

THE STATE OF SOUTH CAROLINA

In the Court of Appeals
APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III

Master in Equity and Circuit Court Judge

Case No. 2011-CP-07-01778

Appellate Case No. 2014-002712

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SC Court of Appeals

BENJAMIN GECY Appellant,

v.

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

RECORD ON APPEAL

VOLUME V
(Pages 878 to 1120)

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BENJAMIN GECY,

Plaintiff,

vs.

CIVIL ACTION NUMBER
2011-CP-07-1778

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

Defendants.

COPY

The deposition of BRUCE VANHORN, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Kyle J.
Saniga, Certified Court Reporter and Notary
Public, at the Offices of GMC Mortgage, 1857
Ribaut Road, Port Royal, South Carolina, on the
10th day of February 2014, commencing at or
about the hour of 3:25 p.m.

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25 ALSO PRESENT:

Doug Jacobs
Jaime Hamner

I N D E X

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1 GECY - VANHORN (DIRECT EXAMINATION)

2 BRUCE VANHORN,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GECY:

7 Q Thank you, Bruce.

8 A Uh-huh.

9 Q How are you doing today?

10 A Good, Ben.

11 Q Try to make this as quickly as
12 possible.

13 This is the deposition of Bruce
14 VanHorn. He's representing the bank, defendant,
15 in Civil Case 2011CP071778 conducted by Benjamin
16 Gecy, pro se plaintiff, on February 10th 2014
17 approximately 3:30.

18 Bruce, do you know what a pro se
19 litigant is?

20 A Yes.

21 Q Okay.

22 A You're representing yourself.

23 Q Yes, sir. Let's go over a few
24 housekeeping questions just so we kind of know
25 what's going on here.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 You understand that you're oath today
3 or your testimony is under oath, correct?

4 A I do.

5 Q Okay. If you don't understand one of
6 my questions, don't answer it, please ask me to
7 rephrase it.

8 I know this is kind of an unusual
9 situation where I'm the witness or not the
10 witness but I'm the litigant but if you could
11 try to refer to me in the third person. If you
12 say 'you' I'll assume you mean Benjamin Gecy and
13 I'll try to correct you.

14 A Uh-huh.

15 Q Do not ask your attorney any questions.
16 If your attorney objects you still have to
17 answer the question unless your attorney advises
18 you to not answer the question then we can talk
19 about that.

20 A Okay.

21 Q Please make verbal responses when you
22 answer a question and try not to nod your head
23 or make hand signals. We want to try to get it
24 as part of the record. Please state your full
25 for the record.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A Bruce W. VanHorn.

3 Q Okay. Where were you born, Bruce?

4 A Pittsburgh, Pennsylvania.

5 Q Tell us about your education from start
6 to finish.

7 A Got a -- I went to high school in
8 Pittsburgh at a place called Deer Lakes and got
9 my college -- went -- got my college degree at
10 Penn State and then moved here about 15 years
11 ago.

12 Q What was your degree at Penn State?

13 A Finance.

14 Q Okay. Any other degrees?

15 A Huh-uh.

16 Q Any real estate?

17 A I had a minor in Accounting but --

18 Q Minor in Accounting. Any real estate
19 certifications?

20 A No.

21 Q Any professional licenses that you
22 hold?

23 A Huh-uh, no.

24 Q Do you hold any type of mortgage
25 brokers license or NMLS number?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A Do not. Well, I do have an ML -- I
3 probably have the number. Being in the banking
4 business I'm required to, I believe, by federal
5 regulation but, you know, outside of that I
6 don't use it actively.

7 Q Do you know what that number is?

8 A No, I don't.

9 Q Have you ever been a party to a
10 lawsuit?

11 A No. This is the first one.

12 Q If the bank is a defendant in a lawsuit
13 here, locally, is that suit served upon you,
14 Bruce VanHorn? Do you get receipt of that?

15 A I mean in this case I did get receipt
16 of it, at some point, but typically that's not
17 the case.

18 Q Have you ever been served any paperwork
19 or accepted service on behalf of the bank, for
20 any type of audit?

21 A I don't recall that I have.

22 Q Okay. I've provided --

23 A I received a deposition or a
24 subpoena --

25 Q Okay.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A -- to be deposed for this case but --

3 Q Okay.

4 A -- outside of that, not typically.

5 Q How long have you been with South
6 Carolina Bank and Trust?

7 A Almost 15 years.

8 Q Have you ever had any complaints filed
9 against you?

10 A Huh-uh.

11 Q Not once?

12 A Well yeah, employees from time to time,
13 but, you know --

14 Q What was --

15 A -- not me, personally.

16 Q What were some of those complaints that
17 employees filed against you?

18 A Oh, not against me, I'm sorry. I
19 thought -- I meant about employees who reported
20 to me.

21 Q Oh, okay.

22 A But no.

23 Q Did they file any complaints against
24 you?

25 A No.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q Okay. Have you ever been arrested?

3 A No.

4 Q Okay. What is your current position at
5 South Carolina Bank and Trust?

6 A Commercial lender and City Executive.

7 Q And what are you responsible for as the
8 City Executive and commercial lender?

9 A Commercial lender I have about a 30
10 million dollar commercial loan portfolio that I
11 have to maintain. I'm responsible for
12 developing new business as a lender and as a
13 City Executive I oversee, you know, other
14 employees in the branch.

15 Q Are construction loans part of the
16 portfolio that you manage?

17 A I don't manage them, personally. They
18 -- you know, the mortgage originators, which
19 would be Doug and Reed Davis, will do the actual
20 construction loans and then if it's necessary I
21 will approve them but I don't have -- you know,
22 I don't do consumer loans. I'm solely a
23 commercial lender.

24 Q So you originate commercial loans?

25 A Correct.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q What type of scenario would require you
3 to approve one of Bruce's loans or one of Doug
4 Jacob's loans?

5 A None of the mortgage originators have
6 loan authority so, you know, it can be lot loan
7 renewals, it can be construction loans, it can
8 be new purchase money deals where, you know,
9 somebody's buying a house outright and, you
10 know, there's no construction component to it.

11 Q So does Doug Jacobs have the authority
12 to close on a commercial or excuse me, a
13 construction loan --

14 A No.

15 Q -- with the bank's money?

16 A Not without a manager's signature.

17 Q Who would --

18 A Not without somebody who's got the
19 proper authority to sign it for it, depending on
20 --

21 Q Are you that person with the proper
22 authority?

23 A In most cases, yes, but not always.

24 Q Okay. In the situation that we're here
25 today about, the Jaime Hamner transaction, there

1 GECY - VANHORN (DIRECT EXAMINATION)

2 was a construction loan that was involved in
3 that application or some type of lot purchase.

4 Were you the one who signed off on that
5 transaction for Doug Jacobs?

6 A I was involved in reviewing it, yes.

7 Q Okay, okay. So Doug Jacobs --

8 A I mean his -- the approval doc never
9 got signed completely because of the -- you
10 know, because we turned it down due to the lack
11 of the road maintenance agreement.

12 Q Okay, okay. So does Doug have the
13 authority to approve or deny individuals --

14 A No.

15 Q -- for -- let me try to finish, Bruce.

16 Does Doug Jacobs have the authority to
17 approve or deny customers for construction
18 lending?

19 A He does not.

20 Q Okay. Does he have the ability to
21 impose rules for the construction guidelines --

22 A No.

23 Q -- for SCB&T? Is Doug supposed to
24 follow the rules and guidelines that SCB&T has
25 put in place for construction loans?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A Yes.

3 Q Okay. Are you Doug's immediate
4 supervisor?

5 A Not technically. He reports to a
6 mortgage production manager. His name's David
7 Kendrick and then --

8 Q What is David Kendrick's title?

9 A He's -- I don't know it, you know,
10 technically, but it's a -- he's a regional
11 mortgage manager so he oversees all the mortgage
12 originators in Beaufort County, Charleston
13 probably all the way up to Myrtle Beach.

14 Q Why was Doug Jacobs involved in the
15 origination of a construction loan that he was
16 not authorized to approve or deny?

17 A He was involved because it was referred
18 to him by you.

19 Q Uh-huh.

20 A You talking about the Hamner request,
21 right?

22 Q Yes.

23 A Yeah. I mean it's his job to do the
24 underwriting piece, gathering the information,
25 communicate with the customer, communicate with

1 GECY - VANHORN (DIRECT EXAMINATION)

2 the people that have referred, you know, the
3 loans to him, so that's why he was involved.

4 Q So he's got the authority to act as an
5 underwriter?

6 A He's got the authority to act like an
7 underwriter but he can't approve a loan without
8 somebody's signature.

9 Q Okay. What's Doug Jacob's title at the
10 bank?

11 A Mortgage Originator.

12 Q Okay.

13 A And, you know, Vice President.

14 Q Vice President, Mortgage Originator?

15 A Uh-huh.

16 Q Does South Carolina Bank and Trust
17 policy allow its loan officers, Vice Presidents,
18 to operate as underwriters, on any type of loan?

19 A It's their responsibility to prepare
20 the documents and begin the underwriting process
21 and to give, you know, a general idea of whether
22 or not it's a doable loan and then pass it onto
23 the people that are going to -- that have the
24 authority to sign it.

