

AFFIDAVIT OF DAVID R. CLARKE

Attorney for Respondent'

Case no. 2016-00-0152

Jean P. Elliott, aka Betty Jean Elliott,  
Individually and as Personal Representative  
Of the Estate of Ervin w. Elliott

Respondent

V.

Alberto Alvarez

Appellant

PERSONALLY APPEARED BEFORE ME AND BEING DULY SWORN, The Affiant deposes and states as follows:

That I am the attorney representing the Respondent in the above captioned case and I have reviewed the record and exhibits in the aforementioned Appeal

That this case was a foreclosure action based upon the Appellant's transfer of the foreclosed property without permission of the Respondent mortgagee and the Appellant's failure to make payments as required by the Note and Mortgage signed by the Appellant.

The Plaintiff exhibits are:

- 1) The deed conveying the property from the Respondent to the Appellant.
- 2) The Note showing the debt of the Appellant to the Respondent.
- 3) The Mortgage securing the foreclosed property as collateral for the debt of the Note from the Appellant to the Respondent..
- 4) The Quitclaim deed conveying the property from the Appellant to J. Guadalupe Ledesma-Martinez and Estela Gutierrez-Garcia.

All of which were admitted without questions or opposition from the Appellant in the November 4, 2015 Hearing, copies of which are attached to this Affidavit and are part of the proposed record.

That the Appellant admitted his signature on the Note (TR. 12/15/15, p. 17, lines 16-21, p. 18 lines 3-5), Mortgage (TR. 12/15/15 p. 18 lines 7-11) and the Quitclaim Deed for the property dated 12/23/15 ( TR. 12/15/15, p. 18 lines 12-18).

That the Appellant's former attorney, Andy White, testified that the Appellant had no problem understanding English and understood the documents he signed. (TR. 12/15/15 p. 37, lines 18-28 ) The Appellant had previously confirmed his comprehension of the proceedings in his sworn testimony when he stated " everything I sign I understand". (TR.12/15/15, p. 22 lines 1-4).

That the Appellant's attorney Andy White testified that he witnessed the Appellant's signature on the Deed (Plaintiff exhibit No, 1), and Mortgage (Plaintiff exhibit No. 3) TR. 12/15/15 P. 38 lines 4-23) and that his office prepared the Note signed by the Appellant. (Plaintiff exhibit No. 2).



That on page three of his "Statement of the Case", the Appellant states:

"Refusing to continue to pay the mortgage with the knowledge that the Respondent held the privilege of essentially foreclosure at will, the Appellant withheld payment to bring this issue to resolve."

That in his document entitled "Motion for Production and Admission of Evidence to Appellate Proceedings", the Appellant states on pages 6 and 7:

"a) The central gravamen of the foreclosure was the sale of 14 Henderson Street in violation to the "terms" written into the mortgage by the APPELLANT'S ATTORNEY ( emphasis added), Mr. Andy White. Cessation of payments was a DELIBERATE ACT (emphasis added) by the buyer (Appellant) to force this issue to resolution."

That in his testimony, Appellant states "Yes. Since '12, and you can see that the closing was done on the house like two years later. I started on September 12,th of 2012 and I QUIT PAYING (emphasis added) because of the fraud the 25th of August of 2014. And the foreclosure, they did it in '15." (TR 12/15/15 p. 19 lines 11-16).

That the Foreclosure Action was not instituted by the Respondent until May 19, 2015 when the Appellant was eight months in arrears, certainly in Default, although the Appellant continued to collect payments from the purchasers of the property and offered no explanation to the Court or accounting of the money the Appellant had collected and not paid to the Respondent. TR. 12/15/15 P. 48 line 17 - P. 50 line 8 ( examination of Appellant by the Court).

That although the Appellant claims to be illiterate in English, he has chosen to represent himself and act "pro se" through two court hearings (11/4/1015 and 12/15/2015), a Motion for Supersedeas, and has filed an Appellant's Brief and approximately fifty plus pages of legal arguments which more than demonstrate the Appellant's ability to comprehend, assimilate and apply the English language.

That by his own testimony, the Appellant testified "truth is that I have my own ideas and I really don't need anyone to help me. The idea is to reason." TR. 12/15/15 P. 21 line 24-25. Question:" So you understood that document before you signed it?" Answer: "Everything I sign, I understand." TR 12/15/15 P. 22 line1-2.

That in his "Argument and Facts", page 12, paragraph 3, the Appellant represents that he has purchased over 25 plus houses during the years he has been involved in these enterprises.

In the Appellant's "Argument and Facts", the Appellant demonstrated his understanding of the definitions and effect of "failure to Pay" (page 5. Paragraphs 2-4), late penalty (page 6, paragraph1, the transfer of property or interest in mortgagor (page 8, paragraph 3), "default"(page 9 paragraph 3), "remedies" (page 9 paragraph 4), "right to foreclose" (page 9 paragraph 5), "waiver of jury trial" (page 12 paragraph 1)

*DRC*

That at the November 4, 2015 Hearing, the Court inquired if the Appellant needed an interpreter, and the Appellant assured the Court that his English was adequate. TR. 11/04/15, P.2 L. 17-25.

That at the Hearing on December 15, 2015, two State certified interpreters were present and interpreted the Court proceedings for the Appellant and other defendants. Tr. 12/15/15 P.3 line 10-25, P. 4 lines 1-25. Each of the defendants, including the Appellant represented that they understood the proceedings. TR 12/15/15, P. 5-7 L 11.



David R. Clarke - S.C. Bar #7143  
Attorney for the Respondent  
3609 Stoney Ridge Trail  
Midlothian, VA 23112  
804-878-6060

Sworn before me this 17<sup>th</sup> day of September, 2016.

Mari Humphreys

Notary Public for the Commonwealth of Virginia  
My commission expires ~~7/7/11~~ 3/31/2019  
toe

SHARI HUMPHREYS  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #158708  
My Commission Expires 3/31/2019

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U.S. DEPARTMENT OF  
HEALTH, EDUCATION &  
WELFARE  
WASHINGTON, D.C.

**Motion For Production And Admission Of Evidence  
To Appellate Proceedings**

**DOCUMENTS**

**APRIL 18, 2016**

**Title To Real Property - Deed**


P # 1




premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantees, and the grantee's heirs or successors and assigns, forever. And, the grantors do hereby bind the grantor and the grantors heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee and the grantee's heirs or successors against the grantors and the grantors) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantors' hands and seals this 21st day of October, 2013.

SIGNED sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
B. Ann Pittman

x Jean P. Elliott (SEAL)  
Jean P. Elliott, aka Betty Jean Elliott

  
\_\_\_\_\_  
B. Ann Pittman

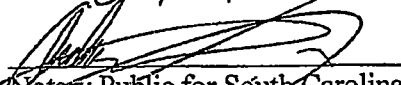
x Ervin W. Elliott by Jean P. Elliott atty. in fact (SEAL)  
Ervin W. Elliott by his attorney in fact  
Jean P. Elliott, aka Betty Jean Elliott

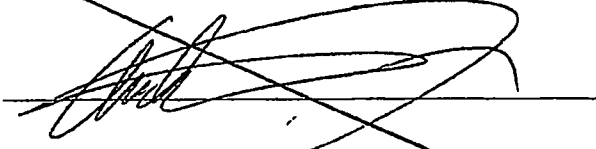
STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF GREENVILLE )

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantors sign, seal and as the grantors' act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 21st  
day of October, 2013

  
\_\_\_\_\_  
(SEAL)  
Notary Public for South Carolina  
My commission expires: 6-20-2015





**Motion For Production And Admission Of Evidence  
To Appellate Proceedings**

**DOCUMENTS**

**APRIL 18, 2016**

**Promissory Note - Tied to Mortgage of 10/21/13**

*RF # 2*

PROMISSORY NOTE

\$53,500.00

Greenville, S.C.

Dated as of: July 1, 2013

FOR VALUE RECEIVED, Alberto Alvarez ("Debtor") hereby promises to pay to the order of Jean P. Elliott, aka Betty Jean Elliott, and Ervin W. Elliott (collectively "Holder") the principal sum of Fifty-Three Thousand Five Hundred and 00/100 (\$53,500.00), together with interest on the unpaid balance thereof at the rate of ten percent (10.0) per annum.

Principal and interest shall be paid in equal monthly installments of Six Hundred Sixty-Nine and 00/100 Dollars (\$669.81), beginning August 5, 2013, and continuing on the same day of each successive month for the next 131 months (i.e., the note principal and interest is to be amortized over a period of 11 years). Any amounts outstanding under this note as of the eleventh anniversary of this note shall be paid in full on that date.

Any monthly principal and interest payment not paid in full by the tenth day of the respective month shall be subject to a late charge equal to ten (10%) of such past due payment.

