terminate a conditional sales agreement and bond for title. Attached to the complaint was a recorded fourteen (14) page Conditional Sales Agreement/Bond for Title containing language that Attorney represented the Seller, and that Purchase could obtain attorney, independent title search etc.

1-

Defendant responded with eleven (11) count Answer, Counterclaim and Third Party Complaint against Real Estate Agents and Law Firm involved in closing.

The Complaint, Answer and other pleadings detail how the Plaintiffs and Defendant entered into their agreement on April 6, 2009. The property was sold "as-is." The agreement noted that there was a pond and dam on the property. The first payment was to be May, 2009. One of Defendant's responses was that the (1) property had a dam on it (2) the Association which was to manage the pond was defunct (3) Defendant had told Plaintiffs that Defendant wanted to build or locate a home on the property. (4) That a significant portion of the property was subject to flood plain which meant a home could not be built or placed there,

Hearing testimony and a review of case history reveals that extensive discovery, discovery motions and dispositive motions, mediation and other process occurred. (See attached CMS Case History Screen Shot)

May 28, 2013 the Order referring the case to the Office of Master-in-Equity was filed.

June 20, 2013 the Order was submitted to the Master-in-Equity Office with a request for a hearing.

July 3, 2014 the case was heard pursuant to agreed date between attorneys and court. Plaintiffs argue that the Circuit Court grant of Summary Judgment and Defendant's failure to withdraw claims timely pursuant to Plaintiffs 'demand, warrant a court imposition of sanctions. Defendant's counsel responds that he had duty to represent client, fully investigate, conduct discovery etc and that all delays in case were not directly caused by Defendant. Defendant also claims that Plaintiff has failed to prove case law specific six (6) factors entitling them to award of attorney fees or if so entitled, the attorney fees are not a separate award, but simply added to the debt.

August 5, 2014, Order entered terminating contract and finding no equity.

ISSUES

- I. Contractual Attorney Fee Claim
- II. Rule 11 Attorney Fee Claim

LAW/ ANALYSIS

I. Contractual Attorney Fees Issue

Plaintiff argues that they are entitled to attorney fees because there is a contractual provision in the contract that states " Purchaser agrees to pay all costs and expenses, including a reasonable sum for attorney's fees incurred by Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all rights of the terms of this Agreement, and in

appropriate judicial proceedings, if any or initiated to establish(ed) or maintain Seller's right or title to, and possession of said property after breach by Purchaser." Contract Page 6.

This clause is a similar clause to those routinely found in promissory notes and mortgages—that is the Plaintiff is entitled to a reasonable attorney fees for the cost of foreclosing the specific lien.

Once it is determined that there is a contractual right to attorney fees, the court must make a determination that the fees are reasonable according to a six factor test. "When determining what constitutes a "reasonable" attorney's fee, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

Consideration should be given by the trial court to all six factors; none of the factors is controlling. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

The Court must make a finding on all six factors. When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in Collins [v. Collins], 239 S.C. 170, 122 S.E.2d 1 (1961)]." Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). (The Honorable Judge Ralph King Anderson, 2010 South Carolina Master-in-Equity Bench /Bar Seminar 6-25 (10-41 2010)).

Plaintiff has submitted three (3) attorney fees affidavits and an affidavit by Attorney John Koon to support their attorney fee claim. A review of the case file, the affidavits, the court's knowledge of these actions and fees charges, and the trial testimony dictates that attorney fees be awarded because (a) Defendant did not contest nor choose to cross examine Plaintiff counsel about the hours worked or claimed to have been worked, and (b) Plaintiff submitted affidavits satisfying the six factor attorney reasonableness test.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

As noted above the pleadings, CMS status report, and counsels hearing arguments indicate that this was a well-contested case about the sale of property that contained a pond. There were counterclaims, defenses, third party claims etc, extensive discovery, mediations, motions filed and argued before various trial courts.

2. The Time and Labor Necessarily Devoted to the Case

Plaintiff documented time. Defendant did not cross Plaintiff about time allocations contained on affidavit nor argue that he believed Plaintiff had not worked the time he claimed on affidavit.

3. The Professional Standing of Counsel.

Plaintiff counsel's affidavits and attorney John Koon's affidavit noted his work experience, his length of practice, various trial and appellate work, legal associations and his Martindale-Hubbard AV attorney rating.

4. The Contingency of Compensation.

Not applicable since this was not a contingency case.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

The various affidavits contained the fee contract and hourly rates of \$200.00 etc. The court has reviewed nine years of attorney fee hourly rates from attorneys in this geographical area for not only foreclosures, but actions to foreclose on bonds for title, equitable mortgages, contracts for deeds, installment sales contracts etc. There is no question in this judge's mind that the court's knowledge plus matters contained in affidavits confirm that the fees based on a \$200 hourly rate satisfies this criteria for such a case and an experienced attorney.

6. The Beneficial Results Obtained.

Plaintiff won. He successfully prosecuted his action; defended against defenses and counterclaims through discovery, and filed and argued motions.

While Plaintiff had demonstrated both a contractual right to attorney fees and that the fees are reasonable, the attorney fee claim is not a separate damage award.

The underlying action was to terminate any equitable interest Defendant had in the property, not to obtain a money or damage award. An Installment Land Contract has been described as the "poor man's mortgage." The two main cases governing these contracts are Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006).

These cases make it clear that the purchaser in an Installment Land Contract may have an equity of redemption in the property after there is a default in payment. After the default, the Court must pursuant to case law and Rule 71, SCRPC determine if there is the Defendant has equity in the property. The first step in this analysis is for the court to determine the debt owned just like in a standard mortgage foreclosure. The principle, interest, allowable attorney fees and cost, escrows if applicable are calculated. Here, as in a mortgage foreclosure, the attorney fees are simple part of the debt calculation, not an independent damage award.

After the debt is calculated and the other factors such as property value, any defendant improvement or property are examined, case law and various legal journals basically explain that there are three possible fact scenarios: (a) if defendant has no equity in property, then proper remedy is to terminate equitable interest. (b) if some equity, then a 30 day (or some time period)

is granted to defendant to redeem or tender a full pay -off. (c) if substantial equity, then a court could order a public sale as in the case of a legal foreclosure. (See Andrew S. Radeker, Esq." 2008 South Carolina Master-in-Equity Bench /Bar Seminar 45-49 (08-41 2008).

The foreclosure of the Installment Land Contract is most closely related to the mortgage foreclosure process in which the Plaintiff does not seek a deficiency judgment. While S.C. Code § 29-3-660 (1976 as amended) allows a Mortgagee the right to seek a deficiency judgment, there is no similar statute or case law which would allow a Plaintiff to obtain a separate judgment for attorney fees in an action to foreclosure an Installment Land Contract.

I further note that this argument, granting a separate award of attorney fees or an assignment of the attorney fees award from client to law firm has been made and universally rejected by our state trial courts over the last nine years.

II. RULE 11 Attorney Fee Claim

Plaintiff's argument that attorney fees as sanctions should be imposed against defendant because the counsel raised or continued to prosecute improper defenses, failed to dismiss them after demand, and ultimately had summary judgment granted against them, is not persuasive.

While Plaintiff's case law does allow for sanctions in certain cases, I do not believe the facts and actions in this matter warrant sanctions under any Plaintiff theory.

Plaintiffs and Defendant both made a business decision to enter into this Conditional Sales Contract/Bond for Title. This arrangement often referred to as 'Owner-financing' results in the buyer paying the seller payments of a fixed period of time pursuant to the payment agreements of the sales document. The benefit to the Seller/Owner is that the seller, if all goes according to plan, will receive a long stream of interest and principal payments of a period of time. The benefit to the purchaser is that the purchaser who is often unable to afford conventional financing, can purchase the home and pay less closing cost type fees.

However, there is always the risk of non-payment which then requires a law suit in circuit court to foreclose the lien. Each decision made thereafter by both attorneys can, and often does, delay the trial date.

The parties could have filed no discovery and simply have waited until the case came up on the court administration benchmark (six months) and asked for a trial before a circuit court judge. Each decision to (1) file discovery or (2) Motions had to be carefully weighed by each attorney, in consultation with their respective clients, to best serve their case.

Trial delays generally can result from things such as (1) 7 month discovery time allowance (2) Attorney or court conflicts while establishing a scheduling Order (3) delays in court time scheduling, hearing and ruling on discovery motions (4) delay in court time scheduling, hearing and ruling on SJM (5) mediations (6) attorney generated request for continuances (7) Court conflict rules-which trial does first if conflict between courts etc.

As noted above, the Action page from the CMS system is attached. This list does not include discovery filed but not requiring court action (ie. Interrogatories, Request to Admit, Produce, etc.)

Rule 407 and the comments reflect the tension between the attorney's responsibility to represent his clients interest and his duty to the not use the legal system improperly. The rules discuss that a lawyer has responsibilities to (a) his client (b) to the legal system and to (3) the lawyer & firm's interest. These rules are designed to provide guideposts advising such things as:

Attorney must have basis in law and fact to plead or act.

Attorney has duty to use the legal procedure for the fullest benefit of the clients cause but also a duty not to abuse the legal system.

Comment 2 notes that an action is not frivolous even if lawyer doesn't believe his client will ultimately win so long as layer can in good faith believes law can by changed or modified, but cautions that attorney can't do things just for delay.

Comments to Rule 3.3 regarding duty to expedite litigation does not seem to indicate that defense attorney has duty to push case forward, but rather that attorney cannot do overt/improper acts to delay. Normally, a lawyer does not have an obligation to dismiss a claim or to quit based upon a request by another lawyer. Trials exist so that parties can argue their case before a judge and or jury to receive a decision pursuant to rules of law, evidence and procedure.

While Plaintiffs claim certain defense were not proper, defendant points out that the failure to raise possible defense could well have been malpractice. Defendant did file a Third Party Complaint against multiple Third Party Defendants which did complicate the case. Several of the Third Party Defendants paid the Defendant sums to settle the claims made against them.