25 Q Okay. Which, if I want to go back

1 GECY - VANHORN (DIRECT EXAMINATION)

2 here --

3 (Whereupon, Mr. Jaime Hamner
4 entered the proceedings.)

5 BY MR. GECY:

6 Q So, what are -- what are Doug Jacob's
7 responsibilities with the bank as a loan
8 originator, Vice President?

9 A Primarily to renew his loan book of
10 business, which is probably 15 to \$17 million
11 and then to develop new business in the form of,
12 you know, home purchase loans that we finance,
13 lot loan renews, for the most part. We don't do
14 a whole lot of new lot loans, at this point,
15 and, you know, that's -- that takes up probably
16 most of his time.

17 Q So he has more authority -- does he
18 have more authority to originate loans, other
19 than residential real estate transactions?

20 A Well, if you include lot loans into
21 that no, no, he does not. I mean his authority
22 is really for residential, you know,
23 real-secured loans.

24 Q Single-family residences?

25 A Yeah. He doesn't typically do home

1 GECY - VANHORN (DIRECT EXAMINATION)

2 equity lines, so they're usually -- they're
3 usually single-family residences.

4 Q So a lot loan purchase would have to go
5 to another individual. Doug doesn't have the --

6 A No, Doug can do that, as well.

7 Q He has to get authority to do that?

8 A But just like with any construction
9 loan he would have to get proper signing
10 authority. He can't do it himself. He can
11 start the process but he's got to pass off the
12 final signature to somebody else.

13 Q So does Doug have to get any type of
14 acknowledgment or consideration from anyone to
15 start a construction loan process?

16 A Not -- not necessarily. I mean, you
17 know, he's experienced enough that, you know, we
18 trust him to go out and develop good loans.

19 Q Okay, all right. Who was the
20 representative for the bank -- well actually,
21 I'll -- we sent some discovery or I sent some
22 discovery out about a month ago that I received
23 on Saturday. Who's the representative of the
24 bank that's answering those production requests?

25 A I believe it was Doug but I'm not --

1 GECY - VANHORN (DIRECT EXAMINATION)

2 yeah, I'm not sure of that.

3 Q Could it be anyone else?

4 A I don't think so. I mean Charlotte
5 could probably help answer. That's Doug's
6 processor.

7 Q Okay.

8 A But --

9 Q So when litigation comes into the bank,
10 with the bank as a defendant, is it typical that
11 the loan officer answers the questions on behalf
12 of the entire bank?

13 A I don't know if that's typical because
14 we haven't been sued. I mean certainly not in
15 Beaufort County, northern Beaufort County.

16 Q South Carolina Bank and Trust -- it's
17 your testimony South Carolina Bank and Trust has
18 not been sued in Beaufort County?

19 A Well, I'm not saying that we haven't
20 been sued but not in Beaufort we haven't been
21 sued, not successfully.

22 Q Has anyone filed suit against SCB&T --

23 A Not that I'm aware.

24 Q -- that you know of? Has anyone ever
25 filed a suit against SCB&T that involved Doug

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Jacobs as a loan officer?

3 A Not that I'm aware of.

4 Q Has anyone filed a suit against South
5 Carolina Bank and Trust where Doug Jacobs was
6 required to give a deposition?

7 A I'm not aware of that.

8 Q Have you ever been required to give a
9 deposition other than --

10 A Never.

11 Q -- this one? Okay, all right.

12 When were you hired with South Carolina
13 Bank and Trust, Bruce?

14 A September of 1999, I think.

15 Q What was your original title?

16 A I came in as a commercial lender and
17 then, you know, probably within a few years
18 became the City Executive in addition to being a
19 commercial lender.

20 Q Okay. What is your -- has your titles
21 changed over the last 15 years --

22 A No.

23 Q -- with the bank?

24 A It's been pretty much the same.

25 Q Okay. How about Doug, how long has he

1 GECY - VANHORN (DIRECT EXAMINATION)

2 been working with the bank?

3 A I can't say, you know.

4 Q Before --

5 A My guess is -- no, he was after me.

6 Eight, eight years, maybe.

7 Q Okay.

8 A I don't know his hire date though.

9 Q All right. Let's get to some of these
10 documents here.

11 What do you remember about the
12 Gecy/Hamner transaction?

13 A I remember that it was referred to Doug
14 by you in the form of it being a construction
15 loan that was going to go to the VA or, you
16 know, permanent market place afterwards.

17 Q And you mentioned, you testified,
18 earlier, that the reason the loan did not close
19 was because of a road maintenance agreement?

20 A Because we didn't have a signed road
21 maintenance agreement.

22 Q Okay.

23 A Correct.

24 Q Was that a requirement of the VA or was
25 it a requirement of South Carolina Bank and

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Trust?

3 A Primarily a verbal of the VA but it's
4 something that's, you know, been folded into our
5 policies, as well. That's how I have been
6 trained, as an approver.

7 Q Okay. Are those policies written
8 anywhere?

9 A They -- I'm sure we have them
10 somewhere.

11 Q Okay. The reason I ask that is I've
12 asked the bank to produce those guidelines and
13 the bank has denied to do that so we're going to
14 file a Motion to Compel to find those guidelines
15 and make sure we know where they are, so, I'm
16 going to ask you some questions.

17 Are you familiar with those guidelines
18 as they -- as the VA refers to --

19 A No.

20 Q -- to the road maintenance agreement?

21 A No because that's -- you know, I spent
22 90 percent of my time doing commercial loans and
23 managing my book of business. Not --

24 Q Is a road maintenance agreement -- I'm
25 sorry, go head, Bruce, finish.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A I was going to say I don't spend really
3 any time -- I've never done a consumer mortgage
4 loan and I don't spend much time reviewing them.

5 Q In your book of business, in your
6 commercial loans, including construction loans,
7 are road maintenance agreements required to
8 close on a transaction?

9 A I've never -- I've never had one.

10 Q You've never had a problem with a road
11 maintenance agreement on a commercial loan?

12 A They just don't apply to commercial
13 loans.

14 Q Okay. Are the construction loans that
15 you guys are closing in these situations, is
16 that considered a commercial loan?

17 A No. You talking about the ones that
18 Doug does?

19 Q Well, I'm talking about the one that
20 you -- that Doug can't do that you have to sign
21 off on for residential loans that goes up the
22 ladder to you to sign off on the authorization,
23 because you testified, earlier, Doug doesn't
24 have the authority --

25 A He didn't have any -- he has zero

1 GECY - VANHORN (DIRECT EXAMINATION)
2 signing authority. So, if a loan's a dollar
3 somebody else is going to have to sign off on
4 it.
5 Q Okay.
6 A Doug just signs on it -- on the loan
7 approval document as the originating officer.
8 Q So, is the loan that you guys, that
9 SCB&T was doing for Mr. Hamner, the original
10 loan, was that a VA loan?
11 A It was going to go to the VA market
12 place.
13 Q The original loan that was going to
14 close, the first loan --
15 A It was going to be a construction loan.
16 Q Was that a commercial loan?
17 A No.
18 Q Was not?
19 A Consumer, consumer loan.
20 Q Consumer loan?
21 A Correct.
22 Q Okay. That does not fall into the
23 commercial category?
24 A No.
25 MR. HOLLOWAY: Objection to the

1 GECY - VANHORN (DIRECT EXAMINATION)

2 form of the question.

3 BY MR. GECY:

4 Q Does that fall into the commercial
5 category --

6 A Does not.

7 Q -- in the guidelines?

8 A No.

9 Q Okay. Does the bank have consumer
10 lending guidelines similar to the commercial --

11 A Yes, they're --

12 Q -- guidelines?

13 A They're different, but yes.

14 Q On the consumer construction loans,
15 have you ever closed any of those, yourself
16 or --

17 A No, never.

18 Q All right. But you do have to sign off
19 on those?

20 A I do have to sign off on them.

21 Q So, you are familiar with the
22 guidelines as it pertains to those since --

23 A I'm vaguely familiar.

24 Q -- you have -- are road maintenance
25 agreements required for the construction loans

1 GECY - VANHORN (DIRECT EXAMINATION)

2 on a consumer side?

3 A I believe that to be accurate.

4 Q Okay. Are those rules written
5 anywhere?

6 A I -- yes, I think they are but I just
7 told you I'm not -- I don't know those rules --

8 Q Okay.

9 A -- very well.

10 Q Okay. But it's your testimony that the
11 commercial side of things is not required --

12 A It's never --

13 Q -- for road maintenance --

14 A Correct.

15 Q Okay, okay.

16 A Yeah, commercial loans are typically
17 being done in commercially zoned areas. Road
18 maintenance agreements are required in
19 residential homeowners associations.

20 Q So you don't know of any commercial
21 properties that might have a private easement
22 that goes back to them?

23 A Not -- well, I mean, they -- you know,
24 I'm sure they're out there but --

25 Q Yeah. But you've never had --

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A It hasn't arisen or me.

