THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Case No. 2012-CP-10-1160
Appellate Case No. 2015-001748

Wells Fargo Bank N.A. , as trustee for the Certificate holders of Banc of America Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 2005-E,

v.

Daniel O. Myers, Bethany A. Theis and Bank of America of whom Daniel O. Myers and Bethany A. Theis are .....Respondents

v.

Aubie Melot, John Melot and Carolina One, LLC, of whom John Melot is the..... Appellant

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RESPONDENTS' FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

I. QUESTIONS PRESENTED

A. Did the Appellant preserve issues for appeal?

B. Did the Trial Court err in finding that the Appellants offered no evidence that the property was inspected prior to the breach?

C. Did the Court err in finding that the contract only provided for a right to terminate the contract if the bank had not approved the sale 20 days prior to closing?

D. Did the Court err in finding Respondents had suffered damages from the breach of the Agreement to Buy the property?

II. STATEMENT OF THE CASE

At the commencement of the trial, the parties stipulated to the admission of exhibits. (R. p. 31)[1]. Respondent, Daniel O. Myers (hereafter individually "D. Myers") the single witness at trial testified as to damages.

Respondents, D. Myers and Bethany A. Theis (hereinafter collectively "Respondents") owned a home at 94 N. Shelmore Blvd. in Mt. Pleasant, South Carolina which was their primary residence until 2007, when they moved to a new home. (R. p. 4 and R. p. 19). On July 14, 2011, Respondents signed an Exclusive Right to Sell Agreement Listing Agreement to list the property with Carolina One, LLC (hereinafter "Carolina"). (R. p. 4 and R. pp. 90-94). The agreed listing price was $600,000 and Nancy Hoy was designated as the broker. (R. pp. 4, and 90-94).

Substantial interest was shown in the house with two offers being submitted on August 9, 2011. (R. p. 4). One of the offers was submitted by Marshal and Jane Beckham for the sum of $620,000.00, which was $20,000.00 above the asking price. (R. pp. 4 and 20). A day later, a third offer on the property was submitted by Aubie and John Melot

[1] Respondents (Plaintiff-Myers) Exhibits 1 through 19, including 11A and 11b, were marked for identification and admitted into evidence. (R. p. 31). Appellant (Defendant-Melot) Exhibits 1 through 14 were marked for identification and admitted into evidence. (R. p. 31).

(hereinafter collectively "Melots"), who were also represented by Nancy Hoy, the same Carolina One Real Estate Agent who represented the Respondents. (R. pp. 4 and 106). Rather than offer a specific purchase price, the Melots instead offered to purchase the home for "$5,000 above verifiable basified [sic] highest offer." (R. pp. 4 and 106).

Respondents communicated to Nancy Hoy their concern that the Melots' offer was not specific enough as to price to be properly evaluated. (R. pp. 4 and 114). Ms. Hoy informed the Respondents that the Melots framed their offer in this manner to ensure their offer was chosen. (R. pp. 4 and 114) Respondents, seeking to ensure that all potential buyers had an opportunity to make their best offer, rejected all offers and asked Nancy Hoy, dual agent for Respondents and Melots, to communicate to all prospective purchasers that multiple competing offers significantly above the listing price were received, and requested that all interested buyers submit a final, best offer. (R. pp. 4 and 21).

Between August 10 and August 14, 2011, Respondents received three new offers from the previous prospective buyers (including Melots) and one additional offer from a new prospective buyer. (R. pp. 5 and 21). The prospective buyer who had previously offered $620,000 raised their offer price to $630,000. (R. p. 5). Another, new offer for the sum of $615,000 was received. (R. pp. 5 and 21).

On August 14, 2011, Melots again submitted an offer with a purchase price of "$5,000.00 above verifiable bonified(sic) highest offer." (R. pp. 5, 115-120 and 121-122). Respondents countered with the sum certain price of $640,000 which was accepted by Melots. (R. pp. 5, 115-120 and 121-122).