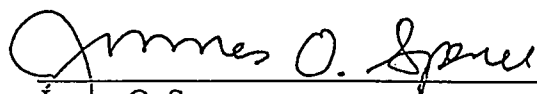
The evidence does not support Plaintiff's claim that Defendant improperly or wrongful delayed court action required to impose sanctions.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.

June 4, 2015


James O. Spence
Master in Equity for Lexington County

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2015 JUN -4 A 11:16
JETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC



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Master in Equity

CASE HISTORY FOR CASE 2011CP3201781

Appendix 54

Charles E Strickland III , plaintiff, et al VS Marjorie E Temple , defendant, et al

FILED DATE: 5/28/2013

CASE TYPE: CP/Foreclosure 420

STATUS: Dismissed

JUDGE: Spence, James O

CASE PARTIES:

Plaintiff Strickland, Charles E III

Plaintiff Attorney Hall, Frederick Ivey III

PO Box 1898, Lexington, SC 29071

Defendant Temple, Marjorie E

Plaintiff Strickland, Latisha D

Plaintiff Dillon, Justin R

Defendant Koivu, Russell

Defendant ERA Wilder Realty

Defendant Pickren, Gary A

Defendant Casterline, Rex

Defendant Harvey Casterline & Vallini LLP

Defendant Attorney Greenburg, Rolland E. III

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Defendant Attorney Syrett, Spencer Andrew

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Defendant Attorney Peace, M. Alan

PO Box 11656, Columbia, SC 292111656

Defendant Attorney Mack, Francis Marion

1900 Barnwell St., Columbia, SC 29201

Defendant Attorney Peace, Taylor Anthony

1331 Elmwood Avenue, Columbia, SC 292011656

Strickland, Charles E III

Age: Unknown

Appendix 55

DL#:

DOB: Unknown
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
5/11/2011	10:07 AM	Filing recorded: Lis Pendens Filed
5/11/2011	10:03 AM	Filing recorded: Summons & Complaint
5/3/2011	12:00 AM	Filing recorded: Acceptance Of Service for M Temple
7/28/2011	12:00 AM	Filing recorded: Answer Counterclaim & 3rd Party Sums & Comp
3/18/2011	12:00 AM	Filing recorded: Service/Acceptance Of Service
3/25/2011	12:00 AM	Filing recorded: Acceptance Of Service/Reg Agt for Harvey Casterling etc
3/9/2011	12:00 AM	Filing recorded: Answer/Wilder & R Koivu to 3rd party Comp
3/22/2011	9:24 AM	Filing recorded: Reply to Answer and Counterclaim
3/15/2011	12:00 AM	Filing recorded: Amended/Amended Certificate of Service
12/30/2011	12:54 PM	Motion/Motion Filing Fee
1/19/2012	3:11 PM	Order/Form 4
1/23/2012	12:00 AM	Filing recorded: AmendReply to Answ & Counter Claim and Third Party Compliant
10/31/2012	3:29 PM	Order/Form 4
11/21/2012	3:49 PM	Motion/Motion Filing Fee
1/4/2013	4:43 PM	Order/Order
1/22/2013	12:00 AM	Filing recorded: Affidavits in Support of Motion
1/22/2013	12:00 AM	Filing recorded: Memo in Support
1/7/2013	12:00 AM	Filing recorded: Affidavit of Charles Strickland III
1/30/2013	12:00 AM	Order/Protective Order
1/13/2013	10:18 AM	Order/Form 4
1/22/2013	4:41 PM	Motion/Motion Filing Fee
1/18/2013	9:50 AM	Order/Form 4
1/17/2013	2:10 PM	Filing recorded: Stipulation Of Dismissal of 3 3rd party defendants
1/20/2013	12:00 AM	Order Grantin SJ on Def Count Claim/Refer to Master
1/28/2013	12:00 AM	Order/Referred to Master
2/16/2011	11:40 AM	Notice of Motion Roster Publication Sent
2/30/2011	12:00 AM	Motion/Compel
1/7/2012	3:53 PM	Notice of Motion Roster Publication Sent
0/2/2012	10:49 AM	Notice of Motion Roster Publication Sent
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Print Date: 06/04/2015

Print Time: 11:14:18AM

Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

Page 2 of 4

11/21/2012	12:00 AM	Motion/Summary Judgment
1/11/2013	11:37 AM	Notice of Motion Roster Publication Sent
2/25/2013	3:17 PM	Notice of Motion Roster Publication Sent
4/4/2013	1:15 PM	Notice of Motion Roster Publication Sent
2/8/2013	3:30 PM	Motion/Motion Filing Fee
5/21/2013	2:28 PM	Motion/Motion Filing Fee
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3/26/2014	12:52 PM	ADR/Mediation Results Report
3/26/2014	12:52 PM	Filing recorded: ADR/Mediation Results Report/Filing
4/17/2014	3:27 PM	Motion/Motion Filing Fee
7/15/2014	10:30 AM	Filing recorded: Amended/Amended
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10/13/2014	12:05 PM	Filing recorded: Plt Reply Memo in Support of Motion to Award Fees and Sancti
10/23/2014	1:32 PM	Motion/Motion Filing Fee
10/13/2014	3:46 PM	Filing recorded: Certificate of Service
10/23/2014	4:28 PM	Plaintiffs Motion for Expedited Hearing
11/10/2014	10:33 AM	Filing recorded: Notice of Hearing
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CASE HISTORY FOR CASE 2011CP3201781

Appendix 57

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

Charles Strickland III et al

PLAINTIFF(S)

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011CP3201781 **Appendix 58**

Marjorie E Temple

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a) SCRCP
☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on June 15, 2015 and a copy mailed, emailed or placed in the appropriate attorney's box on this June 15, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Frederick I. Hall III
Jennifer Cooper
ATTORNEY(S) FOR THE PLAINTIFF(S)

Rolland Greenburg
ATTORNEY(S) FOR THE DEFENDANT(S)

Beth C. Smith
CLERK OF COURT

Spencer Syrett
MAI An Place
Jaylor Peace

Francis M. Mai

Master in Equity

CASE HISTORY FOR CASE 2011CP3201781

Charles E Strickland III , plaintiff, et al VS Marjorie E Temple , defendant, et al

Appendix 59

FILED DATE: 5/28/2013

CASE TYPE: CP/Foreclosure 420

STATUS: Dismissed

JUDGE: Spence, James O

CASE PARTIES:

Plaintiff Strickland, Charles E III

Plaintiff Attorney Hall, Frederick Ivey III

PO Box 1898, Lexington, SC 29071

Defendant Temple, Marjorie E

Plaintiff Strickland, Latisha D

Plaintiff Dillon, Justin R

Defendant Koivu, Russell

Defendant ERA Wilder Realty

Defendant Pickren, Gary A

Defendant Casterline, Rex

Defendant Harvey Casterline & Vallini LLP

Defendant Attorney Greenburg, Rolland E. III

712 Calhoun St., Ste. D, Columbia, SC 29201

Defendant Attorney Syrett, Spencer Andrew

PO Box 7403, Columbia, SC 292027403

Defendant Attorney Peace, M. Alan

PO Box 11656, Columbia, SC 292111656

Defendant Attorney Mack, Francis Marion

1900 Barnwell St., Columbia, SC 29201

Defendant Attorney Peace, Taylor Anthony

1331 Elmwood Avenue, Columbia, SC 292011656

Strickland, Charles E III

Age: Unknown
DL#:DOB: Unknown
Appendix 60
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
5/11/2011	10:07 AM	Filing recorded: Lis Pendens Filed
5/11/2011	10:03 AM	Filing recorded: Summons & Complaint
5/3/2011	12:00 AM	Filing recorded: Acceptance Of Service for M Temple
7/28/2011	12:00 AM	Filing recorded: Answer Counterclaim & 3rd Party Sums & Comp
3/18/2011	12:00 AM	Filing recorded: Service/Acceptance Of Service
3/25/2011	12:00 AM	Filing recorded: Acceptance Of Service/Reg Agt for Harvey Casterling etc
3/9/2011	12:00 AM	Filing recorded: Answer/Wilder & R Koivu to 3rd party Comp
3/22/2011	9:24 AM	Filing recorded: Reply to Answer and Counterclaim
3/15/2011	12:00 AM	Filing recorded: Amended/Amended Certificate of Service
12/30/2011	12:54 PM	Motion/Motion Filing Fee
1/19/2012	3:11 PM	Order/Form 4
1/23/2012	12:00 AM	Filing recorded: AmendReply to Answ & Counter Claim and Third Party Compliant
10/31/2012	3:29 PM	Order/Form 4
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Print Date: 06/04/2015
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 Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

Page 4 of 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011CP3201781 Appendix 63

Charles Strickland III et al

Marjorie E Temple

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a) SCRCP
☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on June 15, 2015 and a copy mailed, emailed or placed in the appropriate attorney's box on this June 15, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Frederick I Hall III
Jennifer Cooper
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kelland Greenburg
ATTORNEY(S) FOR THE DEFENDANT(S)

Beth Cunningham
CLERK OF COURT

Spencer Syrett
MAhan Place
Jaylor Peace

Francis M. Mui

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant.)

DEFENDANT'S
MEMORANDUM IN RESPONSE TO
PLAINTIFFS' 59(e) MOTION

2011-CP-32-1781

Marjorie E. Temple,)
Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third Party Defendants.)

The Defendant responds as follows:

TIMELINESS

Rule 59(e) states as follows:

A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

The Master in Equity signed the Order on June 4, 2015. The Clerk of Court clocked the order on June 4, 2015. On June 4, 2015, Ms. Leslie Shealy, Court Assistant to the Master, e-mailed a copy of the clocked copy of the order to each of the attorneys. She sent Mr. Hall his copy at the following email address: rick@sctrilattorneys.com

On June 16, 2015, Ms. Mona Huggins, clerk in the Clerk's office e-mailed a clocked copy of the order to the attorneys. She sent Mr. Hall his copy at the same address.

