

THE STATE OF SOUTH CAROLINA

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In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

SC Court of Appeals

Marvin H. Dukes, III

Master in Equity and Circuit Court Judge

Case No. 2011-CP-07-01778

Appellate Case No. 2014-002712

BENJAMIN GECY Appellant,

v.

SOUTH CAROLINA BANK & TRUST, JAIME HAMNER
and DEBORAH HAMNER Respondents.

RECORD ON APPEAL

VOLUME I

(Pages 1 to 220)

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Benjamin Gecy,

Plaintiff,

vs.

South Carolina Bank & Trust, Jaime
Hamner and Deborah Hamner,

Defendants.

IN THE COURT OF COMMON PLEAS

CA NO. 2011-CP-07-1778

ORDER

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This matter came before the Court on February 21, 2014, on Motion for Summary Judgment of all Defendants. Plaintiff appeared pro se and Defendants Hamners were represented by attorney James Wegmann and SCBT was represented by attorney Samuel Scoville. The Court fully considered all of the evidence presented and the arguments of the parties and for the reasons that follow, the Court grants Defendants Motions for Summary Judgment.

FACTS

The Plaintiff asserts five (5) causes of actions: (1) Tortious Interference with Contract (Defendant SCBT Only); (2) Breach of Contract (Hamners Only); (3) Civil Conspiracy (Both Defendants); (4) Negligent Misrepresentation (Both Defendants); and (5) Unfair Trade Practices (SCBT Only). Plaintiff's causes of action stem from two contracts, the first to purchase a lot located at 10 Meredith Lane on Lady's Island and the second to build a home on that lot. The contracts were form contracts that were filled out by and provided by Plaintiff for the Hamners signatures. Each contract contained a financing contingency that stated in part, "[b]uyer's obligation under this agreement is contingent on Buyer obtaining said loan." The financing

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contingency in the lot sale contract was not limited to a specific type of loan, amount of loan, interest rate, or loan to value ratio. The financing contingency in the home construction contract was not limited to a specific type of loan, amount of loan, or interest rate but did contain a statement that, "[b]uyer shall apply for a maximum 100% loan (loan-to-value)...."

The Hamners were referred to SCBT by the Plaintiff to finance the transaction. The Hamners applied for a 100% construction loan that would, at the completion of construction, roll into a 100% VA loan. The contracts stated that the original closing date was March 5th, 2010 and both contracts contained a potential thirty (30) day extension to April 5th, 2010 in the event, through no fault of either party, a contingency had not been met. On both March 5th, 2010 and April 5th, 2010, the financing contingency had not been met because, at a minimum, the Plaintiff had not provided SCBT with a fully executed Road Maintenance Agreement (RMA) which was required by the Bank's underwriting procedures as a condition of loan approval.¹ The Hamners provided SCBT with all the requested documents and information pursuant to the financing contingency and took all actions requested by the Bank to process the loan. The Hamners were ready, willing, and able to perform on the contracts and close on the construction loan on either March 5th, 2010 or April 5th, 2010. Unfortunately, however, a completed and signed Road Maintenance Agreement, as required by SCBT for loan approval, was never provided to the Bank and the contracts, by their very terms, expired on the close of business April 5, 2010.

¹ The Plaintiff's causes of action are all predicated on his belief that the Road Maintenance Agreement, required by SCBT, was an unnecessary condition of loan approval and therefore had SCBT followed "proper" underwriting guidelines, the transaction would have closed. Whether a bank chooses to make a loan or requires a road maintenance agreement as a condition of funding is solely the purview of the Bank and their loan approval process. The deposition testimony offered by the Plaintiff of the two SCBT employees, Bruce Van Horn and Doug Jacobs, indicates clearly that the road maintenance agreement was a requirement of funding and that the loan was not approved because SCBT never received a signed road maintenance agreement. This is consistent with the SCBT's Credit Denial Letter offered by the Plaintiff stating, "[d]eclined due to not be able to obtain a Road Maintenance Agreement for the subject property." This is corroborated further by the affidavit of Kenneth Tootle, who was the attorney representing both the Plaintiff and Hamners in the potential closing of the transaction in which he states, SCBT "also made it clear that my title company could not have any exceptions to the title report."

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LEGAL ANALYSIS

Rule 56(c) of the South Carolina Rules of Civil Procedure requires Summary Judgment to be granted if "there is no genuine issue of material fact and ... the moving party is entitled to judgment as a matter of law. S.C.R. Civ. P. 56(c). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by showing that is pointing out to the trial court, that there is an absence of evidence to support the nonmoving party's case." Baughman v. Am.Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The purpose of Summary Judgment is to expedite the disposition of cases not requiring the services of fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "The trial court should grant Summary Judgment if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Turner v. Milliman, 381 S.C. 101, 108, 671 S.E.2d 636 640 (Ct. App. 2009) (citing S.C.R. Civ. P. 56(c) and Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

When a party makes a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 188-89, 322 S.E.2d 453, 457 (Ct. App. 1984). If the adverse party does not respond accordingly, the trial court shall enter summary judgment against him if appropriate. Id. at 189, 322 S.E.2d at 457. When a party makes no factual showing in opposition to a motion for summary judgment the trial "court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary

judgment as a matter of law." *Id.*; see also Hancock vs. Mid-South Mgm't Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009) (indicating summary judgment is appropriate where plaintiff has not proven even a scintilla of evidence).

Ongoing Discovery

The plaintiff requested a continuance from the hearing of this Motion on a claim discovery was not complete. Plaintiff filed a Verified Complaint against the Defendants on April 15, 2010. The parties exchanged extensive written discovery and SCBT filed a Motion for Summary Judgment on March 19, 2012 and Hamners joined the motion shortly thereafter. Plaintiff's counsel was relieved from representing Plaintiff on May 8, 2012. The case was stayed on or about July 7, 2012 when Mr. Gecy filed for Chapter 7 Bankruptcy protection in the United States Bankruptcy Court. After the bankruptcy proceeding was complete this case was restored to the active roster on Motion of the Plaintiff and the Motion for Summary Judgment was restored to the Motions Roster. Since the time the case was restored, Plaintiff requested and was granted the opportunity to conduct depositions and in fact has conducted additional discovery including the taking of six depositions. During the discussion of scheduling this Motion all parties including Plaintiff agreed to the hearing date of February 21, 2013. During the Summary Judgment hearing, Plaintiff requested more time to take two (2) additional depositions.

This Motion for Summary Judgment is being heard nearly three years after the filing of the Verified Complaint and two years after the filing of the Motion for Summary Judgment. Extensive written discovery has been exchanged and all parties to the action have been deposed along with five fact witnesses. Generally, it is not premature for the trial court to grant summary judgment after all parties have been deposed because the litigants have had a full and fair opportunity to develop the record of the case. See George v. Empire Fire & Marine Ins. Co., 344

S.C. 582, 594, 545 S.E. 2d 500, 506 (2001), finding summary judgment was not premature because defendant "had a full and fair opportunity to develop the record on this issue and failed to do so."); also see Bayle v. South Carolina Department of Transportation, 344 S.C. 115, 128-29, 542 S.E.2d 736, 742-43 (Ct. App. 2001) (stating it was not error to grant summary judgment because no further discovery would have contributed to the resolution of the case).

This case is sufficiently mature and all parties have had a full and fair opportunity to develop the record and more than enough time to complete the record for purposes of summary judgment. All parties previously agreed to the hearing date of February 21, 2014. The Plaintiff was questioned by the Court extensively concerning the two depositions he wished to take that spawned the Motion for Continuance and after much discussion, and for reasons stated within, no further discovery would contribute to the resolution of issues in the case.

Breach of Contract

The Plaintiff states in his pleadings that the "Hamners failed to perform and thereby unjustifiably breached the Agreement to Buy and Sell Real Estate for 10 Meredith Lane." The Hamners ability to perform was predicated upon obtaining financing of a construction loan from SCBT. It is well settled law in South Carolina that a failure of a financing contingency clause will excuse the buyer from liability under the contract with the seller. See, Storen v. Meadors, 295 S.C. 438, 440, 369 S.E.2d 651, 652 (Ct. App. 1988) and Gregory v. Taylor, 042610 SCCA, 2010-UP-252. The Hamners made a good faith effort to obtain financing and as part of the process and requirements under the financing clause, provided the Bank with all documents and information necessary to obtain financing. In addition, the record is clear that the Hamners assisted the Plaintiff in attempting to get the required signatures on the Road Maintenance Agreement which was an SCBT requirement for loan approval.

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The Plaintiff argues that SCBT's requirement of a Road Maintenance Agreement was an unnecessary underwriting requirement and that the bank should have approved the Hamner's loan without it and allowed the closing to go through prior to the April 5th, 2010 deadline. Even if arguably the Road Maintenance Agreement requirement was ultimately found to be unnecessary, the Hamners have no control over the SCBT's underwriting guidelines and the Bank issued a loan denial to the Hamners based on a lack of a fully executed Road Maintenance Agreement. The Court questioned the Plaintiff extensively as to whether or not he had any evidence that SCBT had approved the loan and the Hamners had refused to close on the approved loan. The Plaintiff agreed the loan was never approved but again reiterated that it wasn't approved because SCBT made the Road Maintenance Agreement a condition of the loan approval which the Plaintiff believes is an unnecessary condition to financing approval.

There is no genuine issue and the parties all agree that the Hamner loan to purchase the property and build the home was never approved by SCBT either by the original closing date of March 5th, 2010 or by the extension period of April 5th, 2010. Consequently, the financing contingency clauses of the Plaintiff/Hamner contracts operate to insulate the Hamners from all contractual liability under the contracts and therefore Plaintiff's Breach of Contract claim against the Hamners is dismissed with prejudice.

The Statute of Frauds Bars Lender Liability

Section 37-10-107 of the South Carolina Code bars all of the Plaintiffs' claims against defendants, as a matter of law. Many states, including South Carolina, have enacted specialized statutes concerning loan and credit agreements. These statutes bar enforcement of oral lending agreements and bar fraud and other tort claims based on alleged oral voluminous and other

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non-written conduct concerning these loan agreements. Specifically, Section 37-10-107 of the South Carolina Code Annotated provides:

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement:

- (a) to lend or borrow money;
- (b) to defer or forbear in the repayment of money; or
- (c) to renew, modify, amend, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

(2) Failure to comply with subsection (1) precludes an action or defense based on any of the following legal or equitable theories:

- (a) an implied agreement based on course of dealing or performance or on a fiduciary relationship;
- (b) promissory or equitable estoppel;
- (c) part performance, except to the extent that the part performance may be explained only by reference to the alleged promise, undertaking, accepted offer, commitment, or agreement; or
- (d) negligent misrepresentation.

S.C. Code Ann. § 37-10-107.

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Plaintiff alleges the lender's requirement for a Common Road Maintenance Agreement to be in place for the care and maintenance of the private road was improper under custom and/or applicable State and/or Federal lending guidelines. The Plaintiff does not allege that he had a written contract with the bank. Plaintiff merely claims that the contracts with the Hamners expired before Hamners loan application could be approved as a result of the RMA requirement of the bank. Plaintiff alleges, in the alternative, that SCBT directed the Hamners to purchase a different property, but could provide not even a scintilla of evidence to support that bare allegation. In fact, the only evidence in the record is that the Hamners very much wanted to purchase the 10 Meredith Lane property; diligently tried to help Plaintiff obtain the required signatures on the RMA; provided all the necessary documents to the bank for loan approval; and were ready, willing, and able to close if the loan had been approved.²

Plaintiff has not alleged or otherwise provided a writing to evidence any material terms and/or conditions of the alleged promises or representations made to him therefore his claims fail as a matter of law. See Carolina First Bank v. Lucas, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat'l Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000). Specifically, Plaintiff has not alleged that he "received a writing from the party to be charged [i.e. SCBT] containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing." S.C. Code Ann. § 37-10-107(1)(c). Accordingly, as a matter of law, Plaintiffs cannot "maintain an action for legal ... relief ... based upon [SCBT's alleged] failure to lend ... money [to Hamners.]" S.C. Code

² The record indicates that approximately two (2) weeks after the April 5th, 2010 closing deadline, the Hamners contacted a Realtor and began to look for another property, due, in part, to receiving notice from their Landlord that they would have to vacate their rental home. The record further indicates that on or about April 21st, 2010, the Hamners entered into an agreement to purchase a home and that the closing on that home occurred on May 28th, 2010.

Ann. § 37-10-107(1)(a). Under these circumstances, Plaintiff cannot establish his claims against SCBT, as a matter of law.³

Further, Plaintiff can point to no written agreement, law or regulation that limits the banks ability to determine their underwriting standards and requirements for lending. A key purpose of the lenders statute of frauds is to protect financial institutions and other lenders from claims outside the four corners of an agreement or that are inconsistent with the written agreements outlining the terms of the transaction. Because the statutes within Title 37 should "be liberally construed and applied to promote [Title 37's] underlying purposes and policies," any question regarding the applicability of section 37-10-107 to the alleged agreement is resolved in Defendant's favor. See S.C. Code Ann. § 37-10-102(1).

Section 37-10-107 Bars Fraud, Civil Conspiracy, Negligent Misrepresentation and UTPA Claims.

³ The Plaintiff could point to no authority that would allow a Seller, or other third party Plaintiff, to assert causes of action against a lender for failure to approve a loan for a separate buyer. If a Seller or other third party could assert such a cause of action, the potential number of suits would be limitless every time a buyer is denied a loan. Vendors such as material suppliers, subcontractors, etc. would be able to assert claims against a lender who fails to approve a buyer's construction loan, etc.

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South Carolina state and federal trial courts have found that fraud, negligent misrepresentation, civil conspiracy and UTPA claims are barred by Section 37-10-107. See e.g. Lands Inn, Inc. v. Branch Banking and Trust Company of South Carolina, C.A. No. 2:98-158-23 (S.C. Com. Pl. April 12, 1999) (citing Derrick v. Branch Banking and Trust Company of South Carolina, 96-CP-42-2095 (S.C.Ct.Cm. P.) Kerr v. Branch Banking & Trust Co., 2009-CP-10-7516 (S.C. Bus. Ct. 9th Cir. Nov 8, 2011) amended June 15, 2012. Notwithstanding the foregoing, alternatively Plaintiffs' allegations are insufficient to state a claim for negligent misrepresentation, negligence, conspiracy, interference with contract or lender liability. Plaintiffs' claim for negligent misrepresentation fail as a matter of law because Plaintiff has not alleged a legally viable false statement or any fact that would tend to create a right for them to rely on any alleged misrepresentation by Defendants. Plaintiff's only claim appears to be that the lender's underwriting requirement for an RMA was not proper and should not have been required as a condition of a loan. In this case, there is no false statement claimed. Negligent misrepresentation is predicated upon the transmission of a negligently made false statement. See Armstrong v. Collins, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005); Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003); Robertson v. First Union Nat'l Bank, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App. 2002); Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001); West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).

A negligent misrepresentation case requires that there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. See Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526-27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller

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concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud). More specifically, the alleged false representation must be of a present or pre-existing fact. See Spires v. Acceleration Nat'l Ins. Co., 417 F. Supp. 2d 750, 755-56 (D.S.C. 2006) (applying South Carolina law). The negligent representation cannot be based on unfulfilled promises or statements as to future events. See Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993). In addition, an integral component of this element is that the representation be false at the time it is made. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994) (applying South Carolina law).

Plaintiff at most has only alluded to and alleged that "[d]efendants made a false statement to Plaintiff regarding their intention to close the loan and/or their reasons for failing to close the loan. (See Paragraph 74 Amended Complaint). Even if taken as true, such a representation does not relate to present or pre-existing fact cannot, as a matter of law, satisfy the requirements for a claim for negligent misrepresentation.

No Right to Rely

In addition to showing that a false representation was made, a plaintiff must also show that he had a right to rely on such representation in order to pursue a claim for either negligent misrepresentation or fraudulent misrepresentation. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994) (applying South Carolina law). Plaintiff did not have a right to rely on any statements because Plaintiff did not have a fiduciary relationship with either defendant. When there is no fiduciary relationship between the parties and the situation involves an arm's length transaction between mature, educated parties, as is the case here, there is no right

to rely. Lands Inn, Inc., supra. (citing Florentine Corp. v. PEDA I, Inc., 339 S.E.2d 112, 114 (S.C. 1985)); see also First Savings Bank, FSB v. Capital Investors, Inc., 450 S.E.2d 83 (Ct. App. 1994), rev'd in part on other grounds, 459 S.E.2d 307 (S.C. 1995).

Plaintiff makes no allegations as to any fiduciary relationship between SCBT and them. Instead, as the bulk of Plaintiffs' allegations reflect, the relationship at issue is the one between SCBT and Hamners and Plaintiff and Hamners but not Plaintiff and SCBT. Plaintiff has not alleged any specific facts that would create a fiduciary relationship between Plaintiff and SCBT. Accordingly, Plaintiff has not sufficiently pled and cannot establish that he had a right to rely on any alleged false statements by SCBT.

Additionally, Plaintiff cannot establish a claim for negligent or intentional lender liability against SCBT. To prove such a claim, Plaintiff must establish a duty of care, a breach of that duty and damages proximately caused by the breach. McKnight v. South Carolina Dept. of Corrections, 684 S.E.2d 566, 569 (S.C.Ct.App.2009). In this case, SCBT had no duty to Plaintiff. Plaintiff alleges that "SCBT owed Plaintiff a duty of care because SCBT possessed expertise or special knowledge that would ordinarily make it reasonable for Plaintiff to rely on SCBT and because SCBT had pecuniary interest in the transaction and [SCBT] breached its duty of by failing to exercise care." (See paragraph 77 of the Amended Complaint). However, Plaintiff cannot manufacture an alleged duty on behalf of SCBT. Instead, "duty is generally defined as the obligation to conform to a particular standard of conduct toward another." Murray v. Bank of America, N.A., 354 S.C. 337, 343, 580 S.E.2d 194, 197 (Ct. App. 2003). "Ordinarily, the common law imposes no duty on a person to act." *Id.* "An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Id.* In this case, SCBT did not have a duty to Plaintiff as the Hamners were the

applicants for financing and Plaintiff was not. SCBT did not owe any duty to Plaintiff via Hamners application for financing and, therefore, Plaintiff cannot establish a claim for negligence or lender liability.

Civil Conspiracy

There are three elements to the tort of civil conspiracy: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; and (3) causing the plaintiff special damage. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 682 S.E.2d 871, 874 (Ct. App. 2009). Any claim for civil conspiracy must contain or allege additional facts "in furtherance of the conspiracy rather than reallege other claims within the complaint." Id. Furthermore, the plaintiff must plead "special damages" that are different then the damages sought in the other causes of action." Id. at 875.

The Plaintiff has failed to allege "additional facts" particular to or in furtherance of the alleged conspiracy. The plaintiff has merely recycled or realleged facts from the other claims within the complaint which is fatal to his civil conspiracy cause of action. Additionally, the plaintiff has plead the same special damages in four of the five causes of action cited but has failed to distinguish any "special damages" that relate only to the civil conspiracy cause of action. Therefore, as with the recycling of facts, the plaintiff's civil conspiracy cause of action fails on its face.

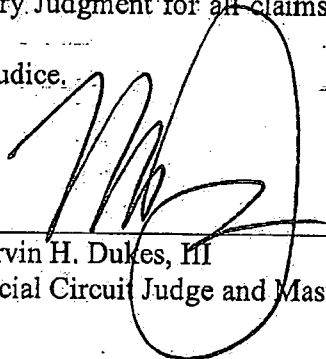
Finally, the Plaintiff has merely recited the elements of the cause of action. A party adverse to a Motion for Summary Judgment may not rest upon mere allegations, but must in his response, by affidavits or as otherwise provided in the Rule, set forth specific facts showing that there is a genuine issue for trial. S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 188-89, 322 S.E.2d 453, 457 (Ct. App. 1984). In the event the adverse party "makes no

factual showing in opposition to a Motion for Summary Judgment, the "court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as a matter of law." Id.

Finally, Plaintiff, as a person without privity with the bank and to which no duty is owed under Hamners application for financing has not pled sufficient allegations against SCBT to support a claim for violation of the SCUTPA. Plaintiffs' claims are essentially that SCBT failed to follow federal lending guidelines for the Hamners applications. Such allegations and claims are generally a state and federally regulated arena. "Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States ..." are generally exempt from the provisions of the SCUTPA. S.C. Code Ann. § 39-5-40(a).

Additionally, to be actionable under the SCUTPA, the unfair or deceptive act or practice must have an impact upon the public interest. Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347 (Ct. App. 1986). Here, Plaintiff merely offers a conclusion of law that the "unfair acts and practices of Defendants have an impact on the public interest, have potential for repetition." Absent from the Amended Complaint are any facts that would even tend to show that the supposed conduct impacted the public directly or that the conduct is otherwise capable of repetition. At most, the Amended Complaint alleges, in sum, that SCBT failed to follow a lending guideline and that failure prevented SCBT from providing financing to the Hamners before the Hamner/Plaintiff contracts expired by operation of time. These allegations do not comprise "unfair or deceptive acts" that are actionable under the SCUTPA because business relationships that affect only the parties to the complained-of transaction are not actionable under the SCUTPA. See Novack Enterprises, Inc. 351 S.E.2d at 349-50.

For the reasons set forth herein, Summary Judgment for all claims and causes of action is hereby GRANTED to all Defendants with prejudice.


Marvin H. Dukes, III
Special Circuit Judge and Master In Equity

Beaufort, South Carolina

6/5, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BENJAMIN GECY,

Plaintiffs,

vs.

SOUTH CAROLINA BANK & TRUST,
JAIME HAMNER AND DEBORAH
HAMNER,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-07-1778

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
and AMENDING ORDER GRANTING
SUMMARY JUDGMENT

MOTION FOR RECONSIDERATION

This matter originally came before the Court on February 21, 2014, on the Defendants' Motion for Summary Judgment. Plaintiff appeared pro se and Defendants Hamner were represented by attorney James Wegmann and Defendant SCBT was represented by attorney Samuel Scoville. The Court fully considered all of the evidence presented and the arguments of the parties and granted the Defendants' Motions for Summary Judgment by order dated and filed June 5th, 2014.

The matter thereafter came before the Court on August 5, 2014, on Plaintiff's Motion for Reconsideration of the Order Granting Summary Judgment dated June 5, 2014. Appearing at the appointed place and time was Robert Mathison, appearing on behalf of the Plaintiff; James J. Wegmann, appearing on behalf of the Hamners; and Thomas Holloway, appearing on behalf of SCBT. In between the time of the original hearing on February 21st, 2014 and the reconsideration hearing on August 5th, 2014, the Supreme Court of South Carolina issued a

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ruling in the consolidated case of *Kerr v. Branch Banking and Trust Co.* 408 S.C. 328, 759 S.E.2d 724 (April 9, 2014). Having considered the Motion and supporting Memorandum and after hearing the various arguments of Counsel, including Plaintiff's arguments related to the Restatement (Second) of Torts §552, I hereby find that *Kerr v. Branch Banking and Trust Co.* 408 S.C. 328, 759 S.E.2d 724 (April 9, 2014), is controlling in this matter. Consequently, I am amending the previous Summary Judgment Order of June 5th, 2014 to incorporate the *Kerr* Court's recent reported decision.¹

The incorporation of the *Kerr* decision and removal of S.C. Code § 37-10-107 discussion from the June 5th, 2014 order does not change the ultimate outcome that the Defendants are entitled, as a matter of law, to Summary Judgment and therefore the Plaintiff's Motion for Reconsideration is hereby denied. To the extent this order conflicts with the prior order of June 5th, 2014, this order controls.

Modified and Amended Order Granting Summary Judgment

FACTS

The Plaintiff asserts five (5) causes of actions: (1) Tortious Interference with Contract (Defendant SCBT Only); (2) Breach of Contract (Hamners Only); (3) Civil Conspiracy (Both Defendants); (4) Negligent Misrepresentation (Both Defendants); and (5) Unfair Trade Practices (SCBT Only). Plaintiff's causes of action stem from two contracts, the first to purchase a lot located at 10 Meredith Lane on Lady's Island and the second to build a home on that lot. The contracts were form contracts that were filled out by and provided by Plaintiff for the Hamners

¹ This Court's June 5th, 2014 Order granting summary judgment was based in part on S.C. Code § 37-10-107. The Supreme Court in *Kerr* specifically found that 37-10-107 "only applies to suits between lenders and borrowers" *Id.* at Footnote 5.

signatures. Each contract contained a financing contingency that stated in part, "[b]uyer's obligation under this agreement is contingent on Buyer obtaining said loan." The financing contingency in the lot sale contract was not limited to a specific type of loan, amount of loan, interest rate, or loan to value ratio. The financing contingency in the home construction contract was not limited to a specific type of loan, amount of loan, or interest rate but did contain a statement that, "[b]uyer shall apply for a maximum 100% loan (loan-to-value)...."

The Hamners were referred to SCBT by the Plaintiff to finance the transaction. The Hamners applied for a 100% construction loan that would, at the completion of construction, roll into a 100% VA loan. The contracts stated that the original closing date was March 5th, 2010 and both contracts contained a potential thirty (30) day extension to April 5th, 2010 in the event, through no fault of either party, a contingency had not been met. On both March 5th, 2010 and April 5th, 2010, the financing contingency had not been met because, at a minimum, the Plaintiff had not provided SCBT with a fully executed Road Maintenance Agreement (RMA) which was required by the Bank's underwriting procedures as a condition of loan approval.² The Hamners provided SCBT with all the requested documents and information pursuant to the financing contingency and took all actions requested by the Bank to process the loan. The Hamners were ready, willing, and able to perform on the contracts and close on the construction loan on either March 5th, 2010 or April 5th, 2010. Unfortunately, however, a completed and signed Road

² The Plaintiff's causes of action are all predicated on his belief that the Road Maintenance Agreement, required by SCBT, was an unnecessary condition of loan approval and therefore had SCBT followed "proper" underwriting guidelines, the transaction would have closed. Whether a bank chooses to make a loan or requires a road maintenance agreement as a condition of funding is solely within the purview of the Bank and their loan approval process. The deposition testimony offered by the Plaintiff of the two SCBT employees, Bruce Van Horn and Doug Jacobs, indicates clearly that the road maintenance agreement was a requirement of funding and that the loan was not approved because SCBT never received a signed road maintenance agreement. This is consistent with the SCBT's Credit Denial Letter offered by the Plaintiff stating, "[d]eclined due to not be[ing] able to obtain a Road Maintenance Agreement for the subject property." This is corroborated further by the affidavit of Kenneth Tootle, who was the attorney representing both the Plaintiff and the Hamners in the potential closing of the transaction in which he states, SCBT "also made it clear that my title company could not have any exceptions to the title report."

Maintenance Agreement, as required by SCBT for loan approval, was never provided to the Bank and the contracts, by their very terms, expired on the close of business April 5, 2010.

LEGAL ANALYSIS

Rule 56(c) of the South Carolina Rules of Civil Procedure requires Summary Judgment to be granted if "there is no genuine issue of material fact and ... the moving party is entitled to judgment as a matter of law. S.C.R. Civ. P. 56(c). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by showing, that is pointing out to the trial court, that there is an absence of evidence to support the nonmoving party's case." Baughman v. Am.Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The purpose of Summary Judgment is to expedite the disposition of cases not requiring the services of fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "The trial court should grant Summary Judgment if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Turner v. Milliman, 381 S.C. 101, 108, 671 S.E.2d 636 640 (Ct. App. 2009) (citing S.C.R. Civ. P. 56(c) and Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

When a party makes a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 188-89, 322 S.E.2d 453, 457 (Ct. App. 1984). If the adverse party does not respond accordingly, the trial court shall enter summary

judgment against him if appropriate. *Id.* at 189, 322 S.E.2d at 457. When a party makes no factual showing in opposition to a motion for summary judgment the trial "court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as a matter of law." *Id.*; see also Hancock vs. Mid-South Mgm't Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009) (indicating summary judgment is appropriate where plaintiff has not proven even a scintilla of evidence).

Ongoing Discovery

The plaintiff requested a continuance from the hearing of this Motion on a claim discovery was not complete. Plaintiff filed a Verified Complaint against the Defendants on April 15, 2010. The parties exchanged extensive written discovery and SCBT filed a Motion for Summary Judgment on March 19, 2012 and the Harnners joined in the summary judgment motion shortly thereafter. Plaintiff's counsel was relieved from representing Plaintiff on May 8, 2012. The case was stayed on or about July 7, 2012 when Mr. Gecy filed for Chapter 7 Bankruptcy protection in the United States Bankruptcy Court. After the bankruptcy proceeding was complete this case was restored to the active roster on Motion of the Plaintiff and the Motion for Summary Judgment was restored to the Motions Roster. Since the time the case was restored, Plaintiff requested and was granted the opportunity to conduct depositions and in fact has conducted additional discovery including the taking of six depositions. During the discussion of scheduling this Motion all parties, including the Plaintiff, agreed to the hearing date of February 21, 2013. During the Summary Judgment hearing, Plaintiff requested more time to take two (2) additional depositions.

This Motion for Summary Judgment is being heard nearly three years after the filing of the Verified Complaint and two years after the filing of the Motion for Summary Judgment.

Extensive written discovery has been exchanged and all parties to the action have been deposed along with five fact witnesses. Generally, it is not premature for the trial court to grant summary judgment after all parties have been deposed because the litigants have had a full and fair opportunity to develop the record of the case. See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 594, 545 S.E. 2d 500, 506 (2001), finding summary judgment was not premature because defendant "had a full and fair opportunity to develop the record on this issue and failed to do so."); also see Bayle v. South Carolina Department of Transportation, 344 S.C. 115, 128-29, 542 S.E.2d 736, 742-43 (Ct. App. 2001) (stating it was not error to grant summary judgment because no further discovery would have contributed to the resolution of the case).

This case is sufficiently mature and all parties have had a full and fair opportunity to develop the record and more than enough time to complete the record for purposes of summary judgment. All parties previously agreed to the hearing date of February 21, 2014. The Plaintiff was questioned by the Court extensively concerning the two depositions he wished to take that spawned the Motion for Continuance and after much discussion, and for reasons stated within, no further discovery would contribute to the resolution of issues in the case.

Breach of Contract

The Plaintiff states in his pleadings that the "Hamners failed to perform and thereby unjustifiably breached the Agreement to Buy and Sell Real Estate for 10 Meredith Lane." The Hamners ability to perform was predicated upon obtaining financing of a construction loan from SCBT. It is well settled law in South Carolina that a failure of a financing contingency clause will excuse the buyer from liability under the contract with the seller. See, Storen v. Meadors, 295 S.C. 438, 440, 369 S.E.2d 651, 652 (Ct. App. 1988) and Gregory v. Taylor, 042610 SCCA,

2010-UP-252. The Hamners made a good faith effort to obtain financing and as part of the process and requirements under the financing clause, provided the Bank with all documents and information necessary to obtain financing. In addition, the record is clear that the Hamners assisted the Plaintiff in attempting to get the required signatures on the Road Maintenance Agreement which was an SCBT requirement for loan approval.