Attached to the Agreement to Buy and Sell Real Estate Residential (hereinafter "Agreement") executed by Respondents and the Melots are a Short Sale Addendum and Addendum 1. (R. pp. 5, 115-120 and 121-122). The terms of the Agreement provide for a closing "within 7 days of final approval from all third parties." (R. pp. 5, 115-120 and 121-122). The Agreement further provides in Addendum 1 that the sale was "as is" and that Buyers would have an opportunity for inspection of the property after third party approval was given, and that if they were not satisfied with the inspection they would have the opportunity to withdraw from the contract. (R. pp. 5, 115-120 and 121-122). The Agreement provides that, in the event of a default, the aggrieved party would be entitled to all remedies provided for at law, including but not limited to attorney's fees and actual costs incurred. (R. pp. 5, 115-120 and 121-122). The Agreement states in bold, capital letters that "THIS IS A LEGALLY BINDING AGREEMENT." (R. pp. 5, 115-120 and 121-122). The Agreement further provides termination is limited to "within 20 days prior to closing" if written approval of the transaction has not been received from the Lender. (R. pp. 6, 115-120 and 121-122).

After entering into the Agreement the Melots obtained several estimates for work they wanted performed on the property. (R. pp. 142, 150 159). No inspection report relating to the property was conducted or admitted into evidence. (R. pp. 8).

On October 5, 2011, Nancy Hoy advised Respondents that the Melots were walking away from the Agreement to Buy and Sell. (R. pp. 6). Mr. Melot (hereinafter singularly referred to as "Appellant") sent Nancy Hoy an email which states in pertinent part: "Yes, we were told what the banks often do and we understood that but, at the time,

we did not know what our insurance company would eventually do. It was only last week that they let us know and Aubie called you immediately...When the insurance company told us what their timeframe for continuing to pay our rent would be we realized that we would need to hear from the bank in the next day or two in order to have a chance of completing the renovations we would need (downstairs master, bath, laundry) before we would be out on the street...We must look for something that satisfies our needs that we can move into by our insurance company's deadline." (R. pp. 6-7).

On the same day, Nancy Hoy advised the Respondents of the Melots intent not to go through with the sale." (R. pp. 7 and 136-138). D. Myers expressed his dissatisfaction and opinion that the contract did not give the Melots the right to withdraw prior to closing and that they had breached the contract. (R. pp. 7 and 136-138).

On October 6, 2011, Nancy Hoy forwarded the Melots' email to the Respondents and requested that the Respondents sign a release. (R. pp. 7 and 130-131). The Respondents declined to sign a release. (R. pp. 7 and 130-131). On October 10, 2011, again Nancy Hoy sent a release to the Respondents attention seeking signature. (R. pp. 7 and 139-140). The Respondents once again declined to sign the release and asked Ms. Hoy what she proposed since the Melots had "irrevocably breached." (R. pp. 7 and 141).

On October 27, 2011, a number of emails were exchanged between Respondents and Michael Scarafile of Carolina One Real Estate. (R. pp. 7 and 142). Mr. Scarafile through the course of the exchange stated: "At this point I will advise him to either get his own attorney or wait for bank approval and, if it is approved as is, he will still have his contract right to inspect and, if not satisfied, terminate the contact at that time. Not sure

that serves anyone, but it would certainly put him in compliance with the contract." (R. pp. 7 and 142). Respondents responded to Mr. Scarafile by stating in pertinent part: "Given the buyer's email to Nancy where he stated he was advised that he should keep looking for a better deal after signing a contract, I think it's clear he's in breach and was never acting in good faith. A pre-textual reason to refuse to close won't fix that. They are in breach now and we won't wait for them to act out a phony charade before we file our lawsuit." (R. pp. 7-8 and 142).

On February 16, 2012, Wells Fargo initiated foreclosure proceedings against Respondents. (R. p. 8). Respondents answered and filed a Third Party Summons and Complaint against the Melots. (R. p. 15). Respondents continued to market the property resulting in a new offer to purchase from Bea Smith on May 9, 2012 for the sum of $500,000. (R. pp. 8, 150, and 32-33). The difference between the Melots purchase price and the Smith purchase price is $140,000 less than the amount the Melots had agreed to pay for the property. (R. pp. 8, 115, 150, 159 and 34).