At the option of the Debtor, this Note may be prepaid, in whole or in part, without penalty or premium. All prepayments shall be applied in inverse order, and to accrued interest before principal.

The occurrence or existence of any one or more of the following events or conditions shall constitute a "Default:"

(a) Debtor shall default in the timely payment of any principal, interest or other amounts due hereunder and shall fail to cure such default within ten (10) days after the applicable due date.

(b) Debtor (i) shall make an assignment for the benefit of creditors or petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (ii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iii) shall have had any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made; or (iv) shall indicate, by any act or intentional and purposeful omission, its consent to, approval of or acquiescence in any such petition, application, proceeding or order for relief or the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (v) shall suffer any such custodianship, receivership or trustee to continue undischarged for a period of sixty (60) days or more; or

(c) Debtor defaults under the terms of any mortgage which Debtor now or hereafter executes and delivers to Holder in connection with the debt evidenced by this promissory note.

If a Default occurs, then Holder may declare the entire unpaid amount of this Note to be due and payable immediately, and upon any such declaration the principal and interest of this Note shall become and be immediately due and payable, and the Holder may thereupon proceed to protect and enforce the Holder's rights either by suit in equity or by action at law or by other appropriate proceedings, whether for specific performance (to the extent permitted by law) of any covenant or

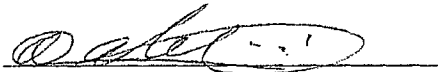
agreement contained herein or in aid of the exercise of any power granted herein, or proceed to enforce the payment of this Note or to enforce any other legal or equitable right of the Holder.

In case Holder uses an attorney to enforce his rights under this Note against Debtor, then Debtor shall pay Holder's reasonable attorneys' fees in connection therewith in addition to any outstanding principal or interest owed under this promissory note.

Debtor hereby waives presentment for payment, demand, protest, notice of nonpayment or dishonor and of protest, and any and all other notices and demands whatsoever and any and all defenses on the grounds of any extension of time for payment which may be granted by the Holder of this Note, or failure to assert any legal right available to the Holder of this Note, and agree to remain bound until the principal sum and interest are paid in full.

The respective rights, duties and obligations of Debtor and Holder shall inure to their respective heirs, executors, administrators, successors, and assigns. This Note and the rights and obligations of the parties hereunder shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of South Carolina, excluding therefrom any principles of such law which may result in the application of the laws of another jurisdiction.

IN WITNESS WHEREOF, the undersigned has caused this Note to be duly executed under seal, all as of the day and year first above written.

  
Alberto Alvarez

**Motion For Production And Admission Of Evidence  
To Appellate Proceedings**

**DOCUMENTS**

**APRIL 18, 2016**

**Mortgage Of Real Estate - Oct 21, 2013**

FF #3

**MORTGAGE OF REAL PROPERTY**

THIS MORTGAGE (hereinafter referred to as the "Mortgage") is made and entered into as of the 24<sup>th</sup> day of October, 2013, by **Alberto Alvarez** (hereinafter referred to as the "Mortgagor"), whose address is 17 Latham Drive, Greenville, SC 29617 and **Jean P. Elliott, aka Betty Jean Elliott, and Ervin W. Elliott** (hereinafter referred to as the "Mortgagee"), whose address is 22 Louise Ave., Greenville SC 29617.

**ARTICLE ONE**  
**GRANT OF MORTGAGE**

1.1 **GRANT.** In order to secure and enforce the payment, performance and observance of the Obligations set forth hereinafter, and for and in consideration thereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor does hereby execute and deliver this Mortgage to the Mortgagee and does hereby grant, bargain, mortgage, sell, transfer, convey, assign, warrant and confirm unto the Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest in and to the Property identified hereinafter, together with and including a first security interest in that portion of the Property comprising the Collateral (as defined hereinafter), to HAVE. AND TO HOLD the Property, all parts thereof, and all and singular the rights, hereditaments and appurtenances appertaining or belonging thereto, unto the Mortgagee, its successors and assigns, to its own use and benefit forever, subject, however, to the terms and conditions herein.

1.2 **OBLIGATION SECURED.** The Obligations secured by this Mortgage consist of the following (hereinafter collectively referred to as the "Obligations"): The payment and performance of all sums now or hereafter due under or pursuant to that promissory note executed and delivered by Mortgagor to Mortgagee in the original principal amount of Fifty-Three Thousand Five Hundred and no/100 Dollars (\$53,500) dated July 1, 2013.

1.3 **THE PROPERTY.** The Property mortgaged and conveyed to the Mortgagee hereunder consists of the following (herein collectively referred to as the "Property"): All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, the same being shown and designated as Lot 33 and part of Lot 32 on a plat of property of Ervin W. Elliott and Jean P Elliott dated July 3, 2013, and recorded September 5, 2013, in the Office of the Register of Deeds for Greenville County in Plat Book PLL 1162 at page 33-33, reference to which is hereby made for a more complete and accurate description.

THIS being the same property conveyed to Mortgagor by deed of Mortgagee of even date herewith and recorded in the office of the Register of Deeds of Greenville County, State of South Carolina, in Deed Book 2433 at page 2603

TMS: 0126000301300

Address: 14 Henderson Street, Greenville, South Carolina

b. **The Improvements.** All buildings, structures and improvements of every nature and kind now or hereafter erected or situate on the Land (hereinafter referred to as the "Improvements").

c. **The Accessories.** All fixtures, materials, machinery, equipment, appliances, systems, goods, furniture, furnishings, building materials, inventory and personal property now or hereafter attached to, located at, stored upon, or used or intended to be used in connections with, or with the operation of, the Land and/or Improvements, or the construction thereof, in which the Mortgagor now has, or at any time hereafter acquires an ownership interest, including without limitation all heating, air conditioning, lighting, refrigeration, plumbing,



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Book MO 5235 Page 4419-4425

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ventilation incinerating, water-heating, radio, communications, electrical, and air conditioning equipment, and all appliances, furniture, engines, machinery, elevators, pumps, motors, compressors, boilers, condensing units, doors, windows, window screens, tables, chairs, drapes, rods, beds, springs, mattresses, lamps, bookcases, cabinets, sprinklers, hoses, tools, lawn equipment, sofas, dressers, mirrors, televisions, radios, speakers, electrical wiring, pipe, and floor coverings, together with all contract rights to acquire any of the foregoing and all deposits and payments made under contract for the acquisition of the same, and all renewals, replacements and substitutions thereof and additions thereto; all of which shall be deemed a part of and affixed to the Land (hereinafter referring to collectively as the "Accessories").

d. Easements and Other Interests. All rights, title and interest of the Mortgagor in and to all easements, rights of way, covenants, rights and appurtenances now or subsequently pertaining to and in favor of the Property, and all rights of enforcement thereof, and all rights of the Mortgagor in and to all streets, alleys, passages, ways, waters and water courses adjoining the Land, whether any of the foregoing be now owned or hereafter acquired by the Mortgagor, and the reversion, remainder, rents, issues and profits thereof, and all of the estate, right, title, interests, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor thereto.

e. Other Rights. All replacements, renewals, substitutions, accessions, additions, proceeds, profits or products of any of the foregoing; all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; and all estates, interests, rights, titles, powers and privileges appurtenant or incident to any of the foregoing.

## ARTICLE TWO COVENANTS OF THE MORTGAGOR

2.1 COMPLIANCE WITH LAWS AND COVENANTS. The Mortgagor covenants and warrants that the Property presently complies with and will continue to comply in all material respects with all applicable private restrictive covenants, easements and conditions of public record applicable to the Property, all applicable zoning and subdivision ordinances and building codes, all applicable ordinances and regulations affecting the use, construction and occupancy of the Improvements and all other applicable federal, state and local laws, rules, regulations, ordinances, codes, permits, licenses, interpretations and orders of any, nature whatsoever with respect to the Property, including without limitation, the provisions of the Federal Occupational and safety Health Act, and the Federal Comprehensive Environmental Response Compensation and Liability Act. The Mortgagor shall, promptly upon receipt, forward to the Mortgagee any notice received from any federal, state or other governmental body claiming that the Mortgagor or the Property is not in compliance with any such law, rule, regulation, covenant, or ordinance, and the Mortgagor shall take all reasonable steps to cure any such non-compliance.