3 Q You've never had a loan turned down for
4 a road maintenance agreement?

5 MR. HOLLOWAY: Object to the form
6 of the question.

7 BY MR. GECY:

8 Q Have you ever had a loan turned down by
9 SCB&T for lack of a road maintenance agreement
10 on a commercial loan?

11 A No.

12 Q Okay. Did you think that this was an
13 unusual situation that we ran into here at the
14 end on this transaction?

15 A Not necessarily.

16 Q Has SCB&T ever run into this situation
17 before on transactions?

18 A I have not declined a construction loan
19 request prior because I don't see that many of
20 them to approve solely for a road maintenance
21 agreement. We've declined them for all kinds of
22 things.

23 Q You have?

24 A Yeah, DTI exceptions, loan-to-value,
25 credit score problems.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q So this is the first loan South
3 Carolina Bank and Trust, here, locally, that you
4 know of, has been turned down for lack of a road
5 maintenance agreement?

6 A Here in Beaufort?

7 Q In your branch, let's just say your
8 branch.

9 A Correct.

10 Q Is that correct? Okay. Does it seem
11 like an un -- is it an unreasonable condition to
12 require every one on a road to sign a road
13 maintenance agreement? What is your opinion on
14 that?

15 A I'm in the banking business. I'm used
16 to unreasonable policies and circumstances.

17 Q Do you just divert to the SCB policy or
18 VA policy, is that how you make your decisions?

19 A Pretty much always.

20 Q Do you think it would be helpful for
21 me, as a pro se litigant, if the bank gave me
22 those written guidelines or provided me with
23 them?

24 A It may be helpful to you but that's not
25 my decision.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q That's right, that's right. It would
3 -- would it answer a lot of questions that we're
4 having here today, the production of that
5 document?

6 A It may answer some of yours.

7 Q Okay. Let's go over these documents
8 that we received here.

9 Bruce, are you familiar with the VA
10 guidelines, at all?

11 A I'm not an expert. I think I
12 referenced that, before.

13 Q Okay. So, who was requiring the road
14 maintenance agreement to be signed by all
15 parties in the Hamner/Gecy transaction, was it
16 you or was it Doug Jacobs?

17 A It wasn't -- it was SCBT and the VA.

18 Q Okay. As far as you knew, that was the
19 policy -- was that the policy of the VA and
20 South Carolina Bank and Trust?

21 A Yes, the best of my knowledge.

22 Q No exceptions -- were there -- did you
23 know of any exceptions that could be made to the
24 VA to waive a road maintenance agreement?

25 A I wasn't aware of it.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q If there were any exceptions, would you
3 have tried to exercise those to help this
4 transaction go through?

5 A If they were brought to my attention,
6 maybe.

7 Q Okay. How about with South Carolina
8 Bank and Trust policy, if there were exceptions
9 that could be made -- let me finish -- would you
10 have tried to exercise those to help this
11 transaction close?

12 A I'm not -- I'm not sure I understand
13 the question. Repeat it.

14 Q If there -- if SCB&T had a policy that
15 allowed exception to be made eliminating a road
16 maintenance agreement, would you have tried to
17 pursue and exercise that to help this
18 transaction close?

19 A That's a possibility.

20 Q If, if the bank had a policy?

21 A If we had a policy.

22 Q But from what I understand, and Mr.

23 Hamner and I understand, I think, from Mr.

24 Hamner, is that the road maintenance agreement

25 wasn't fully executed and therefore we couldn't

1 GECY - VANHORN (DIRECT EXAMINATION)

2 close on the loan?

3 MR. HOLLOWAY: Objection to the
4 form of the question.

5 MR. GECY: I'm sorry, Tom, I'm
6 sorry. I didn't ask you a question
7 there.

8 BY MR. GECY:

9 Q You've already answered that question
10 so I don't need to go through it again.

11 As I said, we got some production
12 information in discovery that came in the mail,
13 that came Saturday. I haven't had a whole bunch
14 of time to review it but I'm still going to pull
15 some things out of here and let you take a look
16 at them.

17 Did you get a chance to review the
18 production information that was delivered?

19 A I did not.

20 Q Okay. What is the normal type of loan
21 that SCB&T closes for a consumer on a
22 construction loan that's rolling over to
23 permanent financing?

24 A Well, you know, it's usually a 12 or
25 24-month interest only period and once the house

1 GECY - VANHORN (DIRECT EXAMINATION)

2 gets built the CO gets, you know, given to the
3 homeowners, our borrowers, and then it gets sold
4 to the secondary market.

5 Q Does it balloon after those periods of
6 time?

7 A Well, it's supposed to go to the
8 secondary market before it balloons.

9 Q What if it does not go to the secondary
10 market?

11 A I don't know. I think that there are
12 situations where they can be structured as an
13 ARM where -- I'm sorry, where it's structured as
14 a balloon and, you know, it would actually
15 mature at the maturity date or it would be an
16 ARM where it would become an adjustable rate but
17 we don't except those loans to stay with us.

18 Q But sometimes they do?

19 A Sometimes they do but --

20 Q Did Mr. Gecy have a loan that was in
21 that situation with his company, River City Real
22 Estate? One that never made it out of the
23 construction period?

24 A Well, we had a loan with you but I
25 didn't recall that it did not make it out of the

1 GECY - VANHORN (DIRECT EXAMINATION)

2 construction period.

3 Q Okay. Does SCB&T have guidelines for
4 loan officers and commercial loan officers to
5 properly disclose what type of loan they are
6 processing and trying to do for customers?

7 A Yes, I believe so.

8 Q Okay. Are there state guidelines that
9 regulate that?

10 A I don't know that they're state
11 guidelines. We're now a state bank, but, you
12 know --

13 Q Are there federal guidelines that --

14 A I believe there to be.

15 Q Okay. So, on a typical construction
16 loan program, is it an adjustable rate loan that
17 you're closing before it rolls to permanent or
18 is it a balloon feature or can it be both?

19 A It can be both.

20 Q Okay. What typically happens in that
21 situation, adjustable rate or balloon?

22 A I think nowadays more frequently there
23 -- it's an ARM just in case it hangs around and,
24 you know, the bank doesn't want to have to
25 manage working it every time it balloons.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q So, if the bank closes on an ARM
3 program and it's amortized for 30 years and the
4 loan cannot roll to the secondary market or
5 permanent financing the bank is stuck with that
6 -- is the bank stuck with that loan?

7 A Pretty much.

8 Q Okay.

9 A Unless we can find somebody else to
10 take it out but that doesn't happen frequently.

11 Q Does the bank have any loans like that
12 in its portfolio, today?

13 A Yes.

14 Q Okay.

15 A Of course.

16 Q Does the bank service those loans?

17 A Yes, for the most part.

18 Q Does the bank treat those customers
19 under the Fair Debt Collection Act as they're
20 supposed to?

21 A I don't know what the Fair Debt
22 Collection Act is.

23 Q Okay. They follow the federal and
24 state guidelines that the bank, charter bank has
25 to follow, correct?

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1 GECY - VANHORN (DIRECT EXAMINATION)

2 A No verbal response.

3 Q I want to you take a look at a document
4 here that your bank produced for Mr. Hamner.

5 MR. HOLLOWAY: I'll take that. Go
6 ahead and ask the question. I'll look
7 at it.

8 MR. GECY: I'm going to ask the
9 question looking at the document, Tom.

10 MR. HOLLOWAY: Okay, I'll look at
11 the document first. This is
12 Plaintiff's Exhibit 2 from the prior
13 deposition, is that right?

14 BY MR. GECY:

15 Q Okay. This is a Uniform Residential
16 Loan Application.

17 A Uh-huh.

18 Q Okay. I want you to read for the
19 record what the purpose of the loan was right
20 there.

21 A Purchase.

22 Q Okay. Now, was Mr. Hamner --

23 A Primary.

24 Q Let's stop right there.

25 Now, was Mr. Hamner and Mrs. Hamner,

1 GECY - VANHORN (DIRECT EXAMINATION)

2 were they doing a purchase or a construction
3 loan?

4 A They were doing a construction loan.

5 Q Okay. Let's go down to the next
6 section. There's a line that says complete --
7 'Complete this line if construction or
8 construction to permanent loan.' Is that the
9 case for Mr. and Mrs. Hamner in this situation?

10 A It was.

11 Q Okay. Why was that area not filled
12 out?

13 A I don't know, you know. What I do know
14 is that this is the way they have to be prepared
15 if we hold the construction loan for a year or
16 two, whatever, however long it takes to build
17 that house and then put it, you know, with a VA.

18 Q Okay. Let's stop right there and talk
19 about that with what the bank was proposing.

20 Up top we had it documented as, what?
21 What is checked there?

22 A Conventional.

23 Q Okay. Is a construction loan of this
24 type, is it considered a conventional loan?

25 A No.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q Okay. What is it considered?

3 A A conventional loan?

4 Q No, no, what is a construction loan?

5 A A construction loan?

6 Q Construction loan?

7 A A construction loan is a construction
8 loan.

9 Q Not a conventional loan?

10 A No.

11 Q Okay.

12 A Correct.

13 Q And then, what? Over here for the
14 amortization type we've got fixed rate, GPM,
15 other, an ARM. What type of program is that?