For purposes of Rule 59(e), The Clerk entered the Order on June 4 and the time for a Motion on Rule 59(e) started running. That time expired on June 15, 2015.

The Plaintiff filed his motion on June 26, 2015.

The Plaintiffs' motion should be dismissed as not being timely filed.

GOOD GROUNDS

The Plaintiffs seek to have the Court define the "good grounds" for the Defendant to assert counterclaims in her answer. The Court's Order adequately addresses this issue.

The Plaintiffs repeatedly state that the Court denied them an award of attorney fees. This is incorrect. The Court awarded all of the fees sought by the Plaintiffs but added those fees to the amount due under the contract. The Court had already determined that there was no equity in the property. The result is an award with no avenue available to the Plaintiffs to collect the fees. Because the Plaintiffs are not entitled to a deficiency judgment, the Court's procedure is entirely appropriate.

IMPAIRING OF THE OBLIGATIONS OF CONTRACT

The Plaintiffs claim that the Court's failure to award attorneys fees separately from the Order terminating the Contract is the "impairment of a valid legal contract."

The Plaintiffs have not previously made an argument on this ground. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995),

A party cannot use a Rule 59(e) motion to present an issue to the court that could have been raised prior to judgment but was not so raised. Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005) (citing generally C.A.H., 315 S.C. at 392, 434 S.E.2d at 270); Patterson, 318 S.C. at 185, 456 S.E.2d at 437; Hickman, 301 S.C. at 456, 392 S.E.2d at 482); see also McMillan v. S.C. Dep't of Agric., 364 S.C. 60, 67, 611 S.E.2d 323, 327 (Ct.App. 2005) (issue not preserved "because it cannot be raised for the first time in a motion to alter or amend."), cert. granted (Feb. 14, 2007). "[A] party cannot use a motion to reconsider, alter or amend a

judgment to present an issue that could have been raised prior to the judgment but was not." RRR, Inc. v. Toggas, 378 S.C. 174, 185, 662 S.E.2d 438, 443 (Ct.App. 2008) (citing Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005)). Coastal Conservation v. Dept. Of Health, 380 S.C. 349, 669 S.E.2d 899 (Ct.App. 2008)

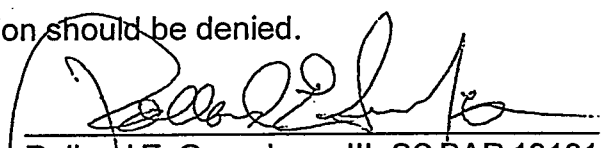
CONCLUSION

The Motion filed by the Plaintiffs was not timely filed.

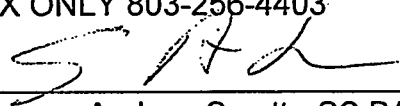
The first part of the motion has been adequately addressed in the Order.

The second part of the motion raises an issue that could and should have been raised prior to the Order. It was not and is therefore not appropriate for a motion under Rule 59(e).

For the reasons stated herein, the Motion should be denied.



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July 27, 2015

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant.)

ORDER DENYING RULE 59(e) MOTION

2011-CP-32-1781

Marjorie E. Temple,)

Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third Party Defendants.)

FILED
2015 SEP - 1 P 1:09
JETH A. SANDERS
CLERK OF COURT
LEXINGTON SC

This matter came before the Court on Plaintiffs' Motion to Reconsider this Court's Order dated June 4, 2015. For the reasons set forth below, the Court denies the Motion.

TIMELINESS

The Defendant argued that the Plaintiffs' motion was not timely. The Court rejects this argument.

The Court signed the Order on June 4, 2015, and clocked the order in the Clerk's Office on June 4, 2015. Although this Court sent out a courtesy copy (without a filed Form 4) of the clocked Order to counsel on June 4, 2015, this courtesy copy was not notice of the entry of the judgment. The Clerk's Office notified the parties of the entry of

the Order on June 16, 2015. Judgments are entered pursuant to Rule 58, SCRPC:

(2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

The Plaintiffs' Motion to reconsider was timely served and filed.

DENIAL OF RULE 11 SANCTIONS

The Plaintiffs assert that the Court's Order fails to set forth the "good grounds" which support the Defendant's Answer and Counterclaim. The Court has reviewed the Order and finds that it adequately addresses the issue.

ATTORNEY FEES ISSUES

IMPAIRMENT OF THE OBLIGATIONS OF CONTRACT

Plaintiffs claim that the Court's order impairs the obligations of contract in violation of the Constitutions of the United States and South Carolina.

The Court has reviewed the record in the case and does not find any prior trial presentation of this argument to the Court. The court did not understand this claim to be at issue at trial and did not request that the parties brief the issue in their respective post trial memos. Thereafter, the issue was not addressed in the (a) post trial memos (b) court's decision memorandum (c) Plaintiff's letter addressing perceived shortcomings in Defendant's proposed Order. The issue was first clearly raised in Plaintiff's Rule 59 Motion. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

HOW ATTORNEY FEES AFFECT DEBT IN FORECLOSURE ACTIONS

Although the Plaintiffs claim that the Order is a denial of an award of attorney fees, the Court awarded the fees that Plaintiffs sought.

While Plaintiff pled two causes of action, both requested termination of the defendant's equitable interest in the property. This action is a foreclosure of an equitable mortgage of real estate. Although based on a contract, it is not a breach of contract action. A plaintiff in this type of action cannot change the equitable mortgage into a simple lease agreement. The Supreme Court has made it clear that foreclosure is only proper way to adjudicate this issue. Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002); Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006)

In order to foreclose a lien, the Plaintiff must first establish the amount of the debt. Rule 71(a), SCRCP. The Rule requires the Court to determine the total debt:

Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53. In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due upon default, the rate of interest and interest from date of default to hearing date, any other relevant interest charged, any amounts due or to be credited on escrow items, the taxable costs of collection prior to hearing, and the amount of allowable attorneys fees due and anticipated through conclusion of the action.

As set forth in the cases described above, in the foreclosure of an installment land contract, a court should examine various factors to determine the appropriate remedy. A court may compare the amount of the debt with the value of the property. If the property is worth more than the amount of the debt, then the property may be sold by the Court. If the property is worth less than the amount of the debt, the Court may terminate the contract and any equity of redemption. Or, if there is some equity, allow a time period for the Defendant to pay the debt and redeem the property. Plaintiff did not

claim nor plead any right to a deficiency judgment in this foreclosure of an installment land contract.

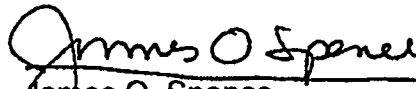
Once the principal, debt, interest, attorney fees etc. were considered, the Defendant conceded, and Plaintiff did not contest, that there is no equity in the property. Just as a Plaintiff in a traditional mortgage foreclosure must plead and prove it's entitlement to attorneys fee, the attorney fees in this case were not a separate damage award, but these fees are, as described above, elements of the debt that must be established to determine the debt, so as to determine the proper remedy which was terminating the equitable interest in the property.

Therefore the appropriate relief in this case, as plead, and argued, is termination of the Contract.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

September 1 2015

FILED
2015 SEP - 1 P 1:09
JERRY A. CAMPBELL
CLERK OF COURT
LEXINGTON SC

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,
v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

**APPELLANT'S MOTION FOR EXTENSION OF TIME TO RESPOND TO
RESPONDENT'S MOTION TO DISMISS**

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rick@sctrilattorneys.com
Attorney for Appellant

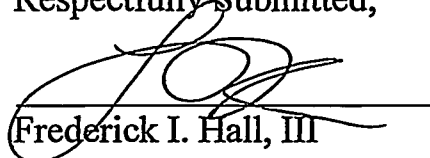
Appellant hereby moves the Court for an Order extending the time period to respond to Respondent's Motion to Dismiss, filed on October 30, 2015, to an additional twenty (20) days.

The principle basis for this motion is the fact that adequate time is needed to respond to Respondent's Motion to Dismiss and counsel for the Appellant has just returned this morning, November 5, 2015, from depositions and case proceedings that have been ongoing since Monday, November 2, 2015 in Chattanooga, Tennessee for a case pending in Georgia. The current response deadline to Respondent's Motion to Dismiss is Monday, November 9th, which gives Appellant roughly three days including the weekend to respond to a motion that involves significant legal issues. In fact, it involves issues that apply to the entire South Carolina bar and issues that reach far beyond the parties in this case.

For these reasons, the Appellant respectfully requests that the Court grant his motion for an extension of twenty (20) days from the date of this motion, making the new deadline to respond November 25th, 2015 to respond to the Respondent's Motion to Dismiss.

Respectfully Submitted,

BY:


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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,

v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

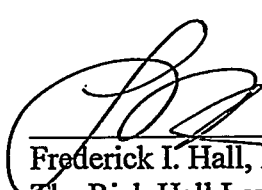
PROOF OF SERVICE

I certify that I have served the Appellant's Motion for Extension of Time to Respond to Respondent's Motion to Dismiss on Marjorie E. Temple by depositing a copy of it in the U.S. Mail, postage prepaid, on November 5, 2015, addressed to her attorneys of record, S. Andrew Syrett and Rolland E. Greenburg, III at the addresses listed below:

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Columbia, SC 29202

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November 5, 2015


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Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,
v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellants.