### 2.2 TAXES, ASSESSMENTS AND LIENS.

a. Taxes and Assessments. The Mortgagor shall promptly pay or bond off, when and as due, all assessments (excluding regular property taxes, which taxes are the responsibility of Mortgagee), and other charges, rates, dues, fees, levies, fines, impositions, liabilities, obligations, judgments, rents and encumbrances of every nature and kind whatsoever now or subsequently levied or assessed upon or applicable to the Property or any operations thereon, or upon or against the interest of the Mortgagee therein, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county or other governmental taxing authority upon or against the Mortgagor or in respect to the Property or any part thereof. The Mortgagor shall deliver satisfactory official certificates evidencing the discharge or payment of the same not less than ten (10) days prior to the date that same shall become delinquent. Notwithstanding the foregoing, however, the Mortgagor shall be entitled by appropriate proceedings to contest the validity of any such tax, assessment or charge so long as collection of the same by foreclosure of the lien thereof or otherwise upon the Property is stayed during the pendency of such proceedings and the Mortgagor deposits and the authority to which such tax, assessment or charge is payable, or in some other escrow arrangement satisfactory to the

Mortgagee, funds or other appropriate security satisfactory to the Mortgagee for payment of or security for payment of the same, together with any applicable interests and penalties, should the same be determined to be due and owing.

b. Mechanic's and Other Liens. In the event of filing of any mechanic's, materialmen's or laborers' lien upon the Property, or any portion thereof, arising from a contractor or other third party engaged by Mortgagor, the Mortgagor shall give written notice thereof to the Mortgagee within ten (10) days following service of written notice of such lien upon the Mortgagor and the Mortgagor shall obtain the discharge of such lien by payment, bonding or other means allowable at law within thirty (30) days following service of notice of such lien or claim of lien upon the Mortgagor.

### 2.3 PERFORMANCE AND EXPENDITURES BY MORTGAGE.

a. The Mortgagee may, at its sole discretion, take any action and make any disbursements necessary to protect its interest hereunder, including without limitation, actions or disbursements with respect to threatened, pending or contemplated actions, proceedings or disputes in which Mortgagee is or might be made a party or is a party plaintiff or party defendant, or which affects or might affect this Mortgage, or any of the interest of the Mortgagee or the Mortgagor therein, including without limitation, foreclosure of this Mortgage. The Mortgagor will pay or reimburse the Mortgagee immediately without demand for all costs, fees, charges, expenses and attorneys' fees incurred or paid by the Mortgagee in any foregoing matter.

b. Performance of Defaults. If the Mortgagor shall not pay when due any payment to be made by Mortgagor under this Mortgage or timely perform or observe any other covenant, condition, term, representation or warranty in this Mortgage, then the Mortgagee, at its sole discretion, may perform or observe the same, or authorize itself or others to enter the Property or any part thereof for such purposes without thereby becoming liable to the Mortgagor or any person in possession, with all payments so made or costs or expenses so incurred to be added to the Obligations secured hereby and to be repaid immediately by the Mortgagor upon demand.

c. Nature of Expenditures. All sums paid or incurred by the Mortgagee pursuant to this provision shall bear interest at the rate of eight percent (8%) per annum until the date of payment.

2.4 FURTHER ASSURANCES. At any time, and from time to time, upon the Mortgagee's request, the Mortgagor shall make, execute and deliver, and cause to be made, executed and delivered to the Mortgagee and, where appropriate, shall cause to be recorded, filed, re-recorded or re-filed and in such offices and places as shall be deemed desirable by the Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as the Mortgagee may consider necessary or desirable in order to effectuate, complete, perfect, continue and preserve the Obligations, this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Property, whether now or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor to do so, the Mortgagee may make, execute, procure, record, file, re-record or refile any and all such mortgages, instruments, financing statements, certificates and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee as the agent and attorney-in-fact of the Mortgagor to do so.

2.5 AFTER ACQUIRED PROPERTY. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on or attached to, or used or intended to be used in connection with, or with the operation of the Property or any part thereof.

2.6 INDEMNIFICATION. The Mortgagor shall appear in and defend any suit, action or proceeding that might in any way, in the Mortgagee's sole judgment, affect the value of the Property, the Mortgagor's title thereto, or the rights, powers or interests of the Mortgagee hereunder. The Mortgagor shall at all times indemnify, hold harmless and reimburse the Mortgagee within ten (10) days following written demand therefor for any and all loss, damage, expense or

costs, including without limitations, attorneys' fees arising out of or incurred in connection with any such suit, action or proceeding.

2.7 TRANSFER OF PROPERTY OR INTEREST IN MORTGAGOR. The Mortgagor shall not, whether voluntarily, involuntarily or by process of law, sell, convey, transfer, or lease or in any other manner change the ownership of or title to all or any portion of the Property.

2.8 ENVIRONMENTAL COMPLIANCE. Neither the Mortgagor, nor the Mortgagor's agents, employees, or contractors shall generate, manufacture, refine, transport, treat, store, handle, dispose of, release, discharge, produce, or process any materials as defined as hazardous waste or substances under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S. C. Section 9601, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6903, et seq.), the Hazardous Materials Transportation Act (42 U.S.C. Section 1801, et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the South Carolina Hazardous Substances Act (S. C. Code Section 23-39-10, et seq.), and the South Carolina Underground Petroleum Environmental Response Bank Act (S. C. Code Section 44-2-10, et seq.), all as now existing or hereafter amended, or any other environmental protection laws or regulations presently or hereafter enacted unless such actions shall be in total and complete compliance with all applicable environmental laws, rules and regulations. No hazardous materials will be introduced or maintained by Mortgagor or its agents, employees, or contractors on the premises in any manner unless done in strict compliance with applicable environmental laws, rules and regulations. The Mortgagor, and its agents, employees, and contractors shall comply with all governmental regulations regarding environmental protection, shall keep the Property free and clear of any liens imposed pursuant to any Property free and clear of any liens imposed pursuant to any applicable governmental requirements respecting environmental protection, and shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove any such hazardous materials on, from or affecting the Property pursuant to any such applicable governmental requirements. The Mortgagor shall indemnify, defend and hold harmless the Mortgagee from and against all liens, claims, damages, actions, causes of action, losses, damages, liabilities, costs and expenses whatsoever, including without limitation, penalties and reasonable attorneys' fees, incurred or suffered by or asserted against the Mortgagee, for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release upon or from the Property of any such hazardous materials, regardless of whether the same may be caused by or within the control of the Mortgagor, whether intentional or unintentional, or due to the violation of any applicable governmental requirements regarding environmental protection or any covenant or representation contained in this Mortgage with respect thereto by the Mortgagor. Provided, however, the foregoing indemnification by Mortgagor shall not apply to any of the aforesaid liens, claims, damages, actions, causes of action, losses, damages, liabilities, costs and expenses to the extent the same are caused by the actions or inactions of Mortgagee. The foregoing covenants, provisions and indemnities shall survive any foreclosure or other realization by the Mortgagee on this Mortgage which may result in acquisition by the Mortgagee or conveyance by the Mortgagee of fee title of any other lesser right, title or interest, in or to the Property.

### ARTICLE THREE DEFAULT AND REMEDIES

3.1 DEFAULT. The term "Default", wherever used in this Mortgage, shall mean the occurrence of any one or more of the following events:

- a. Failure by the Mortgagor to pay when due any of the Obligations when due; or
- b. Failure by the Mortgagor to pay any other sums secured by this Mortgage within twenty (20) days following notice to the Mortgagor from the Mortgagee requiring payment thereof; or
- c. Failure by the Mortgagor to perform, keep or observe any other covenant, condition, warranty, representation, obligation or agreement set forth in this Mortgage.

3.2 REMEDIES UPON DEFAULT. Upon occurrence of any Default, the Mortgagee shall have the right to immediately exercise any and all of the following rights and remedies without further notice to the Mortgagor:

a. Right to Perform for Mortgagor. The Mortgagee may, but shall not be obligated to, perform any covenant, duty or obligation of the Mortgagor whatsoever, the expense or payment of which shall be added to and become a part of the Obligations which the Mortgagor hereby covenants and agrees to pay to the Mortgagee immediately upon demand, with interest at the annual rate of eight percent (8 %).

b. Right to Foreclose. The Mortgagee shall have the right to foreclose this Mortgage and to have a judicial sale of the Property, as an entirety or in separate lots or parcels, under the judgment or decree of a Court of competent jurisdiction. The Mortgagee shall retain the right at all times to bid upon and purchase the Property, or any portion thereof, at such sale, and upon compliance with such bid, to hold, retain, possess and dispose of the Property or the portion thereof so acquired in its own absolute right without further accountability of any nature to the Mortgagor or any other persons whomsoever. The Mortgagee shall further, at its option, be authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to name any such tenants as parties Defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor or any other persons to be, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property. The Mortgagee shall have the right to credit the amount of its bid, should it be the successful bidder on the Property or any portion thereof, upon the unpaid outstanding amount of the Obligations in lieu of a cash payment thereof.