16 A ARM.

17 Q Okay. What does it say besides the ARM
18 there?

19 A Two-year arm.

20 Q What does that meant?

21 A That means in two years if the loan is
22 still actively out there after the construction
23 period the rate will adjust.

24 Q Okay. What --

25 A But we don't expect that to happen nor

1 GECY - VANHORN (DIRECT EXAMINATION)

2 does the borrower.

3 Q But --

4 A Most times.

5 Q But as you, testified, you do have
6 loans --

7 A Have --

8 Q -- in your portfolio?

9 MR. HOLLOWAY: Let him finish the
10 question. Objection to the form.

11 MR. GECY: Thank you, Tom, sorry.

12 BY MR. GECY:

13 Q But you do have loans in -- do you have
14 loans in your portfolio that did not make it to
15 a permanent financing?

16 A Yes.

17 Q Okay.

18 A Not a lot but they -- yes.

19 Q So, in this instance the bank -- did
20 the bank propose a two-year adjustable mortgage
21 amortized over 30 years for Mr. Hamner and Mrs.
22 Hamner?

23 A If they would have hung around long
24 enough that's what would have happened. That's
25 not what was proposed though.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q Okay. Please review that document in
3 that application and tell me where there's any
4 other proposal for any other type of loan that
5 the bank was proposing there.

6 A That's what the application says but
7 I -- that's not what was discussed with the
8 Hamners.

9 Q Okay, all right.

10 A And that's not what the expectation was
11 for the Hamners, either.

12 Q Okay.

13 A But the application does indicate --

14 Q You've been in the lending business for
15 15 years. A lot of -- do situations happen to
16 people's employment while they're processing
17 loans or during construction?

18 A It does happen.

19 Q Do people, sometimes, lose their job
20 and -- while they have a construction loan open?

21 A Sometimes.

22 Q Do they change jobs, sometimes, during
23 construction?

24 A It happens.

25 Q Could those events and changes in

1 GECY - VANHORN (DIRECT EXAMINATION)

2 income affect their ability to move to the
3 secondary market?

4 A It can.

5 Q And if situations like that happen,
6 would the bank be obligated to keep that loan if
7 it were not on a balloon?

8 A We would.

9 Q Would the bank be prepared to keep that
10 loan and service that loan and collect the
11 principal and interest they were obligated to at
12 the time of closing with the customer?

13 A We would have to.

14 Q That's right. By federal and state
15 law?

16 A Right.

17 MR. HOLLOWAY: Objection to the
18 form.

19 BY MR. GECY:

20 Q Does that statement up top, two-year
21 ARM, does that propose any type of balloon
22 feature for Mr. and Mrs. Hamner?

23 A It does not.

24 Q Is there any clause in any of those
25 documents that penalizes the Hamners if they

1 GECY - VANHORN (DIRECT EXAMINATION)

2 don't roll to permanent financing in a period of
3 time?

4 A I don't know the clauses for consumer
5 loan applications or consumer loan documents.

6 Q Does the construction side have a
7 clause that demands or --

8 A You know, we may but I'm not aware of
9 it.

10 Q Okay. Try to let me finish and then
11 I'll try to let you finish, also, please, okay.

12 So it's fair to say on this -- well, in
13 this application right here we're doing, SCB&T
14 is closing on a conventional loan of 306,900,
15 five percent, 30 years adjustable rate, two-year
16 ARM. What's the property address? Subject
17 property address?

18 A 10 Meridith Lane, Beaufort.

19 Q And then below that, the purpose of the
20 loan is?

21 A Purchase.

22 Q Okay. And the construction area there
23 is not filled out, correctly? (Sic)

24 A Correct.

25 Q Does this application seem a little

1 GECY - VANHORN (DIRECT EXAMINATION)
2 misleading, based on what the Hamners were
3 trying to do with the seven acres?
4 A Potentially.
5 Q Okay.
6 A But I don't believe that the mortgage
7 originator was misleading them.
8 Q Okay. Do you think the mortgage loan
9 originator could have been misleading somebody
10 else? Maybe the seller?
11 A I don't think so.
12 Q On page three of the application does
13 it look like the buyers, Deborah and James
14 Hamner, signed that document?
15 A It does.
16 Q Who is the loan officer at the bottom
17 that signed that document and what is his name?
18 A Doug Jacobs.
19 Q Is Doug Jacobs a representative of the
20 bank?
21 A He is as a banking officer.
22 Q What is the date beside --
23 A 213 -- well, I guess that's 10.
24 Q Yeah. Looks like 2010 and Doug Jacobs
25 signed that on that same date?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A He did.

3 Q Was he an employee of the bank on that
4 date?

5 A He was.

6 Q Okay. Take a look at this document
7 right here. It's called a Federal Truth in
8 Lending Disclosure Statement. Are you familiar
9 with that document?

10 A I've seen them, yes.

11 Q Do commercial loans have that?

12 A No, we do not.

13 Q Okay.

14 A We're not required to do it.

15 Q Okay. What does the rate say under the
16 annual percentage rate?

17 A 4.651.

18 Q Okay. I'm going to refer back to the
19 front page of the application. What does the
20 rate say on the front page of the application?

21 A Five percent.

22 Q Do you know why the annual percentage
23 rate is lower than the interest rate?

24 A I do not.

25 Q Do you think Doug will know that

1 GECY - VANHORN (DIRECT EXAMINATION)

2 question or that answer?

3 A I would think so.

4 Q Okay. Who signed -- is that signed by
5 Mr. and Mrs. Hamner at the bottom?

6 A It appears to be.

7 Q Okay. And what are the dates?

8 A February 13th 2010.

9 Q Okay. And down underneath the payments
10 amortizations there's a couple of sections.
11 Which section is checked? And please read that
12 for the record.

13 A 'Variable rate feature'.

14 Q Can you read the rest of it, please.

15 A 'Your loan contains a variable rate
16 feature. Disclosures about the variable rate
17 feature have been provided to you separately.'

18 Q Did Doug Jacobs or you provide that
19 disclosure to Mr. Hamner?

20 A I don't know. That's not my job. It
21 would be the mortgage originator's job.

22 Q Is it bank policy to follow that
23 guideline?

24 A Yes.

25 Q Here's another document that your bank

1 GECY - VANHORN (DIRECT EXAMINATION)

2 provided us in discovery. It's called an
3 Addendum to Residential Loan Application Lot
4 Loan Program Information.

5 Are you familiar with that document?

6 A Not very but it's part of the package.
7 It's -- again, it's a consumer loan document.

8 Q Is it a disclosure document?

9 A It is a disclosure document, I believe.

10 Q What is the subject matter that I have
11 circled right there? Can you read that for the
12 record?

13 A This is not a variable rate mortgage.

14 Q Okay. Does that contradict what we
15 just discussed in the federal truth in lending
16 and loan application?

17 A Somewhat.

18 Q Okay. What do you mean by 'somewhat'?

19 A The indication on the front page of the
20 application was an ARM, a two-year arm with an
21 adjustable rate feature.

22 Q Okay. Is that not a variable rate?

23 A It is a variable rate.

24 Q Okay. What does that statement say
25 there, again?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A It says 'this is not a variable rate
3 mortgage.'

4 Q Okay. But the front page of the
5 application -- does the front page of the
6 application say that it is a variable rate
7 mortgage?

8 A It does.

9 Q Okay. Right below it there's a section
10 checked there. Read that for the record and
11 tell me what is X'd there in the box.

12 A 'Interest only period. Your minimum
13 payments will not repay the principal that is
14 outstanding on your loan. Your monthly payment
15 during the period indicated below will consist
16 entirely of accrued interest and will not reduce
17 the principal.'

18 Q Okay. Did Mr. and Mrs. Hamner sign
19 that?

20 A They did.

21 Q Okay.

22 A That appears to be their signature.

23 Q Is this a document that is originated
24 by South Carolina Bank and Trust, as far as you
25 know?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A Probably.

3 Q Is this a document that Mr. Doug Jacobs
4 normally handles?

5 A He does.

6 Q Okay.

7 (Whereupon, Mr. Doug Jacobs entered
8 the proceedings.)

9 BY MR. GECY:

10 Q Another document that your bank
11 provided on Saturday called a Servicing
12 Disclosure Statement.

13 Are you familiar with that document?

14 A Not very.

15 Q Okay.

16 A But I believe them to be a consumer
17 real estate oriented loans.

18 Q What is a servicing disclosure
19 statement?

20 A I don't know.

21 Q Can you read it for the record.

22 A The whole thing?

23 Q Let's just start at the top and then
24 I'll stop you when I think we can --

25 A Okay.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q -- figure out what it is.

3 A 'Notice to first lien mortgage
4 applicants the right to collect your mortgage
5 loan payments may be transferred. You are
6 applying for a mortgage loan covered in the Real
7 Estate Settlement Procedures Act, RESPA. RESPA
8 gives you certain rights under federal law.
9 This statement described' --

10 Q I'll stop you right there. All right.
11 Do you know what RESPA is?

12 A I'm familiar with the term but --

13 Q Okay.

14 A -- not necessarily.

15 Q Do you know what RESPA regulates?

16 A No.

17 Q Okay. Do you think Doug Jacobs will
18 know that?

19 A He should.

20 Q Okay. Does it sound like SCB&T is
21 planning on selling this loan, transferring the
22 rights, from what you read there?