**Appellants' Memorandum in Opposition to Respondent's Motion to Dismiss
Appeal**

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Attorneys for Respondent

I. Introduction

This matter is before the Court on Respondent's Motion to Dismiss this appeal based upon the grounds that the appeal was not timely served or filed. Appellants filed this appeal within 30 days of **receipt of written notice of entry of the master's order which denied Plaintiff's Rule 59 (e) motion**, in accordance with Rule 203 (b) of the South Carolina Appellate Court Rules. The master found that that the Plaintiffs-Appellants timely filed a Motion to Alter or Amend the Court's Order denying attorney fees. Respondent did not appeal this finding and it is, therefore, the law of the case. Because this appeal was timely filed pursuant to the Appellate Court Rules and the South Carolina Rules of Civil Procedure, the Respondent's Motion should be denied. Furthermore, the Respondent's position that an email of the Order Denying Attorney Fees by the master's court assistant (without a notice of entry or a Form 4) was sufficient written notice to trigger the time within which to file the Motion to Alter or Amend the Judgement denying attorney fees is legally incorrect, because under the South Carolina Rules of Civil Procedure a written notice of entry of the judgment must be by the clerk of court or a party and must be transmitted by U.S. mail, not by email. Therefore, for this additional

reason, Appellants' appeal was timely filed and Respondent's Motion to Dismiss this appeal should be denied.

II. Procedural Background

This is an appeal from an Order of the Master in Equity for Lexington County denying the Appellants' Motion for Rule 11 Sanctions and Request for Attorney Fees after the court terminated the Respondent's interest in an installment land sale contract (Bond for Title). The master found that the Respondent, Marjorie Temple, had no equitable interest in the property based upon her concession and agreement that no equity existed.

The Appellants, Charles Strickland, et al, filed this action on May 11, 2011 in the Circuit Court of Lexington County seeking foreclosure of a Bond for Title (hereafter the Agreement) or, in the alternative, termination of the Agreement and any equitable interest Temple may have had in the property. Strickland also requested attorney fees and costs in the pleadings.

Temple served an answer, counterclaim and third party complaint on July 26, 2011, alleging defenses and causes of action for unconscionability, rescission, negligent misrepresentation, fraud and unfair trade practices.¹ Temple alleged in the counterclaims and defenses that Strickland had failed to disclose the existence of a dam and pond on the property, as well as the

¹ The matters raised in the Third Party Complaint are not at issue in this appeal.

fact that a portion of the property was in a wetlands, despite the fact that all of these matters were disclosed in writing in the Agreement, which Temple acknowledged she read. In addition, she walked and viewed the property prior to purchasing it.

The circuit court issued an order granting summary judgment on May 20, 2013 as to all of Temple's counterclaims and defenses, and referred the underlying breach of contract action to the master in equity for purpose of determining whether Temple had any equitable interest in the property and for final judgment. The court signed an order of reference on May 23, 2013.

Strickland filed a Motion for Rule 11 Sanctions and Attorney Fees on April 17, 2014 on the basis that Temple's counterclaims were filed in bad faith; that there were no good grounds to bring the claims; and that the circuit court found there was no basis in fact or law to support the allegations.

The master issued a final order without a hearing on August 5, 2014 terminating the Agreement and any alleged equitable interest in the property, which consisted of a mobile home and lot, on the grounds that Temple conceded there was no equity the property and that the contract had been breached. The master further ordered that Temple vacate the

property by August 29, 2014 and reserved for determination the issue of attorney fees and costs in his final order.

Strickland requested attorney fees and costs in the amount of \$19, 236.82 under the Agreement and Rule 11, SCRCF from Temple and her counsel. He also sought a monetary fine.

The master heard Strickland's Motion for Rule 11 Sanctions and Attorney Fees on December 11, 2014 and issued an Order denying the requested relief on June 4, 2015 from which Strickland appeals. The order was entered on June 15, 2015 and thereafter Strickland filed a timely Motion To Alter or Amend the Judgment pursuant to Rule 59 (e), SCRCF. The master issued an order denying the Rule 59 (e) motion on September 1, 2015, written notice of which was received on September 16, 2015.

Strickland filed Notice of Appeal on September 28, 2015.

III. Argument

Plaintiffs'- Appellants' Motion to Alter or Amend the Order of the Master Denying Attorney Fees was Timely Filed with the Master within 10 Days of Receipt of Written Notice of Entry of the Order. The Email from The Master's Court Assistant Attaching a Copy of the Written Order (without notice of entry or a Form 4) Is Not Legally Sufficient Notice of Entry, Which Under the South Carolina Rules of Civil Procedure Must Be Served By the Clerk of Court Via U. S. Mail, Which Plaintiff Acknowledges as Received, But Not Properly Served, on June 16th, 2015.

The South Carolina Rules of Civil Procedure (SCRCP) govern the practice in Circuit Court, including the time within which motions must be filed. Rule 81, SCRCP provides "These rules or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law and the procedure therein shall conform to these rules insofar as practicable." Rule 59 (e), SCRCP prescribes the time frame within which a motion to alter or amend an order or judgment of the court must be filed. A Rule 59 (e) motion has also been long viewed as a "motion for reconsideration." *Elam v. South Carolina Dept. of Transportation*, 361 S. C. 9, 602 S.E.2d 772 (2004). Rule 59 (e) provides that "a motion to alter or amend the judgment shall be served not later than ten days after receipt of written **notice of entry** of the order." (Emphasis added) Rule 5 (a), SCRCP provides in pertinent part that:

Unless otherwise ordered by the court because of numerous defendants or other reasons, **all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record.**

SCRCP 5

Written notice of entry of a judgment is such a similar paper and is a form which has been approved by the South Carolina Supreme Court.

Rule 5(b)(1), SCRCF provides that service upon the attorney or upon a party, **shall be made by delivering a copy to him or by mailing it to him** at his last known address or if no address is known, by leaving it with the clerk of court.” “Delivery of a copy within this rule means: **handing it to the attorney** or to the party; or leaving it at his office with his clerk or other person in charge thereof....” (Emphasis added) There is no provision for service by email in the South Carolina Rules of Civil Procedure. Nor do the South Carolina Appellate Court Rules contemplate service by email for matters pertaining to filing and service of orders and motions in circuit court. The Appellate Court Rules do not apply to the timely service and filing of matters in circuit court. The scope of the Appellate Court Rules is contained in Rule 101, SCACR. It provides in pertinent part, “[t]hese Rules are divided into six parts. Part I governs the applicability of these Rules and contains general provisions. Part II governs practice and procedure in appeals, petitions and motions *in the Supreme Court and the Court of Appeals.*” (Emphasis added)

It is the receipt of written notice of entry of an order, not mere receipt of a written order, which triggers the time running for the filing of a motion to

alter or amend a judgment or order. *Ackerman v. 3-V Chemical, Inc.* 349 S.C. 212, 502 S.E.2d 613 (2002). “There is simply no language in the rule [Rule 59 (e)] permitting the motion to served 10 days after the written order.” This is precisely what happened here. While the Appellants received an email copy of a written order, they did not receive a “written notice of the entry of the judgment,” which is accomplished by a separate document- a Form 4 Notice of Entry to which the order must be attached. (Order, March 26, 2013, C.J. Toal- Form 4C Instructions- Judgment In A Civil Case, **Exhibits 1 & 2**)

In *Upchurch v. Upchurch*, 367 S.C. 16, 624 S.E.2d 16 (2006) a written letter from the Judge’s assistant providing an unfiled order was not notice of entry of the judgment for purposes starting the time from which appeal must be taken. But sending even a filed order via email does not invoke the running of the ten day period within which a motion to alter or amend the judgment or order. The Rules of Civil Procedure require that the order be served, and prescribes the manner of service as either by U. S. mail or hand- delivery. Rule 5 (a) (b), SCRPC. See also SCRPC Rule 77(d).

The Appellants are aware that this Court has recently entered an Order dismissing an appeal where the Appellants received an email from the master’s court assistant, similar to this case, which attached the written

order, but also included a “clocked Form 4,” which signified that written notice of the entry of judgement had been given. Here, no Form 4 or written notice of entry of the judgment was given until June 16, 2015. Email from Mona Huggins, **Exhibit 3**. These facts certainly distinguish this case from the Court’s Order in *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642, 777 S.E.2d 575 (2015), and the Court here should find as a minimum that written notice of entry of the judgment denying the Rule 59 (e) motion was not given until June 16, 2015, indicating the order denying attorney fees was entered on June 15, 2015, as reflected on the Form 4 in this case, **Exhibit 4**. And indeed, the Appellants respectfully submit the Court’s holding in *Fallon Properties* was incorrect because the South Carolina Rules of Civil Procedure do not provide for service by email.

Appellant’s call attention to this Court that the Form 4- which has been approved by the Supreme Court and used by Lexington County appears to have been altered to provide that “This judgment was entered on _____, and a copy mailed, *emailed*, or placed in the appropriate attorney’s box on _____ to attorneys of record or to parties (when appearing pro se) as follows:” (Emphasis added) The Form 4, which has been approved by the Supreme Court of South Carolina, Ex. 2, *supra*, does not contain language

providing that service may be by email. Appellant's counsel has not been able to find where this was authorized by the Supreme Court. And it should not be sanctioned.

Parenthetically, the undersigned counsel's paralegal checks the firm's box at the courthouse on a routine basis, 2 to 3 times per week to make sure the firm is retrieving filed documents. This is essentially hand-delivery to the attorney who has consented to receiving documents from the court in this fashion. Under these circumstances this would be proper service by consent. See Affidavit of Glenda Taylor, **Exhibit 5**.

Lawyers need to be able to read the plain and unambiguous rules of civil procedure and rely on them, without having to read appellate case law where the rules are clear. Appellants further understand the Court's reasoning in *Fallon Properties*, but respectfully disagree that the Attorney Information System (AIS) contemplates current application of service by email. Indeed Appellate Court Rule 410 (e) as written plainly requires, "The mailing **and** e-mail address shown in the AIS **shall be used** for the purpose of notifying and serving the member." SCACR 410 (e). Thus, Rule 410 (E) requires both email and mailing by clear, mandatory and unambiguous terms at present. While the Supreme Court may wish to change this in the future, this is the law at present. Therefore, this Court

should overrule *Fallon Properties* and find that the email of the order by the master's court assistant did not constitute written notice of the entry of the judgment.