The subject property was secured by two loans, a primary lien and a secondary lien. (R. p. 36). No funds were paid to the secondary lien holder, Bank of America, at the time of closing to Smith. (R. p. 159). Respondents were not released from liability on the second note and mortgage. (R. p. 36). Records subpoena by the Melots from Bank of America show a charge off balance of $378,720.92. (R. pp. 61 and 36). The indebtedness for the second lien is shown on the Respondents' credit report as an open debt in default. (R. p. 38).

On November 19, 2014, a non-jury trial was held on the Respondents' claims against Appellants. The Order of the Hon. Maite Murphy finding for Respondents and against Appellant and awarding damages was entered on January 15, 2015. (R. p. 2).[2] Appellant filed a Motion to Alter or Amend Judgment on December 29 2015. The Motion to Alter (R. p. 28) consists of two paragraphs and sets forth no specific grounds to alter or amend the Judgment. The Motion to Alter was denied on June 23, 2015. On or about July 29, 2015, Appellant served its Notice of Appeal. The Notice of Appeal states: John Melot appeals the order of the Honorable Matie Murphy dated June 23, 2015.

III. STANDARD OF REVIEW

"A breach of contract action is an action at law." *Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464, 688 S.E.2d 597, 599 (Ct. App. 2010). "[W]hen reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law, and the appellate court will not disturb the [special referee]'s findings of fact as long as they are reasonably supported by the evidence." *Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc.*, 405 S.C. 643, 649, 748 S.E.2d 801, 804 (Ct. App. 2013) (alterations in original) (quoting *Mazloom v. Mazloom* , 382 S.C. 307, 316, 675 S.E. 2d 746, 751 (Ct. App. 2009)). "[T]he interpretation of an unambiguous contract is a question of law." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 12, 738 S.E.2d 480, 486 (Ct. App. 2013).

IV. ARGUMENT

[2] The Order was originally clocked in on December 23, 2014 but was subsequently canceled and re-filed on January 15, 2015.

A. APPELLANT FAILED TO PRESERVE CERTAIN ISSUES FOR APPEAL.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *See Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (finding issue was not preserved where the trial judge did not explicitly rule on the appellant's argument and the appellant did not raise the issue in a Rule 59(e), SCRCP, motion to alter or amend the judgment); *West v. Newberry Elec. Coop.*, 357 S.C. 537, 543, 593 S.E.2d 500, 503 (Ct. App. 2004) (stating an issue that is neither addressed by the trial judge in a final order nor raised by way of a Rule 59(e), SCRCP, motion is not preserved for review).

1. Appellant's argument that the trial court's decision should be reversed because Respondents' suffered no damages fails because the issue was not preserved.

The Trial Court determined that the Respondents established and suffered damages in the amount of $140,000.00 due to Appellant's breach of contract. (R. pp. 12 and 14). Appellant filed a generic Motion to Alter specifying no particular issue for review or modification. The Appellant did not request that the lower court reconsider its determination of damages. Thus, Appellant's failure to submit this specific issue by way of a Rule 59(e), SCRCP motion deprives this court of the ability to review the issue. Thus, the Trial Court's determination of the amount of damages must stand.

B. THE TRIAL COURT DID NOT COMMIT AN ERROR OF LAW WHEN DETERMINING THE APPELLANT BREACHED THE TERMS OF THE CONTRACT.

Appellant argues the lower court's decision should be reversed because the contract provided Appellant with two bases to terminate the contract. First, Appellant argues that the Agreement provided for a right of termination if inspections after approval were unsatisfactory; and second, that the Court was incorrect when it found the Agreement did not provide the Buyer with a right to terminate the Short Sale Agreement at any time prior to third party approval. Both of these arguments are contradicted by the record and without merit The Court below should be affirmed in all respects.

1. The Trial Court properly found that Appellant did not have the property inspected and thus could not terminate the contract for an unsatisfactory inspection.