The Plaintiff argues that SCBT's requirement of a Road Maintenance Agreement was an unnecessary underwriting requirement and that the bank should have approved the Hamner's loan without it and allowed the closing to go through prior to the April 5th, 2010 deadline. Even if arguably the Road Maintenance Agreement requirement was ultimately found to be unnecessary, the Hamners have no control over the SCBT's underwriting guidelines and the Bank issued a loan denial to the Hamners based on a lack of a fully executed Road Maintenance Agreement. The Court questioned the Plaintiff extensively as to whether or not he had any evidence that SCBT had approved the loan and the Hamners had refused to close on the approved loan. The Plaintiff agreed the loan was never approved but again reiterated that it wasn't approved because SCBT made the Road Maintenance Agreement a condition of the loan approval which the Plaintiff believes is an unnecessary condition to financing approval.

There is no genuine issue and the parties all agree that the Hamners' loan to purchase the property and build the home was never approved by SCBT either by the original closing date of March 5th, 2010 or by the extension period of April 5th, 2010. Consequently, the financing contingency clauses of the Plaintiff/Hamner contracts operate to insulate the Hamners from all contractual liability under the contracts and therefore Plaintiff's Breach of Contract claim against the Hamners is dismissed with prejudice.

No Duty Owed to Plaintiff

The Supreme Court in Kerr affirmed the trial court's decision to grant motions to dismiss and held that the bank did not owe a duty of care to non-customer investors of a company. In Kerr the Plaintiff's attempted to frame their claims as alleged misrepresentations made to them in their capacity as investors of a company that had a relationship with the bank. The Court aptly noted that, "at it's core, this case resolves around contractual relationships between BB & T and it's customer, Skywaves Company... [and] our inquiry here is confined to whether the Plaintiffs -- as investors directors, officers, and shareholders of Company-- may maintain a lawsuit [for negligent misrepresentation, fraudulent inducement, negligence, and Unfair Trade Practices Act] ... for what amounts to a breach of contract between Company and BB & T." The Court stated, "[W]e find there is no basis in the law for a finding that BB & T owed a duty to appellant, as non-customer investors ..."

Accordingly, I also find that there is no basis in law to allow Plaintiff, to maintain a lawsuit for the stated claims, as a non-party to the Hamner's application to the bank for mortgage financing.

Negligent Misrepresentation

Notwithstanding the complete bar to Plaintiff's claims as required by Kerr, Plaintiffs' allegations are also insufficient to state a claim for negligent misrepresentation, negligence, conspiracy, interference with contract or lender liability. Plaintiffs' claim for negligent misrepresentation fails as a matter of law because Plaintiff has not alleged a legally viable false statement or any fact that would tend to create a right for them to rely on any alleged misrepresentation by Defendants. Plaintiff's only claim appears to be that the lender's

underwriting requirement for an RMA was not proper and should not have been required as a condition of a loan. In this case, there is no false statement claimed. Negligent misrepresentation is predicated upon the transmission of a negligently made false statement. See Armstrong v. Collins, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005); Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003); Robertson v. First Union Nat'l Bank, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App. 2002); Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001); West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).

A negligent misrepresentation case requires that there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. See Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526-27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud). More specifically, the alleged false representation must be of a present or pre-existing fact. See Spires v. Acceleration Nat'l Ins. Co., 417 F. Supp. 2d 750, 755-56 (D.S.C. 2006) (applying South Carolina law). The negligent representation cannot be based on unfulfilled promises or statements as to future events. See Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993). In addition, an integral component of this element is that the representation be false at the time it is made. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994) (applying South Carolina law).

Plaintiff at most has only alluded to and alleged that "[d]efendants made a false statement to Plaintiff regarding their intention to close the loan and/or their reasons for failing to close the loan. (See Paragraph 74 Amended Complaint). Even if taken as true, such a representation does not relate to present or pre-existing fact and therefore cannot, as a matter of law, satisfy the requirements for a claim for negligent misrepresentation.

No Right to Rely

In addition to showing that a false representation was made, a plaintiff must also show that he had a right to rely on such representation in order to pursue a claim for either negligent misrepresentation or fraudulent misrepresentation. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994) (applying South Carolina law). Plaintiff did not have a right to rely on any statements because Plaintiff did not have a fiduciary relationship with either defendant. When there is no fiduciary relationship between the parties and the situation involves an arm's length transaction between mature, educated parties, as is the case here, there is no right to rely. Lands Inn, Inc., supra. (citing Florentine Corp. v. PEDA I., Inc., 339 S.E.2d 112, 114 (S.C. 1985)); see also First Savings Bank, FSB v. Capital Investors, Inc., 450 S.E.2d 83 (Ct. App. 1994), rev'd in part on other grounds, 459 S.E.2d 307 (S.C. 1995).

Plaintiff makes no allegations as to any fiduciary relationship between SCBT and them. Instead, as the bulk of Plaintiffs' allegations reflect, the relationship at issue is the one between SCBT and the Hamners and Plaintiff and the Hamners but not Plaintiff and SCBT. Plaintiff has not alleged any specific facts that would create a fiduciary relationship between Plaintiff and SCBT. Accordingly, Plaintiff has not sufficiently pled and cannot establish that he had a right to rely on any alleged false statements by SCBT.

Additionally, Plaintiff cannot establish a claim for negligent or intentional lender liability against SCBT. To prove such a claim, Plaintiff must establish a duty of care, a breach of that duty and damages proximately caused by the breach. McKnight v. South Carolina Dept. of Corrections, 684 S.E.2d 566, 569 (S.C.Ct.App.2009). In this case, SCBT had no duty to Plaintiff. Plaintiff alleges that "SCBT owed Plaintiff a duty of care because SCBT possessed expertise or special knowledge that would ordinarily make it reasonable for Plaintiff to rely on SCBT and because SCBT had pecuniary interest in the transaction and [SCBT] breached its duty of by failing to exercise care." (See paragraph 77 of the Amended Complaint). However, Plaintiff cannot manufacture an alleged duty on behalf of SCBT. Instead, "duty is generally defined as the obligation to conform to a particular standard of conduct toward another." Murray v. Bank of America, N.A., 354 S.C. 337, 343, 580 S.E.2d 194, 197 (Ct. App. 2003). "Ordinarily, the common law imposes no duty on a person to act." *Id.* "An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Id.* In this case, SCBT did not have a duty to Plaintiff as the Hamners were the applicants for financing and Plaintiff was not. SCBT did not owe any duty to Plaintiff via Hamners application for financing and, therefore, Plaintiff cannot establish a claim for negligence or lender liability.

Civil Conspiracy

There are three elements to the tort of civil conspiracy: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; and (3) causing the plaintiff special damage. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 682 S.E.2d 871, 874 (Ct. App. 2009). Any claim for civil conspiracy must contain or allege additional facts "in furtherance

of the conspiracy rather than reallege other claims within the complaint.” Id. Furthermore, the plaintiff must plead “special damages” that are different then the damages sought in the other causes of action.” Id. at 875.

The Plaintiff has failed to allege “additional facts” particular to or in furtherance of the alleged conspiracy. The plaintiff has merely recycled or realleged facts from the other claims within the complaint which is fatal to his civil conspiracy cause of action. Additionally, the plaintiff has plead the same special damages in four of the five causes of action cited but has failed to distinguish any “special damages” that relate only to the civil conspiracy cause of action. Therefore, as with the recycling of facts, the plaintiff’s civil conspiracy cause of action fails on its face.

Finally, the Plaintiff has merely recited the elements of the cause of action. A party adverse to a Motion for Summary Judgment may not rest upon mere allegations, but must in his response, by affidavits or as otherwise provided in the Rule, set forth specific facts showing that there is a genuine issue for trial. S.C. Elec. & Gas Co. v. Combustion Eng’g, Inc., 283 S.C. 182, 188-89, 322 S.E.2d 453, 457 (Cl. App. 1984). In the event the adverse party “makes no factual showing in opposition to a Motion for Summary Judgment, the “court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as a matter of law.” Id.

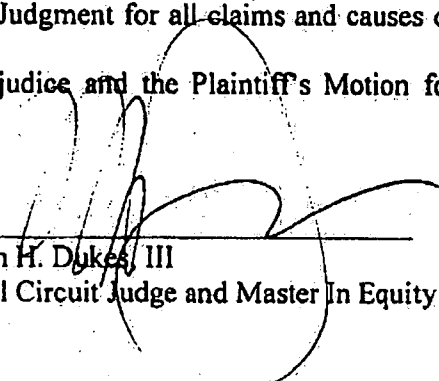
Finally, Plaintiff, as a person without privity with the bank and to which no duty is owed under the Hamners application for financing has not pled sufficient allegations against SCBT to support a claim for violation of the SCUTPA. Plaintiff’s claims are essentially that SCBT failed to follow federal lending guidelines for the Hamners applications. Such allegations

and claims are generally a state and federally regulated arena. "Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States . . ." are generally exempt from the provisions of the SCUTPA. S.C. Code Ann. § 39-5-40(a).

Additionally, to be actionable under the SCUTPA, the unfair or deceptive act or practice must have an impact upon the public interest. Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347 (S.C. Ct. App. 1986). Here, Plaintiff merely offers a conclusion of law that the "unfair acts and practices of Defendants have an impact on the public interest, have potential for repetition." Absent from the Amended Complaint are any facts that would even tend to show that the supposed conduct impacted the public directly or that the conduct is otherwise capable of repetition. At most, the Amended Complaint alleges, in sum, that SCBT failed to follow a lending guideline and that failure prevented SCBT from providing financing to the Hamners before the Hamner/Plaintiff contracts expired by operation of time. These allegations do not comprise "unfair or deceptive acts" that are actionable under the SCUTPA because business relationships that affect only the parties to the complained-of transaction are not actionable under the SCUTPA. See Novack Enterprises, Inc. 351 S.E.2d at 349-50.

For the reasons set forth herein, Summary Judgment for all claims and causes of action is hereby GRANTED to all Defendants with prejudice and the Plaintiff's Motion for Reconsideration is DENIED.

Beaufort, South Carolina
_____, 2014



Marvin H. Dukes, III
Special Circuit Judge and Master In Equity

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-01778

BENJAMIN GECY

SOUTH CAROLINA BANK & TRUAT, ET AL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

THIS CAME BEFORE ME ON PLAINTIFF'S MOTION TO PLACE CASE BACK ON THE ACTICE ROSTER. AFTER HEARING FROM BOTH PARTIES AND REVIEW OF THE FILE I HEREBY GRANT THE MOTION AND RESTORE THE CASE TO THE JURY ROSTER.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

032

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of Jan, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Jan, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

PRO-SE

JAMES J. WEGMANN

THOMAS A. HOLLOWAY

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

033

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07- **1778**

Benjamin Gecy,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

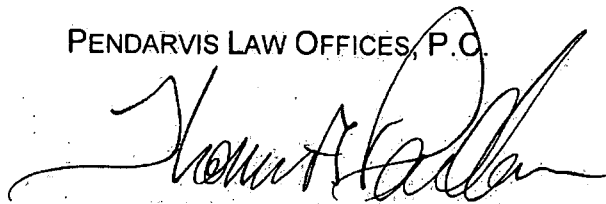
SUMMONS

11 APR 15 PM 3:10
CLERK OF COURT
BEAUFORT COUNTY
S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office, PENDARVIS LAW OFFICES, P.C., 500 Carteret St., Suite A, Beaufort, SC 29902-5066, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorney for the Plaintiff

Beaufort, South Carolina
April 14, 2011

034

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07- /778

Benjamin Gecy,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

VERIFIED COMPLAINT
(Jury Trial Demanded)

(Tortious Interference with Contract)
(Breach of Contract)
(Civil Conspiracy)
(Negligent Misrepresentation)
(Unfair Trade Practices)

FILED
11 APR 15 PM 3:10
CLERK OF COURT
S.C.

Plaintiff, Benjamin Gecy, complaining of Defendants, SOUTH CAROLINA BANK & TRUST and Jaime and Deborah Hamner would respectfully show unto the Court as follows:

PARTIES

1. Plaintiff, Benjamin Gecy, is a citizen and resident of Beaufort, South Carolina.
2. Defendant, SOUTH CAROLINA BANK & TRUST (SCB&T), is, upon information and belief, a corporation located in and doing business in Beaufort, South Carolina.
3. Defendants, Jaime and Deborah Hamner (collectively referred to as "the HAMNERS"), are, upon information and belief, citizens and residents of Beaufort County, South Carolina.

JURISDICTION

4. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803 (1976), and its plenary powers.

035

VENUE

5. Venue is proper in Beaufort County as Defendant South Carolina Bank & Trust is a corporation which has offices and agents located in Beaufort County, South Carolina. Also, Defendants Jaime and Deborah Hamner and Plaintiff Gecy are residents of Beaufort County, South Carolina.

FACT

6. The negligent acts, omissions, and liability of Defendant, SCB&T, includes the acts and/or omissions of their agents, principals, employees and/or servants, both directly and vicariously, pursuant to principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

7. In January 2010, GECY and the HAMNERS began discussions regarding the HAMNERS purchasing a 7 acre parcel of property owned by GECY located at 10 Meredith Lane. The HAMNERS also discussed hiring GECY's construction company, RIVER CITY CONSTRUCTION, to build a residence on the property.

8. In January 2010, GECY received an offer from Roberto and Danielle Fernandez to purchase 3.5 of the 7 acres of property located at 10 Meredith Lane.

9. In January 2010, GECY informed the HAMNERS of the offer from Roberto and Danielle Fernandez and offered to sell the HAMNERS only 3.5 acres. The HAMNERS recommitted their intention and desire to purchase the entire 7 acre parcel.

10. On or about January 28, 2010, the HAMNERS entered into an AGREEMENT TO BUY AND SELL REAL ESTATE to sell their property located at 11 Southern Magnolia Drive, Beaufort, South Carolina.

11. On or about January 28, 2010, GECY served as the real estate agent for Defendants Jaime and Deborah Hamner for the sale of the HAMNERS property located at 11 Southern Magnolia Drive, Beaufort, South Carolina.

12. In January 2010, GECY assisted in securing a buyer, Richard Poole, to purchase the property located at 11 Southern Magnolia Drive from the HAMNERS.

13. In January 2010, GECY agreed to reduce his real estate commission earned in connection with the sale and purchase of 11 Southern Magnolia Drive, Beaufort, South Carolina.

14. It was understood by GECY and the HAMNERS that GECY would agree to reduce his real estate commission earned in connection with Richard Poole's purchase of 11 Southern Magnolia Drive from the HAMNERS in order to reduce the overall purchase price of the property and facilitate Mr. Poole's purchase of the property. It was further understood that GECY reduced his commission in order to facilitate the sale of the HAMNERS' property at 11 Southern Magnolia Drive so that the HAMNERS would be able to purchase the property, and finance the construction of a new home, at the 10 Meredith Drive property the HAMNERS intended to purchase from GECY.

15. On or about February 3, 2010, and based, in part, on the foregoing benefits from GECY, the HAMNERS entered into an AGREEMENT TO BUY AND SELL REAL ESTATE to purchase property located at 10 Meredith Lane, Beaufort, South Carolina for \$150,000.00.

16. On or about February 3, 2010, the HAMNERS entered into a NEW CONSTRUCTION AGREEMENT to have GECY build a house on the property located at 10 Meredith Lane, Beaufort, South Carolina for \$156,900.00.

17. In February 2010, based on the contracts with the HAMNERS, GECY rejected the offer from Roberto and Danielle Fernandez to purchase 3.5 acres of the 7 acre parcel located at 10 Meredith Lane.
18. In February 2010, the HAMNERS informed Gecy of their desired to obtain 100% financing, to which GECY referred them to a loan officer at SCB&T. The HAMNERS subsequently informed GECY that they were seeking conventional financing through SCB&T.
19. In February 2010, SCB&T issued a preliminary report for a real estate closing on 10 Meredith Lane.
20. On or about February 19, 2010, SCB&T sent Patricia Moody of Coastal Appraisal Service an appraiser commitment letter requesting a conventional loan appraisal for 10 Meredith Lane.
21. At all time relevant hereto, Patricia Moody has owned property with her primary residential home adjacent to the undeveloped 7 acre property located at 10 Meredith Lane.
22. In or about February 2010, SCB&T notified GECY that it would require a road maintenance agreement to be issued on Meredith Lane in order to approve the loan financing for the HAMNERS purchase of 10 Meredith Lane.
23. Road maintenance agreements are generally required for VA loan financing but not for conventional loan financing.
24. On or about February 25, 2010, SCB&T faxed preliminary loan closing instructions for the HAMNERS' purchase of 10 Meredith Lane.
25. On or about February 25, 2010, Coastal Appraisal Service issued an Uniform Appraisal Report valuing the land at 10 Meredith Lane for \$115,000 and the home to be

built on the property for \$330,000, well within the total contract price for the lot and residence.

26. On or about March 5, 2010, the HAMNERS requested, and GECY agreed to, an Addendum to AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane. The Addendum added a crawl space to the future house plans and required a non-refundable deposit of \$12,400 to be paid by the HAMNERS to GECY.

27. Although the AGREEMENT TO BUY AND SELL REAL ESTATE listed the closing date as March 5, 2010, the real estate closing did not occur on that date. The terms of the contract, however, provided an automatic 30 day extension to resolve any issues related to the closing.

28. In March 2010, GECY and the HAMNERS agreed to extend the AGREEMENT TO BUY AND SELL REAL ESTATE for an additional 30 days.

29. The parties to the contract and SCB&T continued to prepare to close the loan and perform under the purchase agreement after March 5, 2010 with the anticipation of a closing on or before April 5, 2010.

30. On or about March 6, 2010, SCB&T, by and through its agents and officers, approved the ROAD MAINTENANCE AGREEMENT for 10 Meredith Lane.

31. On or about March 6, 2010, the SCB&T loan officer sent an email to GECY, Kenneth L. Tootle, J.D., the closing attorney representing GECY and the HAMNERS, and an SCB&T Vice President approving the ROAD MAINTENANCE AGREEMENT and asked to be notified "when this will [be] signed so we can get a firm closing date."

32. Upon information and belief, the HAMNERS were financially qualified to obtain the loan financing from SCB&T and SCB&T never indicated that the HAMNERS' credit score was a basis for SCB&T denying the financing or delaying approval.

33. On or about March 6, 2010, SCB&T agreed that the ROAD MAINTENANCE AGREEMENT was the final condition to satisfy all requirements for final approval of the loan financing for the HAMNERS' purchase of 10 Meredith Lane.

34. On or about March 9, 2010, an SCB&T Vice President sent an email to GECY approving GECY commissioning a second, independent appraisal on the 10 Meredith Lane property. The email also stated "If you are willing to pay for the appraisal and delay the closing some more then we are okay with getting another appraisal done."

35. On or about March 10, 2010, Defendant Jaime Hamner called GECY to inform him that he had decided not to purchase 10 Meredith Lane expressing concerns about the ROAD MAINTENANCE AGREEMENT even though it was not required under conventional financing.

36. In March 2010, Kenneth L. Tootle, J.D., the closing attorney representing GECY and the HAMNERS, had a meeting with GECY and Defendant Jaime Hamner to inform the parties that the AGREEMENT TO BUY AND SELL REAL ESTATE gave both parties a 30 days extension on the contract to cure any deficiencies.

37. On or about March 26, 2010, GECY, John Ferguson, a neighboring land owner, and a surveyor, met at Meredith Lane to discuss the easement and the ROAD MAINTENANCE AGREEMENT.

38. On or about March 26, 2010, John Ferguson called Defendant Jaime Hamner and informed Defendant Hamner that he intended to sign the ROAD MAINTENANCE AGREEMENT.

and would help do what he could to ensure that the HAMNERS would be able to purchase 10 Meredith Lane. Upon information and belief, Defendant Jaime Hamner thanked Mr. Ferguson and never mentioned an intent not to perform the contracts.

39. On or about March 27, 2010, Defendant Jaime Hamner emailed GECY to describe the porch design and exterior color choices for the house to be built by GECY on the property at 10 Meredith Lane.

40. On or about April 5, 2010, the ROAD MAINTENANCE AGREEMENT for Meredith Lane was signed by all parties to the easement.

41. On or about April 5, 2010, GECY notified SCB&T via email that all parties to the easement had agreed to the ROAD MAINTENANCE AGREEMENT.

42. On or about April 5, 2010, GECY was ready, willing and able to close and perform both contracts.

43. On or about April 5, 2010, the 30 day extension for the closing date under the AGREEMENT TO BUY AND SELL REAL ESTATE expired.

44. On or about April 5, 2010, GECY had met all conditions under the contract, if any, and the HAMNERS unjustifiably failed to perform as required by the AGREEMENT TO BUY AND SELL REAL ESTATE.

45. Upon information and belief, the reason the HAMNERS chose not to perform was based upon the acts and/or omissions of SCB&T and/or an agreement between the HAMNERS and SCB&T.

46. On or about April 6, 2010, the SCB&T loan officer notified GECY of additional requirements in order to approve the loan financing of a copy of the survey, an ariel map

of the property and tax records identifying adjacent landowners to the easement for Meredith Lane.

47. On or about April 7, the offices of Kenneth L. Tootle, J.D., the closing attorney representing GECY and the HAMNERS, contacted SCB&T to schedule a closing date.

48. On or about April 8, the offices of Kenneth L. Tootle, J.D., again contacted SCB&T to schedule a closing date.

49. On or about April 8, the SCB&T loan officer sent an email to the offices of Kenneth L. Tootle, J.D. office responding to requests for a closing date by stating: "I am waiting on Mr. Hamner to call me back and will let you know when I hear from him."

50. On or about April 9, 2010, Frampton L. Harper, II, J.D. sent a letter on behalf of the HAMNERS to Kenneth L. Tootle, J.D. to inform GECY that the HAMNERS considered "the contract to purchase the acreage located [sic] 10 Meredith Land [sic] (bearing Tax Map Number R200 005 000 0291 0000) null and void." The letter further stated that the HAMNERS' financing was declined because of the "property appraisal" and because GECY was unable to provide a valid ROAD MAINTENANCE AGREEMENT by April 5, 2010.

51. On or about April 13, 2010, Kenneth L. Tootle, J.D. sent a letter to Frampton L. Harper, II, J.D. stating that, in his opinion:

all contingencies made by the bank were completed prior to April 5th. I believe the road maintenance agreement was completed and forwarded to the bank on or before April 5th. Additionally, I understand a second appraisal was completed by Murry Steen which appraised the property at \$150,000 and the finished construction at \$405,000, which is equal to or exceeds the sales price contained in the contracts. I am informed all the parties to the closing, as well as the bank, accepted the new appraisals. With those conditions met in a timely manner, I contacted SCBT on several occasions, starting March 30th, by e-mail and telephone, requesting a closing package. Unfortunately Doug Jacobs at SCBT failed to return any of my contacts.

52. Upon information and belief, SCB&T directed or otherwise motivated the HAMNERS away from their contracts with GECY and into contracts or opportunities to purchase other property and other financing.

53. As a direct and proximate result of Defendants' tortious acts, Plaintiff GECY losses include, but are not limited to, \$150,000.00 profit from the breaches of the AGREEMENT TO BUY AND SELL REAL ESTATE and the NEW CONSTRUCTION AGREEMENT; costs for plan changes adding the crawlspace design, reduction of commission on sale of the HAMNERS' Magnolia Court property; costs of buying down Richard Poole's loan to ensure the sale of the HAMNERS' Magnolia Court property; cost of septic permit for 10 Meredith Lane; cost of installing a temporary power pole with SCE&G and Trademark Electric; cost of engineering plans for Beaufort County permit division; cost of clearing 6.88 acres as requested by Defendant Jaime Hamner; cost of the property survey; cost of additional appraisal as approved by SCB&T; costs associated with beginning four other construction projects in reliance upon selling 10 Meredith Lane and having to terminate construction when the HAMNERS and SCB&T refused to close; and attorney fees associated with the preparation of the ROAD MAINTENANCE AGREEMENT.

FOR A FIRST CAUSE OF ACTION
Defendant SCB&T Only
(Tortious Interference with Contract)

54. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

55. The AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane is a valid contract between GECY and the HAMNERS.

56. The NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane is a valid contract between GECY and the HAMNERS.

57. SCB&T, individually and/or through its respective agents, servants, employees and managers, knew of the existence of the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane between GECY and the HAMNERS.

58. SCB&T, individually and/or through its respective agents, servants, employees and managers, knew of the existence of the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane between GECY and the HAMNERS.

59. SCB&T, individually and/or through its respective agents, servants, employees and managers, intentionally and unjustifiably procured the HAMNERS' breach of the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane between GECY and the HAMNERS.

60. SCB&T, individually and/or through its respective agents, servants, employees and managers, intentionally and unjustifiably procured the HAMNERS' breach of the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane between GECY and the HAMNERS.

61. As a direct and proximate result of SB&T's tortious interference with the binding contract entered into by GECY and THE HAMERS, by the actions and omissions as specified herein, GECY sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

FOR A SECOND CAUSE OF ACTION
Defendants Jaime and Deborah Hamner Only
(Breach of Contract)

62. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

63. GECY entered into a binding contract with the HAMNERS, known as the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane.

64. GECY entered into a binding contract with the HAMNERS, known as the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane.

65. GECY fulfilled all necessary preconditions, if any, of the contracts with the HAMNERS.

66. The HAMNERS failed to perform and thereby unjustifiably breached the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane.

67. The HAMNERS failed to perform and thereby unjustifiably breached the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane.

68. As a direct and proximate result of the HAMNERS' breach of their contractual duties by the actions and omissions as specified herein, GECY sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy)

69. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

70. Upon information and belief, SCB&T, individually and/or through its respective agents, servants, employees and managers, and the HAMNERS conspired and agreed with each other and/or one another against GECY.

71. Upon information and belief, SCB&T, individually and/or through its respective agents, servants, employees and managers, and the HAMNERS conspired and agreed with each other and/or one another against GECY for the purpose of injuring GECY.

72. The civil conspiracy was furthered by the DEFENDANTS various acts and omissions; including, upon information and belief:

- a. SCB&T directed the HAMNERS away from the 10 Meredith Lane property and towards other property;
- b. the HAMNERS, partially based on SCB&T's direction, decided to purchase other property;

- c. SCB&T and the HAMNERS worked together to delay the closing date past the initial March 5, 2010 date under the contract; and
- d. SCB&T and the HAMNERS worked together to delay the closing date past the 30 day extension in April 2010.
- e. did not disclose their plans to beach the contracts and pursue other property;
- f. made false statements and/or omissions that allowed GECY to reasonably believe they intended to close on the property.

73. The DEFENDANTS combined and concurred with each other to damage GECY in order to unlawfully attempt to have the HAMNERS abandon their duties under the AGREEMENT TO BUY AND SELL REAL ESTATE; to abandon their duties under the NEW CONSTRUCTION AGREEMENT; to their duties under the ADDENDUM TO BUY AND SELL REAL ESTATE; and to intentionally and unjustifiably delay the final approval of loan financing until after the expiration date under the contracts.

74. DEFENDANTS' actions have caused special damages to GECY, in addition to his actual damages, including causing GECY to incur costs and lose substantial profits associated with the starting and halting of four other construction projects in reliance upon selling 10 Meredith Lane by April 2010.

75. As a direct and proximate result of SCB&T's conversion by the actions and omissions as specified herein, GECY sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

76. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

77. DEFENDANTS made material, false statements to GECY regarding their intention to close the loan and/or their reasons for failing to close the loan.

78. DEFENDANTS had a pecuniary interest to make such false statements.

79. The HAMNERS owed GECY a duty of care under their contracts with GECY to communicate truthful information to GECY.

80. SCB&T owed GECY a duty of care because SCB&T possessed expertise or special knowledge that would ordinarily make it reasonable for GECY to rely on SCB&T and because SCB&T had a pecuniary interest in the transaction.

81. DEFENDANTS breached their duty by failing to exercise due care.

82. GECY justifiably relied on the DEFENDANTS' misrepresentation as to their willingness to close on the loan transactions and as to their reasons for delaying closing.

83. As a direct and proximate result of DEFENDANTS' negligent misrepresentations by the actions and omissions as specified herein, GECY has sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
Defendant SCB&T Only
(Unfair Trade Practices)

84. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

85. SCB&T is a corporation that engages in trade and/or commerce.

86. SCB&T has violated the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10 et seq., by engaging in unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade and/or commerce.

87. SCB&T advertises and promises to provide loan financing for the purchase of land and construction of residences to qualified citizens of South Carolina.
88. SCB&T's unfair and deceptive acts affect the public interest.
89. Upon information and belief, SCB&T unfair and deceptive acts have been repeated
90. SCB&T's unfair and deceptive acts have the potential for repetition.
91. SCB&T's unfair and deceptive acts and promises proximately caused GECY's damages.
92. SCB&T's unfair and deceptive acts and promises were willful in that SCB&T knew or should have known that its conduct was a violation of the South Carolina Unfair Trade Practices Act.
93. As a direct and proximate result of SCB&T's unfair trade practices by the actions and omissions as specified herein, GECY sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

PUNITIVE DAMAGES

94. In addition to the actual damages, SCB&T and the HAMNERS' highly reckless, wanton, and irresponsible conduct as specified in certain causes of action in this Complaint entitle GECY to an award of punitive damages.

TRIAL BY JURY.

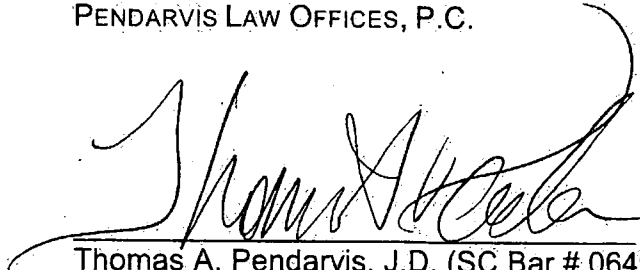
95. GECY demands a jury trial on all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Benjamin Gecy, prays for judgment against Defendants, SCB&T and the HAMNERS, jointly and severally, for all actual damages, consequential damages, special damages, incidental damages, statutory damages, for prejudgment interest, and for punitive damages, all in an amount to be more specifically proven at trial, and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', is written over a horizontal line.

Thomas A. Pendarvis, J.D. (SC Bar # 064918)
500 Carteret St Ste A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorney for Plaintiff, Benjamin Gecy

Beaufort, South Carolina
April 14, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-001778

Benjamin Gecy,

Plaintiff,

vs.