23 A We never got the loan.

24 Q If you guys closed, does it -- does
25 that document appear to say that you guys may

1 GECY - VANHORN (DIRECT EXAMINATION)

2 assign or sell that?

3 A Maybe. We have the right to do that.

4 Q Okay.

5 A And that was the expectation.

6 Q Was the expectation to roll it after
7 construction financing?

8 A Correct.

9 Q Correct. So let me ask you about that.
10 If a -- if there's a program that the
11 expectation is to roll to permanent financing
12 and they have guidelines that are separate than
13 the bank guidelines, is it fair to apply those
14 guidelines to the transaction that's
15 consummating the sale?

16 A We want to match those guidelines so we
17 can sell it.

18 Q Okay. And those are the guide --

19 A If not we get stuck holding the loan.

20 Q Okay. And SCB&T in this -- did SCB&T,
21 in this matter, did they follow the VA
22 guidelines in the South Carolina Bank and
23 Trust --

24 A To the best of my knowledge, yes.

25 Q Okay. I'm going to ask you, again, do

1 GECY - VANHORN (DIRECT EXAMINATION)

2 you think that there are -- are there guidelines
3 with South Carolina Bank and Trust that apply to
4 private roads and road maintenance agreements?

5 A I would imagine we have them.

6 Q Okay.

7 A But again, I don't know that they
8 exist, in particular.

9 Q They may or may not?

10 A May or may not.

11 Q Right? Let's talk about this appraisal
12 from Ms. Moody, Bruce.

13 Did you know or excuse me, did you know
14 that SCB&T ordered an appraisal from an
15 appraiser that lived directly next door to the
16 seven acres?

17 A I didn't know that when it happened.
18 We have an approved list of appraisers that we
19 use and, we -- you know, typically when a need
20 for an appraisal is there we bid out the
21 opportunity to three or four appraisers and, you
22 know, typically it's the one with the lowest fee
23 and the quickest turnaround time to get the
24 transaction, get the work.

25 Q Is Patrice Moody as normal appraiser

1 GECY - VANHORN (DIRECT EXAMINATION)

2 that SCB&T uses here on Lady's Island?

3 A Well, I mean she's an approved
4 appraiser, so, you know.

5 Q Who are the other approved appraisers?

6 A I don't know the list.

7 Q Was Murray Stein an approved appraiser?

8 A I don't believe he is.

9 Q Was he back in 2010?

10 A I don't remember. That was a long time
11 ago.

12 Q Okay.

13 A Appraisers come on and they leave the
14 list.

15 Q Do you think it's a conflict of
16 interest for the appraiser to do an appraisal on
17 a property directly next door to their primary
18 residence?

19 A Potentially.

20 Q Okay. Do you think the appraiser
21 should have notified the bank, upon receipt of
22 that order, that there may be a conflict of
23 interest?

24 A Possibly.

25 Q Was it the bank's responsibility to

1 GECY - VANHORN (DIRECT EXAMINATION)

2 notify Benjamin Gecy, the seller, if they got
3 word of a conflict of interest?

4 A I don't know that that is the case.

5 Q Get to some other documents here.

6 This is the same set of production that
7 your bank provided us and it's a different loan
8 application than the one we just discussed.

9 Can you look at the loan amount in the
10 first section and see if it matches the first
11 loan amount in the first application?

12 A It's \$319,600, which is more than the
13 initial request.

14 Q Is it still an adjustable rate
15 mortgage?

16 A It is still an adjustable rate
17 mortgage.

18 Q Okay. Is the construction area filled
19 in on that document?

20 A No.

21 Q What type of loan is that application
22 applying for?

23 A Purchase --

24 Q Is the conventional box still checked?

25 A I don't see it. I see purchase and

1 GECY - VANHORN (DIRECT EXAMINATION)

2 primary. Conventional is still checked.

3 Q Okay. What is the dates that Mr. and
4 Mrs. Hamner signed that?

5 A March 2nd 2010.

6 Q What day did your loan officer, Doug
7 Jacobs sign that?

8 A March 2nd 2010.

9 Q So, it looks like -- looks like
10 something changed, correct?

11 A Yes, which I believe, you know, they
12 decided to do an addition to the house or
13 something under the crawl space or some type of
14 construction component was added to the cost.

15 Q Okay.

16 A That's how I understood it.

17 Q Do you know if Mr. and Mrs. Hamner paid
18 that out-of-pocket?

19 A Never got to that point.

20 Q Okay. Did SCB&T ever reject or deny
21 the Moody appraisal from Patrice Moody on 10
22 Meridith Lane?

23 A No, we did not.

24 Q There's some dispute over the value,
25 the site value of Moody Drive appraisal by Ms.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Moody.

3 The contract price was 150,000. She
4 brought the site value in at 115,000. Did the
5 bank deny the appraisal because of that?

6 A No.

7 Q Why not?

8 A I don't know. We were willing to use
9 it.

10 Q Okay.

11 A I believe the problem, at that point,
12 was that, you know, it would have created a
13 problem with some of the initial funding but it
14 was -- there was no dissatisfaction, on our
15 part, with the appraisal.

16 Q Okay. Was that just a part of
17 housekeeping on how Mr. Gecy's funds were going
18 to be disbursed?

19 A What do you mean 'housekeeping'?

20 Q Bank would only fund 115,000 upfront
21 and the remaining 35,000 -- would the bank fund
22 the initial 115,000 and, at a later date when
23 the construction was complete, fund the
24 remaining 35,000 so the loan was not over
25 disbursed?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A Scenarios like that do happen.

3 Q Okay.

4 A So it's a possibility.

5 Q Okay. Once again, here's some more
6 documents that your bank provided us that we
7 received on Saturday. I want you to read the
8 section up top for the record. What does that
9 say?

10 A 'Requirements to or at closing'.

11 Q All right. What does 3A say underneath
12 that clause?

13 A 3A says additional documents that may
14 be required prior.

15 Q Okay. What does -- what does -- what
16 does that mean 'may'? Does it mean maybe may
17 not?

18 A May or may not.

19 Q Okay. I want you to read for the
20 record all of the items that are listed under 3A
21 and I want you to read 3A again for the record
22 and then go down to bullet points underneath
23 that.

24 A Appraisal.

25 Q No, let's read the -- what 3A says.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 first and then --

3 A 'Additional documents that may be
4 required prior; appraisal, flood insurance,
5 plans and specifications, architectural
6 approval, copy of recorded plat and meets and
7 bounds survey, copy of declarations and
8 restricted covenants, private street maintenance
9 agreement, copy of permits and approvals, such
10 as building, septic tank, sewer, well permits,
11 approval of private water systems owned.'

12 Q Okay. So that clause there, does that
13 clause mention private street maintenance
14 agreement?

15 A It mentions that it may be required.

16 Q May not be -- does it say it 'may not
17 be required', yes or no?

18 A Yes.

19 Q Yes, that it does what?

20 A It may not be required.

21 Q Okay. In this case, with the Hamners,
22 did the bank require a road maintenance
23 agreement?

24 A We did.

25 Q Why?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A I can't answer that.

3 Q Who can answer that? Who do you think
4 can answer that?

5 A Well, again, we were requiring it so
6 that we could sell it to the VA in the secondary
7 market.

8 Q What if the VA had the same terminology
9 in their lender handbook in their guidelines?

10 A I don't know the VA --

11 Q Okay.

12 A -- guide --

13 Q I'm going to make this entire exhibit
14 part of the record, please.

15 (Whereupon, Plaintiff's Exhibit
16 Number 20 was marked for
17 identification.)

18 BY MR. GECY:

19 Q Are you familiar with the VA handbook?

20 A No.

21 Q Does that look like a pretty large
22 underwriting manual?

23 A It does.

24 Q Do you guys have similar manuals for
25 programs and guidelines with the bank?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A I don't know the answer to that.

3 Q Does a commercial --

4 A The mortgage originators that do VA
5 loans probably do.

6 Q On the commercial side of the bank, do
7 you guys have manuals similar to that?

8 A No.

9 Q Okay. Do you have guidelines that you
10 have to follow?

11 A We have guidelines we have to follow
12 but --

13 Q Are they written guidelines?

14 A Typically.

15 Q Are there written underwriting
16 guidelines that you typically follow?

17 A Yes.

18 Q Are they a set of standards that the
19 bank has created to help and assist you in
20 following the guidelines of the bank?

21 A Yes.

22 Q Okay. Do you think that's why they
23 created a document like that with the VA?

24 A Most likely.

25 Q Okay, all right. So let's go back to

1 GECY - VANHORN (DIRECT EXAMINATION)

2 this road maintenance agreement, Bruce.

3 The documents from the bank that I've
4 received, the requirements prior to or at
5 closing, does Section 3A say 'additional
6 documents that may be required prior' is private
7 street maintenance agreement one of them?