Moreover, the Supreme Court's Order entered October 17, 2001 which amended Rule 410 of the Appellate Court Rules in *Re Attorney Information System Amendments and Requirements*, 396 S.C. 42, 721 S.E.2d 411 (2011) noted that "the Department ... **has begun preparing for the electronic filing of court documents in the future.**" (Emphasis added) The AIS system does not presently provide for the circuit court or the clerk to serve orders by electronic mail. Lexington County has not yet begun e-filing, and therefore, the AIS cannot be a legal basis for holding that the master's court assistant's emailing of his order is proper service.

The proper method for service of written notice of entry of an order is prescribed by SCRCF, Rule 77 (d) which provides that, "Immediately upon entry of an order or judgment, the **clerk shall serve a notice of the entry by first class mail** upon every party affected thereby who is not in default for failure to appear, and shall make a note in the case file or docket sheet of the mailing." This was not done and indeed one could argue that the time for filing a motion for reconsideration has not yet run- though this

position is not taken here. Nevertheless, the master held Plaintiffs' Rule 59 (e) motion was timely filed, and it was.

Finally, the Appellants understand that the Court in *Fallon Properties* cites to and relied upon the Court's decision in *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999) for the proposition that "a fax is written notice for initiating the time for serving a notice of appeal under Rule 203(b)(1)." 413 S.C. at 646. Appellants respectfully submit, however, that this is not a fair reading of *Canal*. The notice provided by opposing counsel in *Canal* advised that the court's order there had been entered on March 19 as Judgment Roll Number 211763 and was sent both by **fax and mail**. The attorney who was notified of entry waited a month to request a copy of the judgment and after receipt waited an additional ten days before filing a Rule 59 (e) motion to reconsider. The Court held, "Because Parker's attorney waited a month to request a copy of the order, his Motion for Reconsideration and Amendment of the Judgment ... was not timely." *Canal*, 338 S.C. at 6. *Canal* can be fairly read to say that since Parker's attorney had received notice by fax and U.S. Mail, which is permitted by the rules, that he had received sufficient service by mail, which presumably would have been received within a few days of mailing. The Court did not

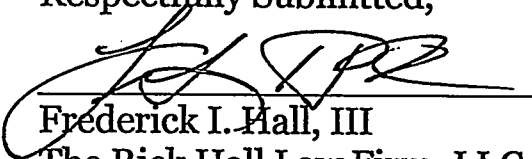
specifically hold that a fax was sufficient service of notice of entry of judgment.

IV. Conclusion

For the foregoing reasons, this Court should hold Plaintiffs'-Appellants' Motion to Alter or Amend the Order of the Master Denying Attorney Fees was timely filed with the master within 10 Days of receipt of written notice of entry of the order. The email from the master's court assistant attaching a copy of the written Order (without notice of entry or a Form 4) is not legally sufficient notice of entry of the judgment, which under the South Carolina Rules of Civil Procedure, must be *served* by the clerk of court via U. S. Mail or by hand delivery.

Respectfully Submitted,

BY:


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Attorney for Appellants

November 12, 2015
Lexington, SC

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,
v.
Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

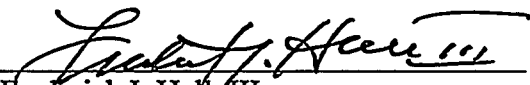
PROOF OF SERVICE

I certify that I have served the Appellants' Memorandum in Opposition to Respondent's Motion to Dismiss Appeal on Marjorie E. Temple by depositing a copy of it in the U.S. Mail, postage prepaid, on November 5, 2015, addressed to her attorneys of record, S. Andrew Syrett and Rolland E. Greenburg, III at the addresses listed below:

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November 12, 2015


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Attorney for Appellant

The Supreme Court of South Carolina

Re: Judgment in a Civil Case Form (SCRCP Form 4C)

ORDER

Pursuant to the provisions of S. C. CONST. Art. V, § 4,

IT IS ORDERED that Form **SCRCP Form 4C, Judgment in a Civil Case**, bearing a revision date of March 2013, is approved for use in the Circuit Courts of South Carolina and replaces SCRCP Form 4C bearing a revision date of December 2011. The form has been revised to include on Page 2 lines for additional information regarding the judgment of the Court and also on Page 1 a reference to the additional information.

This form is available on the South Carolina Judicial Department website at <http://www.sccourts.org/forms>.

IT IS SO ORDERED.

s/Jean Hoefer Toal

Jean Hoefer Toal, Chief Justice

March 26, 2013
Columbia, South Carolina



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

FORM 4

JUDGMENT IN _____ CIVIL CASE
Appendix 90

CASE NO. _____ CP- _____

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date



Appendix 91

CLERK OF COURT

[illegible]

Rick Hall

From: Huggins, Mona Denise <MHuggins@lex-co.com>
Sent: Tuesday, June 16, 2015 8:31 AM
To: 'Rick Hall'
Cc: Rolland E Greenburg, III; Andrew Syrett; Taylor Peace; M Alan Peace
Subject: 2011CP3201781 Strickland vs Temple
Attachments: SKMBT_36315061208213.pdf



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

Charles Strickland III et al

PLAINTIFF(S)

FORM 4

JUDGMENT IN A CIVIL CASE Appendix 93

CASE NO. 2011CP3201781

Marjorie E Temple

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a) SCRPC
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on June 15, 2015 and a copy mailed, emailed or placed in the appropriate attorney's box on this June 15, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Frederick I Hall III
Jennifer Cooper
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kelland Greenbrook
ATTORNEY(S) FOR THE DEFENDANT(S)

Beth Cunningham
CLERK OF COURT

Spencer Syrett
Maia Place
Jaylon Peace
Francis M. Mack



THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,

v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R.
Dillon.....Appellant.

AFFIDAVIT OF GLENDA M. TAYLOR

Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Road
Lexington, SC 2972
(803) 957-5333
(803) 957-7717 facsimile
rick@sctrilattorneys.com
Attorney for Appellant



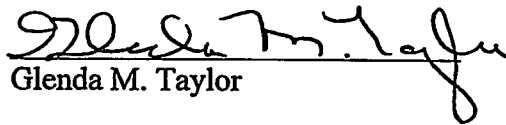
PERSONALLY APPEARED BEFORE ME, Glenda M. Taylor, who first being duly sworn, deposes and states as follows:

1. I have been employed with The Rick Hall Law Firm, LLC since September 1998.

2. It is my responsibility to check the firm's box at the Lexington County Judicial Center to make sure we receive all court documents filed with the clerk's office for any cases we have pending in Lexington County.

3. I usually make 2-3 trips per week to the courthouse for probate filings, etc. While I am there, I always check our firm's box for any court papers the clerk's office may have put in our box.

FURTHER AFFIANT SAITH NOT.


Glenda M. Taylor

SWORN to and SUBSCRIBED before me this
11th day of November, 2015


Notary Public For South Carolina

My Commission Expires: July 6th, 2020

NOV 16 2015

Appendix 96

The South Carolina Court of Appeals

Charles E. Strickland, III, Latisha D. Strickland and
Justin R. Dillon, Appellants.

v.

Marjorie E. Temple, Respondent,

Appellate Case No. 2015-002048

The Honorable James O. Spence
Lexington County
Trial Court Case No. 2011CP3201781

ORDER

The time for serving and filing the appellants' return to respondent's motion to dismiss is hereby extended until November 25, 2015.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Frederick Ivey Hall, III, Esquire
Spencer Andrew Syrett, Esquire
Rolland E. Greenburg, III, Esquire

FILED

November 13, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,
v.
Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

Notice of Motion and Motion To Take Judicial Notice

The Appellants move this court pursuant to Rule 240 of the Appellate Court Rules for an Order to take Judicial Notice of Rule 5(a)(4) of the South Carolina Rules of Civil Procedure, which requires written notices to be served upon the attorney or upon a party by delivering a copy to him (which means handing it to the attorney or leaving it at his office) or by mailing it to him at his last known address or, if no address is known, by leaving it with the Clerk of Court.

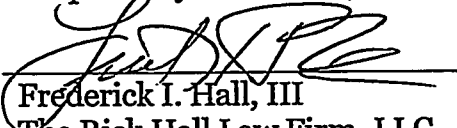
Appellants previously called attention to the Court that Rule 5(a) requires service of a written Order and other similar papers, but did not highlight Rule 5(a)(4) of the South Carolina of Civil Procedure pertaining to written notices.

It is therefore, Appellants' position in this case that any written notice of entry of a judgment or an order must be served in accordance with Rule 5(a)(4) and Rule 5(b)(1) of the South Carolina Rules of Civil Procedure. Until proper service occurs, legal receipt of written notice of entry cannot be effected.

This Court may take judicial notice of a statute, *Robert Trent Jones, Inc. v. B-F Limited Partnership*, 276 S.C. 469, 279 S.E.2d 613 (1981), and may affirm for any reason appearing in the record. *State v. Smith*, 316 S.C. 53, 447 S.E.2d 175 (1993); Rule 220(A), SCACR.

Porter v. S. Carolina Pub. Serv. Comm'n, 327 S.C. 220, 223, 489 S.E.2d 467, 469 (1997)

On these grounds, the Appellants move the court to take judicial notice as set forth herein.