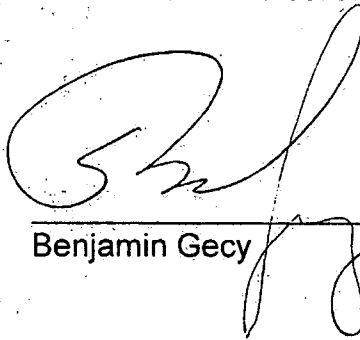
SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

**VERIFICATION
OF COMPLAINT**

APR 15 PM 3:11
CLERK OF COURT
S.C.

PERSONALLY appeared before me Benjamin Gecy, who, first being duly sworn, says: that he is the Plaintiff in the foregoing action; that he has read the foregoing Verified Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.



Benjamin Gecy

SWORN to before me this

14 day of April, 2011

Jennifer A. Clark

(L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 7-8-2015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BENJAMIN GECY,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST,

JAIME HAMNER AND DEBORAH

HAMNER,

Defendants,

IN THE COURT OF COMMON PLEAS

CA NO. 2011-CP-07-1778

ANSWER
(Jury Trial Demanded)

2011 JUN -8 PM 3:03
CLERK OF COURT
S.C.

Come now the Defendant, South Carolina Bank & Trust, reserving all rights under Motions made heretofore or herewith, answering the Complaint and allege and say: (a) that the Defendant denies all of the allegations of the Complaint except those allegations specifically admitted herein or hereinafter with qualification, (b) that those allegations of the Complaint admitted hereinafter with qualification are admitted only with the qualification stated, and, that addressing each paragraph of the Complaint and for Affirmative Defenses, would allege unto this Honorable Court, as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein is denied, and strict proof demanded thereof.
2. Responding to the allegations contained in paragraphs 1,2 and 3 of the Complaint, Defendant is without sufficient information to either admit or deny the allegations. To the extent the Court requires and Answer, the Defendant denies same and demands strict proof thereof.
3. Responding to the allegations contained in paragraphs 4 of the Complaint, the Defendant admits so much of the allegation that alleges that the Court has jurisdiction over these

matters pursuant to Article 5 of the South Carolina Constitution. As to the remaining allegations, the Defendant denies same and demands strict proof thereof.

4. Responding to the allegations in paragraph 5 of the Complaint, the Defendant admits so much of the allegation that alleges venue is proper as it relates to individual Defendants. As to the remaining allegations of venue relating to Defendants Hamner, the Defendant is without sufficient information to admit or deny the allegation. To the extent the Court requires an Answer, the Defendant denies same.

5. Responding to the allegations in paragraph 6 of the Complaint, the Defendant denies same and demands strict proof thereof.

6. Responding to the allegations in paragraph 7 of the Complaint, the Defendant is without sufficient information to admit or deny the allegations. To the extent the Court requires an Answer, the Defendant denies same and demands strict proof thereof.

7. Responding to the allegations in paragraphs 8, 9, 10, 11, 12 and 13 of the Complaint, the Defendant is without sufficient information to admit or deny the allegations. To the extent the Court requires an Answer, the Defendant denies same and demands strict proof thereof.

8. Responding to the allegations of paragraph 14 of the Complaint, the allegation is to the state of mind of the Plaintiff that requires no Answer, or the Defendant is without sufficient information to know the state of mind of the Plaintiff to either admit or deny the allegations. To the extent the Court requires an Answer, the Defendant denies same.

9. Responding to the allegations in paragraph 15 of the Complaint, the Defendant admits so much of the paragraph that an agreement to buy and sell real estate located at 10 Meredith Lane, Beaufort, South Carolina was entered into. As to the remaining allegations, Defendant denies

same and demands strict proof thereof.

10. Responding to the allegations in paragraph 15 of the Complaint, upon information and belief the Defendant admits same.

11. Responding to the allegations in paragraph 17 of the Complaint, the Defendant is without sufficient information to admit or deny the allegations. To the extent the Court requires an Answer, Defendant denies same and demands strict proof thereof.

12. Responding to the allegations in paragraph 18 and 19 of the Complaint, Defendant is without sufficient information to admit or deny the allegations. To the extent the Court requires an Answer, Defendant denies same and demands strict proof thereof.

13. Responding to the allegations in paragraph 20 of the Complaint, Defendant admits that Coastal Appraisal Services was requested to conduct an appraisal. As to the remaining allegations or any other interpretation of the allegations, Defendant denies same and demands strict proof thereof.

14. Responding to the allegations in paragraph 21 of the Complaint, Defendant is without sufficient information to admit or deny the allegations. To the extent the Court requires an Answer, Defendant denies same and demands strict proof thereof.

15. Responding to the allegations in paragraph 22 of the Complaint, Defendant admits that a road maintenance agreement on Meredith Lane was a requirement of the loan financing process. As to the remaining allegations, Defendant denies same and demands strict proof thereof.

16. Responding to the allegations in paragraph 23, 24 and 25 of the Complaint, Defendant denies same and demands strict proof thereof.

17. Responding to the allegations in paragraph 26 of the Complaint, Defendant is

without sufficient information to admit or deny the allegations. To the extent the Court requires and Answer, Defendant denies same and demands strict proof thereof.

18. Responding to the allegations in paragraph 27 of the Complaint, upon information and belief, Defendant admits so much of the allegation that the closing date for the contract was March 5, 2010 and that the closing did not occur on that date. As to the remaining allegations, Defendant denies same and demands strict proof thereof.

19. Responding to the allegations in paragraphs 28, 29 and 30 of the Complaint, Defendant denies same and demands strict proof thereof.

20. Responding to the allegations in paragraph 31 of the Complaint, Defendant admits that so much of the allegation that a Road Maintenance Agreement was a requirement for the loan financing process. As to the remaining allegations, Defendant denies same and demands strict proof thereof.

21. Responding to the allegations in paragraphs 32, 33 and 34 of the Complaint, Defendant denies same and demands strict proof thereof.

22. Responding to the allegations in paragraphs 35, 36, 37, 38 and 39 of the Complaint Defendant was not part of the alleged conversation and therefore, is without sufficient information to either confirm or deny the allegations. To the extent the Court requires an Answer, Defendant denies same and demands strict proof thereof.

23. Responding to the allegations in paragraphs 40, 41 and 42 of the Complaint, Defendant denies same and demands strict proof thereof.

24. Responding to the allegations in paragraph 43 of the Complaint, Defendant admits so much of the allegation that the closing date under the Agreement to Buy and Sell Real Estate had

expired. As to the remaining allegations, Defendant denies same and demands strict proof thereof.

25. Responding to the allegations in paragraphs 44, 45, 46, 47 and 48 of the Complaint, Defendant denies same and demands strict proof thereof.

26. Responding to the allegations in paragraph 49 of the Complaint, it is admitted that Defendant had communications concerning the loan application process. As to the remaining allegations, Defendant denies same and demands strict proof thereof.

27. Responding to the allegations in paragraphs 50 and 51 of the Complaint, upon information and belief, Defendant admits so much of the allegations that allege letters from Mr. Harper and Mr. Tootle were sent between their offices. As to the contents of the letters and their relevance to this matter, the letters speak for themselves and are the best evidence of their contents.

28. Responding to the allegations in paragraphs 52 and 53 of the Complaint, Defendant denies same and demands strict proof thereof.

29. Defendant is informed and believes that paragraph 54 is an administrative paragraph that does not require a response. To the extent that the Court requires an Answer, Defendant restates, reiterates and realleges the Answers in paragraphs 1 through 28, as if stated verbatim herein.

30. Responding to the allegations in paragraphs 55 and 56, Defendant denies same and demands strict proof thereof.

31. Responding to the allegations in paragraphs 57 and 58 of the Complaint, the Defendant admits the existence of agreements between the Plaintiff and Defendant Hamner's. As to the remaining allegations or any other interpretation of the allegations, Defendant denies same and demands strict proof thereof.

32. Responding to the allegations in paragraphs 59, 60 and 61 of the Complaint,

Defendant denies same and demands strict proof thereof.

33. The Defendant is informed and believes that paragraph 62 is an administrative paragraph that does not require a response. To the extent the Court requires an Answer, the Defendant restates, reiterates and realleges its Answer in paragraphs 1 through 32 as if stated verbatim herein.

34. The Defendant is informed and believes that paragraphs 63 through 68 pertain only to Defendants Hamner, and therefore, require no response from this Defendant. To the extent the Court requires this Defendant to respond, Defendant is without sufficient information to either confirm or deny the allegations and therefore deny same and demand strict proof thereof.

35. The Defendant is informed and believes that paragraph 69 is an administrative paragraph that does not require a response. To the extent the Court requires an Answer, Defendant restates, reiterates and realleges its Answers in paragraphs 1 through 34 as if stated verbatim herein.

36. Responding to the allegations in paragraphs 70 through 75 and any sub-parts therein of the Complaint, Defendant denies same and demands strict proof thereof.

37. The Defendant is informed and believes that paragraph 76 is an administrative paragraph that does not require a response. To the extent the Court requires an Answer, Defendant restates, reiterates and realleges its Answer in paragraphs 1 through 36 as if stated verbatim herein.

38. Responding to the allegations contained in paragraphs 77 through 83 of the Complaint, Defendant denies same and demands strict proof thereof.

39. The Defendant is informed and believes that paragraph 84 is an administrative paragraph that does not require a response. To the extent the Court requires an Answer, Defendant restates, reiterates and realleges its Answer in paragraphs 1 through 38 as if stated verbatim herein.

40. Responding to the allegations in paragraphs 85 through 93, Defendant denies same and demands strict proof thereof.

41. Responding to the allegations in paragraph 94 of the Complaint, Defendant denies same and demands strict proof thereof.

42. The Defendant is informed and believes that paragraph 95 is an administrative paragraph that requires no Answer.

FOR A SECOND DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Failure To State A Cause of Action)

43. Defendant alleges and incorporates by reference each and every allegation as if set forth in paragraphs 1 through 42 as if fully set forth herein.

44. The Plaintiff's Complaint fails to set forth sufficient facts to constitute a Cause of Action and therefore should be dismissed.

FOR A THIRD DEFENSE
(Frivolous Action)

45. Defendant alleges and incorporates by reference each and every allegation as if set forth in paragraphs 1 through 44 as if fully set forth herein.

46. The Plaintiff's allegations and Causes of Actions against this Defendant are without basis in law or fact and therefore, are frivolous and improper and in violation of §15-36-10 of the Code of Laws of South Carolina, As Amended (1976). At the conclusion the Plaintiff shall be responsible to the Defendant for attorney fees and reasonable costs expended in the defense of this matter.

FOR A FOURTH DEFENSE
(Parole Discussions)

47. Defendant realleges and incorporates by reference each and every allegation as if set forth in paragraphs 1 through 46 as if fully set forth herein.

48. If any representations were made as alleged by Plaintiff, which allegations are specifically denied, then such representations constitute parole evidence outside the terms of written contracts and cannot serve to supplement written contracts.

FOR A FIFTH DEFENSE
(Contributory Negligence)

49. Defendant realleges and incorporates by reference each and every allegation as if set forth in paragraphs 1 through 48 as if fully set forth herein.

50. If the Plaintiff's allegations constitute a claim for negligent misrepresentation and/or negligence, then Plaintiff was contributorily negligent and substantially contributed to his damages, if any.

FOR A SIXTH DEFENSE
(Punitive Damages)

51. Defendant incorporates and realleges by reference each and every allegation as if set forth in paragraph 1 through 50 as if fully set forth herein.

52. An award of punitive damages would constitute excessive fines, cruel and unusual punishment, violate the Contracts Clause of the United States Constitution, and would deprive the Defendant of due process of law and therefore, the Defendant pleads the Constitution of the United States and of South Carolina as a complete barr to the Plaintiff's claim for punitive damages.

FOR A SEVENTH DEFENSE
(Estoppel)

53. Defendant incorporates and realleges by reference each and every allegation as if set

forth in paragraphs 1 through 52 as if fully set forth herein.

54. To the extent the Plaintiff has pled any negligence on the part of Defendant, which is expressly denied by this Defendant, upon information and belief, one or more of Plaintiff's claims are barred or must be completely or proportionately reduced by one or more of the Plaintiff's contributory or comparatively negligence.

FOR AN EIGHTH DEFENSE

(Contributory and/or comparative, reckless, willful, wanton and/or intentional tortious conduct)

55. Defendant incorporates and realleges by reference each and every allegation as set forth in paragraphs 1 through 54 as if fully set forth herein.

56. To the extent the Plaintiff has pled reckless or willful or wanton intentional tortious conduct on the part of this Defendant, all of such conduct which is expressly denied, upon information and belief, one or more of the Plaintiff's claims are barred or must be comparatively or proportionally reduced, by one or more of the Plaintiff's contributory and/or comparative reckless, willful, wanton, and/or intentional tortious conduct

FOR A NINTH DEFENSE

(Illegal Conduct)

57. Defendant incorporates and realleges by reference each and every allegation set forth in paragraphs 1 through 56 as if fully set forth herein.

58. Plaintiff's claims are barred upon information and belief, by Plaintiff's illegal conduct.

FOR A TENTH DEFENSE

(Lack of Privity)

69. Defendant incorporates and realleges by reference each and every allegation set

forth in paragraphs 1 through 58 as if fully set forth herein.

60. Plaintiff's claims are barred, upon information and belief, by the defense of Lack of Privity with this answering Defendant.

FOR AN ELEVENTH DEFENSE
(Lack of Standing)

61. Defendant incorporates and realleges by reference each and every allegation as set forth paragraphs 1 through 60 as if fully set forth herein.

62. Plaintiff's claims are barred, upon information and belief, by the defense of Lack of Standing with this answering Defendant.

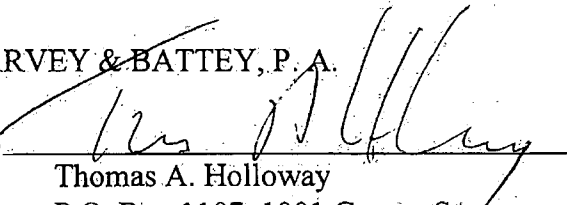
FOR A TWELTH DEFENSE
(Unclean Hands and Unlawful Acts)

63. Defendant incorporates and realleges by reference each and every allegation as set forth in paragraphs 1 through 62 as if fully set forth herein.

64. Plaintiff has come to this Court with unclean hands and is barred from seeking equitable or legal relief. The Plaintiff is barred from maintaining actions against the Defendant as no person may be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequences of that act. The Plaintiff violated his duties under South Carolina Code §40-57-137 et seq., and South Carolina Code §39-5-10 et seq.

65. Defendant gives notice that it intends to assert such other Affirmative Defenses as may become available during the course to discovery and thus reserves the right to amend this Answer accordingly.

HARVEY & BATTEY, P. A.

By: 

Thomas A. Holloway

P.O. Box 1107, 1001 Craven St.

Beaufort, SC 29901-1107

(Tel) 843.524.3109 (Fax) 843.524.6973

Attorneys for the Defendant,

South Carolina Bank & Trust

Beaufort, SC
June 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BENJAMIN GECY,

Plaintiffs,

vs.

SOUTH CAROLINA BANK & TRUST,
JAIME HAMNER AND DEBORAH
HAMNER,

Defendant.

) IN THE COURT OF COMMON PLEAS
2011 MAY 27 FOURTEENTH JUDICIAL CIRCUIT
PM 3:00
) Case No.: 2011-CP-07-1778

)
) CLERK OF COURT
)

) ANSWER AND COUNTERCLAIM
) OF
) JAIME & DEBORAH HAMNER
)
)
)
)
)

COME NOW THE DEFENDANTS, Jaime Hamner and Deborah Hamner, reserving all rights under motions made heretofore or herewith, answering the Complaint and allege and say (a) that the Defendants deny all the allegations of the Complaint except those allegations thereof specifically admitted hereinafter or hereinafter with qualification, (b) that those allegations of the Complaint admitted hereinafter with qualification are admitted only with the qualification stated, and, that addressing each paragraph of the Complaint and for affirmative defenses, would allege unto this Honorable court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein is denied, and strict proof demanded thereof.
2. Responding to the allegations contained in paragraphs 1 and 2 of the Complaint, the Defendants are without sufficient information to either admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same and demand strict proof thereof.

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3. Responding to the allegations contained in paragraph 3 of the Complaint, the Defendants deny the same and demand strict proof thereof. The Defendants would show unto this Honorable Court that they are both active duty Marines with Mr. Hamner being a citizen and resident of California and Mrs. Hamner being a citizen and resident of Michigan.
4. Responding to the allegations contained in paragraph 4 of the Complaint, the Defendants admit so much of the allegations that allege the Court has jurisdiction over these matters pursuant to Article V of the South Carolina Constitution. As to the remaining allegations, the Defendants deny the same and demand strict proof thereof.
5. Responding to the allegations contained in paragraph 5 of the Complaint, the Defendants admit so much of the allegations that allege venue is proper as it relates to the individual Defendants. As to the remaining allegations of venue relating to the Defendant South Carolina Bank & Trust, the Defendants are without sufficient information to either admit or deny the allegation. To the extent the Court requires an answer, the Defendants deny the same.
6. Responding to the allegations contained in paragraph 6 of the Complaint, the Defendants deny the same and demand strict proof thereof.
7. Responding to the allegations contained in paragraph 7 of the Complaint, the Defendants admit so much of the allegations that allege the Defendants and Gecy had discussion regarding the potential purchase of 7 acres of real property and that Mr. Gecy could potentially build them a home on the same property. As to the remaining allegations, the Defendants deny the same and demand strict proof thereof.

8. Responding to the allegations contained in paragraph 8 of the Complaint, the Defendants are without sufficient information to either admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same.
9. Responding to the allegations contained in paragraph 9 of the Complaint, the Defendants admit so much of the allegations that allege Gecy informed the Defendants that he had somebody who had made or was going to make an offer on 3.5 acres; that Gecy could sell the Defendants the remaining 3.5 acres; and that the Defendants informed Gecy that if they were going to purchase the property they wanted to purchase all 7 acres. As to the remaining allegations, the Defendants deny the same and demand strict proof thereof.
10. Responding to the allegations contained in paragraph 10 of the Complaint, the Defendants admit the same.
11. Responding to the allegations contained in paragraph 11 of the Complaint, the Defendants admit the same.
12. Responding to the allegations contained in paragraph 12 of the Complaint, the Defendants admit so much of the allegations that allege Gecy appeared to be acting as Richard Poole's real estate agent during the contracting process between the Defendants and Mr. Poole. As to the remaining allegations, the Defendants deny the same and demand strict proof thereof.
13. Responding to the allegations contained in paragraphs 13 and 14, the Defendants deny the same and demand strict proof thereof.
14. Responding to the allegations contained in paragraph 15 of the Complaint, the Defendants admit so much of the paragraph that they entered into a contract to

purchase property located at 10 Meredith Lane, Beaufort, SC for \$150,000.00. As to the remaining allegations, the Defendants deny the same and demand strict proof thereof.

15. Responding to the allegations contained in paragraph 16 of the Complaint, the Defendants admit the same.
16. Responding to the allegations contained in paragraph 17 of the Complaint, the Defendants are without sufficient information to admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same and demand strict proof thereof.
17. Responding to the allegations contained in paragraph 18 of the Complaint, the Defendants would admit so much of the allegation that can be construed to state that the Defendants contract dated February 3rd, 2010 for the purchase of the home in question required 100% financing as a contingency to the contract and that the Plaintiff recommended SCB&T as a potential lender. As to the remaining allegations or any other interpretation of the allegations, the Defendants deny the same and demand strict proof thereof.
18. Responding to the allegations contained in paragraphs 19, 20, 21, 22, 23, 24, & 25 of the Complaint, the Defendants are without sufficient information to either admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same and demand strict proof thereof.
19. Responding to the allegations contained in paragraph 26 of the Complaint, the Defendants admit so much of the allegations that can be construed to allege the parties entered into an addendum on March 5th, 2010 to "elevate Summerbrooke floor

plan to crawl space" for an additional fee of \$12,400.00. As to the remaining allegations and specifically that the additional price of \$12,400.00 was "non-refundable", the Defendants deny the same and demand strict proof thereof.

20. Responding to the allegations contained in paragraph 27 of the Complaint, the Defendants admit so much of the allegation that alleges the closing date for both contracts was March 5th, 2010. As to the remaining allegation that each contract contained an automatic closing extension for thirty (30) days, the Defendants deny the same and demand strict proof thereof.
21. Responding to the allegations contained in paragraph 28 of the Complaint, the Defendants deny the same and demand strict proof thereof. Furthermore, the Defendants would show unto this Honorable Court that they were erroneously informed by their attorney Mr. Tootle that they had to extend the contract thirty days and furthermore were informed by Mr. Gecy that if they did not extend the contract for thirty days they would be sued.
22. Responding to the allegations contained in paragraph 29 of the Complaint, the Defendants admit so much of the allegations that can be construed to allege that after being threatened with a lawsuit and told by their attorney Mr. Tootle who was also acting as Mr. Gecy's attorney that they had to extend the contract for thirty days, they continued to prepare for a potential closing assuming all the contingencies, etc. of the contract were met by Gecy.
23. Responding to the allegations contained in paragraphs 30, 31, 32, 33, and 34 of the Complaint, the Defendants are without sufficient information to either confirm or

deny the allegations. To the extent the Court requires an answer, the Defendants deny the same and demand strict proof thereof.

24. Responding to the allegations contained in paragraph 35 of the Complaint, the Defendants deny the same.

25. Responding to the allegations contained in paragraph 36 of the Complaint, the Defendants admit that at some point in early March of 2010, the parties met with Mr. Tootle. As to the remaining allegations as to Mr. Tootle's opinion on the agreement, such an opinion calls for a legal conclusion and the Defendants therefore deny the same and demand strict proof thereof.

26. Responding to the allegations contained in paragraph 37 of the Complaint, the Defendants are without sufficient information to either admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same.

27. Responding to the allegations contained in paragraph 38 of the Complaint, the Defendants deny the same and demand strict proof thereof.

28. Responding to the allegations contained in paragraph 39 of the Complaint, the Defendants admit the same.

29. Responding to the allegations contained in paragraph 40 of the Complaint, the Defendants deny the same and demand strict proof thereof.

30. Responding to the allegations contained in paragraph 41 of the Complaint, the Defendants are without sufficient information to either admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same and demand strict proof thereof.

31. Responding to the allegations contained in paragraph 42 of the Complaint, the Defendants deny the same and demand strict proof thereof.
32. Responding to the allegations contained in paragraph 43 of the Complaint, the Defendants admit so much of the allegations in the Complaint that if the alleged thirty day extension is a valid extension, the extension to close would have expired on April 5th, 2010. As to the remaining allegations, the Defendants deny the same and demand strict proof thereof.
33. Responding to the allegations contained in paragraphs 44 and 45 of the Complaint, the Defendants deny the same and demand strict proof thereof.
34. Responding to the allegations contained in paragraphs 46, 47, 48, and 49 of the Complaint, the Defendants are without sufficient information to either admit or deny the allegations. To the extent the Court requires an answer, the Defendants deny the same and demand strict proof thereof.
35. Responding to the allegations contained in paragraphs 50 and 51 of the Complaint, the Defendants admit so much of the allegations that allege letters from Mr. Harper and Mr. Tootle were sent between their offices. As to the contents of the letters and the relevance to this matter, the letters speak for themselves and are the best evidence of their contents.
36. Responding to the allegations contained in paragraphs 52 and 53 of the Complaint, the Defendants deny the same and demand strict proof thereof.
37. The Defendants are informed and believe that paragraph 54 is an administrative paragraph that does not require a response. To the extent the Court requires an

answer, the Defendants restate, reiterate, and reallege their answers in paragraphs 1 through 29 as if stated verbatim herein.

38. The Defendants are informed and believe that paragraphs 55 through 61 pertain only to the Defendant SCB&T and therefore require no further response from the Defendants. To the extent the Court requires these Defendants to respond, the Defendants are without sufficient information to either confirm or deny the allegations and therefore deny the same and demand strict proof thereof.
39. The Defendants are informed and believe that paragraph 62 is an administrative paragraph that does not require a response. To the extent the Court requires an answer, the Defendants restate, reiterate, and reallege their answers in paragraphs 1 through 31 as if stated verbatim herein.
40. Responding to the allegations contained in paragraphs 63 and 64 of the Complaint, the Defendants admit they signed two separate contracts with the Plaintiff. The Defendants are informed and believed that the contracts speak for themselves.
41. Responding to the allegations contained in paragraphs 65 through 68 of the Complaint, the Defendants deny the same and demand strict proof thereof.
42. The Defendants are informed and believe that paragraph 69 is an administrative paragraph that does not require a response. To the extent the Court requires an answer, the Defendants restate, reiterate, and reallege their answers in paragraphs 1 through 34 as if stated verbatim herein.
43. Responding to the allegations contained in paragraphs 70 through 75 and any subparts therein, of the Complaint, the Defendants deny the same and demand strict proof thereof.

44. The Defendants are informed and believe that paragraph 76 is an administrative paragraph that does not require a response. To the extent the Court requires an answer, the Defendants restate, reiterate, and reallege their answers in paragraphs 1 through 36 as if stated verbatim herein.
45. Responding to the allegations contained in paragraphs 77 through 83 of the Complaint, the Defendants deny the same and demand strict proof thereof.
46. The Defendants are informed and believe that paragraph 84 is an administrative paragraph that does not require a response. To the extent the Court requires an answer, the Defendants restate, reiterate, and reallege their answers in paragraphs 1 through 38 as if stated verbatim herein.
47. The Defendants are informed and believe that paragraphs 85 through 93 pertain only to the Defendant SCB&T and therefore require no further response from the Defendants. To the extent the Court requires these Defendants to respond, the Defendants are without sufficient information to either confirm or deny the allegations and therefore deny the same and demand strict proof thereof.
48. Responding to the allegations contained in paragraph 94 of the Complaint, the Defendants deny the same and demand strict proof thereof.
49. The Defendants are informed and believe that paragraph 95 is an administrative paragraph that requires no answer.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

50. The Defendants reiterate and reallege the foregoing paragraphs as if stated herein verbatim.

51. The Defendants entered into a contract to purchase real property located at 10 Meridith Lane, Beaufort, SC 29907 with the Plaintiff, hereinafter, the ("Meridith Lane Contract").
52. Simultaneously with entering into the contract to purchase 10 Meridith Lane, the Defendants entered into a contract with the Plaintiff in which the Plaintiff agreed to build a home at the real property located at 10 Meridith Lane, hereinafter, the ("Construction Contract").
53. Both contracts were subject to the Defendants being able to obtain financing. Additionally, the Defendants are informed and believe the parties' agreements required the financing for the purchase and construction to be 100% financing.
54. In order to obtain the financing necessary to satisfy both contracts financing contingencies, the lending institution required the Plaintiff to produce a "Road Maintenance Agreement" signed by all parties who access and use the private drive known as Meridith Lane.
55. The Plaintiff failed to provide a completed signed Road Maintenance Agreement as required by the lending institution within the timeframe provided in the contracts for closing. The Defendants are informed and believe for this reason and others, the lending institution denied financing for both the Meridith Lane Contract and the Construction Contract.
56. Paragraph 21 of the Meridith Lane Contract states the real property must appraise, "according to the lender's appraisal" at the selling price of \$150,000.00. The lender's appraisal indicated the real property was valued at \$115,000.00 or \$35,000.00 under the agreed upon selling price in the contract.

57. Pursuant to paragraph 21 of the Meredith Lane Contract, the Defendants are informed and believe the Plaintiff had the option to sell the property at the appraised value of \$115,000.00. The Defendants are informed and believe the Seller refused to sell the Property at the \$115,000.00 appraised value.
58. The Meredith Lane Contract further required in paragraph 22 of the Contract, the Plaintiff to provide the Buyers an Army Engineering Corps wetlands delineation letter concerning the "wetlands" believed to be on the property. The Defendants are informed and believe the Plaintiff failed to provide such a letter within the applicable closing timeframe.
59. The Defendants are informed and believe that the actions of the Plaintiff in failing to provide the necessary Road Maintenance Agreement, in failing to provide the Army Corps of Engineering wetlands delineation letter, and in failing to return the Defendants' deposit on the land and house when the property failed to appraise for the required \$150,000.00, amount to a breach of the contracts in question.
60. Pursuant to an addendum to the Construction Contract, the Defendants deposited \$12,400.00 with the Plaintiff. Despite repeated requests for the return of the Defendants deposit, the Plaintiff has intentionally and willfully refused to return the Defendants deposit.
61. As the direct and proximate result of the various failures of the Plaintiff to conform to the terms of the contracts in question, the Defendants are informed and believe the Plaintiff is in breach of said contracts and as a result of the Plaintiff's willful and intentional conduct, the Defendants have been harmed in the Plaintiff's refusal to return their deposit and in other manners as shall be more fully shown at trial.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

62. The Defendants reiterate and reallege the foregoing paragraphs as if stated herein verbatim.
63. The Plaintiff, Benjamin Gecy, hereinafter ("Gecy"), is an individual who held himself out to the Defendants and upon information and belief other individuals in the Defendants similar situation, to be capable of performing various duties that engage in trade and commerce. Those duties/capacities as they relate to the events at question herein are: real estate agent, mortgage broker, residential home builder, and land developer.
64. At all times herein during the events in question, Gecy represented to the Defendants that he was properly licensed and capable of conducting or providing the Defendants the services in all the various capacities noted above.
65. The Defendants are informed and believe that Gecy has violated the South Carolina Unfair Trade Practices Ac, S.C. Code sec. 39-5-10 et seq., by engaging in unfair methods of competition and unfair and deceptive acts and practices in the conduct of his various trades and/or commerce.
66. The Plaintiff alleged to be "reducing" his commission on the sale of the Plaintiff's home 11 Southern Magnolia Lane in paragraph 13 of his Complaint and has asserted in paragraph 11 of his Complaint that he was serving as the Defendants "real estate agent".
67. As their agent, Gecy owed the Defendants certain duties and obligations, to include following the rules and regulations set out by his licensing authority. That Gecy breached those duties and obligations under the rules and regulations set out by his

licensing authority in: (1) failing to explain, procure, and have signed a proper listing agreement detailing the terms of any commission to be paid or "reduced" as claimed by the Plaintiff in his Complaint; (2) failing to explain, procure, and have signed a proper seller's agency agreement detailing the scope and extent of the Plaintiff's duties and responsibilities to the Defendants; and (3) failing to explain, procure and have signed a proper dual agency agreement explaining in detail Gecy's duties and responsibilities to both the Defendants and Mr. Poole the purchaser of the Defendants property.