Appellant first argues that the Agreement allowed them to terminate if they found Inspections to be unsatisfactory. Inspections are addressed in two places in the Agreement. Paragraph 19(B) of the Agreement provides that the Buyer, at Buyer's expense, "shall have the privilege and responsibility of inspecting the structure" and if such inspection revealed deficiencies "the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date." It also states "If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph." (R. p. 117). In addition, the Addendum to the Agreement provides: "Buyers have the right to inspect property *after all third party approval is given.* Buyers further understand property will be sold "as is" with no repairs to be made by the Sellers. If the Buyers are not satisfied with the inspections, they are not obligated to close." (R. p. 115).

Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi,* 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App.2004) (quoting *Heins v. Heins,* 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)). Parties have the right to make their own contracts. *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); *MailSource, LLC v. M.A. Bailey & Assocs.* 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003). A court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.,* 311 S.C. 227, 230,428 S.E.2d 705, 707 (1993); and *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C.636,643,216 S.E,2d 547, 550 (1975) (stating "[T]he parties have a right to make their own contract and it is not the function of this Court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties. "). Succinctly stated, a court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction. See, e.g., *Lewis v. Premium Inv.* 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002) ("It is not the function of the court to rewrite contracts for parties."); *E. Bus. Forms, Inc. v. Kistler*, 258 S.C. 429, 189 S.E.2d 22 (1972) (finding the court may not make a new agreement for the parties into which they did not voluntarily enter).

The parties' intention must, in the first instance, be derived from the language of the contract. *Schulmeyer v. State Farm Fire & Cas. Co.,* 353 S.C. 491, 495, 579 S.E.2d 132,

134 (2003); *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n.,* 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties."); *Superior Auto. Ins. Co. v. Maners,* 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973); *Jacobs v. Service Merch. Co.,* 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). To discover the intention of a contract, the court must first look to its language—if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. *Superior Auto. Ins. Co. v. Maners,* 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon,* 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); *Ellie,* 358 S.C. at 93-94, 594 S.E.2d at 493-94; *accord Kable v. Simmons,* 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

The trial court correctly determined an agreement existed between the parties and that Appellant did not perform. (R. pp. 2-14). Appellant's attempt to mischaracterize or re-characterize the evidence is of no avail.

The Trial Court found as a fact that no inspection report of the property was done or admitted into evidence. (R. p. 8). Appellant blithely speaks of "inspections" of the property that do not exist in the record, and cites hearsay reports of conditions and events that occurred after the breach as evidence of how the property was "unsatisfactory."[3] Although Appellant did not testify at trial, he now argues his "personal" visits to the

[3] See, e.g., Appellant's citation to Melot Exhibit 11, a "property report" from a realtor sent to Nancy Hoy dated March 27, 2012, almost six months after the breach by the Appellant. Even accepting these statements in the communications as true, they have no relevance to the condition of the property at the time of the breach.

property constitute an inspection. He also cites to several estimates he received for things such as painting and attempts to infer those constitute inspections. The estimates for work the Melots wanted to be performed in order to meet their desires, is no evidence of an unsatisfactory inspection. In fact, the Trial Court correctly noted that what transpired here is that the circumstances changed for the Melots and they simply decided they no longer wanted to close the transaction. (R. p. 11). Days after ratifying the contract the Melots continued to search for potential purchases. After the formation of a contract, which provides for certain terms, a mere change of heart is not a basis to terminate. (R. p. 11). The Trial Court was correct, there in fact were no inspections admitted into evidence. The trial court correctly construed the contract and the Appellant's vague reference to the intentions of the parties is of no consequence. Appellant's disregard of the evidence and the record on appeal alone defeats his argument. The Court below properly found that the Appellant's breach was not excused because of non-existent inspections of the property. This court should affirm.