Respectfully Submitted,
BY: 
Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Road
Lexington, SC 2972
S.C. Bar No. 2591
(803) 957-5333
(803) 957-7717 facsimile
rick@sctrilattorneys.com
Attorney for Appellants

November 17, 2015

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple.....Respondent,

v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

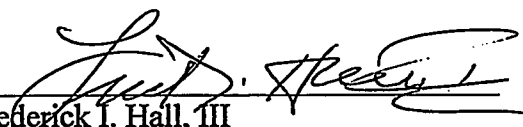
PROOF OF SERVICE

I certify that I have served the Appellants' Notice of Motion and Motion To Take Judicial Notice by depositing a copy of it in the U.S. Mail, postage prepaid, on November 17, 2015, addressed to her attorneys of record, S. Andrew Syrett and Rolland E. Greenburg, III at the addresses listed below:

S. Andrew Syrett, Esquire
712 Richland Street, Suite E
PO Box 7403
Columbia, SC 29202

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201
Attorneys for Respondent

November 17, 2015


Frederick I. Hall, III
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301 Gibson Road
Lexington, SC 2972
Rick@sctrilattorneys.com
(803) 957-5333
(803) 957-7717 facsimile
S.C. Bar. No. 2591
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 18 2015

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY

APPELLATE CASE NO. 2015-002048

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,

Appellants

v.

Marjorie E. Temple,

Respondent,

RESPONDENT'S REPLY TO APPELLANTS' MEMORANDUM

Rolland E. Greenburg, III
712 Calhoun Street, Suite D
Columbia, SC 29201
803-256-4408

Spencer Andrew Syrett
P.O. Box 7403
Columbia, SC 29202
803-765-2110

Attorneys for Respondent

The Respondent replies to the Appellants' Return Memorandum as follows:

1. Appellants argue that the Respondent should have appealed the Master's Ruling on the timeliness of the Motion filed pursuant to Rule 59(e), SCRCP.

An appeal of this finding was not necessary and therefore the Master's Order is not the law of the case. In his orders, the Master denied all of the relief sought by the Appellants. A party cannot appeal a ruling which is completely favorable to the party even if the ruling is based on some alternative theory to which the party may take exception. The situation is analogous to the Court's ruling in Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 518 S.E.2d 591 (1999). In that case, the Court declined to address a second issue because it ruled that an appellate court need not address remaining issues when disposition of a prior issue is dispositive.

2. The Appellant argues that the clocked order e-mailed by the Master did not constitute notice of entry of the order because no Form 4 was included in the e-mail.

Appellate courts recognize — or at least they should recognize — an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter. McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct.App. 1987)

The order that the Master sent to the parties had the standard clocking by the Clerk of Court. The Courts have repeatedly said that an Order becomes effective (and the Judge loses any power to change it) when the order hits the clock in the Clerk's office.

The presence or absence of the Form 4 in the email makes no difference.

It should be noted that nowhere in the Appellants' return to the Motion does the attorney for the Appellants state that he did not receive the Master's email.

3. The Appellants then argue that the notice received by email does not comply with Rule 5 and Rule 77, SCRCP. The Appellants further argue no service other than by mail or personal delivery is valid.

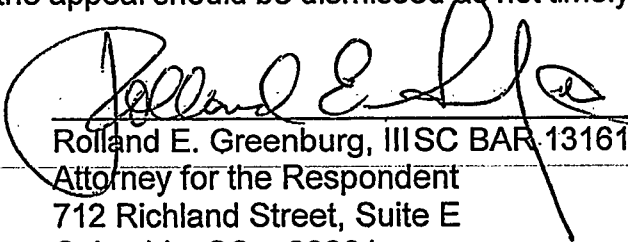
These arguments were presented to the Court and rejected in Wells Fargo v Fallon Properties. (2015-08-26-01) Rule 77 states that mailing of notice is not necessary if a party

has already received notice. Clearly the Master's email with the clocked order attached was sufficient notice.

The attorneys for the Respondent do not necessarily agree with the logic of the Order in Fallon but unless and until the South Carolina Supreme Court issues a contrary opinion, it is the rule upon which attorneys are to operate.

CONCLUSION

As set forth in the Motion to Dismiss, the appeal should be dismissed as not timely served and filed.



Rolland E. Greenburg, II SC BAR 13161

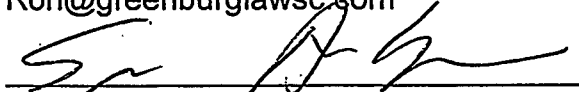
Attorney for the Respondent

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Spencer Andrew Syrett, SC BAR 05459

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P.O. Box 7403

Columbia, SC 29202

803-765-2110

FAX ONLY 803-765-9950

syrettlaw@sc.rr.com

November 17, 2015

The South Carolina Court of Appeals

Charles E. Strickland, III, Latisha D. Strickland and
Justin R. Dillon, Appellants.

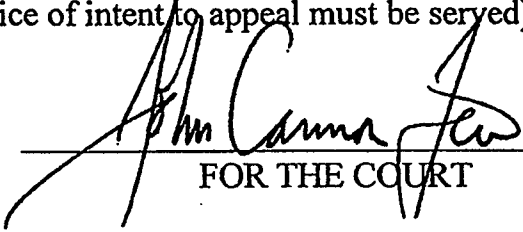
v.

Marjorie E. Temple, Respondent,

Appellate Case No. 2015-002048

ORDER

Respondent's motion to dismiss this appeal is granted. *See Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642, 643, 776 S.E.2d 575, 576 (Ct. App. 2015) (finding an e-mail from the office of the master-in-equity with the order on appeal as an attachment constitutes written notice of entry of the order under Rule 203(b)(1) of the South Carolina Appellate Court Rules and dismissing the appeal because the appellants served their notice of appeal more than thirty days after receipt of the email); Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); Rule 203(b)(1), SCACR (providing a notice of appeal shall be served within thirty days after receipt of written notice of entry of the order and when a *timely* motion to alter or amend has been made, the time for appeal shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended"); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (explaining the notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which the notice of intent to appeal must be served).


FOR THE COURT

FILED

11/3/16

Columbia, South Carolina

cc:

Frederick Ivey Hall, III, Esquire
Spencer Andrew Syrett, Esquire
Rolland E. Greenburg, III, Esquire

Appendix 105
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JAN 19 2016

SC Court of Appeals

COPY

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

James O. Spence, Master-In-Equity Judge

Appellant Case No. 2015-002048

Marjorie E. Temple.....Respondent,

v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R.
Dillon.....Appellant.

PETITION FOR REHEARING

Frederick I. Hall, III
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(803) 957-5333
(803) 957-7717 facsimile
rick@sctrilattorneys.com
S.C. Bar No. 2591kk
Attorney for Appellant

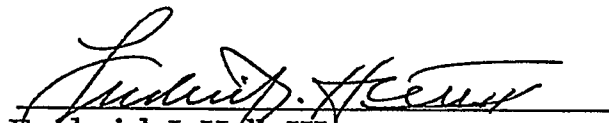
The Appellants, Charles Strickland, et al, hereby petition the Court of Appeals for Rehearing in the above referenced matter on the grounds that under the facts of this case, there is no material distinction between the Court's analysis in White v. South Carolina Dept. of Health and Environmental Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011) and this Court's decision in Wells Fargo Bank, N.A. v. Fallon Properties, 413 S.C. 642, 776 S.E.2d 575 (Ct. App. 2015) because the Court acknowledges that the ALC Rules 5 and 29 (c) contemplate service of an ALC decision by the ALC via the United States Postal Service or hand delivery and not by a party via electronic mail. Likewise, the South Carolina Rules of Civil Procedure contemplate service of a *written notice* either by U.S. Mail or by hand delivery, not by email. There is no prior decision of this Court or the South Carolina Supreme Court recognizing service by electronic mail prior to *Fallon Properties*. Therefore, the dismissal here essentially amounts to an ex-post facto denial of due process, as the Motion for Reconsideration or to Alter the Judgment of the Court in this case was filed within ten days after the Clerk of Court provided written notice on a form prescribed by the Supreme Court that the judgment had been entered on June 15, 2015. The written notice of entry was received on June 16, 2015, all of which was prior to this Court's decision in *Fallon Properties*. This Court, while it focused on

the “receipt of notice,” overlooked and misapprehended the requirement that *written notice* of entry must be *served* either by hand delivery or by mailing it to the attorney or the party as prescribed in SCRPC Rule 5 (a) (4) and (b) and the fact of the matter is that neither the lower court, nor the clerk complied with this rule and the failure to do under this Court’s analysis here in dismissing this appeal and under *White* is tantamount to an ex-post facto a denial of due process.

The Bar had absolutely no notice that service by email, by either the court or the clerk of court, was sufficient legal service or receipt of written notice of entry of a judgment. It is not sufficient to receive a notice under the South Carolina Rules of Civil Procedure, it must be properly served for the notice to be legally received, similar to sufficient service of a summons and complaint. If the service is not proper, it is not legally received. Otherwise, this Court is essentially eviscerating the requirements of Rule 5 (a), (4) and (b), and in the process leaving the Bar in a quandary as to how to comply with or understand the rules.

Respectfully Submitted,

January/9, 2016


Frederick I. Hall, III
The Rick Hall Law Firm, LLC

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Lexington, SC 2972
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(803) 957-5333
(803) 957-7717 facsimile
S.C. Bar. No. 2591
Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-In-Equity Judge

Appellate Case No. 2015-002048

Marjorie E. Temple..... Respondent,
v.
Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellant.

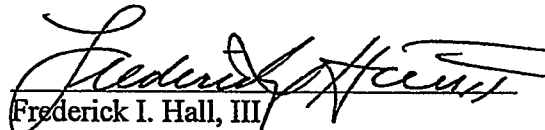
PROOF OF SERVICE

I certify that I have served Appellants' Petition For Rehearing by depositing a copy of it in the U.S. Mail, postage prepaid, on January 19, 2016, addressed to her attorneys of record, S. Andrew Syrett and Rolland E. Greenburg, III at the addresses listed below:

S. Andrew Syrett, Esquire
712 Richland Street, Suite E
PO Box 7403
Columbia, SC 29202

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201
Attorneys for Respondent

January 19, 2016


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(803) 957-7717 facsimile
S.C. Bar. No. 2591
Attorney for Appellant

The South Carolina Court of Appeals

Charles E. Strickland, III, Latisha D. Strickland and
Justin R. Dillon, Appellants.