68. The Defendants are informed and believe that Gecy has violated his licensing authority regulations and as a result of those violations has breached his agency obligations to the Defendants.
69. The Defendants are informed and believe that Gecy, at the time he owed certain duties and obligations to the Defendants as their real estate agent, was also engaged in acting as Mr. Poole's real estate agent and mortgage broker.
70. The Defendants are informed and believes to the detriment of the Defendants, Gecy coerced and pressured the Defendants in to lower their selling price in order benefit one client over the other and to ultimately save a transaction that Gecy stood to make a significant fee from since he was also acting as Mr. Poole's mortgage broker. Additionally, in coercing the Defendants into lowering their asking price, Gecy made certain promises to refund monies to them as part of follow on transactions which, despite repeated requests, Gecy has failed to return said money.
71. The Defendants are informed and believe that there are inherent conflicts of interest in the Plaintiff acting in a multi-party transaction as a dual agent real estate agent,

mortgage broker, individual seller, residential home builder, and land developer all without the necessary required disclosures signed by all parties to the transactions.

72. When the Defendants lending institution placed certain contingencies upon the financing of the Defendants purchase of the property and home upon Gecy, to include the Road Maintenance Agreement, he attempted to, through coercive tactics, pressure and force the Defendants to change lending institutions telling them repeatedly that as a "mortgage broker" he had banks ready to lend them the money to finish this transaction and if they didn't change banks and close, he was going to sue them. Despite these coercive statements, Gecy never once showed the Defendants any paperwork indicating they were approved for a loan at a 100% financing rate with any other lending institution. The Defendants are informed and believe that Gecy's flagrant disregard for his licensing requirements and the inherent conflicts associated with Gecy acting as real estate agent, mortgage broker, seller, residential builder, land developer, etc. in a multi-party/multi-transaction situation amount to unfair and deceptive acts. The Defendants are further informed and believe that Gecy's unfair and deceptive acts have been repeated and are capable of being repeated by Gecy.
73. The Defendants are informed and believe that Gecy's unfair and deceptive acts affect the public interest.
74. The Defendants are informed and believe Gecy's unfair and deceptive acts and promises proximately caused the Defendants damages to include their reduction of their selling price by \$8,000.00 on 11 Southern Magnolia Lane.

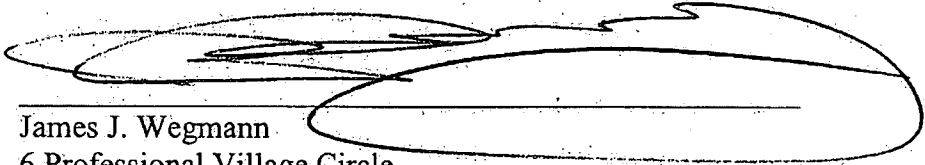
75. The Defendants are informed and believe that Gecy's unfair and deceptive acts and promises were willful in that Gecy knew or should have known his conduct was a violation of the South Carolina Unfair Trade Practices Act.

76. As a direct and proximate result of Gecy's unfair trade practices by the acts and omissions specified herein and to be shown at trial, the Defendants have sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial in this case.

WHEREFORE, having fully set forth their Answer to the Plaintiff's Complaint, and asserted certain Counterclaims, the Defendants pray:

1. That the Complaint of the Plaintiff be dismissed;
2. The Defendants be awarded judgment against the Plaintiff for actual, consequential, special, incidental, and statutory damages, to include prejudgment interest in an amount to be more specifically proven at trial; and
3. For such other and further relief as this Honorable Court shall deem just and equitable.

MIKELL, WEIDNER, WEGMANN AND HARPER, LLC

By: 

James J. Wegmann
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
wegmannj@beaufortlaw.com

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-01778

11 JUN 20 PM 3:50

Benjamin Gecy,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

**PLAINTIFF'S REPLY TO JAIME
AND DEBORAH HAMNERS'
COUNTERCLAIMS**

TO: JAMES J. WEGMANN, J.D., ATTORNEY FOR DEFENDANTS, JAIME HAMNER AND DEBORAH HAMNER:

Plaintiff and Counterclaim Defendant, Benjamin Gecy (GECY), through his undersigned counsel, hereby files his Reply, answering and responding to the Counterclaim by Defendants and Counterclaim Plaintiffs, Jaime Hamner and Deborah Hamner as follows:

GENERAL OBJECTIONS AND RESERVATIONS

GECY generally and specifically denies each and every allegation, statement, matter and/or thing set forth and alleged in the COUNTERCLAIM unless specifically and expressly admitted, qualified, or explained.

Gecy states that those allegations of the Counterclaims admitted hereinafter with qualification are admitted only with the qualification stated.

GECY objects to the extent any allegation in the COUNTERCLAIM calls for a legal conclusion.

GECY reserves all rights under motions made heretofore or herewith, answering the Counterclaims.

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation contained in the Defendants' Counterclaims not specifically admitted herein is denied, and strict proof demanded thereof.
2. In response to Paragraph 50, GECY realleges each of his allegations contained in Paragraphs 1 - 95 of his Complaint.
3. Responding to the allegations contained in paragraph 51 of the Counterclaims, GECY admits that he and the Hamners entered into a valid contract known as the AGREEMENT TO BUY AND SELL REAL ESTATE for property located at 10 Meredith Lane. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.
4. Responding to the allegations contained in paragraph 52 of the Counterclaims, GECY admits that he and the Hamners entered into a valid contract known as the NEW CONSTRUCTION AGREEMENT for property located at 10 Meredith Lane. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.
5. Responding to the allegations contained in paragraph 53 of the Counterclaims, GECY admits that the AGREEMENT TO BUY AND SELL REAL ESTATE and the NEW CONSTRUCTION AGREEMENT were subject to financing. As to the remaining allegation that "the parties' agreements required the financing for the purchase and construction to be 100% financing," GECY denies the same and demands strict proof thereof. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.

6. Responding to the allegations contained in paragraph 54 of the Counterclaims, GECY admits that Defendant SCB&T requested a Road Maintenance Agreement as an at-closing condition for the financing of the Hamners' loan to purchase 10 Meredith Lane. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.
7. Responding to the allegations contained in paragraph 55 of the Complaint, GECY denies the same and demands strict proof thereof.
8. Responding to the allegations contained in paragraph 56 of the Complaint, GECY denies the same and demands strict proof thereof.
9. Responding to the allegations contained in paragraph 57 of the Complaint, GECY denies the same and demands strict proof thereof.
10. Responding to the allegations contained in paragraph 58 of the Complaint, GECY denies the same and demands strict proof thereof.
11. Responding to the allegations contained in paragraph 59 of the Complaint, GECY denies the same and demands strict proof thereof.
12. Responding to the allegations contained in paragraph 60 of the Complaint, GECY admits only that the Hamners' paid a non-refundable deposit of \$12,400.00 to add a crawl space design to the future house plans. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.
13. Responding to the allegations contained in paragraph 61 of the Complaint, GECY denies the same and demands strict proof thereof.

14. In response to Paragraph 62, GECY realleges each of his allegations contained in Paragraphs 1 - 95 of his Complaint and each of his responses set forth in the foregoing Paragraphs in this Reply.
15. Responding to the allegations contained in paragraph 63 of the Complaint, GECY admits that he is a licensed real estate agent, mortgage broker and residential home builder. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.
16. Responding to the allegations contained in paragraph 64 of the Complaint, GECY admits that he is a licensed real estate agent, mortgage broker and residential home builder. The remaining allegations inconsistent therewith are denied and strict proof demanded thereof.
17. Responding to the allegations contained in paragraph 65 of the Complaint, GECY denies the same and demands strict proof thereof.
18. Responding to the allegations contained in paragraph 66 of the Complaint, GECY denies the same and demands strict proof thereof. The allegations contained in paragraph 66 are not contained in GECY's First Amended Verified Complaint.
19. Responding to the allegations contained in paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 75 and 76 of the Complaint, GECY denies the same and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State a Cause of Action)

20. GECY incorporates and realleges by reference each and every allegation as set forth in paragraphs 1 through 19 as if fully set forth herein.

21. The Defendants' Counterclaims fail to state facts sufficient facts to constitute a Cause of Action and therefore should be dismissed.

FOR A THIRD DEFENSE
(Accord and Satisfaction)

22. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
23. The Defendants' Counterclaims are barred by the Doctrine of Accord and Satisfaction.

FOR A FOURTH DEFENSE
(Novation)

24. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
25. The Defendants' Counterclaims are barred by the Doctrine of Novation.

FOR A FIFTH DEFENSE
(Waiver)

26. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
27. The Defendants' Counterclaims are barred by the Doctrine of Waiver.

FOR A SIXTH DEFENSE
(Laches)

28. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
29. The Defendants' Counterclaims are barred by the Doctrine of Laches.

FOR A SEVENTH DEFENSE
(Estoppel)

30. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
31. The Defendants' Counterclaims are barred by the Doctrine of Estoppel.

FOR AN EIGHTH DEFENSE
(Discharged by Operation of Law)

32. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
33. The Defendants' Counterclaims which may have existed have been discharged by operation of law.

FOR A SEVENTH DEFENSE
(Unclean Hands)

34. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
35. The Defendants' Counterclaims are barred by the Doctrine of Unclean Hands.

FOR A NINTH DEFENSE
(Failure to Mitigate)

36. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.
37. The Defendants' Counterclaims are barred by the Doctrine of Failure to Mitigate.

FOR A TENTH DEFENSE
(Comparative Negligence)

38. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.

39. The Defendants' Counterclaims are barred by the Doctrine of Unclean Hands.

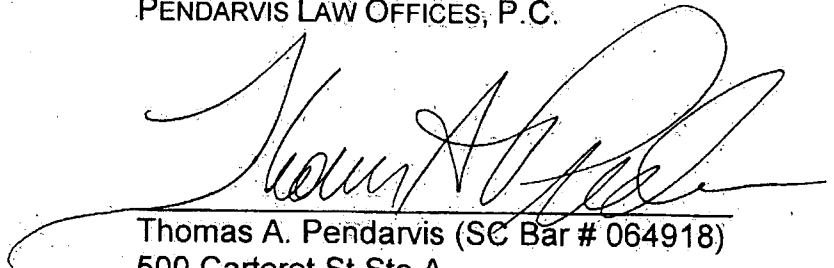
FOR AN ELEVENTH DEFENSE
(Intervening and Superseding Negligence)

40. GECY incorporates and realleges by reference each and every allegation as set forth in the foregoing paragraphs as if fully set forth herein.

41. The Defendants' Counterclaims are barred by the Doctrine of Intervening and Superseding Negligence.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)

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Attorney for Plaintiff and Counterclaim
Defendant, Benjamin Gecy

Beaufort, South Carolina

June 17, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-1778

Benjamin Gecy,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

**FIRST AMENDED
VERIFIED COMPLAINT
(Jury Trial Demanded)**

(Tortious Interference with Contract)
(Breach of Contract)
(Civil Conspiracy)
(Negligent Misrepresentation)
(Unfair Trade Practices)

Plaintiff, Benjamin Gecy, complaining of Defendants, SOUTH CAROLINA BANK & TRUST and Jaime and Deborah Hamner would respectfully show unto the Court as follows:

PARTIES

1. Plaintiff, Benjamin Gecy, is a citizen and resident of Beaufort, South Carolina.
2. Defendant, SOUTH CAROLINA BANK & TRUST (SCB&T), is, upon information and belief, a corporation located in and doing business in Beaufort, South Carolina.
3. Defendants, Jaime and Deborah Hamner (collectively referred to as "the HAMNERS"), are, upon information and belief, citizens and residents of Beaufort County, South Carolina.

JURISDICTION

4. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803 (1976), and its plenary powers.

084

VENUE

5. Venue is proper in Beaufort County as Defendant South Carolina Bank & Trust is a corporation which has offices and agents located in Beaufort County, South Carolina. Also, Defendants Jaime and Deborah Hamner and Plaintiff Gecy are residents of Beaufort County, South Carolina.

FACT

6. The negligent acts, omissions, and liability of Defendant, SCB&T, includes the acts and/or omissions of their agents, principals, employees and/or servants, both directly and vicariously, pursuant to principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

7. In January 2010, GECY and the HAMNERS began discussions regarding the HAMNERS purchasing a 7 acre parcel of property owned by GECY located at 10 Meredith Lane. The HAMNERS also discussed hiring GECY's construction company, RIVER CITY CONSTRUCTION, to build a residence on the property.

8. In January 2010, GECY received an offer from Roberto and Danielle Fernandez to purchase 3.5 of the 7 acres of property located at 10 Meredith Lane.

9. In January 2010, GECY informed the HAMNERS of the offer from Roberto and Danielle Fernandez and offered to sell the HAMNERS only 3.5 acres. The HAMNERS recommitted their intention and desire to purchase the entire 7 acre parcel.

10. On or about January 28, 2010, the HAMNERS entered into an AGREEMENT TO BUY AND SELL REAL ESTATE to sell their property located at 11 Southern Magnolia Drive, Beaufort, South Carolina.

11. In January 2010, GECY assisted in securing a buyer, Richard Poole, to purchase the property located at 11 Southern Magnolia Drive from the HAMNERS.
12. On or about February 3, 2010, the HAMNERS entered into an AGREEMENT TO BUY AND SELL REAL ESTATE to purchase property located at 10 Meredith Lane, Beaufort, South Carolina for \$150,000.00.
13. On or about February 3, 2010, the HAMNERS entered into a NEW CONSTRUCTION AGREEMENT to have GECY build a house on the property located at 10 Meredith Lane, Beaufort, South Carolina for \$156,900.00.
14. In February 2010, based on the contracts with the HAMNERS, GECY rejected the offer from Roberto and Danielle Fernandez to purchase 3.5 acres of the 7 acre parcel located at 10 Meredith Lane.
15. In February 2010, the HAMNERS informed Gecy of their desired to obtain 100% financing, to which GECY referred them to a loan officer at SCB&T. The HAMNERS subsequently informed GECY that they were seeking conventional financing through SCB&T.
16. In February 2010, SCB&T issued a preliminary report for a real estate closing on 10 Meredith Lane.
17. On or about February 19, 2010, SCB&T sent Patricia Moody of Coastal Appraisal Service an appraiser commitment letter requesting a conventional loan appraisal for 10 Meredith Lane.
18. At all time relevant hereto, Patricia Moody has owned property with her primary residential home adjacent to the undeveloped 7 acre property located at 10 Meredith Lane.

19. In or about February 2010, SCB&T notified GECY that it would require a road maintenance agreement to be issued on Meredith Lane in order to approve the loan financing for the HAMNERS purchase of 10 Meredith Lane.

20. Road maintenance agreements are generally required for VA loan financing but not for conventional loan financing.

21. On or about February 25, 2010, SCB&T faxed preliminary loan closing instructions for the HAMNERS' purchase of 10 Meredith Lane.

22. On or about February 25, 2010, Coastal Appraisal Service issued an Uniform Appraisal Report valuing the land at 10 Meredith Lane for \$115,000 and the home to be built on the property for \$330,000, well within the total contract price for the lot and residence.

23. On or about March 5, 2010, the HAMNERS requested, and GECY agreed to, an Addendum to AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane. The Addendum added a crawl space to the future house plans and required a non-refundable deposit of \$12,400 to be paid by the HAMNERS to GECY.

24. Although the AGREEMENT TO BUY AND SELL REAL ESTATE listed the closing date as March 5, 2010, the real estate closing did not occur on that date. The terms of the contract, however, provided an automatic 30 day extension to resolve any issues related to the closing.

25. In March 2010, GECY and the HAMNERS agreed to extend the AGREEMENT TO BUY AND SELL REAL ESTATE for an additional 30 days.

26. The parties to the contract and SCB&T continued to prepare to close the loan and perform under the purchase agreement after March 5, 2010 with the anticipation of a closing on or before April 5, 2010.

27. On or about March 6, 2010, SCB&T, by and through its agents and officers, approved the ROAD MAINTENANCE AGREEMENT for 10 Meredith Lane.

28. On or about March 6, 2010, the SCB&T loan officer sent an email to GECY, Kenneth L. Tootle, J.D., the closing attorney representing GECY and the HAMNERS, and an SCB&T Vice President approving the ROAD MAINTENANCE AGREEMENT and asked to be notified "when this will [be] signed so we can get a firm closing date."

29. Upon information and belief, the HAMNERS were financially qualified to obtain the loan financing from SCB&T and SCB&T never indicated that the HAMNERS' credit score was a basis for SCB&T denying the financing or delaying approval.

30. On or about March 6, 2010, SCB&T agreed that the ROAD MAINTENANCE AGREEMENT was the final condition to satisfy all requirements for final approval of the loan financing for the HAMNERS' purchase of 10 Meredith Lane.

31. On or about March 9, 2010, an SCB&T Vice President sent an email to GECY approving GECY commissioning a second, independent appraisal on the 10 Meredith Lane property. The email also stated "If you are willing to pay for the appraisal and delay the closing some more then we are okay with getting another appraisal done."

32. On or about March 10, 2010, Defendant Jaime Hamner called GECY to inform him that he had decided not to purchase 10 Meredith Lane expressing concerns about the ROAD MAINTENANCE AGREEMENT even though it was not required under conventional financing.

33. In March 2010, Kenneth L. Tootle, J.D., the closing attorney representing GECY and the HAMNERS, had a meeting with GECY and Defendant Jaime Hamner to inform the parties that the AGREEMENT TO BUY AND SELL REAL ESTATE gave both parties a 30 days extension on the contract to cure any deficiencies.

34. On or about March 26, 2010, GECY, John Ferguson, a neighboring land owner, and a surveyor, met at Meredith Lane to discuss the easement and the ROAD MAINTENANCE AGREEMENT.

35. On or about March 26, 2010, John Ferguson called Defendant Jaime Hamner and informed Defendant Hamner that he intended to sign the ROAD MAINTENANCE AGREEMENT and would help do what he could to ensure that the HAMNERS would be able to purchase 10 Meredith Lane. Upon information and belief, Defendant Jaime Hamner thanked Mr. Ferguson and never mentioned an intent not to perform the contracts.

36. On or about March 27, 2010, Defendant Jaime Hamner emailed GECY to describe the porch design and exterior color choices for the house to be built by GECY on the property at 10 Meredith Lane.

37. On or about April 5, 2010, the ROAD MAINTENANCE AGREEMENT for Meredith Lane was signed by all parties to the easement.

38. On or about April 5, 2010, GECY notified SCB&T via email that all parties to the easement had agreed to the ROAD MAINTENANCE AGREEMENT.

39. On or about April 5, 2010, GECY was ready, willing and able to close and perform both contracts.

40. On or about April 5, 2010, the 30 day extension for the closing date under the AGREEMENT TO BUY AND SELL REAL ESTATE expired.

41. On or about April 5, 2010, GECY had met all conditions under the contract, if any, and the HAMNERS unjustifiably failed to perform as required by the AGREEMENT TO BUY AND SELL REAL ESTATE.

42. Upon information and belief, the reason the HAMNERS chose not to perform was based upon the acts and/or omissions of SCB&T and/or an agreement between the HAMNERS and SCB&T.

43. On or about April 6, 2010, the SCB&T loan officer notified GECY of additional requirements in order to approve the loan financing of a copy of the survey, an ariel map of the property and tax records identifying adjacent landowners to the easement for Meredith Lane.

44. On or about April 7, the offices of Kenneth L. Tootle, J.D., the closing attorney representing GECY and the HAMNERS, contacted SCB&T to schedule a closing date.

45. On or about April 8, the offices of Kenneth L. Tootle, J.D., again contacted SCB&T to schedule a closing date.

46. On or about April 8, the SCB&T loan officer sent an email to the offices of Kenneth L. Tootle, J.D. office responding to requests for a closing date by stating: "I am waiting on Mr. Hamner to call me back and will let you know when I hear from him."

47. On or about April 9, 2010, Frampton L. Harper, II, J.D. sent a letter on behalf of the HAMNERS to Kenneth L. Tootle, J.D. to inform GECY that the HAMNERS considered "the contract to purchase the acreage located [sic] 10 Meredith Land [sic] (bearing Tax Map Number R200 005 000 0291 0000) null and void." The letter further stated that the HAMNERS' financing was declined because of the "property appraisal" and because GECY was unable to provide a valid ROAD MAINTENANCE AGREEMENT by April 5, 2010.

48. On or about April 13, 2010, Kenneth L. Tootle, J.D. sent a letter to Frampton L. Harper, II, J.D. stating that, in his opinion:

all contingencies made by the bank were completed prior to April 5th. I believe the road maintenance agreement was completed and forwarded to the bank on or before April 5th. Additionally, I understand a second appraisal was completed by Murry Steen which appraised the property at \$150,000 and the finished construction at \$405,000, which is equal to or exceeds the sales price contained in the contracts. I am informed all the parties to the closing, as well as the bank, accepted the new appraisals. With those conditions met in a timely manner, I contacted SCBT on several occasions, starting March 30th, by e-mail and telephone, requesting a closing package. Unfortunately Doug Jacobs at SCBT failed to return any of my contacts.

49. Upon information and belief, SCB&T directed or otherwise motivated the HAMNERS away from their contracts with GECY and into contracts or opportunities to purchase other property and other financing.

50. As a direct and proximate result of Defendants' tortious acts, Plaintiff GECY losses include, but are not limited to, \$150,000.00 profit from the breaches of the AGREEMENT TO BUY AND SELL REAL ESTATE and the NEW CONSTRUCTION AGREEMENT; costs for plan changes adding the crawlspace design; cost of septic permit for 10 Meredith Lane; cost of installing a temporary power pole with SCE&G and Trademark Electric; cost of engineering plans for Beaufort County permit division; cost of clearing 6.88 acres as requested by Defendant Jaime Hamner; cost of the property survey; cost of additional appraisal as approved by SCB&T; costs associated with beginning four other construction projects in reliance upon selling 10 Meredith Lane and having to terminate construction when the HAMNERS and SCB&T refused to close; and attorney fees associated with the preparation of the ROAD MAINTENANCE AGREEMENT.

FOR A FIRST CAUSE OF ACTION
Defendant SCB&T Only
(Tortious Interference with Contract)

51. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
52. The AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane is a valid contract between GECY and the HAMNERS.
53. The NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane is a valid contract between GECY and the HAMNERS.
54. SCB&T, individually and/or through its respective agents, servants, employees and managers, knew of the existence of the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane between GECY and the HAMNERS.
55. SCB&T, individually and/or through its respective agents, servants, employees and managers, knew of the existence of the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane between GECY and the HAMNERS.
56. SCB&T, individually and/or through its respective agents, servants, employees and managers, intentionally and unjustifiably procured the HAMNERS' breach of the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane between GECY and the HAMNERS.
57. SCB&T, individually and/or through its respective agents, servants, employees and managers, intentionally and unjustifiably procured the HAMNERS' breach of the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane between GECY and the HAMNERS.
58. As a direct and proximate result of SB&T's tortious interference with the binding contract entered into by GECY and THE HAMERS, by the actions and omissions as specified herein, GECY sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

FOR A SECOND CAUSE OF ACTION
Defendants Jaime and Deborah Hamner Only
(Breach of Contract)

59. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

60. GECY entered into a binding contract with the HAMNERS, known as the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane.

61. GECY entered into a binding contract with the HAMNERS, known as the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane.

62. GECY fulfilled all necessary preconditions, if any, of the contracts with the HAMNERS.

63. The HAMNERS failed to perform and thereby unjustifiably breached the AGREEMENT TO BUY AND SELL REAL ESTATE for 10 Meredith Lane.

64. The HAMNERS failed to perform and thereby unjustifiably breached the NEW CONSTRUCTION AGREEMENT for 10 Meredith Lane.

65. As a direct and proximate result of the HAMNERS' breach of their contractual duties by the actions and omissions as specified herein, GECY sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy)

66. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

67. Upon information and belief, SCB&T, individually and/or through its respective agents, servants, employees and managers, and the HAMNERS conspired and agreed with each other and/or one another against GECY.

68. Upon information and belief, SCB&T, individually and/or through its respective agents, servants, employees and managers, and the HAMNERS conspired and agreed with each other and/or one another against GECY for the purpose of injuring GECY.

69. The civil conspiracy was furthered by the DEFENDANTS various acts and omissions; including, upon information and belief:

- a. SCB&T directed the HAMNERS away from the 10 Meredith Lane property and towards other property;
- b. the HAMNERS, partially based on SCB&T's direction, decided to purchase other property;
- c. SCB&T and the HAMNERS worked together to delay the closing date past the initial March 5, 2010 date under the contract; and
- d. SCB&T and the HAMNERS worked together to delay the closing date past the 30 day extension in April 2010.
- e. did not disclose their plans to beach the contracts and pursue other property;
- f. made false statements and/or omissions that allowed GECY to reasonably believe they intended to close on the property.

70. The DEFENDANTS combined and concurred with each other to damage GECY in order to unlawfully attempt to have the HAMNERS abandon their duties under the AGREEMENT TO BUY AND SELL REAL ESTATE; to abandon their duties under the NEW CONSTRUCTION AGREEMENT; to their duties under the ADDENDUM TO BUY AND SELL REAL ESTATE; and to intentionally and unjustifiably delay the final approval of loan financing until after the expiration date under the contracts.

71. DEFENDANTS' actions have caused special damages to GECY, in addition to his actual damages, including causing GECY to incur costs and lose substantial profits associated with the starting and halting of four other construction projects in reliance upon selling 10 Meredith Lane by April 2010.

72. As a direct and proximate result of SCB&T's conversion by the actions and omissions as specified herein, GECY sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

73. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

74. DEFENDANTS made material, false statements to GECY regarding their intention to close the loan and/or their reasons for failing to close the loan.

75. DEFENDANTS had a pecuniary interest to make such false statements.

76. The HAMNERS owed GECY a duty of care under their contracts with GECY to communicate truthful information to GECY.

77. SCB&T owed GECY a duty of care because SCB&T possessed expertise or special knowledge that would ordinarily make it reasonable for GECY to rely on SCB&T and because SCB&T had a pecuniary interest in the transaction.

78. DEFENDANTS breached their duty by failing to exercise due care.

79. GECY justifiably relied on the DEFENDANTS' misrepresentation as to their willingness to close on the loan transactions and as to their reasons for delaying closing.

80. As a direct and proximate result of DEFENDANTS' negligent misrepresentations by the actions and omissions as specified herein, GECY has sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
Defendant SCB&T Only
(Unfair Trade Practices)

81. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

82. SCB&T is a corporation that engages in trade and/or commerce.

83. SCB&T has violated the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10 et seq., by engaging in unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade and/or commerce.

84. SCB&T advertises and promises to provide loan financing for the purchase of land and construction of residences to qualified citizens of South Carolina.

85. SCB&T's unfair and deceptive acts affect the public interest.

86. Upon information and belief, SCB&T unfair and deceptive acts have been repeated

87. SCB&T's unfair and deceptive acts have the potential for repetition.

88. SCB&T's unfair and deceptive acts and promises proximately caused GECY's damages.

89. SCB&T's unfair and deceptive acts and promises were willful in that SCB&T knew or should have known that its conduct was a violation of the South Carolina Unfair Trade Practices Act.

90. As a direct and proximate result of SCB&T's unfair trade practices by the actions and omissions as specified herein, GECY sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

PUNITIVE DAMAGES

91. In addition to the actual damages, SCB&T and the HAMNERS' highly reckless, wanton, and irresponsible conduct as specified in certain causes of action in this Complaint entitle GECY to an award of punitive damages.

TRIAL BY JURY.

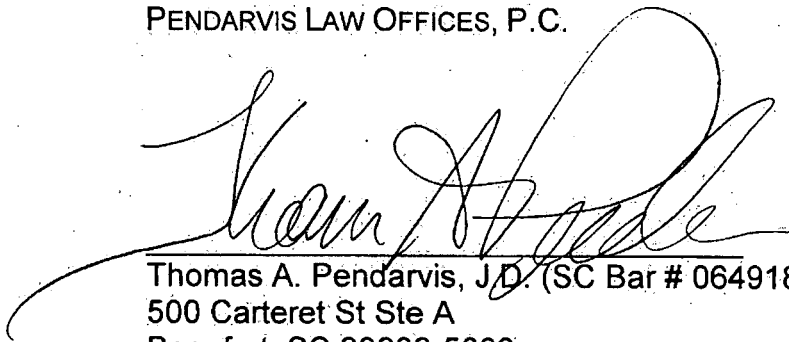
92. GECY demands a jury trial on all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Benjamin Gecy, prays for judgment against Defendants, SCB&T and the HAMNERS, jointly and severally, for all actual damages, consequential damages, special damages, incidental damages, statutory damages, for prejudgment interest, and for punitive damages, all in an amount to be more specifically proven at trial, and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, J.D. (SC Bar # 064918)
500 Carteret St Ste A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorney for Plaintiff, Benjamin Gecy

Beaufort, South Carolina
June 14, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-1778

Benjamin Gecy,

Plaintiff,

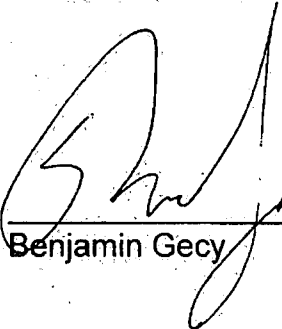
vs.

SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

**VERIFICATION
OF FIRST AMENDED
VERIFIED COMPLAINT**

PERSONALLY appeared before me Benjamin Gecy, who, first being duly sworn says: that he is the Plaintiff in the foregoing action; that he has read the foregoing Verified Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.



Benjamin Gecy

SWORN to before me this

14 day of June, 2011

Jennifer A. Clark

(L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 7-8-2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-1778

BENJAMIN GECY,)

Plaintiff,)

vs.)

SOUTH CAROLINA BANK & TRUST,)
JAIME HAMNER AND DEBORAH)
HAMNER,)

Defendants,)

ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT

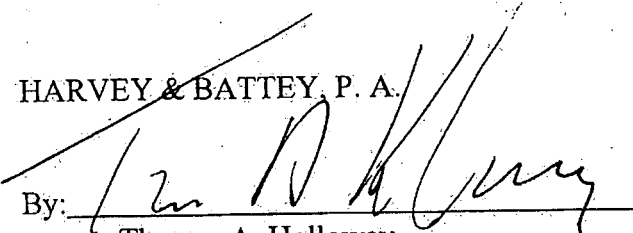
JENNIFER A. ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

2011 JUN 29 PM 3:09

Come now the Defendant, South Carolina Bank & Trust, reserving all rights under Motions made heretofore or herewith, answering the Plaintiff's Amended Complaint allege and say:

1. Responding to the allegations contained in paragraphs 1 through 91 of the Plaintiff's Amended Complaint, this Defendant repeats and reiterates each and every Answer filed in the Defendant's Answer dated June 8, 2011. To the extent that any allegations have changed, the Plaintiff is left to his proofs.

HARVEY & BATTEY, P. A.

By: 

Thomas A. Holloway
P.O. Box 1107, 1001 Craven St.
Beaufort, SC 29901-1107
(Tel) 843.524.3109 (Fax) 843.524.6973
Attorneys for the Defendant,
South Carolina Bank & Trust

Beaufort, SC
June 29, 2011

099

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No.: 2011-CP-07-1778

BENJAMIN GECY,

Plaintiffs,

vs.