8 A Yes.

9 Q Does that --

10 A But there are situations where they are
11 required.

12 Q Okay. Does 3A say that every person on
13 the road maintenance agreement has to sign it?

14 A I don't know that.

15 Q Does that document in 3A say that every
16 person on a road, private road has to sign --

17 A Not here it does not.

18 Q Okay. Do you know if the VA has a
19 guideline that says every person on a private
20 road has to sign a road maintenance agreement?

21 A I don't know VA guidelines that well.

22 Q Have you ever closed a loan on a
23 private road and not made everybody sign the
24 road maintenance agreement?

25 A I -- not that I'm aware of.

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q Okay. Could the bank have made an
3 exception on this, Bruce?

4 A Not when we wanted to sell it to the
5 VA, VA secondary market.

6 Q But what if the VA didn't have this
7 requirement?

8 A Then it would have been a decision by
9 us to keep it in-house and in this case it was a
10 high loan-to-value transaction where there's no
11 money down and those are the types of loans that
12 we don't want to keep in our loan portfolio.

13 Q Okay. That's not what I was asking.

14 If the VA did not have a road
15 maintenance agreement policy or some type of
16 exception to the RMA which allowed the loan to
17 roll over to permanent financing, knowing that,
18 could the bank have made an exception on this
19 transaction for it to close?

20 A It's a possibility.

21 Q Okay. Who would have made that
22 decision?

23 A Probably a group of people, credit
24 officers, regional presidents, me.

25 Q Not Doug Jacobs?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A No.

3 Q Okay. Who are those -- who are the
4 groups of people that you're referring there
5 that would have made that decision?

6 A John Barretie, the Regional President.
7 The Credit Officer is Richard Westbrook now. He
8 wasn't in that position, at that point.

9 (Phonetic)

10 Q Okay. Anyone else?

11 A Huh-uh.

12 Q So you don't have the authority to make
13 that decision?

14 A No.

15 Q You don't have the authority to
16 eliminate a condition where it says 'additional
17 documents that may be required prior', you don't
18 have any --

19 A No.

20 Q Okay. And the bank follows that on
21 every transaction. Doug follows that on every
22 -- does Doug follow that on every transaction?

23 A You'll have to ask Doug that.

24 Q Okay. Do you follow the bank's
25 guidelines on every transaction?

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A Almost always.

3 Q Okay. Any other secondary market,
4 people you sell it to, if they impose guidelines
5 or standards, do you try to follow those?

6 A Yes.

7 Q Okay. Do you know if the Moody Drive
8 or the Moody appraisal completed on the
9 property, was it a VA appraisal?

10 A I don't recall.

11 Q Okay. Would the bank need a VA
12 appraisal to roll to permanent financing?

13 A I don't know that.

14 Q These are the two contracts that Mr.
15 Hamner and Mr. Gecy signed to buy and build at
16 10 Meridith Lane, Exhibits 9 and Exhibit 8 for
17 plaintiff.

18 Can you add up those, the best you can,
19 in your head, on the purchase prices and come up
20 with a total acquisition and construction price
21 and read out loud what the numbers are for each
22 contract, the purchase price.

23 A Purchase price on the 10 Meridith
24 Lane --- this is a Summerbrook floor plan so I'm
25 assuming these are the construction costs, is

1 GECY - VANHORN (DIRECT EXAMINATION)

2 that correct?

3 Q Here's the purchase price right there.

4 What does that figure say?

5 A \$156,900.

6 Q Okay. And then on --

7 A The other one's 150.

8 Q And that contract is what? What does
9 it say at the top?

10 A It says 'February 3rd between buyers'
11 -- what, up here?

12 Q Yeah. Why does that --

13 A 'Agreement buy and sell real estate.'

14 Q What was the purchase price?

15 A 150.

16 Q Okay. And if you add 150 to 156,900 --

17 A Right.

18 Q -- what's the approximate --

19 A 250.

20 Q -- probably 306,900.

21 A You said -- okay, all right. 150

22 plus --

23 Q Plus 156,900.

24 A We'll go with your figure.

25 Q It comes to 306,900.. Do you agree with

1 GECY - VANHORN (DIRECT EXAMINATION)

2 that?

3 A I agree with that.

4 Q Okay, all right. I don't have a
5 calculator. I've tried to use a calculator.

6 306,900 is the combined number we're
7 dealing with.

8 And in the application that your bank
9 provided, is that the amount that is in --

10 A 306,900.

11 Q Okay. So that matches up perfectly
12 with the new construction contract and the lots
13 and acreage contract, correct?

14 A Correct.

15 Q Okay. Give you a copy of Ms. Moody's
16 report.

17 At the very bottom, can you tell me
18 what the value is she's illustrated with her
19 opinion at the bottom?

20 A 350,00.

21 Q Okay. Does that exceed both contract
22 prices, 306,900?

23 A It does.

24 Q Okay. Is that why the bank was willing
25 to proceed with the transaction and --

1 GECY - VANHORN (DIRECT EXAMINATION)

2 A That's one of the reasons.

3 Q Okay, okay. And the -- I'm going to
4 show you a denial letter that your bank gave Mr.
5 Hamner, okay.

6 Can you read the top of it and tell me
7 what the title of that is.

8 A 'Statement of credit denial termination
9 or change'.

10 Q Okay. Who signed that document?

11 A Doug Jacobs.

12 Q What date did he sign it?

13 A I don't see a date, frankly.

14 Q Is there a date down there that it was
15 originated?

16 A Notice mailed on 3-10 2010 --

17 Q So do you think he could have possibly
18 prepared that on or before March 10th 2010?

19 A Possibly.

20 Q Okay. What is the reason for the
21 denial there?

22 A Inadequate collateral.

23 Q Okay. And underneath 'inadequate
24 collateral' there are some things that can be
25 checked there. Can you read those for the

1 GECY - VANHORN (DIRECT EXAMINATION)

2 record and tell me if they are checked.

3 A Unacceptable property, insufficient
4 date, unacceptable appraisal, unacceptable
5 leasehold estate. None of them are checked.

6 Q Okay, all right. And then down at the
7 bottom, what is checked down there and can you
8 read that for the record?

9 A Declined due to -- 'declined due to not
10 being able to obtain a road maintenance
11 agreement for the subject property.'

12 Q Is that an accurate denial of what we
13 have here --

14 A Yes.

15 Q -- on this particular property?

16 That denial, was it issued based on the
17 VA guidelines or the South Carolina Bank and
18 Trust guidelines or both?

19 A Both.

20 Q Okay. So it's your testimony that the
21 -- that was a VA guideline needing a road
22 maintenance agreement?

23 MR. HOLLOWAY: Objection to the
24 form of the question.

25 BY MR. GECY:

1 GECY - VANHORN (DIRECT EXAMINATION)

2 Q Do you think the VA requires a road
3 maintenance agreement?

4 A Yes.

5 Q Okay. Do you think the VA requires
6 that all parties to a private road has to sign a
7 road maintenance agreement?

8 A That, I don't know.

9 Q Was that the last condition that Jaime
10 Hamner and Ben Gecy had on their transaction to
11 close? Excuse me, let me rephrase that.

12 Was a road maintenance agreement signed
13 by all parties for Meridith Lane the last
14 condition to close for Jaime Hamner and Ben
15 Gecy?

16 A It was one of the conditions. I don't
17 know that it was the last one.

18 Q Was that the last -- is that why the
19 road maintenance agreement was documented in the
20 denial?

21 A Yes.

22 Q Okay. So the denial for road
23 maintenance agreement, they -- the bank denied
24 it but -- did the bank deny the road maintenance
25 -- or did the bank deny the loan because all

1 GECY - VANHORN (DIRECT EXAMINATION)

2 parties did not sign the road maintenance
3 agreement?

4 A Correct.

5 Q And your testimony is the VA -- does
6 the -- your testimony -- let me make sure it's a
7 question -- so you think the VA requires all
8 parties, on a private road, to sign a road
9 maintenance agreement?

10 MR. HOLLOWAY: Objection to the
11 form of the question. It's a
12 statement.

13 BY MR. GECY:

14 Q You may answer.

15 A I do.

16 Q Okay. Do you think SCB&T has the
17 identical policy?

18 A Most likely.

19 Q In the documentation I showed you, does
20 it appear that SCB&T could possibly waive that
21 condition for a road maintenance agreement?

22 A It's a possibility but that's general
23 language that's in most documents.

24 Q But the document says 'may be
25 required'.

1 HOLLOWAY - VANHORN (CROSS-EXAMINATION)

2 MR. HOLLOWAY: Objection to the
3 form.

4 BY MR. GECY:

5 Q Does the document say 'may be
6 required'?

7 A The document does say 'may be
8 required'.

9 Q Okay.

10 MR. GECY: I don't have anything
11 else, right now, guys.

12 CROSS-EXAMINATION

13 BY MR. HOLLOWAY:

14 Q Bruce, did there come a time that Mr.
15 Gecy told you he was rejecting the Patrice Moody
16 appraisal?

17 A I do recall that he had an issue with
18 it.

19 Q But did -- the bank would only fund
20 \$115,000 of the real estate purchase. Is that
21 what you recall?

22 A Yes.

23 Q And that the real estate contract
24 required 150,000 as the purchase price?

25 A Correct.

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 Q Did Mr. Gecy tell you he was not going
3 to close under those conditions?