c. Right to Sue for Enforcement of Obligations. In addition to all rights of foreclosure set forth hereinabove and with or without entry into or taking possession of the Property as hereinafter provided, the Mortgagee shall have the right to enforce payment, performance and/or observance of any of the Obligations by instituting any other proceedings at law or in equity (including specific performance) for payment, observance or performance of the Obligations or of any other terms or conditions set forth in this Mortgage, including without limitation, the right to seek judgment for the recovery of all outstanding Obligations either before, after or during the pendency of or as a part of any actions for foreclosure or enforcement of this Mortgage, without any impairment of the lien of this Mortgage or the rights, powers and remedies conferred upon the Mortgagee, or the foreclosure of the lien hereof.

d. Right to Appointment of Receiver. The Mortgagee, upon application to a court of competent jurisdiction, shall have the absolute right to the appointment of a receiver of the Property and of the income, rents, issues and profits thereof, without regard to the value or occupancy of the Property and without any showing of any insolvency, fraud, or mismanagement on the part of the Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for the appointment for such receiver. Such receiver shall have all powers granted to the Mortgagee herein to enter upon and operate the Property, together with any other powers available to receivers by law and as may be conferred by the Court which appoints such receiver. All expenditures of any nature incurred in connection with such receivership shall be deemed to be a part of the Obligations and shall be secured by this Mortgage.

e. Rights to Collect Rents and Other Income. The Mortgage shall have the right to collect and receive all income, revenues, rents, issues and profits of or attributable to the Property, any operations thereon, and any leases thereof, with or without entry upon or taking possession of the Property as provided hereinafter.

f. Right to Enter, Take Possession Of, and Operate the Property. The Mortgagor shall, immediately upon demand from the Mortgagee, forthwith surrender to the Mortgagee actual possession of the Property. To the extent permitted by law, the Mortgagee, itself or through its agents or representatives, may enter upon, take and maintain exclusive possession of the Property, or any part thereof, including without limitation, all cash, escrows, insurance proceeds, condemnation proceeds, income, rents, issues, profits, documents, instruments, books,

records, papers and accounts of the Mortgagor in connection herewith or attributable to the Property, with all costs and expenses thereof (including without limitation, all costs, expenses and attorneys' fees incurred in connection with any suit or proceeding which may be brought by the Mortgagee to obtain immediate possession of the Property as aforesaid) to be a part of the Obligations secured by this Mortgage. Upon such entry and taking possession of the Property, the Mortgagee, in its own name or in the name of the Mortgagor, may hold, store, use, conduct the business thereof, make repairs, replacements, alterations, and improvements to the Property and any portion thereof, and enter into agreements with others to exercise any of the foregoing powers, all as the Mortgagee may deem necessary or desirable.

g. Suits to Protect the Property. The Mortgagee shall have the right to institute and maintain any suits and proceedings which it may deem advisable for the purpose of preventing any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, preserving and protecting its interest in the Property, or restraining the enforcement of or compliance with any legislation or governmental regulations, rules or orders, the enactment or enforcement of which may impair the security hereunder or the Mortgagee's interest herein.

h. Other Rights and Remedies. The Mortgagee shall have the right to exercise any other rights, remedies and powers granted to it under this Mortgage or otherwise existing at law or in equity.

3.3 APPLICATION OF PROCEEDS. Any proceeds of any nature and kind derived from the exercise of any remedy conferred herein following occurrence of a Default shall be applied to the Obligations and such sums as may be payable by Mortgagor to Mortgagee hereunder in such order of priority as the Mortgagee shall determine.

3.4 DISCONTINUANCE OF PROCEEDINGS. The Mortgagee at its sole option for any reason whatsoever, shall have the right to discontinue at any time any proceedings for enforcement of this Mortgage, in which case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had occurred or had been taken.

3.5 NO WAIVER. No delay or failure by the Mortgagee to exercise any right or remedy conferred hereunder upon occurrence of a Default shall be deemed a waiver by the Mortgagee of any future right to exercise such right or remedy or any other right or remedy provided herein; nor shall any waiver of any Default be deemed to be a waiver of any other Default or of the future occurrence of the same Default.

3.6 NATURE OF REMEDIES. No right, power or remedy conferred upon or reserved to the Mortgagee by this Mortgage is exclusive of any other right, power or remedy. Each right, power and remedy is cumulative and concurrent; shall be in addition to any other right, power and remedy under this Mortgage and now or hereafter existing at law, in equity or by statute; and may be pursued separately, successively or concurrently against the Mortgagor, any guarantors or endorsers of any of the Obligations, and/or the Property, at the sole discretion of the Mortgagee. The Mortgagor hereby ratifies any and all acts which the Mortgagee shall lawfully do by virtue hereof.

#### ARTICLE FOUR MISCELLANEOUS

4.1 SURVIVAL. All representations, warranties and covenants made herein shall survive the execution and delivery hereof and shall remain in full force and effect until complete payment and discharge of the Obligations.

4.2 SEVERABILITY. Unenforceability or invalidity for any reason of any provision of this Mortgage shall not limit or impair the operation, validity or enforceability of any other provisions of this Mortgage.

4.3 NOTICES. All notices, requests and demands to or upon the respective parties made or required to be made pursuant to the terms of this Mortgage shall be in writing and shall be deemed to be given or made when personally delivered or when deposited in (a) the United States mail, registered or certified, postage prepaid, return receipt

requested, or (b) Federal Express or other comparable overnight private courier service, addressed in any such event, to the Mortgagor or the Mortgagee at the address set forth hereinabove or at such other address as may hereafter be designated in writing by the respective parties hereto.

4.4 GOVERNING LAW. This Mortgage shall be governed and construed under and in accordance with the laws of the State of South Carolina. The Mortgagor, by execution of this Mortgage, agrees that any legal actions or proceedings with respect to this Mortgage shall be subject to the jurisdiction of and shall be brought in the courts of the State of South Carolina.

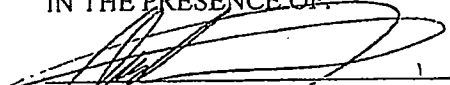
4.5 WAIVER OF JURY TRIAL. The Mortgagor and Mortgagee acknowledge that the right to trial by jury is a Constitutional one, but that it may be waived. Each party, after consulting (or having had this opportunity to consult) with counsel of their choice, knowingly and voluntarily, and for their mutual benefit, waives any right to trial by jury in the event that litigation arises regarding the performance or enforcement of, or in any way related to, this Mortgage or the Obligations.

4.6 HEIRS, SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. It is expressly recognized and agreed by the Mortgagor that the Mortgagee may assign this Mortgage, or interests therein, to other persons, firms or entities and that, in such event, all provisions of this Mortgage shall continue in full force and effect notwithstanding the effects of such assignment.

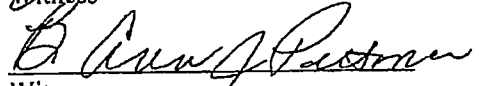
4.7 CAPTIONS. The headings and captions in this Mortgage are included only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Mortgage or the interest of any other provision hereof.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the date first written above.

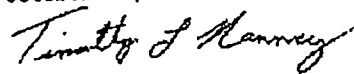
IN THE PRESENCE OF:

  
Witness

  
Alberto Alvarez

  
Witness

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD  
2013089976 Book: MO 5235 Page: 4419-4425  
October 21, 2013 02:42:29 PM

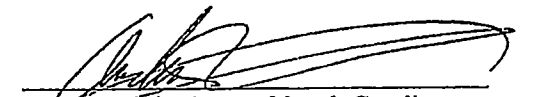


STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF GREENVILLE )

The foregoing Mortgage was acknowledged before me this 26th day of October, 2013, by Alberto Alvarez.

  
Notary-Public, State of South Carolina  
My Commission Expires: 6-20-2015

2436-5064

Recording Requested By and  
When Recorded Mail to:

Alberto Alvarez  
17 Latham Drive  
Greenville, SC 29617



2013105724

QCD  
2 PGS  
Book DE 2436 Page. 5064-5065

December 23, 2013 10 15 09 AM Cons: \$0 00  
Rec \$10 00 Cnty Tax EXEMPT State Tax EXEMPT

FILED IN GREENVILLE COUNTY, SC

Recording Time, Book & Page

### SOUTH CAROLINA QUITCLAIM DEED

COUNTY: GREENVILLE  
CITY: GREENVILLE

TAX MAP NUMBER: 0126000301300  
DATE: December 23, 2013

Grantor

Grantee

Alberto Alvarez  
17 Latham Drive  
Greenville, SC 29617

J. Guadalupe Ledesma-Martinez and/or  
Estela Gutierrez-Garcia  
14 Henderson Street  
Greenville, SC 29611

Enter in appropriate block for each party name, address, and, if appropriate, character of entity, e.g. corporation, partnership, limited liability company

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENTS, that Grantor, for assuming mortgage hereby acknowledged, to

ALL that piece, parcel or lot of land with improvements thereon, situate, lying on and being in the County of Greenville, State of South Carolina, the same being shown and designated as Lot 33 and Part of Lot 32 on plat of property of Ervin W. Elliott and Jean P. Elliott dated July 3, 2013, and recorded September 5, 2013, in the Office of the ROD for Greenville County in Plat Book PLL 1162 at page 32-33, reference to which is hereby made for a complete and accurate description:

This being the same property conveyed to the Grantor by Title to Real Estate to Alberto Alvarez dated October 21, 2013 and recorded in Deed Book 2433 at Pages 2603-2605, in the office of the ROD for Greenville County.