SOUTH CAROLINA BANK & TRUST,
JAIME HAMNER AND DEBORAH
HAMNER,

Defendant.

ANSWER AND COUNTERCLAIM
OF
JAIME & DEBORAH HAMNER
TO
PLAINTIFF'S AMENDED COMPLAINT

2011 JUL 20 PM 1:57
CLERK OF COURT
BEAUFORT COUNTY, S.C.

COME NOW THE DEFENDANTS, Jaime Hamner and Deborah Hamner, reserving all rights under motions made heretofore or herewith, answering the Complaint and allege and say:

1. Responding to the allegations contained in paragraphs 1 through 91 of the Plaintiff's Amended Complaint, the Defendants repeat and reiterate each and every Answer and reassert their Counterclaims as contained in their Answer and Counterclaim filed on or about May 27th, 2011 as if fully stated herein. To the extent that any allegations have changed, the Defendants deny said allegations and demand strict proof thereof.

MIKELL, WEIDNER, WEGMANN AND HARPER, LLC

By:

James J. Wegmann
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
wegmannj@beaufortlaw.com

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

11 JUL 29 PM 7:28
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-01778
CLERK OF COURT

Benjamin Gecy,

Plaintiff,

vs.

SOUTH CAROLINA BANK & TRUST, Jaime
Hamner and Deborah Hamner,

Defendants.

**PLAINTIFF'S REPLY TO THE
ANSWER AND COUNTERCLAIM
OF JAIME AND DEBORAH
HAMNER TO PLAINTIFF'S
AMENDED COMPLAINT**

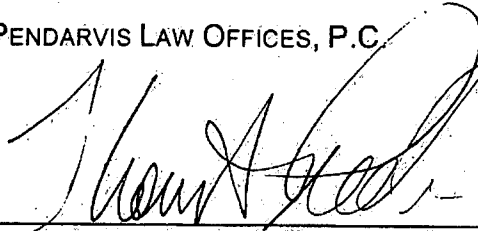
TO: JAMES J. WEGMANN, J.D., ATTORNEY FOR DEFENDANTS, JAIME HAMNER AND DEBORAH HAMNER:

Plaintiff and Counterclaim Defendant, Benjamin Gecy, through his undersigned counsel, hereby files his REPLY, answering and responding to the Counterclaims asserted by Defendants and Counterclaim Plaintiffs, Jaime Hamner and Deborah Hamner, in their ANSWER AND COUNTERCLAIM to Plaintiff's AMENDED COMPLAINT as follows:

Plaintiff and Counterclaim Defendant, Benjamin Gecy reasserts each and every answer, allegation, and defense contained in Plaintiff's REPLY to Jaime and Deborah Hamner's Counterclaims filed on or about June 17, 2010.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
500 Carteret St Ste A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Attorney for Plaintiff and Counterclaim
Defendant, Benjamin Gecy

Beaufort, South Carolina

July 27, 2011

1 State of South Carolina) Court of Common Pleas
 2 County of Beaufort) 14th Judicial Circuit
 3 No.: 2011-CP-07-1778

4 Benjamin Gecy,)

5 Plaintiff,)

6 vs.)

HEARING

7 South Carolina Bank &)
 8 Trust, Jaime Hamner and)
 9 Deborah Hamner,)

10 Defendants.)

February 21, 2014

11
 12 Hearing reported by Deborah S. Thomas,
 13 Certified Verbatim Reporter and Notary Public in and
 14 for the State of South Carolina; said hearing held
 15 before the Honorable Marvin H. Dukes, III, Beaufort
 16 County Master in Equity and Special Circuit Court
 17 Judge in accordance with the South Carolina Rules of
 18 Civil Procedure, at the Beaufort County Courthouse,
 19 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 20 on February 21, 2014, at the hour of 9:59 a.m.

21
 22 ABACTIS REPORTING SERVICES

23 15 Pineapple Drive
 24 Bluffton, South Carolina 29909
 25 (803) 206-7390

COPY

Appearances

Representing the Plaintiffs:

BENJAMIN GECY
Pro Se

Representing

JAMES J. WEGMANN, ESQUIRE
Weidner, Wegmann & Harper, LLC
6 Professional Village Circle
Beaufort, South Carolina 29907

Representing

JOHN SAMUEL VERNER SCOVILLE, ESQUIRE
Harvey & Battey, PA
P.O. Box 1107
Beaufort, South Carolina 29901
sscoville@harveyandbattey.com

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EXHIBIT INDEX

Exhibits:

Marked at Page

(None were proffered.)

* * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning then,
4 everyone. We are here on Case 2011-CP-07-1778.
5 This is Gecy versus SCB&T and Hamner and Hamner.
6 We had scheduled for today SCB&T's -- or I'm sorry.
7 Summary judgment motions on behalf of all
8 Defendants.

9 Yesterday Plaintiff filed a motion to
10 continue today's hearing. And I don't have it here,
11 but you all have all told me it exists, so let's
12 hear it. So, Mr. Gecy -- here it is. I'm sorry.
13 Motion to Continue filed February 20th, 2014. And I
14 think it's appropriate we take that up first.

15 So, Mr. Gecy, go ahead, please, on your
16 motion to continue.

17 MR. GECY: Thank you, Your Honor. I
18 filed the motion to continue as I have two
19 outstanding depositions that have been properly
20 served and filed for Mr. Walters and a Mr. Chalmers.

21 The reason I'm asking for a motion to
22 continue is both of those witnesses were not
23 witnesses to the case until our depositions were
24 conducted February 10th, 11th, and 12th. I filed
25 the motion to continue based solely on those two

1 depositions with what I expect to come out of their
2 testimony.

3 JUDGE DUKES: And what do you expect
4 to come out of their testimony that would have a
5 bearing on today's summary judgment motion?

6 MR. GECY: Well, the summary judgment
7 motion that we are here arguing today is one that
8 has been filed for approximately two years. And the
9 subject matter in that summary judgment was there
10 was no genuine issue of fact. And an affidavit
11 attached to it from a Diana Chalmers.

12 Mr. Chalmers is one of the witnesses we
13 are going to depose next week. The affidavit
14 Ms. Chalmers prepared said that she had never agreed
15 to sign a road maintenance agreement during the
16 period of time we were under contract and no time in
17 the future.

18 Well, during depositions Ms. Chalmers
19 testified that she didn't send the e-mails that said
20 they agreed to sign the road maintenance agreements.

21 And during the depositions we questioned
22 her repeatedly on who sent them, and she blamed it
23 on her husband. So at that point in time I
24 immediately filed under Rule 45 a subpoena for his
25 deposition.

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1 And given the 10 days notice, we have
2 narrowed that down to February 27th and possibly
3 February 26th, which I think is important. And also
4 I think Mr. Walters, we had submitted on
5 January 8th, which I've given you also requests for
6 production from the bank. In that request for
7 production we asked for certain questions to be
8 answered that the Defendant South Carolina Bank &
9 Trust denied and objected to and also said it wasn't
10 relevant.

11 So my office and myself did some research
12 into Beaufort County records only days before the
13 depositions on February 10th, and found certain
14 instances that prove there are no policies from the
15 bank in place for road maintenance agreements or the
16 V.A. policies that the Defendants have used as a
17 defense as far as a requirement on this transaction.

18 So Mr. Walters' testimony is expected to
19 not only prove multiple levels of deceit, lies,
20 misrepresentations. And he's also expected to
21 testify that the bank employee prepared the road
22 maintenance agreement for his transaction.

23 Mr. Walters closed a transaction with
24 South Carolina Bank & Trust in December 2012,
25 construction loan. Rolled it over to a permanent

1 V.A. loan which was identical to the Hamner
2 transaction. He funded that with the same loan
3 originator and the same bank, South Carolina Bank &
4 Trust.

5 And his situation is completely opposite
6 of what the agents from South Carolina Bank & Trust
7 and Mr. Hamner have pled from the very beginning.
8 And I think it's relevant, Your Honor.

9 JUDGE DUKES: All right. Again, I'm
10 trying to figure out, and you all know this case
11 obviously a lot better than I do and what the
12 subject matter is, but I'm looking at the brief in
13 support of summary judgment and it talks about there
14 is a statute of frauds, lender liability issue.
15 That seems like that wouldn't have any -- be no
16 bearing on this having to do with this road
17 maintenance agreement. Maybe there would, I don't
18 know.

19 And there are some other things in here;
20 fraud, civil conspiracy, negligent
21 misrepresentation. Those probably do have or those
22 depositions may have some bearing on that. Let me
23 do this --

24 MR. GECY: Well---

25 JUDGE DUKES: Go ahead, Mr. Geey.

1 MR. GECY: Your Honor, we don't know.
2 I mean, Mr. Walters' testimony I think is going to
3 be compelling to all of the claims that we have in
4 there. I mean, we've got a loan officer that we
5 think has prepared a road maintenance agreement that
6 they claim are policies that they never deviate
7 from. And I don't know what else he's going to --

8 JUDGE DUKES: Can you tell me what --
9 explain the road maintenance agreement.

10 MR. GECY: I'll start from the
11 beginning, yes. It's kind of easier if we start
12 from the beginning.

13 JUDGE DUKES: And I know you've told
14 -- I've heard some of this before, but --

15 MR. GECY: This case, the Defendants
16 and the Plaintiffs all agree, all of the affidavits
17 describe one central theme and that is a road
18 maintenance agreement. This loan failed because of
19 a road maintenance agreement requirement by South
20 Carolina Bank & Trust.

21 South Carolina Bank & Trust applied a road
22 maintenance agreement to this private road of
23 Meredith Lane that I owned a house on and said that
24 all parties to the road had to sign the road
25 maintenance agreement.

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1 JUDGE DUKES: All right. So you
2 were -- this was a loan that you were renewing with
3 South Carolina Bank & Trust?

4 MR. GECY: No. I was the seller of
5 the property.

6 MR. WEGMANN: If it helps, and I
7 don't --

8 MR. GECY: Go ahead, Jim.

9 MR. WEGMANN: I don't want to step on
10 you. Okay?

11 MR. GECY: That's okay. Go ahead.

12 MR. WEGMANN: If it helps, Judge.
13 Essentially, and I'll try and be as brief as I can
14 because we've been living with this for awhile, but
15 essentially Mr. Gecy and my clients, the Hammers, on
16 February 3rd of 2010, entered into two contracts.

17 The first contract -- and essentially they
18 are together, but the first contract was for
19 \$150,000, and it was for the roughly 6.78 acres on
20 Meredith Lane for the land. Okay?

21 The second contract was approximately
22 156,900--was for the new construction to build a
23 house. Okay?

24 JUDGE DUKES: So Gecy was -- you were
25 purchasing from Hammers?

1 MR. WEGMANN: No. No.

2 MR. GECY: No. No.

3 JUDGE DUKES: The Hamners were
4 purchasing from you?

5 MR. WEGMANN: The Hamners were
6 purchasing from Mr. Gecy the land. And Mr. Gecy,
7 through one of his companies, was going to build the
8 house.

9 JUDGE DUKES: Build a house.

10 MR. WEGMANN: So he was acting as
11 seller of the land, owner of the land, and builder.

12 JUDGE DUKES: Okay.

13 MR. WEGMANN: And those contracts
14 were signed on February 3rd of 2010.

15 JUDGE DUKES: Okay.

16 MR. WEGMANN: Within the contracts
17 there are financing contingencies that are
18 open-ended. The only thing that is filled out in
19 the financing contingency is really on the new
20 construction contract, and it says a hundred percent
21 financing.

22 There is no V.A. check. There is no
23 conventional check. There is no time period checked
24 for when they had to apply or anything else. At
25 that stage, and we don't disagree on this I don't

1 think, Mr. Gecy referred the Hammers over to Doug
2 Jacobs at South Carolina Bank & Trust.

3 MR. GECY: That's correct.

4 MR. WEGMANN: The Hammers did their
5 loan application, gave South Carolina Bank & Trust
6 everything that they needed to do. And I don't
7 think there is any disagreement about that.

8 MR. GECY: No. No.

9 MR. WEGMANN: The original closing
10 date under both contracts -- because they really are
11 joint. I mean, it's not like you are going to
12 purchase the land and not build a house.

13 JUDGE DUKES: Sure.

14 MR. WEGMANN: Or you can't build a
15 house unless you purchase the land, but the original
16 closing date was set for March 5th. Mr. Gecy and
17 the Hammers shared one lawyer, Ken Tuttle. And
18 essentially at March 5th the problem was -- and I
19 don't think we differ too much about this, and I
20 think the e-mails speak for themselves.

21 Two things had come up at that point.
22 One, the appraisal had come back. And the
23 appraisal -- although if you looked at the
24 appraisal, to be fair to Ben, if you looked at the
25 appraisal in whole it covered both contracts. So if

1 you add the 150 and 159,600 together, you know, you
2 get your 309 and whatever. And the appraisal came
3 in for --

4 MR. GECY: 350.

5 MR. WEGMANN: -- 350. Okay.

6 However, at that point in time the lot value was
7 115, not 150. Okay? So there was a discrepancy as
8 it relates to the appraisal and there were some
9 things going back and forth between Mr. Gecy and the
10 bank at that point in time about the appraisal,
11 whether another one was going to be done.

12 Mr. Gecy had some comps he wanted Patrice
13 Moody, the appraiser, to look at, et cetera. The
14 other thing was the road maintenance agreement. So
15 we hit March 5th. Things are not ready to close.
16 Okay?

17 Each contract has a 30-day potential
18 extension as long as -- you know, there are
19 contingencies out there through no fault of either
20 party, et cetera. I will admit because, you know, I
21 don't think anybody disagrees with this, my clients
22 didn't know. They actually sent Kenny Tuttle a
23 thing on March 12th that said, hey, look, you know,
24 we are going to be done with this. You know, there
25 is this issue with the appraisal and there is no

1 road maintenance agreement, da-ta-da-ta-da, but
2 everybody got together after that.

3 I think Mr. Tuttle was there. Mr. Gecy
4 was there. I think both the loan originator was
5 there and Bruce Van Horn, the vice president over at
6 SCB&T, were there. And essentially we moved on
7 toward April 5th. Okay? At that point in time when
8 we hit April 5th -- and as of March 27th, to be fair
9 to my client, you know, he's e-mailing Mr. Gecy
10 going, I like these colors. I like this porch on
11 this house over here. Can you do that, et cetera.

12 We get to April 5th and there is still no
13 road maintenance agreement signed. Okay? The gist
14 of it is from Mr. Gecy's point of view, and I don't
15 want to speak for him, but is that he believed the
16 bank essentially shouldn't have required every
17 person on Meredith Road to sign the road maintenance
18 agreement.

19 Not to speak for the bank, the bank's
20 point of view is our underwriting is our
21 underwriting. And, you know, under the lender's
22 statute of fraud if the Hammers have no recourse
23 against us, certainly a third-party seller has no
24 recourse, but essentially no road maintenance
25 ~~agreement in its entirety has ever been signed to my~~

1 knowledge.

2 I've never seen one. It wasn't signed on
3 April 5th. After April 5th there is a bunch of
4 stuff going back and forth between everybody. On
5 April 8th the bank sends Mr. Gecy an e-mail that
6 says, hey, look, we are still looking for, you know,
7 these items. We are looking for a signed road
8 maintenance agreement. We are looking for -- they
9 wanted an aerial or an overhead photo. They wanted
10 a tax assessor page showing who owned, you know,
11 certain places. So they were still looking for
12 things. And everybody was still kind of hanging out
13 at that point in time.

14 On April 12th, my office sends out to Mr.
15 Gecy, because Mr. Tuttle figures out that, I'm stuck
16 in the middle. I represented both of them and can't
17 do anything. Sends a thing out that says, hey,
18 look, you know, my clients are out. Return the
19 earnest money, which was about 14,000 and some
20 change. And, you know, let's move on down the road.

21 The normal stuff happens after that. Hey,
22 if you are not going to do this we are going to sue
23 you, you know, stuff like that that happens in every
24 one of these things. But if you boil it all down to
25 soup-to-nuts, you know, it comes down to the bank

1 had a requirement that a road maintenance agreement
2 be done. The bank says -- and again jump in if I'm
3 wrong. But the bank says that between their
4 policies at SCB&T and between the V.A. because this
5 thing was set up essentially as -- V.A. doesn't --
6 and you won't disagree with me I don't think. V.A.
7 doesn't lend money for construction. Okay?

8 So you can get a V.A. loan at the end, and
9 there are two ways to do that, but the way this one
10 was structured is SCB&T was going to loan the
11 construction money at a hundred percent. And
12 essentially at the end of that construction period
13 it was going to roll into a V.A. perm, 30-year fixed
14 rate, et cetera. Okay?

15 The bank's position is, essentially, that
16 because it was rolling to a V.A. perm they required
17 a road maintenance agreement between the bank
18 policies and what they believed the V.A. policies
19 are. All right?

20 From my client's perspective, they don't
21 set the guidelines for underwriting. From Mr.
22 Gecy's perspective, and again I'm trying not to
23 speak for him, but as I understand it through all of
24 these depositions and everything is that is not a
25 proper guideline. The bank shouldn't have been

1 requiring that. And that is where this Mr. Walters
2 thing comes in.

3 MR. GECY: This is where we differ,
4 Your Honor. It comes down to the road maintenance
5 agreement requirement. They feel that it's a denial
6 based on bank policy. I feel that it's
7 interference. And I can prove in this document from
8 the V.A. and I've requested the bank's policies
9 through production. Mr. Holloway has denied me
10 those and answered it that it's not relevant to the
11 matter. It's completely relevant. There is no bank
12 policy.

13 JUDGE DUKES: Well, I guess -- and
14 not talking about your clients for a minute, but the
15 bank. What obligation did the bank have to you, the
16 seller?

17 MR. GECY: Well, the contract that I
18 signed with Mr. Hamner was subject to financing.
19 They became a third party to the contract by
20 providing the financing. Mr. Doug Jacobs, the other
21 representative City executive and Mr. Hamner
22 repeatedly led me to believe that the V.A. was
23 funding the transaction.

24 They led the neighbors on Meredith Lane to
25 believe that the V.A. was funding the transaction.

1 The V.A. guidelines do not require all parties to a
2 road -- a private road sign a road maintenance
3 agreement, Your Honor. And it's clearly written in
4 the guidelines.

5 They misrepresented a V.A. guideline and
6 applied it to a loan. And they simply just scrubbed
7 the V.A. guidelines upfront and put it on their
8 South Carolina Bank & Trust construction policy and
9 said, these are our policies. Well, those aren't
10 the V.A. policies. And I can prove that. I've
11 proven it in the depositions. The agents of the
12 bank said they would never deviate from the policy
13 of requiring all parties to a private road to sign a
14 road maintenance agreement.

15 And we've asked two different employees of
16 the bank, and they say that is the policy and we
17 never deviate from that. When there is a private
18 road, and a road maintenance agreement is required,
19 we always get every party to the road. And I've got
20 exhibits in front of you in Beaufort County public
21 records that prove otherwise, Your Honor.

22 JUDGE DUKES: But, I mean, is it your
23 theory -- is it the Plaintiff's theory that a bank
24 that may or may not provide a loan to a purchaser
25 somehow becomes liable to a developer if they don't

1 give the purchaser the loan?

2 MR. GECY: Well, I was relying on the
3 financing to fund the transaction for the buyer. I
4 mean, the financing and the type of financing the
5 bank was providing, I think they had a duty of care
6 to me, yes, as a seller to act in good faith, to not
7 misrepresent guidelines from where they were
8 borrowing the money or where they were trying to
9 fund the transaction.

10 In this case, the bank has no policy for
11 road maintenance agreements. And they applied a
12 V.A. guideline in all of the e-mails and all of the
13 depositions and said they basically -- Bruce Van
14 Horn says he -- they folded the V.A. guidelines into
15 their policies for these types of loans.

16 MR. JACOBS: Your Honor --

17 MR. GECY: The V.A. policy does not
18 require all parties to a road maintenance agreement.
19 And SCB&T also testified that they have never turned
20 down a loan for a road maintenance agreement issue
21 in Beaufort ever.

22 JUDGE DUKES: I mean, isn't there
23 some level of subjectivity of whether or not a bank
24 makes a loan on anything? I mean, don't these bank
25 groups get together when they are deciding to make a

1 loan, the loan committee, and say, we don't like
2 what direction this neighborhood is headed. This
3 isn't what we want to do. Can't they just say, no,
4 we aren't making this loan? Why don't you try
5 Wachovia?

6 MR. GECY: Well, not when there are
7 lies and deceit about where they are actually
8 originating the guidelines from, Your Honor. In
9 this case it was from the very beginning up until
10 the depositions of February 10th it was always the
11 V.A. that they relied on.

12 Well, I busted that theory wide open in
13 the depositions and everybody else did. So now
14 they've gotten away from the V.A. And in these
15 affidavits -- you know, I got a summary judgment
16 that was preparing for, the subject matter was
17 always around Diana Chalmers' affidavit.

18 And in both the summary judgment motions
19 they both say judgment on the grounds that there is
20 no genuine issue as to material fact. Okay? Well,
21 two days before this hearing I get two more
22 affidavits from Mr. Wegmann and Mr. Jacobs ignoring
23 Rule 56 where I'm supposed to get 10 days and all of
24 a sudden there is material fact. And Mr. Hamner
25 adds 22 new statements to his affidavit two days

1 ago.

2 JUDGE DUKES: Let me ask you, so
3 these two depositions that you are talking about are
4 scheduled when?

5 MR. GECY: February 26th and
6 February 27th depending on Mr. Holloway's schedule.
7 He's informed me that he's not available the week of
8 February 26th and he's not available the week after
9 that.

10 We went through that with the motion to
11 quash, Your Honor. I properly served the witness.
12 And, you know, maybe Mr. Holloway -- I'm trying to
13 work with his schedule under the rules, but, you
14 know, maybe he's got to file a motion to quash to
15 check his schedule out. You know, these depositions
16 are important to my claim, especially with what has
17 been reflected in the Beaufort County public records
18 about these sales.

19 MR. JACOBS: May I be heard, Your
20 Honor?

21 JUDGE DUKES: Yes, absolutely.

22 MR. JACOBS: On behalf of the bank
23 and Mr. Holloway, we filed -- I filed this morning
24 Mr. Holloway's brief in support of this motion. And
25 certainly defer to the brief as to any arguments

1 that we make here today. I'm going to ask that the
2 court consider all arguments raised in the brief.

3 But based on what -- your questioning of
4 Mr. -- Gecy?

5 MR. GECY: Gecy, yes, sir.

6 MR. JACOBS: His theory is as to the
7 bank that the bank owed this duty to him by virtue
8 of, you know, the buyer applying for financing at
9 the bank when he had a contract with the buyer which
10 was contingent upon financing.

11 There is no contract between him and the
12 bank. And he has not raised -- despite notice of
13 this motion, he has not presented any authority to
14 establish that the bank owed him a duty under his
15 theory. And that obligation is on him. He filed
16 this case. He's the Plaintiff. He filed his own
17 bankruptcy. He moved to have the case restored.
18 He's had ample time to develop all of this. And to
19 now request more depositions which aren't going to
20 have -- without any legal authority to establish the
21 duty, and without -- I mean, they are not going to
22 make any difference whatsoever.

23 He hasn't explained that at least here
24 today and he hadn't explained it in any responses or
25 in his motion to continue the case. And he's

1 talking about the road maintenance agreement as to
2 what that goes to, but the road maintenance
3 agreement has absolutely nothing to do with whether
4 he had a contract with the bank or whether the bank
5 owed him a duty.

6 And our position is if he can't show
7 either one of those things, he's got no case. And
8 there is no need to continue this, to put the bank
9 and all the parties to further expenses would be a
10 waste of judicial resources and the parties
11 resources to continue this.

12 And, I mean, so far today at least from
13 what I've heard our position is he's not even
14 addressing the issues which are raised by the motion
15 which are the statute of frauds and the lack of any
16 other duty which he's -- he's not even arguing.

17 I mean, he argues in his complaint that
18 there was a duty, but he's presented no legal
19 authority for that.

20 JUDGE DUKES: Well, and that is why I
21 was curious about what these depositions were
22 supposed to -- whether or not -- because I don't
23 know. I mean, again, I'm not dealing with the
24 individuals which may be -- I mean, this may or may
25 not be a situation where we proceed with the summary

1 judgment on behalf of the bank and not the
2 individuals because I don't know what the people are
3 going to say, but as to the bank itself -- I mean, I
4 think that is important to show that they had a duty
5 or contract or something like that. And I guess I
6 think what I'm hearing is these witnesses aren't
7 going to testify to that one way or another or maybe
8 they are.

9 MR. GECY: We don't know that, Your
10 Honor. I mean, you know, the bank is responsible
11 for the transaction in my opinion that they came up
12 with a condition for the buyer, but they imposed it
13 on me, the seller. They forced me to go out and get
14 these road maintenance agreements. They said it was
15 my responsibility.

16 Agents from the bank and the other
17 attorneys said I had title defects. I've got a
18 50-foot easement. I've got a benefit easement. It
19 qualifies just fine. The V.A. guidelines, they
20 merely misrepresented what was required.

21 And let it be known, Your Honor, he didn't
22 apply for a V.A. loan. The application that he
23 applied for, they never even went to the V.A. And
24 the bank has no guidelines. So now what they are
25 doing is they are getting away from the V.A.,

1 stepping back and saying, well, it's our own
2 internal guideline. I've asked for the written
3 guidelines from the bank.

4 JUDGE DUKES: But, I mean, if your
5 theory is correct, I mean, wouldn't any seller of a
6 property have a cause of action against a bank that
7 refuses to give a loan to a buyer? I mean, that
8 would open up -- that would just blow lending law
9 wide open. I mean, it would be an entirely new
10 theory. I mean, where is that duty? That is the
11 part I guess I'm -- and, again, we are not arguing
12 the motion. I'm trying to figure out what might
13 be -- we are on your motion to continue. And I'm
14 trying to figure out what on earth would come out of
15 these two depositions that would change any of that,
16 what any of these witnesses could possibly say
17 because the documents that we would be dealing with
18 wouldn't be from third parties. They would be from
19 you or your company which, of course, you would
20 already be aware of. And these aren't bank
21 witnesses I don't think, right? This is -- who are
22 these people?

23 MR. WEGMANN: Mr. Walters is someone
24 who two years later -- and this is the testimony. I
25 was there for all of this.

1 JUDGE DUKES: I thought it was
2 somebody's wife or something.

3 MR. WEGMANN: No. No. Well,
4 Mr. Chalmers is the husband of Ms. Chalmers who has
5 been deposed.

6 JUDGE DUKES: Okay.

7 MR. WEGMANN: The issue there for Mr.
8 Gecy, as I understand it, is simply Ms. Chalmers
9 testified that she was -- she had an affidavit that
10 was in his original filing for summary judgment that
11 said, I never signed the road maintenance agreement
12 nor would I ever sign the road maintenance
13 agreement.

14 There is an e-mail out there running
15 around from -- the bottom of the e-mail says Ed --
16 and what is her first name? Cathy?

17 MR. JACOBS: Diana.

18 MR. WEGMANN: Diana Chalmers. And in
19 her -- and Ben questioned her about it at length.
20 And she said, I didn't send the e-mail. My position
21 hasn't changed. I wouldn't sign it. That e-mail
22 was sent by Ed. But at the end of the --

23 JUDGE DUKES: Is the Plaintiff's
24 theory that you had some contract with the bank
25 where if you got a road-maintenance agreement they

1 would make the loan?

2 MR. WEGMANN: That claim was denied.

3 MR. GECY: That was the
4 condition -- that was the condition why they denied
5 the loan. The final condition was the road
6 maintenance agreement, but, Your Honor, on V.A.
7 loans the bank and the buyer are obligated in that
8 handbook, they have to notify me as the seller that
9 he's going V.A.

10 There is a document called a V.A.
11 amendatory clause. And it's the bank's
12 responsibility to give that to the seller because
13 there are special conditions in this manual for
14 sellers to follow. The bank never did that.

15 JUDGE DUKES: But, I mean, is that a
16 private cause of action thing or is that an
17 administrative complaint kind of thing?

18 MR. WEGMANN: And to be fair, and
19 this was the testimony at the deposition, the V.A.
20 does not loan money for construction. They don't do
21 it. They don't give out money for construction. So
22 you can take your own money out of your bank and
23 build your house and then roll it to a V.A.,
24 refinance it, roll it, whatever. Or you can get a
25 V.A. lender who does it.

False
They do
see ratio
???
V.A. does
insure
construct
Proven in
V.A.
Handbook
more evidence roll
was a lie

1 The bank testified that essentially they
 2 were giving him a conventional construction loan
 3 that was going to last for up to a year, but Ben had
 4 said he could build it in four to six months I think
 5 it was, but -- and the intent was that the Hamners
 6 were going to roll that into a permanent V.A. fit.

7 As I understand it -- and Ben has been
 8 doing it for 15 years as a mortgage broker, but as I
 9 understand it that doesn't -- that V.A. roll doesn't
 10 get started until construction is going on the first
 11 loan. Somebody has got to pay -- the V.A. doesn't
 12 give you money to build a house. Somebody has to
 13 pay that.

14 MR. GECY: Your Honor, if I -- if I
 15 may?

16 JUDGE DUKES: All right. But I guess
 17 I'm -- this is all kind of off topic?

18 MR. WEGMANN: Yes, sir, it is.

19 JUDGE DUKES: And I guess what I'm --
 20 and I asked what is this about.

21 MR. WEGMANN: You did.

22 JUDGE DUKES: So I asked for it, I
 23 get it. But tell me -- back to the motion to
 24 continue. And let's forget the Hamners for a
 25 second. With regard to the bank, what would come

1. Loan
 application
 signed by all
 parties was
 a 30-yr
 term
 loan
 w/ no rollover
 clause
 or balloon
 loan App.
 was permanent

False
 V.A. can
 start on
 construction
 see Section
 77?
 V.A. it had back

1 out of these two depositions that -- what is the
2 best case scenario for the Plaintiff that the
3 testimony would be or the documents produced out of
4 this deposition that would -- that would cause there
5 to be some sort of a contract with the bank on this
6 issue?

7 MR. GECY: The Chalmers deposition is
8 not going to produce any of that Your Honor. The
9 Walters deposition is going to possibly produce a
10 fraud from the bank. That he prepared a road
11 maintenance agreement for the individual that
12 violated his deviation of the policy -- the bank's
13 policies and the V.A.

14 There are 10 people on Hester Lane that
15 Mr. Walters closed with. Not only did they close
16 the construction loan without a road maintenance
17 agreement that they said they would never do under
18 oath. They went and got the road maintenance
19 agreement a year later for the V.A. loan.

20 And instead of getting all parties to
21 Hester Lane to sign the road maintenance agreement,
22 the originator prepared, from what I understand with
23 Mr. Walters, it's hearsay right now, the originator
24 prepares the road maintenance agreement knowing that
25 this action is going on for Mr. Walters, singular,

1 one person, did not go to the other 10 people.