4 A I don't recall that he said he wasn't
5 going to close under those conditions but he had
6 an issue with it.

7 Q Did he ever tell you that he accepted
8 that appraisal and would accept a close under
9 those -- under that appraisal?

10 A He didn't say that he would accept the
11 appraisal.

12 Q Okay.

13 MR. HOLLOWAY: That's all I have.

14 REDIRECT EXAMINATION

15 BY MR. GECY:

16 Q I'm going to ask you to read this
17 e-mail for the record, please.

18 The bottom portion starting here and
19 we're going to finish up there. I may interrupt
20 you but if you can read who it's from, who it's
21 to.

22 A It's from Ben Gecy to me copying Jaime
23 Hamner.

24 Subject Hamner/Gecy.

25 Bruce I have reviewed the appraisal

1 GECY - VANHORN. (REDIRECT EXAMINATION)

2 completed on my land at Royal Pines and will not
3 accept the report given by Patrice Moody. I
4 believe there is a major conflict of interest
5 since she lives directly on the property with
6 her primary residence and has developed opinions
7 of the property that do not truly reflect the
8 accurate value of the property. This is clearly
9 expressed throughout the report and is not
10 providing Jaime with an accurate value of the
11 project which is making him very nervous. This
12 report is also restricting my personal sale
13 because of the site value given.

14 As you know I have provided you with
15 the appraisals on .375-acre new construction
16 with identical floor plans that have appraised
17 at or above the price.

18 I am also working on other loans in the
19 area with different appraisers on .45 to one
20 acre lots, I believe that reads, that are coming
21 in with less square footage than our subject
22 with higher value.

23 On Monday I provided four land comps
24 and one home comp that a few hundred yards away
25 from this site. I'm sorry, a few hundred yards

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 away from the site sold within the last year
3 that should have been used as land comp.

4 Please call Jaime as I believe he feels
5 the same about the report. He and I both agree
6 that the new report should be ordered.

7 As I have mentioned, over the past few
8 days, I cannot let the buyers take title without
9 paying the \$150,000 land closing. If I had not
10 asked Doug last week this would have -- this
11 would have blown up at the closing table so I am
12 thankful we are addressing it now. I have
13 requested and offered three options as the
14 seller since I have been notified of the land
15 value and disbursements;

16 1; Ask Moody to evaluate her report or
17 reevaluate the report with any additional comps
18 provided. Order a new appraisal with a
19 disinterested third-party. Cancel this loan and
20 pursue other construction options.

21 I am not trying to be difficult but the
22 loan -- the loan really isn't this hard. If we
23 decide to order a new appraisal I will request
24 it be ordered through non-VA appraiser since we
25 may pursue Hamners' other lending options other

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 than the VA. We will be paying for this report
3 and asking that it be transferrable to me upon
4 request.

5 As you can see, there are a lot of
6 problems on this loan that need to be resolved.
7 Let's touch base tomorrow to see if we can get
8 it done.'

9 BY MR. GECY:

10 Q Okay. Does that statement sound like
11 we were trying to send him to another lender
12 that may not require a road maintenance
13 agreement?

14 A I didn't say it would but it sounds
15 like you do have an issue with the appraisal.

16 Q Okay. How about read the top portion
17 of that e-mail. Tell me who it's from, who it's
18 to and the detail.

19 A It's from me to Ben copying Jaime,
20 Bruce VanHorn.

21 Q Okay. Is that your e-mail address?

22 A That's my e-mail address.

23 Q Okay.

24 A 'Ben, if you are willing to pay for the
25 appraisal and delay the closings more we are

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 okay with getting another appraisal done and
3 will have one of our appraisers, approved
4 appraisers do it. Remember that we have the
5 right to a satisfactory review and acceptance of
6 the appraisal. Please remember that we can't
7 disburse more than the appraised value of the
8 land at closing which would be an over
9 disbursement exception that I'm not able to do.
10 I've shared this information with Doug so he is
11 aware of what I am proposing as a compromise. I
12 will be out of the office for the remainder of
13 the day so if you have any questions contact
14 Doug.

15 Q Does that sound like a compromise to
16 you, yes or no?

17 A Yes.

18 Q Okay. I think it is. What is the date
19 on that e-mail, again, Bruce, your response to
20 my e-mail?

21 A March 9th 2010.

22 Q Okay. Do you recall having a meeting
23 with Bruce, Jaime and Ben Gecy in your office,
24 at any time?

25 A I do recall but it was a long time ago.

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 Q Could that meeting have occurred after
3 this e-mail, possibly?

4 A It's possible.

5 Q Could that meeting have occurred around
6 March 15th to March 16th 2010?

7 A It's possible.

8 Q Do you remember what was discussed in
9 that meeting?

10 A Not specifically.

11 Q Did we discuss Murray Stein's appraisal
12 and Patrice Moody's appraisal?

13 A It's possible but I don't recall.

14 Q Okay. Did you or any representative of
15 the bank in that meeting deny the loan because
16 of Patrice Moody's appraisal?

17 A No.

18 Q Okay. Did any representative of the
19 bank, including yourself, accept the Murray
20 Stein appraisal in that meeting?

21 A No.

22 Q Okay, all right. So, in the commercial
23 market -- you've testified that the commercial
24 market really doesn't deal with RMA, so
25 you've --

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 A Never.

3 Q -- you've never made an exception on a
4 road maintenance agreement for a commercial
5 loan?

6 A I've never had to.

7 Q Okay. Have you had to make an
8 exception for an RMA, road maintenance
9 agreement, for a consumer loan, ever?

10 A I don't recall.

11 Q Okay. Have you ever made an exception?

12 A I've made exceptions but not for an RMA
13 agreement for a construction loan.

14 Q Have you ever made an exception for a
15 road maintenance agreement on a consumer loan?

16 A Not that I'm aware of.

17 Q Do you know of one -- do you know of
18 any exception the bank has ever made on one of
19 those?

20 A No. That would be hard for me to know.

21 Q Okay. I mean could it been possible
22 that the bank has made an exception before?

23 A It's possible.

24 Q Okay.

25 MR. GECY: I don't have anything

1 GECY - VANHORN (REDIRECT EXAMINATION)

2 else.

3 MR. HOLLOWAY: Nothing.

4 MR. WEGMANN: Nothing.

5 (Whereupon, the deposition of
6 Bruce VanHorn was concluded at
7 approximately p.m. 4:16)

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C E R T I F I C A T E

STATE OF GEORGIA:

CHATHAM COUNTY:

I, Kyle J. Saniga, Court Reporter and
Notary Public in and for the above county and
state, do hereby certify that the foregoing
testimony was taken before me at the time and
place herein-before set forth; that the witness
was by me first duly sworn to testify to the
truth, the whole truth, and nothing but the
truth, that thereupon the foregoing testimony
was later reduced by computer transcription; and
I certify that this is a true and correct
transcript of my stenographic notes so taken.

I further certify that I am not of
counsel to either party, nor interested in the
event of this cause.

Kyle J. Saniga, CCR

Notary Public, B-2038

Savannah, Georgia

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BENJAMIN GECY,
Plaintiff,

vs.

CIVIL ACTION NUMBER
2011-CP-07-1778

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

COPY

The deposition of JOHN FERGUSON, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before Kyle J.
Saniga, Certified Court Reporter and Notary
Public, at the Offices of GMC Mortgage, 1857
Ribaut Road, Port Royal, South Carolina, on the
12th day of February 2014, commencing at or
about the hour of 9:15 a.m.

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DOCUMENTARY EVIDENCE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
PX-32	Color photo of easement on Meredith Lane	4
PX-33	E-mail to Michelle L. Fludd, dated April 6, 2010	28
PX-34	E-mail to Michelle L. Fludd, dated March 19, 2010	28
PX-35	E-mail to Gecy from Hamner, dated March 27, 2010	28

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 (Whereupon, Plaintiff's Exhibit
3 Number 32 was marked for
4 identification.)

5 JOHN FERGUSON,
6 having been produced and first duly sworn as a
7 witness, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GECY:

10 Q This is the deposition of John
11 Ferguson, witness Civil Case 2011-CP071778
12 conducted by Benjamin Gecy, pro se, for
13 plaintiff on February 11th 2014 (sic)
14 approximately 9:05 a.m.

15 Mr. Ferguson, let's just go over a few
16 rules with the deposition. You understand that
17 your testimony today is under oath?

18 A That's right.

19 Q Okay. If you don't understand one of
20 my questions please ask me to rephrase it and
21 I'll do my best to try to rephrase it as a
22 question to you. Ask me and only me to rephrase
23 the question.

24 Do you have any attorneys here today or
25 any of the attorneys here today, Mr. Holloway or

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Mr. Wegmann representing you?

3 A No.

4 Q Do you have an attorney --

5 A No.

6 Q -- in any matter related to Meredith

7 Lane right now?

8 A No, I do not.

9 Q Okay. Please make verbal responses.

10 Try not to head nod or make --

11 A Uh-huh.

12 Q -- hand signals so the court reporter

13 can record your answer there.