Assumption of Mortgage by Grantee: \$52,000, recorded in the office of the ROD for Greenville County as Book MO 5235, Pages 4419-4425 dated October 21, 2013.

- Ervin W. Elliott  
- Jean P. Elliott

Tax Map No: 0126000301300  
14 Henderson Street  
Greenville, SC 29611

Grantor paid by Grantee, does hereby remise, release and forever quitclaim unto Grantee all of Grantor's right, title and interest, if any, in and to the real estate (the "Premises") described as follows:

TO HAVE AND TO HOLD unto Grantee and Grantee's heirs, successors and assigns forever, the Premises and the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of Grantor, if any.

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed under seal this 23 day of December, 2013.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Nicolas Martinez  
Witness #1  
[Signature]  
Witness #2

GRANTOR:  
Signature of individual Grantor [Signature] (SEAL)  
Type name: Alberto Alvarez

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Acknowledgment for Individual Grantor

I, a Notary Public for South Carolina, do hereby certify that Alberto Alvarez, Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 23<sup>rd</sup> day of December, 2013.

Alberto Alvarez  
Notary Public for South Carolina  
My Commission Expires: 10/26/19

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD  
2013105724 Book: DE 2436 Page: 5064-5065  
December 23, 2013 10 15 09 AM

Timothy J. Hanney

preparation of the Appellant's Initial Brief had begun. Before referring you to specific documents and annotation which Underpin and support the veracity of the statements above, I wish to enter A number of additional core considerations essential to a full understanding of the information presented thus far that is truth, the information presented thus far that is fabrication - and what can assist in discerning between the two. Full disclosure of these facts, and admission of the evidence discussed herein are the impetus and essence of this motion and are of consummate importance to the Appellant's initiative to his eventual success In overturning the errant ruling on the case as it stands at present. Full disclosure of many adjudicative facts were suppressed and have yet to be exposed to-date in this action. Thus.. Be it known that:

- a) The central gravamen of the foreclosure was the sale of 14 Henderson Street in violation to the "terms" written into the mortgage by the Appellant's attorney, Mr. Andy White.

(6)

*Appellant's Motion for Production AND Admission of Evidence*

Cessation of payments was a deliberate act by the buyer to force this issue to resolution.



b) The Bond For Title of July 1, 2013 was prepared by the Appellant and includes specific terms which allows the Appellant to rent, lease, or sell 14 Henderson at will. There is no Due On Sale Clause integral to the original contract - this would be completely contrary to the interests of the Appellant - to Purchase and restore a home which could not be resold until the original note had been retired. Additionally, the Appellant had already, prior to this transaction, purchased 4 properties as per the terms needed for his business model to be successful from Respondent and party. The departure from the terms observed time prior was a shock to the Appellant and one can see how easily he was duped into signing such contracts that stripped him of his ability to realize a successful business investment, especially with an attorney hired to additionally

(7)

*Appellant's Motion for Production and Admission of Evidence*

## Statement Of The Case

Unknowing of the restriction to sell the home after renovation, unable to read English, the Appellant, when becoming aware of this restriction, which essentially killed his initiative and any benefit to be had in his enterprising, appealed incessantly to the Respondent for the terms to be modified to reflect the agreement of the Bond For Title they had agreed upon just months earlier, to the same terms the two parties had already agreed to in three previous homes sales. The Respondent refused.

Refusing to continue to pay the mortgage with the knowledge that the Respondent held the privilege of essentially foreclosure at will, the Appellant withheld payment to bring this issue to resolve.

On November 4, 2015 and December 15, 2015, the foreclosure action was heard in the court of the Greenville County Master In Equity.

The Court Ruling was in favor of the Respondent, the mortgage was foreclosed, and the home sold at Judicial Sale on February 2, 2016. The

(3)

*Appellant's Statement of the Case*

down payment has been paid by the owners to the Appellant Alvarez.

Refer to:

[Plaintiffs #2, Promissory Note, July 1st, 2013]

[Transcript(2), pg. 15, lines 11-16]

[Transcript(2), pg. 14, lines 22-25, pg. 15, lines 1]

Document authored by Appellant's attorney Mr. Andy White. States - under

item " a ) ", failure to pay as per terms of this promissory note more than 10

days later than due date does officially constitute "Default" on the note by

the promissor.

Remedy afforded Promisee by Default is the right to foreclose on the

property attached to this note - referred to in the Mortgage of 14

Henderson Street.

Appellant was unaware of such an unconscionable condition for

payment being included with terms and questions which court, within South

Carolina, would foreclose on a mortgage due to a payment being rendered

more than 10 days late?? Wrongfully displace a family of six from their

home, as the decision on this foreclosure action has.

Also, within this same contract written by Mr. White, paid to prepare this

(5)

*Appellant's Argument AND Facts*

*wait for  
FORMS*

" a necessary". A bond For Title that was already executed, and sans contention.

The Appellant questions the value advice of attorney who manufactures false needs, creates work for his firm when there is no basis for change beyond the "Professional Expert Advice" to fix that which is not broken. Was this in best interests of his client? In the end, this recommendation proved to be a debacle for the Appellant and his interests.

Refer to: [Plaintiff's #3, Mortgage Of Real Property, 11-4-2015 - 2.7]

2.7 Transfer of Property or Interest in Mortgagor. The Mortgagor shall not, whether voluntarily, involuntarily or by process of law, sell, convey, transfer, or lease or in any other manner change the ownership of or the title to all or any portion of the property. This is the condition added by the Appellant's attorney which essentially killed the viability of his enterprise. Not in Original Bond For Title.

Term non-specificity is confusing as it does not attach timeline, date, or meeting terms of obligation as a consideration in regard to any change of

(8)

*Appellant's Argument AND FACTS*

*3rd Bond  
IFEM  
18 of  
Bond fee  
FILE  
NO ASSIGNED*

*occupied  
#3  
#9 Alterations  
consent doc*

ownership or occupation of the house. This wording can be interpreted to imply the house shall never have ownership transferred in perpetuity - even when mortgage is retired. Indicative of the lack of attention and disregard for the Appellant's work.

Refer to: [Plaintiff's #3, Mortgage Of Real Property, 11-4-2015 - 3.1,3.2]

These are a few terms included in the mortgage by the Appellant's attorney.

3.1 Default. The term "default", wherever used in this Mortgage, shall mean the occurrence of any one or more of the following events:

a) Failure by the Mortgagor to pay when due any of the Obligations when due;

3.2 Remedies. Upon Default. Upon occurrence of any Default, The Mortgagee shall have the right to immediately exercise any and all of the following rights and remedies without further notice to the Mortgagor:

B. Right to Foreclose. The Mortgagee shall have the right to foreclose this mortgage and to have a Judicial Sale of the property.

(9)

*Appellant's Argument AND Facts*

4.5 Waiver Of Jury Trial. The Mortgagor and Mortgagee acknowledge that the right to trial by jury is a constitutional one, but that it may be waived. Each Party, after consulting (or having had this opportunity to consult ) with counsel of their choice, knowingly and voluntarily, and for the mutual benefit waives any right to trial by jury in the event that litigation arises regarding the performance or enforcement of, or in any way related to, this mortgage or the obligations.

The Appellant does believe with utmost certainty, that Mr. Andy White, albeit in the Appellant's employ, did serve without compunction, but with malice, reckless abandon, and sans fear of recourse ~~from an ignorant Latino, to waive have the Appellant~~ unknowingly waive his right to a trial by jury would serve the interests of his true masters well. This was certainly not a condition of sale in the original Bond For Title or Bond #2, nor has it ever been such in any of the ~~separate 25-plus other home purchases I have consumated over the~~ years I have been involved with such enterprising. The Appellant can interpret this most distasteful, predatory

(12)

Appellant's "Argument AND Facts"

sleight of hand, a pre-meditated and a pre-emptive move, in anticipation that litigation was inevitable. Which it proved to be.