2. The Trial Court correctly found that the right to terminate prior to closing was never triggered.

Appellant next argues that the Agreement allowed the Buyer to terminate at any time prior to Bank approval. Appellant bases this argument on paragraph 1 of the Short Sale Addendum, which provides in its entirety as follows:

> 1. Contingency: Purchaser and Seller acknowledge that the purchase price is less than the amount of the Seller's debt(s) secured by the property, which are owed to one or more lender(s) or lienholder(s) (collectively "Lender"). Such a transaction is known as a "short sale." Therefore, this contract is contingent upon: (a) Lender's approval of the purchase price and other terms of the Contract and the HUD-1 Settlement statement, (b) Lender's agreement to accept a payoff which is less than the balance due on the loan or other indebtedness, and (c)

> Lender's release and satisfaction of the mortgage(s) and/or other liens(s) upon receipt of discounted payoff amount(s).
>
> If Seller has not obtained and provided Purchaser or Purchaser's Agent written notice of Lender's approval of the transaction, as set forth above, *within 20 days prior to the closing date specified in the Contract*, Purchase may terminate the Contract, and in such event Purchaser shall be entitled to a refund of the earnest money deposit, and neither party shall have any further rights or obligations hereunder

(R. p. 115). The contract provided for a closing date "within 7 days of final approval from all third parties." There is no basis for Appellant's contention that this creates an unfettered right of Buyer to terminate at any time prior to closing. As the Court below found:

> The contract provides for very specific grounds for termination. The first is Purchasers could terminate 20 days prior to closing if the bank had not approved the sale. Here the time period had not even come into play nor was it ever triggered. The Melots terminated prior to a closing date being set. In fact, the Melots terminated so early, the approval process had barely begun. The Melots position that they could terminate at any time prior to lender approval has no basis under a clear reading of the contract.

(R. pp. 10 and 11).

The Court below correctly interpreted the plain meaning of the contract at issue, and should be affirmed. The contract does not provide the Buyer with the unfettered right to terminate at any time prior to third party approval. The contract is clear, the Purchaser is only entitled to terminate if approval is not obtained 20 days prior to closing. Thus, the buyers, the Melots breached the contract when they indiscriminately terminated. The Trial Court correctly followed the law and construed the contract its plain and ordinary meaning and enforced the contract as written.

Lastly, Appellant's argument there was no contract or a meeting of the minds is completely meritless. First, this issue was not preserved by Appellant. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Second, the trial court correctly determined it was undisputed the parties entered into an agreement. (R. pp. 2-14). There was clear assent to the terms between the parties: the Appellant and the Respondents. At no time, contrary to Appellant's suggestion was "the bank a party to the transaction." (Appellant Br. p. 15). Simple reference to the contract clearly identifies the parties to the transaction. Appellant's proposition has not basis in law or in fact.

C. THE COURT PROPERLY FOUND THAT THE RESPONDENTS WERE ENTITLED TO DAMAGES.

Finally, Appellant argues that Respondents suffered no damages from the Appellant's breach. At the trial, Respondent Daniel Myers testified as to damages. Mr. Myers testified that after the breach, the property was eventually sold for $140,000 less than the purchase price agreed to by Appellant. (R. pp. 8, 32-34 and 150). The Court found damages in that amount plus interest.

Appellant argues that because the sale to Appellant would have been a short sale the $140,000 would have been claimed by the lender and thus Respondents were not harmed when it was not. Appellant further argues that the records of the sale show the unpaid balance of the second mortgage on the home was "written off," and thus Respondents were not harmed.

As the Court found, the Agreement between the Appellants and Respondents provided for a purchase price that was $140,000 more than the eventual sale price after

the Appellant breached. When calculating damages for breach of contract, damages should place a nonbreaching party in the position he would have enjoyed had the contract been performed. *Collins Entm't., Inc. v. White*, 363 S.C. 546, 559, 611 S.E.2d 262, 268-69 (Ct. App. 2005). The Lender was not a party to the Agreement between the parties and, aside from approval of the sale and releasing release of the lien, whether and how the loan was paid was irrelevant to the measure of damages from the breach. Had the Appellant performed, Respondents would have been $140,000 to the better, regardless of whether those funds were immediately applied to an existing debt or not.