APR 14 2016

v.

Marjorie E. Temple, Respondent,

Appellate Case No. 2015-002048

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff A.C.J.

Paul G. Syrett, Jr. J.

[Signature] J.

Columbia, South Carolina

cc:

Frederick Ivey Hall, III, Esquire
Spencer Andrew Syrett, Esquire
Rolland E. Greenburg, III, Esquire

FILED

4/13/16 *[Signature]*

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

James O. Spence, Master-In-Equity Judge

Appellant Case No. 2015-002048

Marjorie E. Temple.....Respondent,
v.

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon
.....Petitioners.

Petition for Writ of Certiorari

Frederick I. Hall, III
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rick@sctrilattorneys.com
S.C. Bar No. 2591
Attorney for Petitioner/Appellant

TABLE OF CONTENTS

Table of Authorities.....	2
I. Introduction.....	3
Certificate of Counsel.....	6
Question Presented.....	6
II. Statement of the Case and Procedural Background.....	6
III. Argument.....	9
• Petitioners'- Appellants' Motion to Alter or Amend the Order of the Master Denying Attorney Fees was Timely Filed with the Master within 10 Days of Receipt of Written Notice of Entry of the Order. The Email from The Master's Court Assistant Attaching a Copy of the Written Order (without notice of entry or a Form 4) Is Not Legally Sufficient Notice of Entry, Which Under the South Carolina Rules of Civil Procedure Must Be Served By the Clerk of Court Via U. S. Mail or Hand-delivery Which Plaintiff Acknowledges as Received, But Not Properly Served, on June 16th, 2015.....	9
IV. Conclusion.....	18

TABLE OF AUTHORITIES

CASES

<i>Ackerman v. 3-V Chemical, Inc.</i> 349 S.C. 212, 502 S.E.2d 613 (2002).....	12
<i>Canal Ins. Co. v. Caldwell</i> , 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999)..	16, 17
<i>Elam v. South Carolina Dept. of Transportation</i> , 361 S. C. 9, 602 S.E.2d 772 (2004).....	10
<i>Re Attorney Information System Amendments and Requirements</i> , 396 S.C. 42, 721 S.E.2d 411 (2011).....	15
<i>Upchurch v. Upchurch</i> , 367 S.C. 16, 624 S.E.2d 16 (2006)	12

Wells Fargo Bank, N. A. v. Fallon Properties, 413 S.C. 642, 776 S.E. 2d 575 (Ct. App. 2015).....3, 5, 9, 13, 14, 15, 16

OTHER AUTHORITIES

Rule 5, SCRCP	3, 12, 17
Rule 5(a), SCRCP	10
Rule 5(b)(1), SCRCP	5, 11
Rule 11, SCRCP	8
Rule 59(e), SCRCP	9, 10, 12, 13, 16
Rule 77, SCRCP	3, 4, 5, 6, 17
Rule 77(d), SCRCP	12, 15, 17
Rule 81, SCRCP	10
Rule 101, SCACR	11
Rule 203(b)(1)	16
Rule 410(e), SCACR	14, 15

I. Introduction

The Court of Appeals dismissed the Petitioners’ appeal in this case on the grounds that it was not timely filed. It based this finding on an emailed Order from the Master In Equity’s assistant for Lexington County, which was unaccompanied by a Form 4, and was not mailed or hand-delivered by the Clerk of Court’s office as required by Rules 5 and 77, SCRCP, citing to its decision in the case of *Wells Fargo Bank, N. A. v. Fallon Properties*, 413 S.C. 642, 776 S.E. 2d 575 (Ct. App. 2015) for the proposition that an email

notice from the Court is sufficient to trigger the time running from which a motion to reconsider or an appeal must be filed. In this case, the Petitioners filed what the Master In Equity held was a timely filed Motion to Alter or Amend the Judgment of the Court. The ruling denied the Plaintiff's Motion for Rule 11 Sanctions and Request for Attorney Fees arising out of the successful prosecution of an action to terminate a conditional sales contract or bond for title. If Plaintiff's motion to alter or amend was timely filed, and it was, then the Court of Appeals erred in dismissing Petitioners' appeal. The Plaintiff's counsel in the lower court did receive an emailed order denying the motion to alter or amend via email from the master's court assistant on June 4, 2015 which was unaccompanied by a Form 4. The Court of Appeals held this was sufficient to trigger the time within which to file a Motion for Reconsideration or to Alter the Judgment and ultimately the time within which an appeal must be filed. The Petitioners respectfully submit this was error because the South Carolina Rules of Civil Procedure, Rule 5 and Rule 77, specifically require the service of a written notice of entry of an order by mail or hand delivery.¹ The rules are couched in mandatory language and provide that

¹ The Petitioners note that there is a current Petition for Writ of Certiorari pending with this Court in the case of Well Fargo Bank, N.A. v. Fallon Properties involving this precise issue. The matter cries out for a proper resolution and the Petitioner's would urge this court to grant this Petition for Writ so that the Bar can be put on notice of what rules apply.

such written notice of entry “shall be served” upon the parties of record or their attorneys. And service upon an attorney must be made by mailing it to him at his last known address or by hand delivery to the attorney or leaving it with his clerk or other person in charge. Rule 5 (b) (1), SCRCP. There is no provision for service by email in the current South Carolina Rules of Civil Procedure or the Appellate Court Rules where the rules of electronic filing or SCE- File are not in effect. It is undisputed that electronic case filing is not in effect in Lexington County and was not at the time of this matter.

For these reasons and those that follow, the Petitioners respectfully submit that their Petition for Writ of Certiorari be granted.

Certificate of Counsel

Petitioners’ counsel hereby certifies that the Petition for Rehearing was made and finally ruled upon on April 13, 2016.

Question Presented

Rules 5 and 77, SCRCP require that a written notice or entry of a judgment or order be served upon the parties or their attorneys, if a party is represented, by U.S. Mail or hand-delivery. The master’s court assistant in this case emailed the Court’s Order Denying Attorney Fees and Rule 11

sanctions on June 4th without a Form 4. The Court of Appeals held the email was sufficient notice. Was this error?

II. Statement of the Case and Procedural Background

This is an appeal from an Order of the Master in Equity for Lexington County denying the Petitioners'-Appellants' Motion for Rule 11 Sanctions and Request for Attorney Fees after the court terminated the Respondent's interest in an installment land sale contract (Bond for Title). The master found that the Respondent, Marjorie Temple, had no equitable interest in the property based upon her concession and agreement that no equity existed.

The Petitioners-Appellants, Charles Strickland, et al, filed this action on May 11, 2011 in the Circuit Court of Lexington County seeking foreclosure of a Bond for Title (hereafter the Agreement) or, in the alternative, termination of the Agreement and any equitable interest Temple may have had in the property. Strickland also requested attorney fees and costs in the pleadings.

Temple served an answer, counterclaim and third party complaint on July 26, 2011, alleging defenses and causes of action for unconscionability, rescission, negligent misrepresentation, fraud and unfair trade practices.²

² The matters raised in the Third Party Complaint are not at issue in this appeal.

Temple alleged in the counterclaims and defenses that Strickland had failed to disclose the existence of a dam and pond on the property, as well as the fact that a portion of the property was in a wetlands, despite the fact that all of these matters were disclosed in writing in the Agreement, which Temple acknowledged she read. In addition, she walked and viewed the property prior to purchasing it.

The circuit court issued an order granting summary judgment on May 20, 2013 as to all of Temple's counterclaims and defenses, and referred the underlying breach of contract action to the master in equity for purpose of determining whether Temple had any equitable interest in the property and for final judgment. The court signed an order of reference on May 23, 2013.

Strickland filed a Motion for Rule 11 Sanctions and Attorney Fees on April 17, 2014 on the basis that Temple's counterclaims were filed in bad faith; that there were no good grounds to bring the claims; and that the circuit court found there was no basis in fact or law to support the allegations.

The master issued a final order without a hearing on August 5, 2014 terminating the Agreement and any alleged equitable interest in the property, which consisted of a mobile home and lot, on the grounds that Temple conceded there was no equity the property and that the contract

had been breached. The master further ordered that Temple vacate the property by August 29, 2014 and reserved for determination the issue of attorney fees and costs in his final order.

Strickland requested attorney fees and costs in the amount of \$19, 236.82 under the Agreement and Rule 11, SCRCP from Temple and her counsel. He also sought a monetary fine.

The master heard Strickland's Motion for Rule 11 Sanctions and Attorney Fees on December 11, 2014 and issued an Order denying the requested relief on June 4, 2015 from which Strickland appeals. Petitioner's counsel received this Order via email from the master's court assistant. The order was entered by the clerk on June 15, 2015 and thereafter Strickland filed a timely Motion to Alter or Amend the Judgment pursuant to Rule 59 (e), SCRCP. The master issued an order denying the Rule 59 (e) motion on September 1, 2015, written notice of which was received on September 16, 2015.

Strickland filed Notice of Appeal on September 28, 2015. The Respondents moved to dismiss the appeal citing the Court of Appeals' decision in *Fallon Properties*, supra. The Court of Appeals granted the motion and denied rehearing on April 13, 2016.