Per Mr. Andy White, Attorney for Defendant

[Transcript(2), pg. 40, lines 1-6]

“At the closing in which Ms. Elliott, Ms. Pittman and Mr. Alvarez were present, I discussed with all of them the Promissory Note and the Mortgage. And I remember, I explained to Mr. Alvarez what we call, lawyers, a DUE ON SALES CLAUSE. He can sell the house, but he has to pay the mortgage if he does it. He agreed. And we did the closing. “

Refer to: [Plaintiff's #3, Mortgage Of Real Property, 11-4-2015 - 2.7]

2.7 Transfer of Property or Interest in Mortgagor. The Mortgagor shall not, whether voluntarily, involuntarily or by process of law, sell, convey, transfer, or lease or in any other manner change the ownership of or the title to all or any portion of the property.

Rules Of Professional Conduct [SCACR, 407, Rule 1.1: Competence]

A lawyer shall provide competent representation to a client. Competent

(13)

*Appellants Argument And Facts*

1 THE COURT: All right. And I will note it was filed  
2 with the Clerk's Office on November 25th, 2015. And as noted  
3 earlier, the first part of the trial was held on November 5,  
4 2015. In looking at the subpoena, it is directing Mr. Stewart,  
5 attorney for the Plaintiff, to provide his bar association  
6 number, his proof of the City of Greenville business license, his  
7 proof of bonding and insurance, and a copy of a picture ID. So  
8 if that becomes an issue, we'll certainly address it.

9 MR. STEWART: Thank you, Your Honor.

10 THE COURT: Now, Mr. Alvarez, you are here with an  
11 interpreter; is that correct?

12 MR. ALVAREZ: Yes.

13 THE COURT: And your interpreter's name is what,  
14 please, sir?

15 MS. ORTIZ ALFONSO: There are two interpreters because  
16 there will be simultaneous. My name is Emily Ortiz Alfonso,  
17 certified court interpreter number 15482. And my teammate today  
18 is ...

19 MS. TUGGY STEPHENS: Rubylene Tuggy Stephens.

20 THE COURT: Okay. I'm sorry. So, Ms. Alfonso?

21 MS. ORTIZ ALFONSO: Yes.

22 THE COURT: And your interpreter certification number  
23 is, again?

24 MS. ORTIZ ALFONSO: 15482.

25 THE COURT: 15482. And that's through the State of

1 South Carolina; correct?

2 MS. ORTIZ ALFONSO: Correct, Your Honor.

3 THE COURT: Okay. And you have been retained by Mr.  
4 Alvarez?

5 MS. ORTIZ ALFONSO: Correct.

6 THE COURT: Okay. And in your opinion, is Mr. Alvarez  
7 able to understand you and are you able to understand Mr.  
8 Alvarez?

9 MS. ORTIZ ALFONSO: Yes.

10 THE COURT: Okay. All right. Thank you.

11 Now, ma'am, your name again?

12 MS. TUGGY STEPHENS: Rubylene, R-U-B-Y-L-E-N-E, Tuggy,  
13 T-U-G-G-Y, Stephens, S-T-E-P-H-E-N-S. Also certified by the  
14 State of South Carolina; and my number is 11051.

15 THE COURT: Okay. And you have been retained on behalf  
16 of whom?

17 MS. TUGGY STEPHENS: Mr. Alvarez also retained me  
18 because it's such a long hearing.

19 THE COURT: So Mr. Alvarez has retained two separate  
20 interpreters?

21 MS. ORTIZ ALFONSO: Actually, Your Honor, the  
22 interpreters work as a team per the standards of practice of the  
23 ASTM, and the NAJIT, which is the National Association of  
24 Judicial Interpreters and Translators, to ensure that Mr. Alvarez  
25 can participate since many people will be speaking and the

1 interpretation will be simultaneous except for when there are  
2 witnesses at the stand, when the interpretation will be  
3 consecutive. In order to preserve the accuracy of the  
4 proceedings and to avoid the fatigue that's associated with  
5 simultaneous interpreting, he has retained two interpreters.

6 THE COURT: Okay. And there are two other Defendants  
7 who -- are they present today?

8 MR. ALVAREZ: Correct.

9 THE COURT: Then where is Ms. Martinez? All right.  
10 That's Guadalupe Ledesma-Martinez?

11 MS. ORTIZ ALFONSO: Yes.

12 THE COURT: Okay. Then he needs to come up to one of  
13 the tables, because he is a named ... Now, does he have an  
14 interpreter?

15 MR. ALVAREZ: Yes.

16 MS. ORTIZ ALFONSO: The interpreters are mutual  
17 parties; therefore, they can provide interpretation for ---

18 THE COURT: Okay. If you will ask that gentleman to  
19 state his full name.

20 MR. LEDESMA-MARTINEZ: Guadalupe Ledesma, L-E-D-E-S-M-  
21 A, Martinez.

22 THE COURT: All right. Ask him to explain in his words  
23 what this lawsuit is about and what he's doing here today.

24 MR. LEDESMA-MARTINEZ: Well, when I bought the house  
25 from Mr. Alvarez, I was current making the payments on it.

1 THE COURT: All right. And is he willing for you and  
2 Ms. Stephens to act as his interpreter and does he understand  
3 you?

4 MR. LEDESMA-MARTINEZ: Well, no, I can't understand.

5 THE COURT: Okay. What can't he understand?

6 MR. LEDESMA-MARTINEZ: I'm not sure what you're saying,  
7 if it's about the language. I don't think I understand your ---

8 THE COURT: I'm asking if he is able to understand your  
9 interpretation.

10 MR. LEDESMA-MARTINEZ: Uh-huh (Affirmative).

11 THE COURT: And is he willing for you to act as his  
12 interpreter here today?

13 MR. LEDESMA-MARTINEZ: Yes.

14 THE COURT: Okay. And what about Estela Gutierrez-  
15 Garcia; is she present?

16 MS. GUTIERREZ-GARCIA: I am.

17 THE COURT: All right. Now, she's a Defendant. She  
18 needs to also come up to this table.

19 And if you'll ask her if she will state her full name.

20 MS. GUTIERREZ-GARCIA: Estela Gutierrez-Garcia.

21 THE COURT: And ask her to explain in her words the  
22 purpose of this lawsuit and why she is here.

23 MS. GUTIERREZ-GARCIA: We were subpoenaed here because  
24 we are buying the house.

25 THE COURT: All right. And is she able to understand

1 you and your translation and is she willing for you to act as her  
2 interpreter?

3 MS. GUTIERREZ-GARCIA: Yes.

4 THE COURT: Okay. And do both Ms. Gutierrez-Garcia and  
5 Mr. Ledesma-Martinez understand that this is a trial and they  
6 will have a right to testify and they will also have a right to  
7 call witnesses and present evidence?

8 MS. GUTIERREZ-GARCIA: Yes, we understand.

9 THE COURT: And Mr. Ledesma-Martinez, do you  
10 understand?

11 MR. LEDESMA-MARTINEZ: Yes.

12 THE COURT: All right. Then they can both have a seat  
13 for right now. And Mr. Alvarez, from my review of the transcript  
14 at the trial on November 5th, Ms. Elliott presented evidence in  
15 the form of a copy of a deed, the promissory note and the  
16 mortgage and also a quit claim deed and established the debt due  
17 under the note and mortgage. So now is your opportunity to  
18 testify or present any evidence or call any witnesses you may  
19 feel so inclined to do, sir.

20 MR. ALVAREZ: Okay. Last time Mr. Stewart ---

21 REPORTER: Ask him to use the interpreter, please.

22 THE COURT: You're going to need to speak slowly and  
23 clearly so my court reporter is able to understand you, sir.

24 MR. ALVAREZ: Okay. I think I have to do it in Spanish  
25 since I've got an interpreter.

1 THE COURT: That's fine. Yes, sir.

2 MR. ALVAREZ: The last time the ---

3 (WHEREUPON, Ms. Ortiz Alfonso spoke to Mr. Alvarez in  
4 Spanish, at which time Mr. Alvarez begins to speak in  
5 Spanish.)

6 MR. ALVAREZ: Mr. Stewart the last time gave me a  
7 promise, payment of promise, a note of payment. However, this  
8 promissory note or this note to payment doesn't have an address.  
9 It doesn't have a business ---

10 THE COURT: Let me stop right now. If he wishes to  
11 testify he may come to the witness stand. He may not stand up  
12 and present an editorial dissertation of what he contends should  
13 or should not have occurred. So if he wishes to testify, he  
14 needs to come and be placed under oath.