2 And I've got an exhibit of Hester Lane.

3 I've got a letter from Beaufort County. Hester Lane
4 has never been a public road. It's always been a
5 private road. So what we have is Mr. Walters --
6 Mr. Jacobs at the bank prepares the road maintenance
7 agreement for just Mr. Walters to close on the loan.

8 He does not go to the other nine or 10
9 residents that they say the V.A. requires in order
10 to close a loan. Also, it's the bank's policy that
11 says we always -- and I've got that deposition and
12 those documented in my affidavit where they
13 testified, we always get all parties to sign a road
14 maintenance agreement before we do the construction
15 loans.

16 JUDGE DUKES: But, I mean, if I were
17 to assume for purposes of this summary judgment
18 motion that the bank violated internal policies or
19 V.A. policies in failing to make a loan to the
20 Hamners --

21 MR. GECY: I was the seller on that
22 transaction.

23 JUDGE DUKES: But, I mean, I'm still
24 trying to get how that creates a private cause of
25 action for you.

1 MR. GECY: The money that Mr. Hamner
2 was borrowing was consummating my sale with the
3 seller. And it was subject to the financing. So I
4 was relying on that.

5 JUDGE DUKES: But, I mean if that is
6 the case the lumber contractor that was providing
7 you with lumber that didn't get paid might have a
8 cause of action against the bank, and the -- I mean,
9 it could go -- where does the chain end, you know?
10 I mean, does this mean if a lender doesn't lend
11 money to someone, anyone that that lender
12 conceivably is going to send that money to has a
13 cause of action against the bank? I just think
14 it -- I don't know. And, again, I'm not hearing the
15 motion. I'm trying to figure out what your best
16 case scenario is.

17 MR. GECY: It's the lies, the deceit
18 and -- you know, if the bank would have come out and
19 on their sign and on the front door it says we lie,
20 we deceive, and we misrepresent, I would have been
21 okay with that, but the bank said South Carolina
22 Bank & Trust. And I sent a customer over there
23 trusting that they would in good faith fund the
24 transaction.

25 What they did was they misrepresented

1 guidelines that injured me as the seller. And those
2 guidelines are not accurate with what he required.
3 That was the final condition. And that is not
4 disputed.

5 JUDGE DUKES: But, I mean, it's a
6 duty question. I mean --

7 MR. JACOBS: If I may, Your Honor?

8 JUDGE DUKES: Yes.

9 MR. JACOBS: As you said, this is his
10 motion to continue. Being the moving party we would
11 ask what legal authority does he rely upon for this
12 duty that he says he might be able to establish or
13 gather testimony about from these depositions?

14 And so far he's presented no legal
15 authority for that. And that being the case, we are
16 just talking about things that are irrelevant to the
17 motion for summary judgment. And therefore we would
18 ask that you deny the motion to continue because
19 he's presented no legal authority for this alleged
20 duty. Again, he's the moving party.

21 JUDGE DUKES: Well, I know, and I was
22 giving him a little leeway because he's pro se, but
23 you've got a point. Is there any legal precedent or
24 anything that creates a duty of the type that you
25 are attempting to impose on this lender?

1 MR. GECY: Well, Your Honor, part of
2 the problem I'm dealing with is this motion for
3 summary judgment has been so close to my depositions
4 and have been somewhat constrained, but, no, I don't
5 have anything right now.

6 JUDGE DUKES: I mean, the problem is
7 honestly I've heard lots of cases like this. And
8 I've never seen any legal precedent that does
9 anything but says there is no duty in a situation
10 like this. And I'm happy to look at case law to the
11 contrary, but I have to consider that in this motion
12 to continue because if what you are telling me is
13 this deposition isn't going to come up with a
14 contract that you had --

15 MR. GECY: Understood.

16 JUDGE DUKES: -- then it would be
17 inappropriate for me to grant the motion to
18 continue. Now, again, I'm inclined to bifurcate the
19 situation because I don't know what this thing with
20 the Hammers has to do with this, but allow the bank
21 to proceed with their motion for summary judgment.

22 MR. GECY: I'm still prepared to --
23 argue the summary judgment. I mean, the motion to
24 continue was just for my discovery of those two
25 depositions. So, I mean, I'm prepared to --

1 JUDGE DUKES: Well, I'm happy to
2 continue the summary judgment on the Hammers and let
3 you complete -- I don't know if you still need both
4 depositions or one or whatever you need, but with
5 regard to the bank, I mean, I think what you are
6 telling me is there is no legal precedent that you
7 are aware of and there is nothing in the depositions
8 that would create any sort of scenario that I could
9 consider based on the fact that there is no legal
10 precedent on --

11 MR. GECY: I don't know that to be
12 the fact, Your Honor. I mean, I'll research it
13 and --

14 JUDGE DUKES: I mean, today sort of
15 would have been the day to come up with that.

16 MR. GECY: Yeah. Yeah. You are
17 right. You are right.

18 JUDGE DUKES: But I don't -- you are
19 welcome to look. It will be a surprise and news to
20 me if you actually find it, but I'm surprised every
21 day.

22 MR. GECY: Is there any way that I
23 could have some sort of break for five minutes or so
24 to try to find something like that or --

25 MR. WEGMANN: Your Honor, we would

1 oppose that and ask he file a motion to reconsider
2 it. That would be the appropriate time to do that,
3 assuming you granted the motion. I mean, you may
4 not even grant the motion.

5 JUDGE DUKES: I mean, I think what
6 I'm going to do is grant the motion to continue as
7 to the Hamners and allow you to take the depositions
8 and come back on the Hamners, but I just -- you
9 haven't shown me anything that would lead me to
10 grant a motion to continue on the bank. Based on
11 everything that you are telling me, there is just
12 nothing that is going to come out of these
13 depositions that is going to alter that.

14 MR. WEGMANN: And I understand what
15 you are saying, Your Honor, but as it relates to the
16 Hamners, these two depositions are really, and at
17 least in the Plaintiff's mind, related to the R.M.A.
18 agreement and the bank. They are not related to the
19 Hamners.

20 JUDGE DUKES: I thought the whole
21 thing was the Hamners said they wanted the loan, but
22 then there is something on the road maintenance
23 agreement, who is going to sign it, that sort of --

24 MR. WEGMANN: Well, that is the
25 condition the bank put on it.

1 JUDGE DUKES: Okay.

2 MR. GECY: And it really is about the
3 bank, Your Honor. I mean --

4 MR. WEGMANN: And I agree --

5 MR. GECY: And I agree with Mr.
6 Wegmann. I mean --

7 MR. WEGMANN: The Hamners are -- and
8 here is my view. If I read the case law correctly,
9 and I'm not saying I do. And I read the statute on
10 lender liability correctly, unless my client had a
11 contract with the bank for lending and all they have
12 filed is an application, even if the bank
13 misrepresents to the Hamners or frauds the Hamners,
14 because they don't have a contract the case law is
15 pretty clear the Hamners have no recourse against
16 the bank. And they are the ones asking for the loan
17 at that point. Until there is a commitment, and
18 jump in.

19 JUDGE DUKES: No. You are right.

20 MR. WEGMANN: But as I understand the
21 case law, until there is a commitment. And as Your
22 Honor knows, all the commitments at issue these days
23 have so many exceptions to them to include anything
24 they may think about in the future.

25 JUDGE DUKES: Written by lawyers no

1 doubt.

2 MR. WEGMANN: Yeah. And so until you
3 get to the day of closing and they issue a
4 package --

5 JUDGE DUKES: Yeah, they can back out
6 pretty easily.

7 MR. WEGMANN: -- they can back out
8 for any reason or no reason at all even if they've
9 lied to the applicant.

10 JUDGE DUKES: Let me -- and maybe
11 I've misunderstood Mr. Gecy's motion to continue.
12 It was really primarily directed at the bank you are
13 saying now?

14 MR. GECY: Yes.

15 JUDGE DUKES: Okay. Then there is --
16 then let's do this. I will give you five minutes to
17 just get your thoughts together and then we will do
18 the summary judgments. I think it would be
19 unfair --

20 MR. GECY: I don't need the five
21 minutes.

22 JUDGE DUKES: Okay.

23 MR. GECY: Yeah. We can move right
24 into that. Thank you, though.

25 JUDGE DUKES: All right. All right

1 then. Happy to hear from you.

2 MR. JACOBS: Well, Your Honor, I'll
3 proceed then with the motion for summary judgment.
4 It's detailed more fully in the brief that we handed
5 up, sir, today. On the other hand, the Plaintiff in
6 his motion to continue stated that he knows of no
7 legal authority which would establish a duty on
8 behalf of the bank independent of a contract between
9 him and the bank to support the allegations he makes
10 in his complaint.

11 And he's produced no writing between
12 himself and the bank. And therefore any other --
13 assuming there was anything left of the complaint,
14 those causes of action would be barred by 37-10-107.
15 I think that's all there is to it.

16 He had no contract with the bank,
17 certainly not any written contract that would
18 satisfy that statute. And there is no legal
19 authority to support any other duty between himself
20 and the bank, and therefore there is no genuine
21 issue of material fact. And summary judgment is
22 appropriate at least as to the bank. And I'm not
23 sure how the other Defendants tag along, but I'll
24 let Mr. Wegmann speak for them.

25 JUDGE DUKES: All right. Why don't

1 we let Mr. Wegmann go, and then, Mr. Gecy, I'm happy
2 to hear from you on both unless you want to take
3 them separately. Mr. Gecy, I'll leave it at your
4 option.

5 MR. GECY: No, I'll let Mr. Wegmann
6 go.

7 JUDGE DUKES: Okay.

8 MR. WEGMANN: You know, and we talked
9 about earlier on what this boils down to is
10 essentially the Hamners and Mr. Gecy had a contract
11 to purchase land and build. The bank, for whatever
12 reason, right, wrong, or indifferent, when April 5th
13 came around and that was the last day of the
14 extension on 30 days, they did not fund the loan,
15 approve the loan, or provide Mr. Tuttle a package.

16 There are three causes of action within
17 the complaint as it relates to the Hamners. The
18 first is breach of contract. As Your Honor knows,
19 and I've cited in the brief, that a financing
20 contingency that is unfulfilled, and I've cited
21 several cases and I've given you the cites and the
22 cases to them, is an excuse.

23 In other words, it excuses the Hamners
24 from any liability as it relate to the contract. If
25 they can't get financing, they can't fulfill their

1 contract. So it's not a breach when they can't.
2 The Hamners didn't set the condition as it related
3 to the road maintenance agreement. The Hamners in
4 good faith were ready, willing, and ready to close
5 on both March 5th and April 5th if they had had a
6 package.

7 In fact, on March 27th they were talking
8 to Mr. Gecy about colors and porches and everything
9 else along those lines. You know, Mr. -- and so as
10 it relates to the contract claim, their liability is
11 excused because the contingency for financing, which
12 was open-ended, was never fulfilled.

13 As it relates to civil conspiracy and
14 negligent misrepresentation, and I've quoted you the
15 case law in there, Your Honor, but essentially when
16 parties are in contract and they are in privity of
17 contract, unless there is a special relationship
18 between the parties, any action lies in contract and
19 not in tort.

20 Both negligent misrepresentation and civil
21 conspiracy are tort, but if we get past that
22 point -- so I say it ends there. Any action would
23 be in contract and their liability is excused under
24 contract pursuant to financing contingency.

25 If we go into the negligent

1 misrepresentation and talk about the torts,
 2 basically what came out of all of the depositions
 3 and everything else and what is in Mr. Gecy's brief
 4 or affidavit for this is essentially they told him
 5 he was going for V.A. -- that they would close and
 6 they were getting V.A. financing.

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7 Well, those are not conditions that are
 8 present conditions. Those are future conditions.
 9 And that cannot be the basis of a negligent
 10 misrepresentation. It has to be a present
 11 condition. And I've quoted the case within the
 12 brief, and I'll stand on that.

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13 So even if you can get past somehow that
 14 there is some kind of special relationship between
 15 the Hamners and Gecy, and nobody has argued one,
 16 there is not one in the complaint, and we are
 17 certainly not saying there is one. This is just
 18 your standard purchase and sale agreement, you know,
 19 even if you can get past that there is no special
 20 relationship such that you could take this out of
 21 contract and you can put it into a tort.

22 The typical case -- and I know Your Honor -
 23 is familiar with these -- that they cite for this is
 24 there can be third party liability that comes out of
 25 a contract and puts it into tort in a case such as

1 when there is a contract between a builder and a
2 homeowner or an entity to build something, whether
3 it's commercial or residential.

4 And essentially that homeowner and/or
5 entity hires an architect and a construction
6 manager. There can be liability between the
7 architect and construction manager and the builder
8 even though they are not in privity to contract
9 because of the special relationship that the
10 architect and/or construction manager has taken on
11 to oversee construction of the builder, to handle
12 the money and the financing or the payments to the
13 builder, et cetera. They have found that exception
14 to pull it out of contract because there is a
15 special relationship that exists.

16 Other special relationships as Your Honor
17 knows that comes out of that are fiduciary
18 relationships between trustees and others, et
19 cetera. There is just no special relationship
20 between a seller of property and a builder of a home
21 and the individuals who have contracted to do that.

22 So this action lies squarely in contract.
23 The whole crux of the matter, as Mr. Gecy has said,
24 has been over the R.M.A. agreement and whether or
25 not they are valid underwriting guidelines for the

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1 bank.

2 That is purely out of my client's control,
3 you know. And what it comes back to is that being
4 under contract is simply that. My clients were
5 ready, willing, and able to close, would have closed
6 had the loan been funded. The loan wasn't funded
7 through no fault of their own. They had provided,
8 and everybody agrees, everything that the bank
9 required of them to do.

10 And to take it a step further, and Mr.
11 Gecy will agree to this, it's not an issue in fact,
12 is that my client was actually out there meeting
13 with the neighbors, handing them the road
14 maintenance agreement on behalf of Mr. Gecy and at
15 least attempting to help Mr. Gecy further that
16 along.

17 But as we sit here today no completely
18 signed road maintenance agreement has ever been
19 forthcoming. At best I understand that two of the
20 individuals, Mr. Gecy being one of them, and
21 Mr. Ferguson signed. I've never seen it. And I
22 don't doubt Mr. Gecy. He says he's got signatures
23 of two people, but that is not a completely signed
24 road maintenance agreement as required by the bank
25 that would have allowed my clients to close.

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1 My clients would have closed had they been
2 able to, but they simply were not funded. And the
3 case law is clear. If the financing contingency
4 fails, and they can't get bank funding, they are not
5 required to pay cash. And their liability under the
6 contract is excused.

7 And for the rest of it, Your Honor, I will
8 stand on my brief and the cases that are cited.

9 JUDGE DUKES: All right. Mr. Gecy?

10 MR. GECY: Your Honor, I mean, this
11 is what it comes down to is the financing
12 contingency in the contract. The last condition was
13 the road maintenance agreement signed by all
14 parties.

15 I had three out of the four people sign
16 road maintenance agreements. The fourth had
17 committed to signing the road maintenance agreement
18 at closing. The closing never happened.

19 Now, a year and a half later Ms. Chalmers
20 suddenly appears over at the Harvey & Battey Law
21 Firm a year and a half after April 2010 and signs an
22 affidavit. The affidavit says, I never agreed to
23 sign a road maintenance agreement then or in the
24 future.

25 Mr. Holloway files a summary judgment

1 motion based on that affidavit immediately. I go
2 back in my e-mails and I provide e-mails that show
3 that they clearly agreed to that and there was an
4 agreement.

5 I filed for bankruptcy. The case was
6 stayed. The motion for summary judgment was stayed
7 also. When it got restored, that was the first
8 thing that Mr. Holloway tried to do was restore the
9 motion for summary judgment.

10 We've had no depositions in this case. I
11 got my depositions completed. The road maintenance
12 agreements, we do have three out of the four.
13 Hester Lane, they only have one out of the 10. And
14 I've got testimony in those depositions from bank
15 employees saying that they never close loans without
16 getting all of the parties. And that was the
17 fundamental reason of why they turned this loan
18 down.

19 And they posed that on me as a seller that
20 I didn't have all the parties to the private road
21 sign the road maintenance agreement. The loan did
22 not close. I don't think there is any dispute that
23 there aren't any other conditions. Exhibit J is a
24 loan denial from the bank.

25 And if you will look at Exhibit J on the

1 bottom, that was issued March 10th, 2010. The
2 extension ran through April 5th. The bank turned
3 down Mr. Hamner, at the bottom I've got it
4 highlighted, it says, declined due to not able to
5 obtain a road maintenance agreement for subject
6 property.

7 Okay? There is nothing else checked on
8 that loan denial. And we still had over 30 days
9 left in the extension period. Mr. Hamner in Exhibit
10 I -- there is no date on the document, but I think
11 the e-mail came through around the 10th or 11th, he
12 withdrew his interest in the transaction based on
13 this denial letter although the contract called for
14 a 30 or 40-day extension.

15 And he's clearly breached the contract by
16 saying, you know, there is an appraisal issue. The
17 bank did not turn down the loan for an appraisal
18 issue. I've got a sworn testimony in my affidavit
19 where Bruce Van Horn, the City executive, said that
20 they did not deny the loan over the appraisal. The
21 appraisal was fine, Your Honor. The issue was the
22 road maintenance agreement.

23 It was not signed by all parties. Your
24 Honor, there are no guidelines that require all
25 parties to sign a road maintenance agreement. And

Hamner
Breach

1 the loan that they were closing with SCB&T, there
2 isn't even a guideline for any road maintenance
3 agreement, Your Honor. And I've proven that through
4 the Beaufort County public records with the Walters'
5 transaction. They closed it without any road
6 maintenance agreement.

7 So they misrepresented a condition. And
8 either Doug Jacobs did it individually with -- by
9 himself or he did it together with Bruce Van Horn
10 and Jamie Hamner together to stop the sale. And
11 that is the civil conspiracy of it. We don't know
12 that.

13 These depositions that we take with
14 Mr. Chalmers, how did they just show up at the
15 Harvey & Battey Law Firm and just jump into being a
16 witness of the lawsuit. Ms. Chalmers could not
17 explain that, Your Honor. She just said she woke up
18 one day and decided to walk over to Harvey & Battey
19 and sign an affidavit, and had never signed an
20 affidavit before in her life.

21 And the Defense -- the Defendants relied
22 on that affidavit, but they are no longer doing that
23 because she made false statements in that affidavit.
24 Two days before this hearing, I get these new
25 affidavits with 22 new additional facts when before

1 the summary judgment says there is no genuine issue
2 or question of fact.

3 So there are questions that still remain.
4 They differ on many subjects. I differ in my side,
5 but the fundamental thing that this comes down to is
6 the road maintenance agreement. And that was the
7 final condition on this loan. I've got e-mails from
8 the bank where they say you have three conditions;
9 satisfactory builder docs which got signed off on,
10 satisfactory appraisal which the bank says they were
11 okay with. I even went out and ordered a new
12 appraisal that they accepted, and the road
13 maintenance agreement.

14 But, Your Honor, the road maintenance
15 agreement is not a condition for the bank. They
16 have no policy in place for a road maintenance
17 agreement. And it's a misrepresentation. It's
18 false for them to interfere with my transaction and
19 require a road maintenance agreement when it's not
20 even a policy, but they led me to believe through
21 lies and deceit that there was a policy in place.

22 First it was that it was the V.A.'s
23 policy. The guidelines clearly say that is not a
24 policy. They didn't even apply for a V.A. loan, did
25 not order a V.A. appraisal. What would have

1 happened down the road when the house was built and
2 the V.A. appraiser came out who is different from
3 the appraiser who actually completed the
4 transaction, what if he would have lowered the price
5 or the value and it came in below 306,900? Would me
6 the seller have to refund my money? No.

7 They were merely just grabbing some
8 guidelines, folding those as Bruce Van Horn said,
9 into their policies, policies that do not exist.
10 There is no bank policy.

11 And I've requested that policy. And I
12 filed a motion to compel -- to compel the bank to
13 answer the additional questions so I can determine,
14 you know, where the bank stands with this condition
15 that they not only put on the buyer, they put on me
16 as the seller. They were e-mailing me, not the
17 buyer.

18 JUDGE DUKES: Let me ask -- and
19 maybe -- I was trying to follow everything you said.
20 You said at one point that Bruce Van Horn said that
21 all the conditions were met for the loan such that
22 the Hammers could have closed. Did I understand you
23 to say that?

24 MR. GECY: Yes. I've got testimony
25 from bank employees where they say the road

1 maintenance agreement is the last condition. Jamie
2 Hamner understood that to be the last condition. Me
3 as the seller, I've got repeated e-mails that, hey,
4 get the road maintenance agreement, we are ready to
5 close.

6 Ken Tuttle, the attorney, knew that the
7 road maintenance agreement was the final condition.
8 And when I got Mr. Ferguson to sign the road
9 maintenance agreement that everybody knew that he
10 was the final straw for the road over there. Diana
11 Chalmers had agreed to sign it.

12 JUDGE DUKES: Well, let me tell you
13 what I'm focused on --

14 MR. GECY: Okay.

15 JUDGE DUKES: -- is the -- just so
16 you all know and don't start talking about other
17 things. The breach of contract, the second cause of
18 action against the Hamners. The Hamners obviously
19 seek summary judgment on the entire complaint I
20 assume. Is that what we are here about today?

21 MR. WEGMANN: Yes, sir.

22 JUDGE DUKES: But based on what Mr.
23 Gecy is representing is in the record, that breach
24 of contract -- there probably is a scintilla of
25 material fact as to whether or not --

1 MR. WEGMANN: No, sir.

2 JUDGE DUKES: -- the loan was
3 available.

4 MR. WEGMANN: No, sir.

5 JUDGE DUKES: Tell me why not.

6 MR. WEGMANN: If you read Doug
7 Jacobs' affidavit as well as the testimony that they
8 have provided -- Mr. Gecy has actually provided
9 within his affidavit, the -- and he's actually
10 stated. Bruce Van Horn never testified that the
11 loan was available. The last condition -- and I
12 agree with Mr. Gecy, and I'll swing back to explain
13 something, but the last condition was the road
14 maintenance agreement. A completed -- and this is
15 the bank's policy.

16 Whether or not Mr. Gecy is right on the
17 V.A. or that, I don't know, but the last condition
18 was a completed and signed road maintenance
19 agreement. That has never happened. That is why
20 the initial denial was issued. And, again, to swing
21 back to talk about that is, yes, it's dated the 10th
22 that they denied the loan. Okay?

23 On the 12th, and it's Exhibit F to my
24 package, Mr. Hammer sends Mr. Tuttle a thing that
25 says, okay, it's been denied. I'm done. Okay?

1 Then they have this meeting between Hammers, Gecy,
2 and nobody contradicts this, and the bank.

3 MR. GECY: There was a meeting at the
4 bank and a meeting at Mr. Title's office.

5 MR. WEGMANN: Yes.

6 MR. GECY: And everybody agreed that
7 the final condition was the road maintenance
8 agreement, everybody go try to fulfill the --

9 MR. WEGMANN: Because what they were
10 talking about was the appraisal early on. So the
11 loan has never been available, was never made
12 available. And as my client's affidavit and the
13 bank's affidavit indicate, my client was ready,
14 willing, and able to close, but no package was ever
15 issued to Mr. Tuttle.

16 As Mr. Tuttle's own affidavit that is in
17 Mr. Gecy's package indicates is that he never got a
18 package, if I recall correctly, and that the bank
19 wanted a clean -- they didn't want any exceptions to
20 title, which they couldn't provide because of the
21 road maintenance agreement. Okay?

22 And so no loan was ever available to my
23 client, otherwise they would have closed.

24 JUDGE DUKES: Well, maybe I
25 misunderstood Mr. Gecy's argument or maybe you've got

1 a different opinion. And if you do, if you can show
2 me in the -- because I guess my question is this.
3 If there is a scintilla of fact as to whether or not
4 the loan was available, and it would be more than a
5 scintilla. It would be something where the bank
6 says, the loan is available. Not the loan would be
7 available if this were done, but the loan is
8 available.

9 MR. GECY: I've got it right here,
10 Your Honor. Page 2 of my affidavit, if you flip to
11 Page 2, Mr. Van Horn's testimony, Page 19.

12 JUDGE DUKES: All right. Hold on.
13 Just tell me what it says.

14 MR. GECY: I'll read it for the
15 record. Question to Mr. Van Horn, Page 19 of his
16 deposition, and you mentioned, you testified earlier
17 that the reason the loan did not close was because
18 of a road maintenance agreement? Because -- his
19 answer, because we didn't have a signed road
20 maintenance agreement.

21 Question, okay. He answers correct. Was
22 that a requirement of the V.A. or was it a
23 requirement of South Carolina Bank & Trust? Answer,
24 primarily a verbal of the V.A., but it's something
25 that's, you know, been folded into our policies as

1 well. That is how I've been trained as an approver.

2 JUDGE DUKES: Well, let me stop you
3 because I guess what I was looking for or thinking
4 you had somewhere was something where Mr. Van Horn
5 would have said, yes, we made the loan available to
6 the Hamners and they failed to close. I mean, is
7 there something that -- maybe I misunderstood your
8 argument.

9 MR. GECY: The bank -- no. No. I
10 didn't realize that was the question, Your Honor,
11 and I apologize. The loan was available through
12 repeated communications that we are ready to fund
13 the transaction if we get this road maintenance
14 agreement signed by all parties. So, yes, they did
15 extend financing under a condition. There is no
16 condition. The road maintenance agreement is not a
17 condition, Your Honor. It's not a policy of the
18 bank and it's not a policy of the V.A. loan. And
19 Mr. Hamner did not apply for a V.A. loan with the
20 bank. So there is no policy.

21 So the final condition, they repeatedly
22 extended and said we are ready to close contingent
23 upon the final road maintenance agreement. Okay?
24 And I provided three of those before the closing to
25 Mr. Tuttle. And let the record reflect Mr. Tuttle

1 called the bank from March 30th until April 7th
2 every day. The bank would not return his phone
3 calls.

4 And Mr. Hamner did send me an e-mail
5 March 27th. All right? And I tried to call
6 Mr. Hamner several times between the 27th and the
7 5th, the expiration. They went silent, Your Honor,
8 to make the contract expire. And as soon as the
9 contract expired, they sent me a letter and demanded
10 the money back.

11 And in that letter I got a fake complaint
12 from Mr. Hamner's new attorney that they drafted up
13 accusing me of fraud and conversion and everything
14 else that they could think of. And they didn't sign
15 the complaint. And said if you don't send this
16 money back, I'm going to file this.

17 MR. WEGMANN: Well, to be fair, Your
18 Honor, that letter was filed -- that letter was sent
19 by Mr. Harper out of my firm in July --

20 MR. GECY: That's correct.

21 MR. WEGMANN: -- after there was no
22 response as to whether or not he was going to refund
23 the money. And he sent him a proposed complaint and
24 said, hey, we need to work this out. If we can't
25 work this out, then we are going to go ahead and

1 file.

2 MR. GECY: Regardless of that, Your
3 Honor, yes, the bank repeatedly offered financing.

4 MR. WEGMANN: With a condition.

5 MR. GECY: With one condition --

6 MR. WEGMANN: That was never
7 satisfied.

8 MR. GECY: -- that I have proved --
9 that I have proved and will prove that does not
10 exist.

11 MR. WEGMANN: But that is not my
12 client's fault.

13 JUDGE DUKES: Okay. The question
14 is -- yeah, the question is not whether or not the
15 condition was something the bank just came up with
16 out of thin air because I think banks can do that.
17 The question is was the financing available to the
18 Hammers and they failed to take it. I mean, was the
19 financing contingency met, I mean, at least as far
20 as it goes to this breach of contract hearing?

21 MR. GECY: I think that is the
22 ultimate material question of fact, Your Honor. I
23 mean, the financing was ready. They were ready to
24 send the package.

25 JUDGE DUKES: But, I mean, Bruce Van

1 Horn here in this deposition says it wasn't because
2 there was no road maintenance agreement signed. And
3 so are you saying these witnesses -- and again I'm
4 sort of halfway back at least to this one on whether
5 or not these depositions make any difference. Are
6 you saying these witnesses might say, no, it was
7 signed and we had it and the Hamners knew it was
8 signed?

9 MR. GECY: No. The witnesses are
10 going to confirm the theory that there is no road
11 maintenance agreement condition that the bank has.

12 JUDGE DUKES: Okay. I mean, and
13 again for purposes of this I think they get to make
14 up their own conditions.

15 MR. GECY: Okay.

16 JUDGE DUKES: I think the scintilla
17 that I would have an issue with that would cause the
18 breach of contract to live on in my mind at least
19 until the next time we did this would be -- and
20 maybe I misunderstood when you started off with this
21 because it is complicated. I was thinking that
22 maybe one of these people out there was going to
23 say, yes, we were the last people that needed to
24 sign and we signed. And we returned it to somebody.
25 And the Hamners knew that it was there. And

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1 therefore the contingencies were met and they still
2 didn't close. Then the Hammers owe some money. But
3 I don't think anyone is saying that is what is going
4 on.

5 MR. GECY: No, I am saying that, Your
6 Honor. I am saying that.

7 MR. WEGMANN: No, nobody has said
8 that.

9 JUDGE DUKES: All right. Well, show
10 me in this where --

11 MR. GECY: Okay. Well, I don't have
12 the road maintenance agreements. I have three -- I
13 have three out of the four road maintenance
14 agreements. I have myself, I have O'Neil, and I
15 have Ferguson. And I had a commitment from
16 Ms. Chalmers to show up at closing and sign the road
17 maintenance agreement.

18 That would have fulfilled the fourth
19 road -- the fourth person on the road maintenance
20 agreement.

21 MR. WEGMANN: And the condition --

22 MR. GECY:-- The closing never
23 happened.

24 JUDGE DUKES: And Ms. Chalmers is the
25 one that you are deposing?

1 MR. GECY: Yes.

2 MR. WEGMANN: Ed Chalmers is.

3 MR. GECY: That is correct.

4 MR. WEGMANN: He's already deposed
5 Ms. Chalmers.

6 MR. GECY: And I think that is
7 important.

8 JUDGE DUKES: You all need to go one
9 at a time.

10 MR. GECY: I think that is important,
11 Your Honor, because in that deposition Mr. Chalmers
12 is going to agree that he did agree. The only
13 problem that Diana and Mr. Chalmers had was they
14 wanted me to sign another agreement with them during
15 construction that if my trucks came down the road
16 and damaged the road that I would take
17 responsibility for that. And I did agree to that.
18 Okay?

19 Mr. Chalmers and Ms. Diana Chalmers --
20 Diana worked with my wife at the church. All right?
21 At the day school. All right? She was always, her
22 and her husband, willing and ready to help
23 Mr. Hamner out with his V.A. financing on this road
24 maintenance agreement.