III. Argument

- i. **Petitioners'- Appellants' Motion to Alter or Amend the Order of the Master Denying Attorney Fees was Timely Filed with the Master within 10 Days of Receipt of Written Notice of Entry of the Order. The Email from The Master's Court Assistant Attaching a Copy of the Written Order (without notice of entry or a Form 4) Is Not Legally Sufficient Notice of Entry, Which Under the South Carolina Rules of Civil Procedure Must Be Served By the Clerk of Court Via U. S. Mail or Hand-delivery Which Plaintiff Acknowledges as Received, But Not Properly Served, on June 16th, 2015.**

The South Carolina Rules of Civil Procedure (SCRPC) govern the practice in Circuit Court, including the time within which motions must be filed. Rule 81, SCRPC provides "These rules or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law and the procedure therein shall conform to these rules insofar as practicable." Rule 59 (e), SCRPC prescribes the time frame within which a motion to alter or amend an order or judgment of the court must be filed. A Rule 59 (e) motion has also been long viewed as a "motion for reconsideration." *Elam v. South Carolina Dept. of Transportation*, 361 S. C. 9, 602 S.E.2d 772 (2004). Rule 59 (e) provides that "a motion to alter or amend the judgment shall be served not later than ten days after receipt of written **notice of entry** of the order." (Emphasis added) Rule 5 (a), SCRPC provides in pertinent part that:

Unless otherwise ordered by the court because of numerous defendants or other reasons, **all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record.** (Emphasis added)

Written notice of entry of a judgment is such a similar paper and is a form which has been approved by the South Carolina Supreme Court.

Rule 5(b)(1), SCRPC provides that service upon the attorney or upon a party, **shall be made by delivering a copy to him or by mailing it to him** at his last known address or if no address is known, by leaving it with the clerk of court.” “Delivery of a copy within this rule means: **handing it to the attorney** or to the party; or leaving it at his office with his clerk or other person in charge thereof....” (Emphasis added) There is no provision for service by email in the South Carolina Rules of Civil Procedure where the new electronic filing rules have not been implemented. Nor do the South Carolina Appellate Court Rules contemplate service by email for matters pertaining to filing and service of orders and motions in circuit court. The Appellate Court Rules do not apply to the timely service and filing of matters in circuit court. The scope of the Appellate Court Rules is contained in Rule 101, SCACR. It provides in pertinent part, “[t]hese Rules

are divided into six parts. Part I governs the applicability of these Rules and contains general provisions. Part II governs practice and procedure in appeals, petitions and motions *in the Supreme Court and the Court of Appeals.*” (Emphasis added)

It is the receipt of written notice of entry of an order, not mere receipt of a written order, which triggers the time running for the filing of a motion to alter or amend a judgment or order. *Ackerman v. 3-V Chemical, Inc.* 349 S.C. 212, 502 S.E.2d 613 (2002). “There is simply no language in the rule [Rule 59 (e)] permitting the motion to served 10 days after the written order.” This is precisely what happened here. While the Petitioners-Appellants received an email copy of a written order, they did not receive a “written notice of the entry of the judgment,” which is accomplished by a separate document- a Form 4 Notice of Entry to which the order must be attached. (Order, March 26, 2013, C.J. Toal- Form 4C Instructions- Judgment In A Civil Case, **Exhibits 1 & 2, Appendix p. 89 and pp. 90 – 91)**

In *Upchurch v. Upchurch*, 367 S.C. 16, 624 S.E.2d 16 (2006) a written letter from the judge’s assistant providing an unfiled order was not notice of entry of the judgment for purposes starting the time from which appeal must be taken. But sending even a filed order via email does not invoke the

running of the ten day period within which a motion to alter or amend the judgment or order. The South Carolina Rules of Civil Procedure require that the order be served, and prescribes the manner of service as either by U. S. Mail or hand- delivery. Rule 5 (a) (b), SCRCF. See also SCRCF Rule 77(d).

The Petitioners- Appellants are aware that the Court of Appeals has recently entered an Order dismissing an appeal where the Appellants received an email from the master's court assistant, similar to this case, which attached the written order, but also included a "clocked Form 4," which signified that written notice of the entry of judgement had been entered. Here, no Form 4 or written notice of entry of the judgment was entered until June 16, 2015. Email from Mona Huggins, **Exhibit 3, Appendix p. 92**. These facts certainly distinguish this case from the Court's Order in *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642, 777 S.E.2d 575 (Ct. Appeals, 2015), and the Court here should find as a minimum that written notice of entry of the judgment denying the Rule 59 (e) motion was not given until June 16, 2015, indicating the order denying attorney fees was entered on June 15, 2015, as reflected on the Form 4 in this case, **Exhibit 4, Appendix p. 93**. And indeed, the Petitioners-Appellants respectfully submit the Court's holding

in *Fallon Properties* was incorrect because the South Carolina Rules of Civil Procedure do not provide for service by email at present where electronic filing has not been implemented.

Petitioners-Appellants call attention to this Court that the Form 4- which has been approved by this Court and used by Lexington County appears to have been altered to provide that “This judgment was entered on _____, and a copy mailed, *emailed*, or placed in the appropriate attorney’s box on _____ to attorneys of record or to parties (when appearing pro se) as follows:” (Emphasis added) The Form 4, which has been approved by the Supreme Court of South Carolina, Ex. 2, *supra*, does not contain language providing that service may be by email. Appellant’s counsel has not been able to find where this was authorized by the Supreme Court. And it should not be sanctioned.

Parenthetically, the undersigned counsel’s paralegal checks the firm’s box at the courthouse on a routine basis, 2 to 3 times per week to make sure the firm is retrieving filed documents. This is essentially hand-delivery to the attorney who has consented to receiving documents from the court in this fashion. Under these circumstances this would be proper service by consent. See Affidavit of Glenda Taylor, **Exhibit 5, Appendix p. 94.**

Lawyers need to be able to read the plain and unambiguous rules of civil procedure and rely on them, without having to read appellate case law where the rules are clear. Petitioners-Appellants further understand the Court's reasoning in *Fallon Properties*, but respectfully disagree that the Attorney Information System (AIS) contemplates current application of service by email. Indeed Appellate Court Rule 410 (e) as written plainly requires, "The mailing **and** e-mail address shown in the AIS **shall be used** for the purpose of notifying and serving the member." SCACR 410 (e). Thus, Rule 410 (E) requires both email and mailing by clear, mandatory and unambiguous terms at present. While the Supreme Court may wish to change this in the future, this is the law at present. Therefore, this Court should overrule *Fallon Properties* and find that the email of the order by the master's court assistant did not constitute written notice of the entry of the judgment.

Moreover, the Supreme Court's Order entered October 17, 2001 which amended Rule 410 of the Appellate Court Rules in *Re Attorney Information System Amendments and Requirements*, 396 S.C. 42, 721 S.E.2d 411 (2011) noted that "the Department ... **has begun preparing for the electronic filing of court documents in the future.**" (Emphasis added) The AIS system does not presently provide for the circuit

court or the clerk to serve orders by electronic mail. Lexington County has not yet begun e-filing, and therefore, the AIS cannot be a legal basis for holding that the master's court assistant's emailing of his order is proper service.

The proper method for service of written notice of entry of an order is prescribed by SCRCF, Rule 77 (d) which provides that, "Immediately upon entry of an order or judgment, the **clerk shall serve a notice of the entry by first class mail** upon every party affected thereby who is not in default for failure to appear, and shall make a note in the case file or docket sheet of the mailing." This was not done and indeed one could argue that the time for filing a motion for reconsideration has not yet run- though this position is not taken here. Nevertheless, the master held Plaintiffs' Rule 59 (e) motion was timely filed, and it was.

Finally, the Petitioners- Appellants understand that the Court in *Fallon Properties* cites to and relied upon the Court's decision in *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999) for the proposition that "a fax is written notice for initiating the time for serving a notice of appeal under Rule 203(b)(1)." 413 S.C. at 646. Petitioners- Appellants respectfully submit, however, that this is not a fair reading of *Canal*. The notice provided by opposing counsel in *Canal* advised that the court's order

there had been entered on March 19 as Judgment Roll Number 211763 and was sent both by **fax and mail**. The attorney who was notified of entry waited a month to request a copy of the judgment and after receipt waited an additional ten days before filing a Rule 59 (e) motion to reconsider. The Court held, "Because Parker's attorney waited a month to request a copy of the order, his Motion for Reconsideration and Amendment of the Judgment ... was not timely." *Canal*, 338 S.C. at 6. *Canal* can be fairly read to say that since Parker's attorney had received notice by fax **and U.S. Mail**, which is permitted by the rules, that he had received sufficient service by mail, which presumably would have been received within a few days of mailing. The Court did not specifically hold that a fax was sufficient service of notice of entry of judgment.

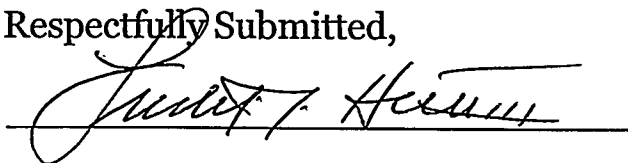
While the Respondent may argue that if a party has already received notice that mailing by the clerk is not required under Rule 77 (d), this fails to take into account that another party is allowed to serve a notice or order, provided that it is done "in the manner provided in Rule 5 for the service of such papers." What this essentially means is that if another party has already served the notice properly, either by mail or hand-delivery, then the clerk of court need not do it again. Alternatively, if the clerk handed such notice to a party or their counsel, then it need not mail written notice of

entry. In any case, the written notice of entry must be served as provided by Rule 5 or Rule 77, SCRPC. The 2014 Amendments to Rule 77 make it clear that “[a]ny party who is traditional filer and not proceeding in the electronic filing system **must be served by first class mail as provided in paragraph (d).**” (Emphasis added)

IV. Conclusion

For the foregoing reasons, this Court should hold Petitioners’-Appellants’ Motion to Alter or Amend the Order of the Master Denying Attorney Fees was timely filed with the master within 10 Days of receipt of written notice of entry of the order. The email from the master’s court assistant attaching a copy of the written Order (without notice of entry or a Form 4) is not legally sufficient notice of entry of the judgment, which under the South Carolina Rules of Civil Procedure, must be *served* by the clerk of court via U. S. Mail or by hand delivery. Therefore, Petitioners’ pray that their Petition for Writ of Certiorari be granted, that this Court dispense with further briefing and reinstate the Petitioner’s appeal so that it might be heard on the merits.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Frederick I. Hall, III", is written over a horizontal line.

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