15 MR. ALVAREZ: Yes.

16 THE COURT: If you'll place your left hand on the bible  
17 and raise your right hand.

18 You swear to tell the truth, whole truth and nothing but the  
19 truth?

20 MR. ALVAREZ: I promise.

21 THE COURT: If you'll come around to this green chair  
22 there, please, sir.

23 MR. ALVAREZ: Thank you, sir.

24 THE COURT: And if you will state your full name.

25 MR. ALVAREZ: My name is Alberto Alvarez.

Direct testimony of Alvarez

ALBERTO ALVAREZ,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: Now, Mr. Alvarez, now is your opportunity to present your side of the case about what happened.

MR. ALVAREZ: Well, first, I wanted to begin with the promissory note. I have this promissory note from the lawyer, Mr. Stewart, regarding 14 Henderson Street. Okay. Therefore, this promissory note, it does not have any witnesses. It doesn't have any addresses. And it's not notarized by an attorney -- by a notary. And I wanted to present as evidence this promissory note to Mr. Stevens (verbatim) and to your honorable sir.

THE COURT: Tell him it was already introduced at the November 5th hearing and is marked as Plaintiff's Exhibit Number 2.

MR. ALVAREZ: Well, I don't think that the promissory note is valid, and I don't think that as herein written that Andy White would agree to the terms without it being duly authorized.

MR. STEWART: Your Honor, the note was admitted ---

THE COURT: I understand.

MR. STEWART: --- without objection. And I ---

THE COURT: He can continue with his testimony.

MR. ALVAREZ: Thank you, Your Honor. I am here because I had signed a mortgage, fraudulent mortgage. When I got the house in '12, the closing happened about a year later, Andy White was the lawyer, and I explained that when I bought the house that

1 MR. ALVAREZ: To prove that although I am Latino, I am  
2 not ignorant.

3 THE COURT: He can certainly testify to whatever he  
4 wants to. Just because he's a Latino, I make zero inference from  
5 that in any regard.

6 MR. ALVAREZ: I have the credentials here that I would  
7 like to present. And also there was one that I was arrested for  
8 attempted murder. Would Mr. Stewart like to see the credentials?

9 MR. STEWART: Yes.

10 MR. ALVAREZ: It's in Spanish, so if you'd like the  
11 interpreter can read it for you.

12 (WHEREUPON, the interpreter read the document to Mr.  
13 Stewart.)

14 MR. STEWART: Does it say what he was convicted of?

15 MR. ALVAREZ: For attempted murder, homicide.

16 MR. STEWART: So he was convicted of that?

17 MR. ALVAREZ: Three years.

18 MR. STEWART: No objection.

19 THE COURT: If you'll hand it to my court reporter and  
20 she'll mark it as an exhibit; Defendant Alvarez 1.

21 MR. ALVAREZ: Okay. I also have licenses for  
22 electrical, plumbing ---

23 THE COURT: If he wishes to testify about the note and  
24 the mortgage, its enforceability, that's fine. But I'm going to  
25 limit -- I really am trying to be patient. But these are legal

1 car -- that she moved here a good bit earlier. And I understand  
2 that before I did the closing that Ms. Jean Elliott Piedmont,  
3 before I had even done the closing, that I was guilty without  
4 even having signed anything. And I put everything into my  
5 lawyer's hands. And the houses -- I've bought and sold four  
6 houses from Ms. Piedmont and I've bought four houses from her and  
7 then I've sold them. She knows that I dedicate myself to buying  
8 homes and selling them. It makes sense that I wouldn't buy three  
9 houses and sign the mortgage to buy three houses just to look at  
10 them and not use them for ten years.

11 THE COURT: Let me try -- I really am trying to get to  
12 something that's relevant. He admits he signed the promissory  
13 note; correct?

14 MR. ALVAREZ: No, that's not correct. That is a fraud.  
15 That is not a promissory note.

16 THE COURT: Ask him if that is his signature?

17 MR. ALVAREZ: Yes. But it doesn't have an address on  
18 there about what house it refers to.

19 THE COURT: I understand he disagrees with that it's a  
20 legal enforceable document. But is that his signature?

21 MR. ALVAREZ: Yes. But Your Honor, I do not accept  
22 this as evidence, not for him, not for everyone.

23 THE COURT: Thank you. But tell him that is my job in  
24 this courtroom.

25 MR. ALVAREZ: I understand that.

1 THE COURT: Mr. Alvarez, listen.

2 MR. ALVAREZ: I'm not meaning any disrespect.

3 THE COURT: And I understand that. Plaintiff's number  
4 2 is the promissory note. And Mr. Alvarez has now identified his  
5 signature. He disagrees that it's an enforceable document. He  
6 has now identified his signature.

7 I'm now showing him Plaintiff's 3, which is a seven-page  
8 document entitled mortgage. Mr. Alvarez, is that your signature?  
9 I'm not asking you if you agree it's enforceable. I'm asking you  
10 if that's your signature.

11 MR. ALVAREZ: Yes. Certainly. That is my signature.

12 THE COURT: I'm now showing him Plaintiff's Exhibit  
13 Number 4, which is a -- purports to be a recorded deed where Mr.  
14 Alvarez transferred property on December 23rd, 2013, and I'm  
15 asking not if he agrees that this is an enforceable document, but  
16 is that his signature on the deed?

17 MR. ALVAREZ: That's correct. It is my signature, but  
18 that is not saying that I am guilty.

19 THE COURT: He's not being charged with any crime, so  
20 ... Does he contend that the money has been repaid in full to  
21 Ms. Elliott?

22 MR. ALVAREZ: I didn't understand that.

23 THE COURT: Mr. and Mrs. Elliott deeded a piece of  
24 property to them.

25 MR. ALVAREZ: Correct.

1 THE COURT: Mr. Alvarez signed what is called a  
2 promissory note and a mortgage.

3 MR. ALVAREZ: I repeat that I do not accept that  
4 promissory note.

5 THE COURT: Then is he contending that the Elliotts  
6 gave him the house for free?

7 MR. ALVAREZ: No, that's not correct. That's why I  
8 want to show the Judge that I did not buy the house on that date.  
9 It was on ---

10 THE COURT: Has he paid the Elliotts for the house?

11 MR. ALVAREZ: Yes. Since the year '12, and you can see  
12 that the closing was done on the house like two years later. I  
13 started on September 12th of 2012 and I quit paying because of  
14 the fraud the 25th of August of 2014. And the foreclosure, they  
15 did it in '15. If you would permit me to provide you the  
16 evidence that I have.

17 THE COURT: Yes, ma'am. Tell him he can present proof.  
18 I need to show that he has paid to the Elliotts fifty-six  
19 thousand dollars.

20 MR. ALVAREZ: Okay. May I continue? I had no  
21 obligation to pay them the house in full. I had the option, I  
22 have the right, to quit paying because the documents that were  
23 done regarding the house were fraudulent. I don't accept them as  
24 if they were the closing on a house.

25 THE COURT: So is he telling me that because his

*Cross Exam of Alvarez by Attorney Stewart*

1 to call him as a witness when he's finished testifying, he may  
2 call him.

3 MR. ALVAREZ: Okay.

4 THE COURT: Mr. Stewart, any questions?

5 MR. STEWART: Please the Court, Your Honor.

6 **CROSS EXAMINATION**

7 **BY MR. STEWART:**

8 Q. Mr. Alvarez, you filed an Answer in this case; did you not?

9 A. What are you referring to? You should be giving me a copy  
10 and you're not doing it.

11 (WHEREUPON, the document was handed to Mr. Alvarez.)

12 A. Yes, that's correct.

13 Q. Did you sign it?

14 A. Yes, I signed it.

15 Q. Did you read it before you signed it?

16 A. Yes, I did. Correct.

17 Q. So you can read English?

18 A. Not totally; a portion. There's somebody that helps me.

19 Q. Okay. So you've got somebody that -- if somebody gives you  
20 something in English you've got somebody to help you understand  
21 it; correct?

22 A. I have a thousand people that help me.

23 Q. Well, did all thousand of them help you on that or just one?

24 A. No. The truth is that I have my ideas and I don't really  
25 need anyone to help me. The idea is to reason.

1 Q. So you understood that document before you signed it?

2 A. Everything that I sign, I understand.

3 Q. All right.

4 MR. STEWART: Your Honor, is there a copy of the Answer  
5 in the record?

6 THE COURT: Was it filed June 11th, 2015?

7 MR. STEWART: I don't know, Your Honor. My copy is not  
8 filed.

9 THE COURT: It's called Response to Civil Action.

10 MR. STEWART: Is this it?

11 THE COURT: No, sir. There is a document that was  
12 filed by Mr. Alvarez on June 11th, 2015 titled Response to Civil  
13 Action. It may be -- what you have may be in there, Mr. Stewart,  
14 but I don't see it.

