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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III

Case No.: 2009-CP-07-3201  
Appellate Case No.: 2014-001296

National Bank of SC..... Respondent,

v.

Thaddeus F. Segars; KCS Investments, LLC; Singleton  
Place Homeowners Association Inc.; and Suntrust  
Mortgage Inc.,..... Defendants,

Of Whom Thaddeus F. Segars is the ..... Appellant.

PETITION FOR REHEARING

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## INTRODUCTION

Pursuant to Rule 221(a) and Rule 240(i), SCACR the Appellant, Thaddeus Segars respectfully petitions this Court for a rehearing of Unpublished Opinion No. 2016-UP-325 dated June 22, 2016.

## ARGUMENT

The main point which must be addressed is whether the applicable Statute of Limitations expired prior to Segars initiating his counterclaims. Sections 15-3-530(1) and (5) of the South Carolina Code (2005) provide a three year statute of limitations for an action upon a contract, obligations, or liability, and tort claims. "Under the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Coastal States Bank v. Hanover Homes of S.C. LLC*, 408 S.C. 510, S.C. 360, 363, 468 S.E. 2d 645, 647 (1996)). Therefore, the question must be when did Segars know or reasonably should he have known he had a cause of action against NBSC for negligent misrepresentation. The misrepresentation was, of course, that Lot 2 was worth \$1.6 million dollars. The cause of action for negligent misrepresentation could only have occurred when NBSC took some action which involved the transaction with Segars. Appellant contends that NBSC made a negligent misrepresentation as to the value of Lot 2. The only representation NBSC made with regards to the value of Lot 2 was based upon the appraisal performed by the bank's appraiser Steve Linsday. When NBSC agreed to loan Segars the funds, NBSC was confirming that Lot 2 was indeed valued at \$1.6 million. The question becomes how, or why, was NBSC's representation as to the value of the Lot 2 inaccurate. The answer is that NBSC accepted an appraised value on Lot 2 of 1.6 million dollars despite the fact that the lot was unbuildable. Despite

having the 2004 plat in hand Lindsay valued the property at \$1.6 million. Since the 2003 plat clearly showed the limitations on Lot 2 which would make it unbuildable the appraisal was gross misrepresentation. When NBSC adopted that appraisal and represented to Segars that Lot 2 was worth \$1.6 million it too was in error and thus gave rise to Appellant's cause of action for negligent misrepresentation NBSC's negligent misrepresentation took place when it confirmed the value of Lot 2 to be \$1.6 million in its Commitment letter from Doug Matney. (R 741). The next question the court needs to address is when Segars knew, or reasonably should have known, that the appraisal was in error and thus the Bank's represented value of Lot 2 was wrong. NBSC hired the Lindsay Group to provide NBSC an appraisal. While Segars was billed for the appraisal he was not provided a copy. NBSC procured the appraisal for its own purposes. There was nothing which would have prompted Segars to request a copy of the appraisal. Without the appraisal Segars could not have known what plat was used. The discovery as to what plat was used is the trigger for the Statute of Limitations to begin. Segars was only made aware the 2004 plat was used when he received a copy of the appraisal in 2009. Segars attempted to refinance Lot 2 with NBSC in 2009. NBSC required that a new appraisal had to be performed. When the 2009 appraisal came back with an appraised value of \$1.3 million Segars requested to see a copy of the 2004 appraisal that valued the property at \$1.6 million. It was only then that Segars discovered what plat was used by Lindsay.

This Court affirms the Master's ruling that "Segars had actual knowledge the Office of Coastal Resource Management (OCRM) line was not located where he thought it was at the time of purchase and the line's location would affect his ability to build a

residence on Lot 2. Moreover, this Court adopts the Master's finding that Segars had knowledge of an issue with the OCRM line. Specifically this Court adopts the Master's finding that "However, by March 16, 2005, Segars had retained an attorney to represent him to intervene in a pending Administrative Law Court case against the South Carolina department of Health and Environmental Control ("DHEC") wherein he alleged that he was adversely affected by DHEC's position refusing to relocate the OCRM Line. Thus, at least by March 16, 2005, Segars knew of the correct location of the OCRM Line."

(R723). The Master and this Court both take the position that Segar's cause of action for negligent misrepresentation against NBSC begin to run on March 16, 2005. The fact that he used the 2004 plat to formulate his appraisal causes the appraisal to be wrong and NBSC's valuation of the property a negligent misrepresentation. The fact that Segars knew of an issue with the OCRM line on March 16, 2005 does not put him on notice that NBSC's appraisal was inaccurate. It is only when Segars learns what plat was used does his cause of action arise. Segars knowledge of an issue with the OCRM line simply cannot trigger an awareness of a cause of action against NBSC? The fact that there was an issue regarding the OCRM line would not put someone on notice that NBSC had made a negligent misrepresentation. Segars did not obtain a copy of the Linsday appraisal until approximately April 2009. It was only when Segars realized the appraiser used the 2004 plat that he knew the appraiser and, therefore, NBSC were wrong. Segars only discovered what plat was used when he demanded and received the appraisal after NBSC commenced its foreclosure action July 6, 2009.

This Court also bases its ruling that "Segars is not entitled to a tolling of the statute of limitations because the statute of limitations for his claim expired on March 16,

2008, before NBSC filed its foreclosure action on July 6, 2009. “ The Court’s position is entirely based upon the Master’s determination that Segars knew of an issue with the OCRM line when he retained counsel to represent him in a Administrative Law Action. NBSC’s foreclosure action only accrued after Segars failed to make monthly payments in 2009. Up until that time Segars was current and the bank had no cause of action for foreclosure. When NBSC brought their foreclosure action Segars counterclaimed as to the valuation NBSC put on Lot 2. Segars compulsory counterclaims were brought within time allowed and in response to NBSC’s action. The counterclaims arise out of the same transaction and occurrence ( the loan). As Appellate courts of other States have pointed out if the counterclaims arise out of the same transaction or occurrence as the underlying claims they are no staler than the initial action.

As set forth above Segars’ knowledge of an issue with the OCRM line could not have put him on notice that NBSC had made a negligent misrepresentation. The March 16, 2005 date selected by the Master and adopted in its ruling by this court has nothing to do with NBSC’s negligent misrepresentation. Since the March 16, 2005 date is incorrect the statute of limitations on Appellant’s cause of action for negligent misrepresentation as set forth in his counterclaims should arguably be tolled.

#### CONCLUSION

WHEREFORE, for the reasons set forth herein, the Appellant, Thaddeus F. Segars, seeks an Order granting rehearing.

Dated July 6, 2016

Respectfully Submitted,  
FINN LAW FIRM, P.C.



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SC Court of Appeals

July 6, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
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## VIA HAND DELIVERY

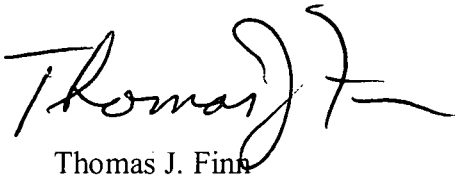
Re: National Bank of South Carolina v. Thaddeus F. Segars, et al  
Appellate Case No:2014-001206

Dear Ms. Kitchings,

Enclosed for filing in the above referenced mater, please find the original and seven copies of Appellant's Petition for Rehearing along with the original and one copy of a Certificate of Service . Also enclosed is a check for the \$25.00 filing fee. I am requesting that one of the enclosed copies of the Petition and the copy of the Certificate to be time stamped and returned to my office in te4h enclosed self addressed envelope.

Thank you for your attention to this matter.

Sincerely,



Thomas J. Finn

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