25 JUDGE DUKES: Has Hamner already been

1 deposed?

2 MR. GECY: Yes.

3 MR. WEGMANN: Hamner has been
4 deposed. And here is the deal with Ms. Chalmers.
5 Ms. Chalmers deposition is clear. And there are no
6 facts to controvert it. She is the landowner.
7 Mr. Chalmers isn't. He has no say. He doesn't need
8 to sign the road maintenance agreement. The only
9 you will see on this road maintenance agreement for
10 signature is Diane L. Chalmers. Her deposition has
11 been taken and her affidavit is in the file. She
12 didn't sign it nor would she ever sign it, period.
13 And she said she didn't send the e-mail to Mr. Gecy.
14 Her husband did. Her husband is not a necessary
15 party to the road maintenance agreement, only she
16 is.

17 As far as whether or not he has three of
18 the four, I'll give it to him. I've never seen it.
19 He says he does, but as of April 5th, and this is
20 what was turned over in discovery, none of these are
21 signed, not even by him. I assume he would have
22 signed it before --

23 MR. GECY: I signed mine.

24 MR. WEGMANN: I agree with you. And
25 he says Ferguson, but there are other names on here.

1 There are Arayna and there are O'Neils. He says he
2 has O'Neils' signature. I've never seen it as of
3 today. And there are Classa. So there are other
4 signatures on there.

5 The condition for the funding, and I think
6 the bank will chime in and agree with me on this,
7 was they needed this in order to get clearance from
8 underwriting in order to fund. That is not an
9 instantaneous thing. Showing up at closing with it
10 wouldn't have done it because they are not going to
11 issue a package until they have a completely signed
12 road maintenance agreement which by April 5th did
13 not happen. And that is uncontroverted. It doesn't
14 exist. You have the deposition in there and the
15 affidavit of Ms. Chalmers. She is the only one that
16 needed to sign. Mr. Chalmers didn't. He doesn't
17 own the land. In her deposition she stated that, I
18 own it. He doesn't.

19 And she stated in her deposition that she
20 wouldn't, and her affidavit says the same thing, she
21 didn't sign it nor would she ever sign it. So I'll
22 give him the benefit of the doubt that he's got
23 three of the four, but there are more than four.

24 There is also Reyna and Classa. Again, to Ben's
25 credit he says they don't have to sign on it because

1 they are on -- they front on Francis Marion, but as
2 the testimony was there and it's uncontroverted that
3 one of them actually uses Meredith Lane to go in to
4 get to his garage there.

5 The bank required -- and this is what the
6 bank required. My Exhibit E has Classa and Reyna on
7 it, too, never signed. Ms. Chalmers never signed.
8 If Ben says he got the other three, okay, but I've
9 never seen it, but that wasn't the condition. The
10 condition for funding --

11 JUDGE DUKES: Yeah, and I guess I'm
12 thinking of summary judgment. It's not whether or
13 not the conditions were met. It's the question of
14 whether or not the Hammers were offered the
15 financing and refused it.

16 MR. WEGMANN: No, there is no
17 evidence of that?

18 JUDGE DUKES: And that is -- I'm
19 going to think about that a little bit.

20 MR. GECY: Your Honor?

21 JUDGE DUKES: Yes?

22 MR. GECY: -- Could I read something for
23 the record might help us out here --

24 JUDGE DUKES: Sure.

25 MR. GECY: --- with the financing part

1 of this. This is Bruce Van Horn's deposition,
2 Page 58. The question, if the V.A. did not have a
3 road maintenance agreement policy or some type of
4 exception to the R.M.A. which allowed the loan to
5 rollover to permanent financing, knowing that could
6 the bank have made an exception on this transaction
7 for it to close? His answer, it's a possibility.

8 MR. JACOBS: Here we go. Horseshoes
9 and hand grenades.

10 MR. WEGMANN: Which is all the
11 evidence that the answer to your question is there
12 was never a commitment made to be turned down. And
13 all of this is, with all due respect to the
14 Plaintiff, is not the issue before the court. The
15 issue before the court is was there -- was the
16 contingency met? And everything that has been said
17 by everyone here today is no, it was not met.
18 Whether the bank required Mickey Mouse to sign off
19 on it, and I don't mean to be flippant, but I think
20 it's clear that that is their business. That has --
21 the Plaintiff has no right to complain about that.

22 MR. JACOBS: And, you know, Doug
23 Jacobs' affidavit says the same thing. We never had
24 a commitment of loan to the Hammers.

25 JUDGE DUKES: Well, I'll give you the

1 last word, Mr. Gecy.

2 MR. GECY: Well, Your Honor, you
3 know, the ultimate or the question that I have or
4 that I'm raising is the road maintenance agreement.
5 How can you ask one transaction over here to get all
6 the parties to sign the road maintenance agreement
7 and then close loans over here, not get any road
8 maintenance agreement, and then after the fact go
9 back and deviate from the policy that you failed
10 this transaction on and not get all 10 property
11 owners to sign it. You only get one. And then the
12 one person that they did get signed the loan officer
13 prepares the road maintenance agreement.

14 JUDGE DUKES: And, again, I think if
15 there is a complaint to be made about that it would
16 be by the Hamners against the bank, not necessarily
17 you. I don't know if that duty extends to you under
18 South Carolina's law. The only thing that gave me
19 pause is this breach of contract thing, but the
20 ultimate question in that breach of contract with
21 the Hamners' situation is were the Hamners offered
22 the financing. And there is just -- the best
23 witness there is going to be the bank. And because
24 these witnesses that you are going to depose or have
25 scheduled to depose next week certainly can't say

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1 that the bank offered them financing. And I
2 think --

3 MR. GECY: No, they cannot.

4 JUDGE DUKES: The uncontroverted
5 testimony is the bank did not offer them the
6 financing. You had a bunch of things happen. They
7 conceivably would have offered it, but those things
8 didn't happen. And I can't imagine there is
9 anything that would come out in those depositions
10 that would change any of that. I think you just
11 said that is the case.

12 MR. GECY: I agree with that, Your
13 Honor.

14 JUDGE DUKES: Anyway, I was hoping
15 you all would come up with some settlement of this,
16 but I'm going to -- I'll think about it before I
17 sign any order, but I'm going to ask the Defendants
18 to draft an order granting summary judgment. Again
19 I'm going to look at all of this before I execute
20 it, but I mean just knowing what I know, looking at
21 this and listening to the arguments, following the
22 law I don't think I have any choice but to grant
23 summary judgment in this case under the laws of
24 South Carolina and this evidence.

25 So it may take me until longer than the

1 26th to get this order and review it. So I think it
2 is probably prudent to delay those -- and if for
3 some reason I change my mind and didn't execute this
4 order or modified it in some way where those
5 depositions might still be necessary --

6 MR. GECY: Okay.

7 JUDGE DUKES: I'm not saying those
8 people would never be deposed, but for now I think
9 it would be inappropriate to depose them until I've
10 executed an order.

11 MR. GECY: Okay.

12 JUDGE DUKES: And anyway, so get any
13 proposed order to Mr. Gecy first for his review
14 before you give it for Heather.

15 MR. WEGMANN: Yes, sir.

16 JUDGE DUKES: And then we will see
17 what we can do.

18 MR. WEGMANN: Yes, sir.

19 MR. GECY: All right. Thank you,
20 Your Honor. Have a good weekend.

21 (Whereupon, the hearing
22 was concluded at 11:04 a.m.)

23

24

25

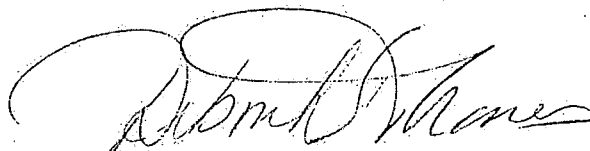
Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Gecy vs. SCB&T, et al, on the 21st day of February, 2014: and that the foregoing 66 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to the ***** Speights & Runyan, 100 Oak Street, P.O. Box 685, Hampton, South Carolina.

In witness whereof I set my hand and seal this 24th day of March, 2014.



My Commission
expires 1/4/18

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

1 State of South Carolina) Court of Common Pleas
 2 County of Beaufort) No.: 2011-CP-07-01778

3
 4 Benjamin Gecy,)
 5)
 6 Plaintiff,)
 7 vs.) HEARING

8 South Carolina Bank &)
 9 Trust, Jaime Hamner and)
 10 Deborah Hamner,)
 11 Defendants.) August 5, 2014
 12)

13 Hearing reported by Deborah S. Thomas,
 14 Certified Verbatim Reporter and Notary Public in and
 15 for the State of South Carolina; said hearing held
 16 before the Honorable Marvin H. Dukes, III, Beaufort
 17 County Master in Equity and Special Circuit Court
 18 Judge in accordance with the South Carolina Rules of
 19 Civil Procedure, at the Beaufort County Courthouse,
 20 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 21 on August 5 2014, at the hour of 3:07 p.m.

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EXHIBIT INDEX

Exhibits:

Marked at Page

(None were proffered.)

* * * * *

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good afternoon. We are
4 here on 11-CP-07-1778. This is Gecy versus South
5 Carolina Bank & Trust, et. al. We are here today on
6 Plaintiff's motion to reconsider or amend that order
7 filed June 5th, 2014.

8 And, Mr. Mathison, I am happy to hear from
9 you. And I think before you get into it too much, I
10 think I agree with you on the part that is about the
11 lender -- I mean, the lender statute of frauds cause
12 of action in there because that footnote in Kerr
13 seems to take care of that, but I'm happy to hear
14 from you any way on that, whatever you want to tell
15 me.

16 MR. HOLLOWAY: I concede that the
17 Kerr case does not allow the lender liability
18 statute to apply in this case.

19 JUDGE DUKES: Or the statute of
20 frauds, yeah. It's that footnote -- I lost track of
21 it, there, but it's in there somewhere.

22 MR. MATHISON: It's actually Footnote
23 Number 2 in the current case, I believe.

24 JUDGE DUKES: There it is. Okay. Is
25 it two?

1 MR. HOLLOWAY: No, it's five.

2 MR. MATHISON: No, it's five.

3 JUDGE DUKES: There it is. Five.

4 Okay.

5 MR. MATHISON: 37.10.107.

6 JUDGE DUKES: Clearly to the extent
7 the order is different than Footnote 5, it needs
8 modification, but I'm happy to hear from you on the
9 rest of it.

10 MR. MATHISON: For purposes of my
11 argument I'm going to go through what is in the
12 memorandum of authorities first because I think that
13 what is in there may have actuated overlooking
14 certain things that are a little more specific and
15 not necessarily as important, but they recur
16 throughout the order.

17 And in the motion I've dealt with the
18 specific technicalities. And I would like to be
19 heard first on the broad brush stuff and then go to
20 the technicalities if that is all right.

21 JUDGE DUKES: However you would like
22 to do it is fine with me.

23 MR. MATHISON: If you recall during
24 the period that I was recovering from my accident, I
25 had an opportunity to argue in addition to the

1 argument that Mr. Gecy had already made with respect
2 to the summary judgment. We had a telephone
3 conference. And I was heard at that time. I had
4 been out of pocket.

5 And one of the arguments I made, although
6 perhaps not eloquently enough, was that there was a
7 provision of the restatement second of torts which
8 dealt with specifically this type of negligent
9 communication of information that should control in
10 this situation.

11 And despite having intoned those words or
12 some semblance thereof, that particular provision,
13 which is Section 552 of the restatement second of
14 torts never made it into the order. It's my belief
15 that Section 552 specifically validates Plaintiff's
16 negligent misrepresentation claim. And that there
17 is ample authority to show that it has been embraced
18 and adopted as the law of the State of South
19 Carolina, specifically M.L.E. Acquisition Fund
20 versus Letush, a previous bank case, the Nouce case.
21 A colleague of mine, Mr. Herring, I believe was
22 involved.

23 There is no effort to measure the conduct
24 by the Defendants against the tests that are set
25 forth in Section 552 of the restatement. And I

1 think that that is clearly something that the court
2 may have overlooked and clearly something that has
3 to be addressed, whether the court agrees with the
4 conclusions that I've set forth in my memorandum or
5 reaches contrary conclusions, I think someone needs
6 to pass on that.

7 My belief is that the literal language of
8 restatement 552.1 applies to the communications
9 between Mr. Jacobs, the bank officer, and Mr. Gecy
10 and also Mr. Hamner. And had he just said the same
11 things to Mr. Hamner and Mr. Hamner turned around
12 and said them to Mr. Gecy, under this section of the
13 restatement they would still be actionable against
14 the bank.

15 It makes it clear to my way of thinking
16 that that is the way the matter works. There is a
17 limitation because there are two schools of thought
18 with respect to this form of liability. And the
19 limitation is that not a pure foreseeability
20 argument, but those set forth in Subsection 2 of
21 Section 552 which I have set forth on the second
22 page.

23 And that is that the liability stated in
24 Subsection 1 is limited to loss suffered, A, by the
25 person or one of a limited group of persons for

1 whose benefit and guidance he intends to supply the
2 information or knows that the recipient intends to
3 supply it.

4 As to that I believe there is no question
5 that while Mr. Jacobs was under no duty to respond
6 to inquiries from the Plaintiff, Mr. Gecy, once he
7 decided to respond and did respond, the restatement
8 specifically with respect to misrepresentations
9 holds him responsible for telling the truth.

10 And consequently it's inconceivable that
11 he would not know that Mr. Gecy was going to act on
12 the information that he imparted. One of the ways
13 the court has addressed this in the order is to
14 pretend this isn't a misrepresentation, that this is
15 just a bank policy.

16 Well, Mr. Gecy's thrust in his complaint
17 is that this bank policy is nonexistent, that it's
18 false. That it was conjured for the purpose of
19 defeating his transaction. And consequently I
20 believe that that is a misrepresentation. It's
21 actionable.

22 If someone represents we have a bank
23 policy, that is a misstatement of presently existing
24 fact. And if there is no such policy, it's a lie.

25 Now, it could be a negligent lie or it could be --

1 you know, a terribly deceitful lie, but it's a lie
2 nevertheless. And it's caught by this provision.

3 Subsection B of Section 2 does not in any
4 way, shape, or form eliminate liability from the
5 bank because it says that another way that the
6 liability would be circumscribed is if through
7 reliance upon it in a transaction that he intends
8 the information to influence or knows that the
9 recipient so intends or in a substantially similar
10 transaction.

11 What that means to me is he had to realize
12 in imparting the information to Mr. Gecy that he was
13 relying on it. The bank took the position that Mr.
14 Gecy didn't do what they required which is he didn't
15 deliver an R.M.A. that included the signature of
16 every adjoining landowner. That was the stated
17 policy of the bank according to Mr. Jacobs.

18 But Mr. Gecy doesn't believe that. And as
19 the court knows, evidence was developed from the
20 public record that this theoretical policy didn't
21 apply to someone else who was going through the same
22 bank loaning procedure at the same time, a man by
23 the name of Mr. Walters.

24 So if you apply both Sections of 552 to
25 the bank's conduct and specifically Mr. Jacobs'

1 representations about the bank's policy with respect
2 to the R.M.A., or the road maintenance agreement,
3 it's clear that it is, in fact, something that would
4 be caught by 552. And it is actionable under 552.

5 With respect to the so-called lender's
6 statute of frauds, the argument that I made at the
7 time that we -- that you were kind enough to allow
8 me to be heard on this since I was late added
9 counsel for Mr. Gecy, was that there wasn't any
10 statute of frauds that I couldn't figure out a way
11 around.

12 And at the time I was thinking about par
13 performance and that sort of thing, but what I did
14 is I went and I read the statute. And then I read
15 the Kerr case. And then I read the case in which
16 Eric Hague participated. And it's clear to me that
17 Mr. Hamner's loan if, in fact, that is the loan that
18 would be caught by 37.10.107, you know, was a
19 promissory note that carried a real estate mortgage.
20 And that it was primarily used for personal family
21 or household purposes. And therefore as a matter of
22 law it was exempt from that statute.

23 No one ever should have argued that. It
24 never should have been the red herring that it was
25 at the hearing where my client showed up prepared to --

1 defend against a single affidavit supplemented two
2 days before by an affidavit that kept it a factual
3 issue, and instead heard an argument presented that
4 the bank essentially owed him no duty.

5 This red herring distracted someone who
6 didn't have the presence to realize that it was
7 interjected into the proceedings too late really
8 without adequate notice. Now, it's not too late
9 now. I mean, clearly I have notice of it, but when
10 you read the statute you realize it doesn't apply.

11 And then if you go to the cases and read
12 the cases, it doesn't apply. Now, I wouldn't tell
13 you that I know or (inaudible) everything in the
14 Kerr case, but the Kerr case clearly says it only
15 applies to suits between lenders and borrowers.

16 Well, Mr. Gecy is not a borrower. And
17 therein lies the problem because the Defendants
18 managed to convince the court that there wasn't any
19 duty by a bank to anyone who wasn't a borrower and
20 that is just not true. I've got a duty to Jim if he
21 asks me a question not to lie to him if I answer.

22 It has nothing to do with being a
23 fiduciary. It has -- I don't have to answer. I can
24 say go pound sand. I don't owe you anything, but if
25 I answer I've got a duty of telling the truth.

1 There isn't any special exemption for banks to lie.
2 Or if there is, God knows, don't let the F.D.I.C.
3 know about it.

4 And why is this important? Well, it's
5 important for two reasons, least in my view. When
6 the issues were framed on the motion for summary
7 judgment, the bank prepared an affidavit for a lady
8 by the name of Ms. Chalmers who said essentially she
9 had never approved of the road maintenance
10 agreement.

11 The bank theoretically has a policy where
12 unless everybody approves, unless all adjoining land
13 owners approve, they won't approve the loan. That
14 is their theoretical policy. Mr. Gecy asked for and
15 received time to go take depositions. It wasn't
16 clear to him exactly who had written him an e-mail,
17 but he had an e-mail from the Chalmers, Mr. or Ms.,
18 which said that they did approve.

19 He took Ms. Chalmers' deposition first
20 because she was the one that signed the affidavit.
21 And she said, oh, well, that was my husband that
22 said that. He came back here and asked you in a
23 manner that was highly material to the bank's
24 position to be able to take Mr. Chalmers' deposition
25 because his wife had said that if anybody indicated

1 approval it was her husband, not her.

2 And was denied. And the reason stated in
3 the order is, well, you know, the case was two years
4 old or three years old or something like that. And
5 he had had adequate opportunity to discover from the
6 Defendants before he got here on the motion for
7 summary judgment.

8 Well, that is wrong for two reasons. Mr.
9 Gecy was in bankruptcy. This case couldn't move a
10 square inch because of the automatic stay for two
11 years. So the fact that it has a case number that
12 is from 2011 is largely irrelevant in terms of what
13 happened to it prosecution-wise.

14 From the time that the bankruptcy stay
15 disappeared or I guess you could say the discharge
16 injunction disappeared, the case was actively
17 prosecuted. He took the deposition of the person he
18 thought was responsible, and she essentially said it
19 was her husband, if anyone.

20 He wanted to take the husband's
21 deposition. If the husband had agreed with what was
22 put in that e-mail, then Mr. Gecy, using the bank's
23 own criteria, had made out a prima fascia case that
24 everybody on that road had approved.

25 Therefore the condition would not have

1 prevented the closing. Therefore the contract could
2 have been performed. All right? So denying him the
3 opportunity to put that evidence in the record
4 effectively denied him the opportunity to prevail on
5 the grounds the bank was asserting.

6 From Mr. Gecy's standpoint, he had apart
7 from -- well, strike that. One of the things Mr.
8 Gecy asked the bank for in document discovery was
9 their written policy with respect to road
10 maintenance agreements. Specifically he was looking
11 for some indication that what Mr. Jacobs testified
12 was the case was, in fact, true.

13 Mr. Jacobs testified that unerringly
14 without exception every single road maintenance
15 agreement required the signature of every single
16 person that lived on the road. And in the absence
17 of all of those signatures, they wouldn't make the
18 loan. That is what he testified to.

19 Well, Mr. Gecy managed to get into the
20 register of deeds public records. And he found a
21 mortgage that was recorded in favor of SCB&T about
22 contemporaneously with the Hamner's application in
23 which there was no road maintenance agreement filed
24 at the time the mortgage was filed notwithstanding
25 the fact that the particular piece of property was

1 on a private road.

2 He also found that months later an R.M.A.
3 was, in fact, filed which included the names of
4 fewer than half of the people that lived on the
5 road. In other words, that information impeached
6 the testimony of Mr. Jacobs.

7 In my view because these were public
8 records discoverable the court could have taken
9 judicial notice of it, but had the court permitted
10 him to take Mr. Walters deposition, I represent to
11 the court that Mr. Walters would have testified that
12 the person who participated in closing that loan was
13 the same Mr. Jacobs who in my opinion lied under
14 oath when he said that every R.M.A. that they ever
15 accepted required the signatures of all adjoining
16 property owners and that they didn't close any of
17 them until they had it. That is what that
18 deposition would have established.

19 That to my way of thinking would have
20 created a material issue of fact on Mr. Gecy's
21 question, the one he wants to argue, which is did
22 what Mr. Jacobs say amount to an actionable
23 misrepresentation. So by denying the discovery we
24 vindicated the bank's claim that not everybody who
25 lived on the road agreed to the R.M.A. And we

1 defeated Mr. Gecy's claim that what the court chose
2 to style as a bank policy was, in fact, false.

3 The fact that it's a bank policy doesn't
4 mean that if the man says they do it invariably and
5 unerringly and that is not true, if they represent
6 it to be the fact it's nevertheless actionable.
7 Being a bank policy doesn't exempt it somehow from
8 the requirement that it be true.

9 I've also pointed out that under the
10 scintilla rule, which would apply here because these
11 are preponderance of the evidence causes of action
12 that have been brought by the Plaintiff, there is
13 much more than a scintilla of evidence here that
14 would preclude the entry of summary judgment. That
15 is the Hancock case.

16 And I found a single case, although there
17 are a multiplicity of cases, that indicate that
18 until there has been opportunity for meaning
19 discovery, motion for summary judgment should not be
20 entertained. Those I believe are the core reasons
21 that Mr. Gecy's case was given short tripped in a
22 lengthy order where there are a number of things
23 that I believe are flawed.

24 And rather than, you know, springing off
25 into that, I would throw the floor open so that my

1 adversaries can tell me in what regard I may have --
2 I may be wrong about what I just said.

3 JUDGE DUKES: All right. Happy to
4 hear from you, sir.

5 MR. WEGMANN: Oh, you want me to go?

6 MR. HOLLOWAY: Sure?

7 MR. WEGMANN: That is fine. Okay. I
8 can. I haven't heard a whole lot by my client in
9 this. It appears that most of it has to do with the
10 bank. The only thing that I see out of Mr.
11 Mathison's motion is specifically a state of
12 technical default should be found to exist by virtue
13 of false requirement of R.M.A.

14 I mean, for my client, either the bank
15 approved the loan or didn't approve the loan.
16 Nothing else afterward. And they didn't for
17 whatever reason. As to some of the other stuff that
18 is out there, I don't recall ever receiving a notice
19 of deposition for Mr. Walters at any point.

20 I know there was discussion at the first
21 summary judgment hearing as it related to
22 Mr. Chalmers, but I don't recall ever receiving a
23 notice of deposition for Mr. Walters at any point
24 from Mr. Gecy or from Mr. Mathison. So since the
25 bulk of it has to do with the bank, I'll let Tom go

1 and I may chime in after that if it's okay with the
2 court.

3 MR. HOLLOWAY: The -- one comment
4 from Mr. Mathison was that the Statute 37.10.110 did
5 not apply which shouldn't have been brought to the
6 court's attention and therefore the Plaintiff may
7 have somehow been confused or deceived.

8 I'll point out to the court that the
9 underlying decision in Kerr versus BB&T which is
10 cited in the court's order extensively goes through
11 the analysis of 37.10.107 and applies it to that
12 case. And that it really why that statute was
13 brought to the attention of the court and made part
14 of the court's order.

15 The underlying decision by Judge Roger
16 Young extensively relied upon that statute in making
17 that decision. When the case made it to the Supreme
18 Court, the Supreme Court determined that that
19 statute only applied between the applicant and the
20 lender and not third-parties.

21 And that case even went further and said
22 specifically not by virtue of the statute of frauds,
23 37.10.107, did the bank not owe a duty to the
24 investors in the Sky Ways Corporation. In that case
25 Kerr, Mr. Kerr and his partners owned a company

1 called Sky Ways.

2 And they made an application to BB&T for
3 what they called a factoring agreement. It was
4 essentially a loan agreement to continue expansion
5 of the activities of the company. They alleged that
6 the bank came to meet with the partners, investors,
7 or members of the LLC, and that they had essentially
8 promised to keep funding that company's needs for
9 some period of time in the future.

10 And that at some time the bank determined
11 that Sky Ways was in default of their obligation
12 under the terms of the factoring agreement and
13 stopped funding it. Ultimately Sky Ways went into
14 bankruptcy. And these investors allege that they
15 lost their investment as a result of the failure to
16 fund pursuant to the factoring agreement.

17 Sky Ways sued BB&T. And in a separate
18 suit Mr. Kerr and his partners sued BB&T alleging
19 that they were essentially intended third-party
20 beneficiaries or that they had some right to rely on
21 the factoring or loan agreement between BB&T and the
22 company.

23 The Supreme Court said no. The only
24 obligation that could possibly be there would be a
25 fiduciary obligation between the bank and the

1 customer. There is very limited duties. And it
2 does not go to intended third-party or people that
3 allege they are third-party beneficiaries. In this
4 case, in Kerr, these folks were even in a closer
5 position to the agreement than Mr. Gecy is in this
6 case.

7 They were the investors who alleged that
8 the bank promised them individually that they would
9 keep funding Sky Ways pursuant to the factoring
10 agreement between BB&T and Sky Ways. The court said
11 no. There is no duty whatsoever to Sky Ways under
12 the theory of negligence, negligent
13 misrepresentation, or any theory that was raised
14 except for Unfair Trade Practices which they relied
15 upon -- excuse me. Judge Young's decision that said
16 (inaudible) because that was an unappealed issue,
17 that even under that cause of action there could be
18 no liability.

19 So under Kerr anything that was raised by
20 Mr. Mathison is not a valid argument. So I would
21 point out to the court that everything that you
22 heard in the notice of motion and the table of
23 authorities was either raised and ruled upon and
24 ruled upon properly by the court in the first time
25 or not raised at all because there is nothing that I

1 remember with regard to Section 552 of the
2 restatements that was discussed or raised.

3 Nonetheless, in reading the provisions
4 that are cited for 552, they don't even apply in
5 this instance. And so I think that the court
6 properly ruled upon the issues. The issues were
7 properly framed during the motion. If you look at
8 the filings by the Plaintiff, he filed a very
9 extensive affidavit, several affidavits. One of his
10 own and one from his prior counsel Mr. Tuttle.

11 He had exhibits that he attached A through
12 N. He framed the issues as to whether or not -- if
13 you see the affidavit that was provided, that the
14 R.M.A., the road maintenance agreement, should not
15 have been required as a condition of the loan to the
16 Hamners because he alleged that there was no written
17 policy.

18 The court may recall during the hearing
19 that it was actually part of the loan application
20 between the bank and the Hamners that they provide
21 an R.M.A.

22 The second thing that he raised was that
23 the road maintenance agreement was not in conformity
24 with the V.A. guidelines which is alleged. The
25 court properly ruled that that was not an issue.

1 between Mr. Gecy and the bank. That was an issue
2 between the Hamners and the bank.

3 And third, he provided that the R.M.A.
4 requirement interfered with his contract of sale.
5 He alleged that he was a beneficiary of the sale
6 between or the funds of the loan application because
7 he was the seller of property.

8 As Kerr says, there is a limited duty to
9 noncustomers, no duty to people that are
10 applicant -- or excuse me. Very little duty to
11 people that are applicants of the lender or borrower
12 and really no duty to somebody that is not in any
13 fiduciary duty whatsoever.

14 So for those reasons I think that the
15 court's order should stand with the limited
16 provision that the decision of the Supreme Court of
17 April the 9th of this year be substituted in the
18 section of the order that applies with what Judge
19 Roger Young provided for in his order in the lower
20 court in the Kerr case under 37.10.107.

21 JUDGE DUKES: You mean the Footnote 5
22 modification.

23 MR. HOLLOWAY: Correct. Yes.

24 JUDGE DUKES: The other part of Kerr
25 that I think is worth looking at as it relates to

1 this case is the Sky Ways investors were induced to
2 stay with BB&T under their facts which were
3 considered to be the fact in this case, induced to
4 stay with BB&T by the assertions of BB&T that they
5 would provide the funding that they needed to
6 continue operations.

7 And I think the facts are in here that
8 they had looked at four or five different banks.
9 And BB&T gave a presentation to these investors and
10 said stay with us. And don't worry, we will provide
11 your funding.

12 And, of course, for whatever reason the
13 funding was pulled, the place went bankrupt, and our
14 Supreme Court said those investors had no leg to
15 stand on. And what is --

16 MR. MATHISON: Actually what they
17 said exactly, Your Honor, is they said despite
18 the appellant's attempt to frame their attempts --
19 their claims as alleged misrepresentations made to
20 them in their capacity as investors, the trial court
21 aptly noted that at its core this case revolves
22 around the contractual relationship between BB&T and
23 its customer Sky Ways.

24 In other words, they were treated as
25 intended third-party beneficiaries of some

1 contractual relationship between the borrower and
2 the bank.. And my client has not asserted that. We
3 are not here asking to be treated as an intended
4 third-party beneficiary.

5 And that is why I said in my memorandum to
6 you that you don't have to deal with any of this
7 intended third-party beneficiary material because
8 the one thing the bank didn't do in Kerr is they
9 didn't distinguish 552. And 552 applies squarely to
10 the facts in this case. Simply put, it applies
11 squarely. And Kerr does not deal with 552 at all.
12 That is the restatement.

13 JUDGE DUKES: Did you -- anything
14 else?

15 MR. WEGMANN: No, Your Honor.

16 MR. HOLLOWAY: No, Your Honor.

17 MR. MATHISON: With respect to Jim, I
18 would say this. I believe that if the condition is
19 false, that in theory his client had a duty to go
20 through with the transaction. Under the
21 circumstances where the condition is false and is
22 not proven false until a trial, it occurs to me that
23 there is no breach of contract claim there
24 regardless, but he would have a breach of -- he
25 would have some kind of claim against the bank.

1 I'm not here arguing that the bank owes my
2 client a fiduciary duty. And I'm not here arguing
3 that my client is a third-party beneficiary. I'm
4 arguing that my client is somebody who was deceived
5 under Section 552 of the restatement second of
6 torts. That is my argument.