15 MR. STEWART: Well, Your Honor, we would move to admit  
16 that into evidence as the next Plaintiff's exhibit.

17 MR. ALVAREZ: Tell them that I protest.

18 THE COURT: On what basis?

19 MR. ALVAREZ: I don't have time to read it.

20 THE COURT: He just said he identified it and he signed  
21 it and that he always understands everything he signs.

22 MR. ALVAREZ: But I haven't read that document.

23 THE COURT: But he just said he signed it. Under oath  
24 he said he ---

25 His objection is noted. Overruled.

1 Q. All right. Had you represented him on other real estate  
2 transactions?

3 A. Yes. Several other real estate transactions in which Mr.  
4 Alvarez had come in with, say, a bond for title or something  
5 else, and he wanted us to help him straighten out problems that  
6 had developed in those transactions later.

7 (WHEREUPON, Ms. Tuggy Stephens is now the interpreter.)

8 Q. And when you and Mr. Alvarez consulted, did you speak  
9 Spanish with him? Or how did y'all converse?

10 A. Generally we spoke in English with a mixture of Spanish  
11 where necessary.

12 Q. And from what we've heard today, you seem to be fluent in  
13 Spanish; is that correct?

14 A. I have a practical knowledge of Spanish. I wouldn't say  
15 fluent, being an interpreter such as these ladies, but I do have  
16 Spanish clients and do conduct negotiations and transactions  
17 using Spanish; yes.

18 Q. At the time that you and Mr. Alvarez consulted with regard  
19 to the transactions with Ms. Elliott, did he ever indicate to you  
20 that he did not understand what he was doing?

21 A. No. We were at a table; Mr. Alvarez, myself, Mrs. Elliott,  
22 Ms. Pittman, and we were all talking in English. And he didn't  
23 have any problem understanding what we were talking about.

24 MR. STEWART: And do you have the other exhibits; the  
25 mortgage, notes and so on?

1 Alvarez, and I wanted to ask them about what they wanted.

2 THE COURT: If you will ask Ms. Gutierrez-Garcia, have  
3 they been making payments to Mr. Alvarez and are they current in  
4 their payments?

5 MS. GUTIERREZ-GARCIA: Yes; month-by-month.

6 THE COURT: And how much are they paying Mr. Alvarez  
7 each month?

8 MS. GUTIERREZ-GARCIA: We normally -- the payments are  
9 normally six hundred fifty-two dollars per month. But sometimes,  
10 if we're able to pay more, we'll pay seven hundred or six hundred  
11 sixty.

12 THE COURT: And ask them if they're aware that Ms.  
13 Elliott -- it's been over a year since she's received any type of  
14 payments from Mr. Alvarez?

15 MS. GUTIERREZ-GARCIA: Yes. I realized that at the  
16 last court appearance.

17 THE COURT: Okay. Ask Mr. Alvarez where is the money?  
18 If he hasn't been paying it to the Elliotts and if these nice  
19 people have been paying him for some fourteen or fifteen months,  
20 where is the money?

21 MR. ALVAREZ: Are you asking me or are you asking ...

22 THE COURT: No, I'm asking Mr. Alvarez.

23 MR. ALVAREZ: I did tell them that I had suspended  
24 making the payments. They were aware of that, because I said  
25 that the terms of the contract needed to be changed. I just

1 wanted to let you know that these people, that they do make their  
2 payments on time. Sometimes they're early, but they always pay  
3 on time. They've been very responsible. They have insurance.  
4 They pay the taxes. They take care of the property taxes. They  
5 take care of everything according to the agreement that we made.  
6 They're very good people. They've complied with everything and  
7 made the payments. And they should be able to keep the house. I  
8 did tell them that if something should happen -- although I'm  
9 sure we'll win the case -- that, you know, after a little bit of  
10 time, because, you know, if not I could appeal and either go to  
11 the grand jury. That I do have another house for them that's  
12 larger and prettier. And they trust me and they plan to follow  
13 me. And you may question them if it's ---

14 THE COURT: No. Now ask him if he will actually answer  
15 the question I asked him.

16 MR. ALVAREZ: To me?

17 THE COURT: By my calculations, these nice people have  
18 paid him over ten thousand dollars since he stopped paying Ms.  
19 Elliott.

20 MR. ALVAREZ: Yes. They have paid, but I do have the  
21 receipts that are more than ten thousand dollars that I've paid  
22 to Annie Piedmont.

23 THE COURT: All right. The last receipt that's been  
24 introduced into evidence from Mr. Alvarez was August 25th, 2014.  
25 So ask him to show me the receipts where he's paid the ten

1 thousand dollars to Ms. Elliott.

2 MR. ALVAREZ: Well, I believe that from August of 2014  
3 when I stopped paying up to today, I don't think that comes out  
4 to ten thousand. Maybe five thousand dollars.

5 THE COURT: Tell him his math is not very good. Tell  
6 him he can have a seat; I'm going to issue my ruling.

7 All right. To these nice people, to Mr. Ledesma-Martinez  
8 and Ms. Gutierrez-Garcia, I'm sorry you got caught up in this  
9 mess. You should not have gotten caught up in this mess.

10 The money that Mr. Alvarez was supposed to be paying to Ms.  
11 Elliott, he gives no explanation about what has happened to your  
12 money.

13 My ruling is -- Mr. Alvarez is obviously experienced in real  
14 estate transactions. Mr. Alvarez retained an attorney to prepare  
15 documents in his dealings with the Elliotts. The promissory note  
16 and the mortgage are both clearly enforceable under the laws of  
17 this state. Mr. Alvarez acknowledges that he signed both of  
18 them. There is no proof of fraud. There is no limit on Mr.  
19 Alvarez's ability to sell the house except for the fact that when  
20 he sold the house he was supposed to pay off his debt to the  
21 Elliotts. He did not do that. There have been no payments to  
22 the Elliotts since August of 2014. That provides a basis to  
23 award the relief sought by Plaintiff.

24 Further, the mortgage that Mr. Alvarez signed had what's  
25 called a due on sale clause. That means if the property is sold

1 Mr. Alvarez was required to pay off the debt to the Elliotts.

2 I'm going to have Attorney Stewart prepare a proposed Court  
3 Order finding that Ms. Elliott is entitled to have the house sold  
4 at a foreclosure auction. That auction will occur on February  
5 1st at eleven o'clock in the morning in this same courtroom.

6 Now, Mr. Stewart, is your client seeking or waiving  
7 deficiency?

8 MR. STEWART: One moment, Your Honor. Your Honor, my  
9 client is willing to waive the deficiency. She is concerned  
10 about the condition of the house. So if there could be some  
11 provisions in the Order that the house would not be ransacked or  
12 ---

13 THE COURT: I have no problem issuing a restraining  
14 Order.

15 MR. STEWART: Thank you. Under those conditions we  
16 would waive the deficiency.

17 THE COURT: All right. So to Mr. Ledesma-Martinez and  
18 Ms. Gutierrez-Garcia, there's going to be a Court Order that  
19 simply says as long as you're in the house just take care of it.  
20 Both of you seem like very nice people. And I would suggest  
21 while everybody is here and that we have two wonderful  
22 interpreters that perhaps y'all chat with Mr. Stewart outside  
23 just to discuss what it looks like to move ahead. And Mr.  
24 Stewart, in your proposed Order -- I know last time you had  
25 submitted an attorney's fee affidavit and clearly there have been

1 BY THE COURT: All right. Mr. Stewart, tell me where things  
2 stand.

3 MR. STEWART: Your Honor, this is a foreclosure case. My  
4 client is here, Ms. Jean Elliott. She is appearing for herself  
5 and also as Personal Representative of the estate of her deceased  
6 husband, Ervin Elliott. The Defendants are Mr. Alvarez -- I  
7 believe he's seated here -- and Ms. Estela Gutierrez-Garcia, who  
8 I believe this is her seated to my left. I have handed Ms. Wanda  
9 a notice letter that I sent out to all of the Defendants. The  
10 other Defendant J. Guadalupe Ledesma-Martinez, the bailiff has  
11 called his name out in the hall, and we've called it in here, and  
12 I don't believe he's here but we take the position he was given  
13 proper notice and we are ready to proceed.

14 THE BAILIFF: No response.

15 BY THE COURT: All right. Sir, if you would state your full  
16 name, please.

17 MR. ALVAREZ: My name is Alberto Alvarez.

18 BY THE COURT: Now, Mr. Alvarez, do you understand what this  
19 is involving here this morning?

20 MR. ALVAREZ: Yes.

21 BY THE COURT: Okay. I may be mistaken but someone on my  
22 staff, I believe, had a discussion with you earlier this morning  
23 outside of the courtroom, is that correct, on the telephone?

24 MR. ALVAREZ: Really, I got to do it because I think I can  
25 do it with my English but my interpreter is in another town