Even if Respondent's debts owed to persons not a party to the Agreement would be relevant to the damages caused by breach, Appellant's argument that Respondents were not harmed because the underlying debt was extinguished appears to be based on a fundamental misunderstanding of the facts. Appellant suggests that because the debt was written off by the original creditor, Respondents no longer owe anything for the deficiency. This is simply wrong.

A write-off is merely an accounting practice or convention for reducing to zero the value of an asset as shown on a balance sheet. *See A Dictionary of Accounting* 343 (R. Hussey ed., 1995) (defining "write-off"). A bad debt that has been written off may still be recovered in the future and written back on the books again. Id. at 39 (defining "bad debt recovered"). Thus, writing off a bad debt merely reflects the creditor's determination at the time that none of the debt is then either collectible or has any likelihood of ever becoming so, or that any collection expenses will likely exceed receipts, but it does not constitute a legally effective discharge or release of the indebtedness and it does not imply

that the creditor intends to thereby legally divest himself of ownership of the debt or to legally preclude any further efforts to collect. *Long v. Turner*, 134 F.3d 312, 317-18 (5th Cir. 1998)

At the trial, Mr. Myers testified to this effect:

> Q. Now, you just used the term charged off.
>
> A. Yes.
>
> Q. Can you explain - do you know what that means in the context of a bank?
>
> A. Yes I do. Charged off is an accounting term. It just means that they took what was considered an asset under accounting rules and now they are not counting it as an asset. It doesn't mean that I don't owe the money.

(R. pp. 37-38).

On cross, Appellant's Counsel attempted to suggest there were no documents in evidence that showed an open debt because the debt was written off:

> Q. Okay. So your - the only - the only I guess evidence that we have that they have not released that debt is your testimony?
>
> A. No, it is the document that you have there, your Exhibit 1.
>
> Q. Exhibit 1 says zero.
>
> A. It says written off.
>
> Q. Right.
>
> A. That is not a release. That is written off is an accounting term. That means they take it off their assets and put it into another -
>
> Q. Okay.
>
> A. -- point.
>
> Q. Now this is - this document, Exhibit - Melot Exhibit 1, I subpoenaed -
>
> A. Right.

Q. - and there is -

A. And there is no - there is no release in there of the -of the note.

* * *

Q. There is no release in there, you are correct. But that - the only - the only number that is in there with - under your name is zero. There's no other information in there. Would you - do you disagree with me?

A. Yes I do. You have any - or a copy of the document that shows money is owed, and there is nowhere in here that it is not stamped that it is paid. There's nothing in here that shows that it has been paid.

The zero is a charge-off in which as I said is not a release and does not

mean that I don't owe the money. It is just an accounting term.

..*

I guess I am not clear of what you are saying. There is the note in there which shows that I owe $340,000. There is nothing in here - these are all the documents as you say that Bank of America is. [sic] And there is nothing in here that indicates that Bank of America has released me of that indebtedness. There's nothing in her that says that they have released me of indebtedness. I have got nothing that shows that I no longer owe the money. So those documents right there show that I owe the money.

Q. It shows - it shows one of two things; it either shows you owe the money or it doesn't. And that zero is pretty powerful to me.

A. I know. It was to me before I understood what - what charge-off meant.

* * *

I understand what you are trying to argue. You are trying to argue that because they have written it off I don't owe the money. I wish you were right.

(R. pp. 41-45).

The Court properly found that there had been no release of indebtedness to Bank of America. (R. p. 9). The Court properly found that the Respondents had suffered damages from the breach, and should be affirmed.

CONCLUSION

Therefore, for the foregoing reasons, Respondents respectfully asks this Court to uphold the lower court's finding of breach of contract and award of damages against Appellant. Appellant has set forth no error of law committed by the trial court or that the findings of fact were unsupported by the evidence. The lower court decision should be affirmed.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

April 19, 2016

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PROOF OF SERVICE

I hereby certify that I have served the Respondents' Final Brief on Appellant by depositing copies of the same in the United States Mail, postage pre-aid, addressed to the below Counsel of Records:

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