7 And Kerr does not say that 552 does not
8 apply.

9 MR. WEGMANN: And obviously -- and I
10 am often not smart to follow Rob, but there is a
11 financing contingency within both contracts, the
12 land contract and that. Financing didn't come
13 about. Contingency were never met. Money didn't
14 show up for whatever reason on the date that it was
15 supposed to.. They both had the same settlement
16 agent. You know, closing didn't happen. I'm not
17 sure how my client can be in a technical breach if
18 the bank doesn't fund based on their condition of a
19 road maintenance agreement.

20 And without rehashing everything that went
21 before, the road maintenance agreement that my
22 client spent a lot of time going to neighbors to try
23 and get signed. And that one was never signed in
24 any way, shape, or form that I've seen be presented.
25 --So I'm not sure how my client plays into a

1 technical, you know, breach of contract when they
2 have a financing contingency that says essentially
3 if you don't get financing, you are out. So --

4 MR. MATHISON: From a technical
5 standpoint I think that Jim's client has got an
6 estoppel against the bank. They can't deny what
7 they said to him so that he's -- that works against
8 the bank, but I'm not certain he's estopped against
9 my client unless, of course, my client told him what
10 the bank told my client. That would probably raise
11 an estoppel.

12 MR. HOLLOWAY: I would simply add
13 that I'm not -- in reading the words that Rob has in
14 his coddle of authorities, Section 552, I don't see
15 how those words apply to this case, but I will point
16 out that the bank has its own right to provide funds
17 to a loan transaction or not. It's within their
18 sole discretion. In this case there was no fully
19 executed R.M.A. that was required at the time --
20 that they required at the time of closing.

21 And every case or cause of action requires
22 damages. So even if you took it further and
23 accepted for purposes of the motion that untruths
24 were told as to whether or not an R.M.A. was
25 required in other transactions or it was required in

1 guidelines or V.A. guidelines, in this transaction
2 it is a fact that it was required and it was not
3 provided. And the bank did not make funds available
4 to his client.

5 And even if he said the -- the bank said,
6 well, we require this in all cases. And maybe there
7 was a transaction where it wasn't required, Mr. Gecy
8 is not damaged because he's not a part of the
9 transaction between my client and Jim's. And that
10 is the only thing that is important under what --
11 the facts of this case.

12 MR. MATHISON: May it please the
13 court, that is just completely wrong. If Jim is
14 correct and his client is exonerated by virtue of
15 whatever the bank said, true or follows, and he may
16 well be right. My client has been damaged by losing
17 the value of his contract which if Tom's client was
18 being disingenuous or deceitful would have occurred
19 but for the misrepresentation of this road
20 maintenance agreement as requiring more than it
21 actually did.

22 Bear in mind there was only one person --
23 at least one person that Tom can find that wasn't
24 amenable to signing. So out of the 10 or so that
25 were on the road, they were one away. --Mr. Walters

1 didn't seem to have that problem. And he got his
2 R.M.A. well after he closed his loan.

3 And if Mr. Walters had been allowed to
4 testify, he would have said that Mr. Jacobs is the
5 person that closed his loan which would have made
6 Mr. Jacobs' statement to Mr. Gecy and to Mr. Hamner
7 not true.

8 JUDGE DUKES: Well, and, of course,
9 Kerr was a motion to dismiss, not a summary
10 judgment, right? And so the plaintiffs in Kerr had
11 alleged a misrepresentation. That misrepresentation
12 being that don't look at these other banks. We will
13 absolutely continue to fund the company that you
14 have invested in.

15 And so the comparison is here in Kerr the
16 bank absolutely misrepresented that they would
17 continue to fund Sky Ways. They made that
18 representation directly to the investors in a
19 meeting that is -- must be taken as fact I guess
20 stated in this case. And despite all of that our
21 Supreme Court said sorry, investors. The bank has
22 no duty to you.

23 I mean, the parallels are pretty similar
24 here. And while I don't think anyone would ever
25 applaud misrepresentation in any of its forms, I

1 mean, I think this case is very close to on point.
2 And I'm just not sure what else I would do with the
3 order that is out there other than make that change
4 pursuant to Footnote 5 that we've previously
5 discussed.

6 MR. MATHISON: Well, if you make the
7 change pursuant to Footnote 5, how could the case
8 have any application to this one?

9 JUDGE DUKES: Because of the duty
10 issue.

11 MR. MATHISON: Notwithstanding the
12 fact that the court does not consider Section 552 of
13 the restatement?

14 JUDGE DUKES: Well, in considering
15 this recent Supreme Court case that is on point here
16 on the duty issue of third-parties. I mean, I'm
17 happy to put that at this hearing we've already --
18 of course, we made a record of this anyway so I
19 don't even know if I need to, but that you argued
20 that issue, but I found it inapplicable. And the
21 Appellate Court can certainly tell me if I'm wrong,
22 as they have before, but I think other than that the
23 duty from the similarities with Kerr or Sky Ways or
24 whatever we are calling this case is such that it
25 would be inappropriate to modify the order other-----

1 than that which specifically needs to be modified
2 because of a footnote.

3 MR. MATHISON: Well, I would
4 respectfully disagree with that, Your Honor. And
5 would point out that throughout the order my
6 client's arguments and my opinion have been miscast.
7 And what Mr. Gecy has argued as misrepresentation
8 has been characterized repeatedly as a bank policy.

9 The language of the order is entirely
10 conducive to reaching the conclusion that you just
11 stated for the record. And I believe that the
12 language of the order should be changed in the
13 material particulars that I've set forth in my
14 motion for reconsideration to at least reflect that
15 there has been a balanced approach to what is going
16 on here..

17 For example, the first one that concerns
18 me is on Page 2 of the order. The court found the
19 Plaintiff has not provide SCB&T with a fully
20 executed road maintenance agreement which was
21 required by the bank's underwriting procedures as a
22 condition of loan approval.

23 That is a contested fact, Your Honor.
24 It's a contested fact on the record contested by Mr.
25 Gecy in his affidavit. For you to find that as a

1 fact is according greater weight to evidence induced
2 by the bank than to evidence induced by Mr. Gecy.

3 It's just -- it can't be done on a motion
4 for summary judgment. There has to be a finding
5 that there is no evidence that would contradict
6 that. That is a vindication of the bank's position
7 essentially despite the fact that there is evidence
8 to the contrary in the record.

9 And it goes on like that. Every single --
10 because the order was prepared by if not the banks,
11 some combination of the Defendants with the bank's
12 interest at heart.

13 JUDGE DUKES: Let me ask you this
14 though. Under Kerr if it said that the bank
15 misrepresented this road maintenance agreement and
16 it simply found that as a matter of fact, under Kerr
17 does it matter?

18 MR. MATHISON: I think that if Kerr
19 had included the argument that under 552 they have a
20 duty to supply correct information if asked, which
21 is what 552 holds, and rule that banks are exempt
22 then it would apply. I don't think there is any
23 question. But 552 wasn't raised in Kerr. And
24 therefore it's beyond the ambit of the decision.
25 And I would hope that when next given an opportunity

1 to review the matter the court would have the sense
2 to say that we can reconcile one with the other. I
3 certainly can't.

4 JUDGE DUKES: Well, I think I just
5 got what you e-mailed me not to long ago, so I've
6 had a chance to read it but not look over it. And
7 I'll looked over it one more time. And clearly
8 anything that is a -- you pointed out one thing that
9 probably should definitely be changed, but I don't
10 know if that changes the result based on Kerr.

11 MR. HOLLOWAY: I don't think it
12 should be changed. I think that is what the record
13 reveals. Mr. Gecy's arguments in the motion was
14 just the R.M.A. requirement was not valid. That it
15 wasn't valid pursuant to Federal V.A. guidelines or
16 it wasn't evenly handed out between borrowers.

17 It is a fact in this case that no valid
18 road maintenance agreement signed by all the parties
19 on the road was provided by Mr. Gecy prior to the
20 date of closing. That is a fact, uncontested fact
21 throughout the record. The issue on the other side
22 was that it shouldn't have been a requirement
23 pursuant to whatever guidelines that he felt were
24 applicable.

--25 JUDGE DUKES: - Where is the sentence?

1 I never -- oh, there it is. Unfortunately -- I
2 think it's the as required by SCB&T for loan
3 approval clause that is giving Mr. Mathison some
4 problems.

5 MR. HOLLOWAY: That was --

6 MR. MATHISON: It's going over --
7 Item B, eliminating so much of the same paragraph as
8 state, quote, a completed and signed road
9 maintenance agreement as required by SCB&T for
10 approval. It was never provided to the bank.

11 MR. HOLLOWAY: It was part of the
12 lending application package uncontroverted that an
13 R.M.A. was required in this particular transaction.

14 JUDGE DUKES: All right. So maybe at
15 the very least some footnotes pointing in that
16 direction. All right. Let me take -- anything else
17 for this record?

18 MR. WEGMANN: No, Your Honor.

19 JUDGE DUKES: Okay. Mr. Mathison,
20 anything?

21 MR. MATHISON: I have one more thing.
22 In Item D, I referred to the fact that there was a
23 bait-and-switch argument made in this case.
24 Specifically, there was a motion made on the fact
25 that the R.M.A. had failed by virtue of not having

1 unanimous approval of the adjoining property owners?

2 And with no prior notice to Mr. Gecy, when
3 that argument took place the bank's counsel showed
4 up with a lengthy brief which made the argument
5 specifically under Code Section --

6 JUDGE DUKES: What am I looking at
7 here?

8 MR. MATHISON: I'm looking at Item D
9 of the motion, Your Honor.

10 JUDGE DUKES: Okay. All right. Got
11 it.

12 MR. MATHISON: Showed up with an
13 elaborate brief essentially arguing that there was
14 no duty by the bank under any set of circumstances,
15 and specifically under Section 37.10.107. The
16 entire hearing, of which I have a transcript, was
17 devoted to that.

18 And I believe that the court, convinced
19 that there was no duty, was inclined not to look at
20 the salient facts that Mr. Gecy tried to put in the
21 record, but simply assumed that there being no duty
22 it didn't really matter what the facts were. And
23 certainly the order that was signed by the court
24 would reflect the same thing.

25 JUDGE DUKES: Well, and, I mean, that

1 is I guess why I pointed out that Kerr was a motion
2 to dismiss. It was an appeal for a motion to
3 dismiss because they do address the duty issue in
4 Kerr. And, of course, that wasn't necessarily what
5 I was thinking about with whatever you are looking
6 at there, but I think how much of this does matter
7 is something that needs to be considered from Kerr
8 because it was a motion to dismiss in which the
9 Plaintiffs had alleged a misrepresentation.

10 MR. MATHISON: Your Honor, I didn't
11 plead Kerr and I didn't argue Kerr. I can tell you
12 that nobody in Kerr as reported raised Section 552
13 of the restatement second of torts. And that is
14 what I'm arguing. And Kerr doesn't say anything
15 about that.

16 Now, it may be by implication, but I think
17 that when you bring a case, you get a decision based
18 on what is argued. And I don't think that a court
19 would have any trouble in a case in which 552 was
20 raised distinguishing that case from Kerr. If they
21 argued essentially that their entitlement sprang
22 from third-party beneficiary status of the
23 borrower's relationship with the bank, that is what
24 Kerr speaks to. That is not what my client's
25 argument is. It wasn't before and it's not now.

1 And I said so specifically in that memorandum that I
2 handed up.

3 JUDGE DUKES: All right. Anything
4 else?

5 MR. MATHISON: Now, that may be a
6 very good argument, but it's not the one we are
7 making.

8 JUDGE DUKES: Okay. Anything else
9 from anybody?

10 MR. HOLLOWAY: No, Your Honor.

11 MR. WEGMANN: No, Your Honor.

12 JUDGE DUKES: Anything else?

13 MR. MATHISON: No, Your Honor.

14 JUDGE DUKES: All right. I will
15 conclude this.

16 (Whereupon, the hearing was concluded
17 at 3:50 p.m.)

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Certificate of Reporter

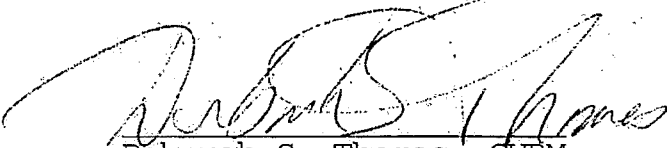
I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of First South vs. Rosenberg, on the 5th day of August, 2014: and that the foregoing 37 pages constitute a true and correct transcription of the said hearing.

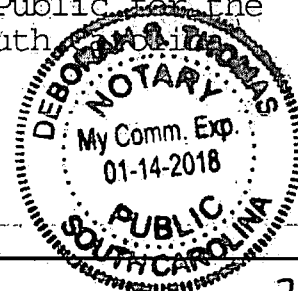
I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Rob Mathison, Law Offices of Mathison & Mathison, Post Office Box 5271, Hilton Head Island, South Carolina 29938.

In witness whereof I set my hand and seal this 9th day of March, 2015.

My Commission
expires 1/4/18


Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina



IN THE COURT OF COMMON PLEAS
CA NO. 2011-CP-07-01778

Plaintiff,

Defendant SCB&T's Notice of Motion And Motion For Summary Judgment

Defendants,

PLEASE TAKE NOTICE that the Defendant, South Carolina Bank & Trust, by and through their undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas for Beaufort County, on the tenth (10th) day after service hereof, or at some other time and place as is convenient to the Court for an Order, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting this Defendant Summary Judgment on the grounds that there is no genuine issue as to any material fact. This Motion is based upon the pleadings in this case and the Affidavit, attached hereto and made a part hereof as Exhibit A.

By:

Beaufort, SC
March 19, 2012

208

EXHIBIT - A

209

STATE OF SOUTH CAROLINA)

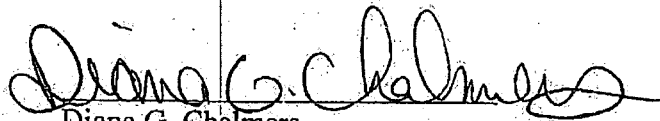
COUNTY OF BEAUFORT)

AFFIDAVIT

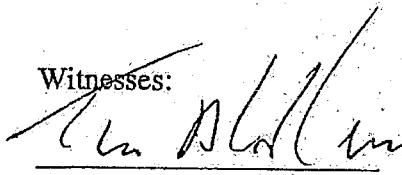
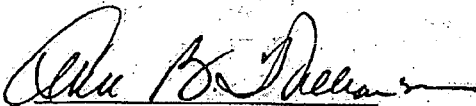
Personally appeared before me, Diana G. Chalmers, who, being duly sworn, deposes and says that:

1. I am the owner of #8 Merideth Lane, Beaufort County, South Carolina and reside there with my husband and children.
2. I am personally familiar with Ben Gecy and his family.
3. Approximately, in April, 2010, Ben Gecy came to my home on several occasions and asked me to sign a "Road Maintenance Agreement" for Meredith Lane. Mr. Gecy explained that the agreement was necessary before he could sell a vacant lot on Meredith Lane to Mr. and Mrs. Hamner.
4. On the first visit I advised Mr. Gecy that I would need to review the matter with my husband.
5. Mr. Gecy repeatedly came to my home over the next several days and repeatedly asked me to sign the "Road Maintenance Agreement."
6. At all times I declined to sign the "Road Maintenance Agreement." Further, I advised Mr. Gecy that I had no intention of signing the document then or anytime in the future.
7. I swear that the foregoing statements made by me are true and are made under oath.

See Exhibit
C


Diana G. Chalmers

Witnesses:

Personally appeared Thomas A. Holloway and made oath that he/she saw the within named
Diana G. Chalmers sign as her act and deed the within Affidavit and that he/she along with
Ann B. Williamson, witnessed the execution thereof.

SWORN to before me this 7th day of November, 2011.

Thomas A. Holloway

Notary Public For South Carolina

My Commission Expires: 01.04.20

CERTIFICATE OF MAILING

I certify that on the 19th day of March, 2012, a copy of the attached **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** was placed in the United States Mail with first class postage prepaid and mailed to the following:

Thomas A. Pendarvis, Esquire
500 Carteret Street, Suite A
Beaufort, SC 29902

HARVEY & BATTEY, P.C.

By: 

Ann B. Williamson

Beaufort, South Carolina

2012 MAR 19 PM 1:08
CLERK OF COURT
BEAUFORT COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

BENJAMIN GECY,)

Plaintiffs,)

vs.)

SOUTH CAROLINA BANK & TRUST,)
JAIME HAMNER AND DEBORAH)
HAMNER,)

Defendant.)

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-07-1778

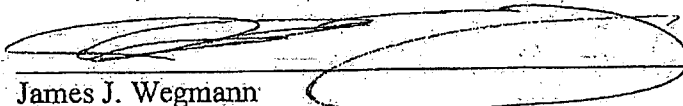
JOINDER IN DEFENDANT SCB&T
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT
BY
DEFENDANTS JAIME HAMNER AND
DEBORAH HAMNER

2012 APR 27 PM 3:56
BEAUFORT COUNTY CLERK
JAMES J. WEGMANN

TO: THOMAS A. PENDARVIS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendants, Jaime Hamner and Deborah Hamner, by and through their undersigned attorney, join in Defendant's South Carolina Bank & Trust's Notice of Motion and Motion for Summary Judgment which is scheduled to be heard on May 14th, 2012 at 2:00 p.m. before the Presiding Judge of the Court of Common Pleas for Beaufort County, South Carolina, in seeking, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, an Order granting the Defendants Jaime Hamner and Deborah Hamner, Summary Judgment on the grounds there are no genuine issues as to any material fact. This joinder in Motion for Summary Judgment is based upon the pleadings in this case, the Affidavit previously filed by the Defendant SCB&T in this case and the Affidavit, attached hereto and made a part hereof, as Exhibit A.

MIKELL, WEIDNER, WEGMANN AND HARPER, LLC

By: 

James J. Wegmann
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
wegmannj@beaufortlaw.com

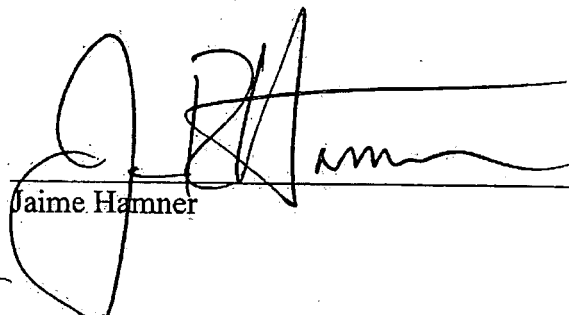
213

EXHIBIT A

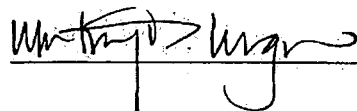
STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) AFFIDAVIT

Personally appeared before me the Defendant, Jaime Hamner, who, being duly sworn,
deposes and says that:

1. I am a Defendant in the above stated case.
2. I have read and reviewed the Answer and Counterclaim and the Amended Answer
filed on my and my wife's behalf by our attorney, James J. Wegmann.
3. The facts as pled within the Answer and Counterclaim and the Amended Answer,
except for those matters stated which are alleged upon information and belief, are true
to the best of my knowledge and I hereby, as if stated verbatim herein, are making
them under oath.

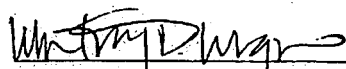

Jaime Hamner





Personally appeared James J. Wegmann and made oath that he/she saw the within named
Jaime Hamner sign as his act and deed the within Affidavit and the he/she along with
Courtney D. Long, witnessed the execution thereof.

Sworn to before me this 2nd day of April 2012


Notary Public for South Carolina
My Commission Expires: 8/3/19

STATE OF SOUTH CAROLINA)

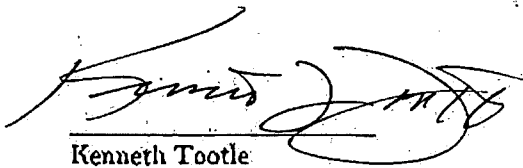
AFFIDAVIT

COUNTY OF BEAUFORT)

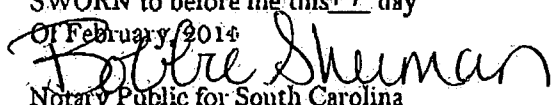
Personally appeared before me the WITNESS, Kenneth Tootle Attorney At Law, who, being duly sworn, deposes and says that:

I Kenneth Tootle was the closing agent for both buyer and seller of 10 Meredith Ln Beaufort SC 29907. I swear and affirm the following statements are true and correct:

- 1) On more than one occasion my office contacted Doug Jacobs at SCBT to inform him it was my opinion as an Attorney that all party's did not need to sign a road maintenance agreement for the Gecy/ Hammer transaction on Meredith Ln.
- 2) At all times Mr Jacob's informed me that my legal theory of one person in singular signing the RMA was not acceptable to the bank or VA guidelines.
- 3) Mr Jacob's also made it clear that my title company could not have any exceptions to the title report.


Kenneth TootleSWORN to before me this 19th day

Of February, 2014


Bobbie Shuman
Notary Public for South Carolina

Commission expires:

216

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF BEAUFORT)

Personally appeared before me the Plaintiff, Benjamin Gecy, who, being duly sworn, deposes and says that:

I Benjamin Gecy am the plaintiff in case # 2011-CP-07-1778. I am a licensed mortgage broker in the State of South Carolina with more than 15 years experience. I have extensive knowledge in VA / USDA / FHA government financing:

The subject matter of this Summary Judgment Motion revolves around one central issue for Plaintiff and Defendant and that is the question of a certain "Road Maintenance Agreement" required by SCBT and or the Veterans Affairs. SCBT and Mr Hamner from the beginning of this transaction in February, 2010 have always led me the seller to believe The VA was providing financing for Mr Hamner.

On February 18th at approximately 4.00 pm the defendants submitted two new affidavits that describe Mr Hamner's financing without any reference to a VA application as previously pled.

Here are the true facts:

The CORE ISSUES

- 1) As of February 18th, 2014, SCBT has provided NO written policy requiring all parties to a private road, must sign a road maintenance agreement. Feb 10th, 2014, SCBT supervisor, Bruce Van Horn testifies that he does not know if such guideline exist.

(Van Horn testimony 2.10.11 pg 47-48)

Q Correct. So let me ask you about that:	9
If a -- if there's a program that the	10
expectation is to roll to permanent financing	11
and they have guidelines that are separate than	12
the bank guidelines, is it fair to apply those	13
guidelines to the transaction that's	14
consummating the sale?	15
A We want to match those guidelines so we	16
can sell it.	17
Q Okay. And those are the guide --	18
A If not we get stuck holding the loan.	19
Q Okay. And SCBT in this -- did SCBT,	20
in this matter, did they follow the VA	21
guidelines in the South Carolina Bank and	22
Trust --	23
A To the best of my knowledge, yes.	24
Q Okay. I'm going to ask you, again, do	25

Page 48

GECY - VANHORN (DIRECT EXAMINATION)	1
you think that there are -- are there guidelines	2
with South Carolina Bank and Trust that apply to	3
private roads and road maintenance agreements?	4
A I would imagine we have them.	5



Q Okay.	6
A But again, I don't know that they	7
exist, in particular.	8
Q They may or may not?	9
A May or may not	10

(Van Horn Page 19)

Q And you mentioned, you testified,	17
earlier, that the reason the loan did not close	18
was because of a road maintenance agreement?	19
A Because we didn't have a signed road	20
maintenance agreement.	21
Q Okay.	22
A Correct.	23
Q Was that a requirement of the VA or was	24
it a requirement of South Carolina Bank and	25

(Van Horn page 20)

GECY - VANHORN (DIRECT EXAMINATION)	1
Trust?	2
A Primarily a verbal of the VA but it's	3
something that's, you know, been folded into our	4
policies, as well. That's how I have been	5
trained, as an approver.	6
Q Okay. Are those policies written	7
anywhere?	8
A They -- I'm sure we have them	9
somewhere.	10
Q Okay. The reason I ask that is I've	11
asked the bank to produce those guidelines and	12
the bank has denied to do that so we're going to	13
file a Motion to Compel to find those guidelines	14
and make sure we know where they are, so, I'm	15
going to ask you some questions.	16
Are you familiar with those guidelines	17
as they -- as the VA refers to --	18
A No.	19

(Van Horn page 23-24)

Q -- you have -- are road maintenance	24
agreements required for the construction loans.	25

(Van Horn page 24)

GECY - VANHORN (DIRECT EXAMINATION)	1
on a consumer side?	2
A I believe that to be accurate.	3
Q Okay. Are those rules written	4
anywhere?	5
A I -- yes, I think they are but I just	6
told you I'm not -- I don't know those rules--.	7

- 2) Since 2011, SCBT has only provided "one" document pertaining to private maintenance agreements.

I have been working with Lenders underwriting guidelines for over 15 years and the SCBT document provided is clearly not a lender requirement. Also, The document does not reference or cite that all party's to a private road must sign the agreement. (*see exhibit B what lender "MAY" require*)



- 3) On January 8th, 2014, I submitted discovery requests to the defendants specifically asking for the 100% Construction loans underwriting handbook. The defendants objected and provided no written bank guidelines.
- 4) My transaction with the Hamners on Meredith could have closed if SCBT, Doug Jacobs and Bruce van Horn reviewed the VA Guidelines and actually applied for a VA Loan.

(Van Horn testimony 2/10/14)

Q Okay. That's not what I was asking. 13
If the VA did not have a road 14
maintenance agreement policy or some type of 15
exception to the RMA which allowed the loan to 16
roll over to permanent financing, knowing that, 17
could the bank have made an exception on this 18
transaction for it to close? 19
A It's a possibility. 20.

- 5) The bank wrongfully applied the all party condition to my sale. The loan should have closed as agents from the bank testified SCBT has never turned a loan down to an RMA issue

(Van Horn testimony 2/10/14 pg 25)

Q Has SCBT ever run into this situation 16
before on transactions? 17
A I have not declined a construction loan 18
request prior because I don't see that many of 19
them to approve solely for a road maintenance 20
agreement. We've declined them for all kinds of 21
things. 22

(Van Horn page 26).

GECY - VANHORN (DIRECT EXAMINATION) 1
Q So this is the first loan South 2
Carolina Bank and Trust, here, locally, that you 3
know of, has been turned down for lack of a road 4
maintenance agreement? 5
A Here in Beaufort? 6
Q In your branch, let's just say your 7
branch. 8
A Correct. 9
Q Is that correct? Okay. Does it seem 10
like an un -- is it an unreasonable condition to 11
require every one on a road to sign a road 12
maintenance agreement? What is your opinion on 13
that? 14
A I'm in the banking business. I'm used 15
to unreasonable policies and circumstances

(van Horn testimony 2/10/14 pg 58)

If the VA did not have a road. 14
maintenance agreement policy or some type of 15
exception to the RMA which allowed the loan to 16
roll over to permanent financing, knowing that, 17
could the bank have made an exception on this 18
transaction for it to close? 19
A It's a possibility. 20

THE VA Veterans Affairs

- 6) The (VA) Veterans Affairs under TITLE 38 of the U.S. Code does not cite any requirement that "all" party's living on a private road must sign a road maintenance agreement.

SCBT repeatedly conditioned and misrepresented the VA handbook to me as a seller.

(See Exhibit D, Jacobs emails, Hamner's emails, Van Horn Emails)

(Van Horn 2/10/14 pg 65)

GECY - VANHORN (DIRECT EXAMINATION) 1
Q Do you think the VA requires a road 2
maintenance agreement? 3
A Yes. 4
Q Okay. Do you think the VA requires 5
that all parties to a private road has to sign a 6
road maintenance agreement? 7
A That, I don't know. 8

(Van Horn 2/10/14 pg 65)

Q -- on this particular property? 15
That denial, was it issued based on the 16
VA guidelines or the South Carolina Bank and 17
Trust guidelines or both? 18
A Both. 19
Q Okay. So it's your testimony that the 20
-- that was a VA guideline needing a road 21
Maintenance agreement?

Pg 65 (cont'd)

GECY - VANHORN (DIRECT EXAMINATION) 1
Q Do you think the VA requires a road 2
maintenance agreement? 3
A Yes. 4
Q Okay. Do you think the VA requires 5
that all parties to a private road has to sign a 6
road maintenance agreement? 7
A That, I don't know. 8

Jacobs 2/11/14 pg 22/23)

Q What would that modify? What would 20
that fee modify? 21
A It would have modified a construction 22
loan to a VA permanent loan. 23
Q And that was the expected -- was that 24
the expected financing scenario of Mr. Hamner 23

GECY - D. JACOBS (DIRECT EXAMINATION) 1
the purchase of 10 Meridith Lane? 2
A Yes. 3
Q Construction to perm with a rollover to 4
VA, was that the scenario you proposed to Mr. 5
Hamner? 6
A Construction and then his VA perm to 7
any lender he chose, yes. 8

- 7) The (VA) Veterans Affairs under TITLE 38 of the U.S. Code, includes (MPR's) Minimum Property Requirements & "Waivers". These waivers protect the veteran from Road Maintenance Agreement issues and conflicts.

220

A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III

RECEIVED
FEB 23 2016
SC Court of Appeals

Master in Equity and Circuit Court Judge

Case No. 2011-CP-07-01778

Appellate Case No. 2014-002712

BENJAMIN GECY..... Appellant,

v.

SOUTH CAROLINA BANK & TRUST, JAIME HAMNER
And DEBORAH HAMNER Respondents.

PROOF OF SERVICE

I, Robert V. Mathison, Jr., hereby certify that on February 19, 2016, I filed
and served by mail the original and copies of the revised Record on Appeal by
depositing same, with sufficient first class postage prepaid, at the United States Post
Office at Asheville, North Carolina, addressed as follows:

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Thomas A. Holloway, Esquire
Harvey & Battey, P.A.
Post Office Box 1107
Beaufort, South Carolina 29901



Robert V. Mathison, Jr.
S.C. Bar No. 3685
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

Attorney for the Appellant
Benjamin Gecy

February 19, 2016

Hilton Head Island, South Carolina.

MATHHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29938
Telephone: (843) 785-6503
Email: rmathlaw@aol.com

RECEIVED

FEB 23 2016

SC Court of Appeals

19
February 18, 2016

Rm

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Benjamin Gecy v. South Carolina Bank & Trust, et al.
Appellate Case No. 2014-002712

Dear Ms. Kitchings:

Enclosed for filing, please find the following items:

1. A new unbound version of the Record on Appeal in this case. The pagination has changed, albeit slightly, and this version should be substituted for the one previously furnished.
2. A bound version of the Record on Appeal, which divides the record into six volumes, each of which has a cover page and contains fewer than 250 pages.
3. The original Proof of Service showing that service of the revised Record has been served on Mr. Holloway.

The remaining 13 bound copies of the revised Record on Appeal have been sent via UPS to the 1015 Sumter Street address, and I am advised that they should arrive more or less contemporaneously with this missive.

Thanking you and with kind regards, I am

Sincerely,



Robert V. Mathison, Jr.
S.C. Bar No. 3685

RVM:bh
Enclosures
cc: Thomas A. Holloway, Esquire