14 Also, do you understand that I'm

15 conducting this deposition pro se?

16 A Yes.

17 Q Do you know what a pro se litigant is?

18 A Yes.

19 Q Okay, okay. Please state your full

20 name for the record.

21 A John Ferguson.

22 Q Okay. Where do you live, Mr. Ferguson?

23 A I live at Number 7 Gadwall Drive West,

24 Lady's Island, South Carolina.

25 Q How long have you lived at Gadwall

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Drive?

3 A Can't say for certain, possibly two,
4 three years.

5 Q Okay. Where were you born?

6 A Nashville, Tennessee.

7 Q Okay. You known by any other aliases
8 or names?

9 A No, I do not -- no, I'm not.

10 Q Do you still own property at Meredith
11 Lane or on Meridith Lane?

12 A Yes, I do.

13 Q Okay. Do you own the property
14 underneath the easement known as Meredith Lane?

15 A Yes, I do.

16 Q Okay. How long have you owned that
17 property, Mr. Ferguson?

18 A I do not recall the exact purchase
19 date.

20 Q Okay. It's been ten years or longer --
21 has it been more than ten years?

22 A Honestly I cannot recall.

23 Q Has it been more than five years?

24 A It has been more than five years.

25 Q Okay, okay. Do you hold any

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 professional licenses, real estate licenses, do
3 you have any real estate licenses?

4 A No, I do not.

5 Q Have you ever held a real estate
6 license?

7 A No, I have not.

8 Q Have you ever had a builder's license?

9 A No.

10 Q Okay. Do you have a concealed weapons
11 permit?

12 A I had a concealed weapons permit. I no
13 longer have it active due to my position with
14 the sheriff's office.

15 Q Okay. What is your position currently?

16 A I'm currently a deputy sheriff.

17 Q Okay. How long have you been in that
18 position?

19 A Just over five years.

20 Q Okay. What was your position before
21 working at the sheriff's department?

22 A I owned a business.

23 Q What was the name of that business?

24 A It was Gold's Gym. It was a Gold's Gym
25 franchise.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Okay. How long did you own that
3 franchise?

4 A Approximately ten years.

5 Q Okay, okay. Have you ever been in the
6 military?

7 A Yes, I have.

8 Q How long did you serve in the military?

9 A Just under ten years.

10 Q Okay. Were you honorably discharged?

11 A Yes, I was.

12 Q Okay. Did you have any type of VA
13 benefits?

14 A No VA benefits whatsoever.

15 Q Okay. Were you eligible for a VA
16 benefit on a home purchase?

17 A Yes, I did. I did have a VA loan if
18 that's what you're asking.

19 Q Yes. Have you ever exercised your
20 eligibility under the VA guidelines to purchase
21 a home?

22 A Yes, I have.

23 Q How many times?

24 A Twice.

25 Q Okay. What was the first property you

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 purchased with your VA eligibility?

3 A It was Drayton Drive.

4 Q Okay.

5 A Port Royal.

6 Q Did you have an agent that represented
7 you --

8 A Yes.

9 Q -- to purchase Drayton?

10 A Yes, I did.

11 Q Who was the agent?

12 A I do not recall.

13 Q Do you recall if the contracts had
14 clauses pertaining to VA financing on that
15 purchase?

16 A I'm not -- I don't understand what
17 you're asking, 'clauses'?

18 Q And -- well, wait. Let's look for an
19 example here. We'll use an exhibit.

20 See what we have here. Look at number
21 five in Exhibit Plaintiff's Exhibit Number 8,
22 Section five of the sales contract between Jaime
23 Hamner, Deborah Hamner and Benjamin Gecy, do you
24 recall if there was a clause in your contract to
25 purchase Drayton Drive notifying the seller that

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 you may be going a VA financing route?

3 A I don't recall.

4 Q Now, you said that you've used your VA
5 subsequently or twice what was the other
6 property you purchased with the VA?

7 A My current residence.

8 Q Okay. Do you recall if the contract
9 you signed with that had a VA option for
10 financing in it?

11 A I do not recall.

12 Q Okay, okay, that's okay, all right.
13 Have you ever had any violations in the
14 military?

15 A No.

16 Q Any write-ups?

17 A No.

18 Q Your current position with the
19 sheriff's department, have you had a
20 satisfactory rating since you started?

21 A Yes.

22 Q Okay. Have you had any write-ups?

23 A No.

24 Q Any investigations?

25 A No.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q -- against you? Okay.

3 How long have you owned the land
4 underneath the Meridith Lane easement?

5 A I don't recall with the purchase.

6 Q Okay.

7 A Of the house.

8 Q Okay, okay, all right. Let me show you
9 a picture here, Mr. Ferguson, and see if you
10 recognize it.

11 Do you recognize Plaintiff's
12 Exhibit 32?

13 A Yes, I recognize this.

14 Q What is that a picture of?

15 A It's a picture of the current roadway
16 located on the easement.

17 Q Easement of what roadway?

18 A Of Meridith Lane.

19 Q And are you certain of that?

20 A Yes, I am.

21 Q Okay. What surface is that or excuse
22 me, does it appear to have a surface on the
23 road?

24 A Yes, it does.

25 Q What type of surface is it?

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 A Looks like a gravel asphalt.

3 Q How many pieces of gravel do you see?

4 A Well, there's only a couple of certain
5 areas off on the shoulders.

6 Q Okay. Is it mostly asphalt?

7 A It appears to be.

8 Q Does it look like it's in good
9 condition?

10 A Reasonably -- reasonably good.

11 Q Okay, all right. I show you another
12 picture here. I think you already have this as
13 an exhibit.

14 Plaintiff's Exhibit Number 24, do you
15 recognize that road?

16 A I don't recognize this.

17 Q Does that -- can you describe the
18 surface on that road?

19 A It appears to be a gravel or crushed
20 concrete road.

21 Q Is it a dirt road?

22 A I guess it would be considered a dirt
23 road.

24 Q Does it have limited gravel?

25 A Yes.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Is it mostly dirt?

3 A It appears to be mostly crushed
4 concrete but gravel.

5 Q Okay. I'd like for you to look at both
6 pictures and give me your opinion, as a
7 sheriff's deputy, I assume -- do you travel a
8 lot of road as a sheriff's deputy?

9 A Yes, I do.

10 Q Do you see a lot of different
11 surfaces --

12 A Yes.

13 Q -- on roads? In your opinion, which
14 road would be better suited for travel on a day
15 like we have today that there's potential ice
16 and bad weather?

17 A It'd probably be preferable to be on a
18 concrete or asphalt paved road.

19 Q Okay. Which one of those pictures has
20 an asphalt road?

21 A Exhibit 32.

22 Q And which location is that that you
23 referred to it as?

24 A That is referred to as the easement
25 located on 40 Meridith Lane.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Okay. Now, Exhibit Number 24 and
3 Exhibit Number 32, which one do you think would
4 be easier to maintain, on a normal everyday
5 basis, as it is illustrated in those pictures
6 right there?

7 A I would say Exhibit 24 based upon the
8 clearing of the brush and the trees.

9 Q Okay. Which one is more of a permanent
10 surface?

11 A Well, both of them can be considered a
12 permanent surface with it's gravel and crushed
13 concrete is even compared to the asphalt both of
14 them are permanent services.

15 Q Okay. Which one do you think would
16 require more maintenance on a monthly basis, the
17 gravel dirt road or the asphalt road and in a
18 one-month maintenance period?

19 A Speaking of specifically the roadways,
20 probably more maintenance would be required on
21 the asphalt dealing with potholes and such like
22 that with the crushed concrete the surface is
23 pretty impacted.

24 Q Okay.

25 A But there's some give to it so I don't

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 think there's -- you have to deal with a lot of
3 cracking and potholes in it.

4 Q So when you say 'give' if we have five,
5 six inches of rain --

6 A Uh-huh.

7 Q -- that road could possibly wash out --
8 could it possibly wash out?

9 A Well, there's a possibility.

10 Q All right. Can you tell, for sure, in
11 that exhibit, that it is exactly crushed
12 concrete all the way down to the base or could
13 it be dirt road with just limited gravel?

14 A It could be based upon the picture. I
15 see a pretty flat surface. It's pretty smooth.
16 I -- there's no way for me to tell what the
17 underneath looks like.

18 Q That's right. How many times have you
19 driven down the asphalt driveway at Meridith
20 Lane?

21 A Several hundred.

22 Q Have you ever had any problems with
23 that easement accessing your property or that
24 asphalt?

25 A No, I have not.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Have the neighbors and yourself ever
3 done any maintenance to that easement or
4 surface?

5 A Yes, we have.

6 Q When you say 'we' who is we?

7 A There was another neighbor located on
8 the property that actually utilizes the
9 easement.

10 Q Do you remember who that was?

11 A I don't recall his name, right off.

12 Q Have Diana Chalmers or Ed Chalmers ever
13 done any limited maintenance or any filling in
14 potholes to the --

15 A I believe it was Ed Chalmers actually
16 put some gravel and/or the -- that asphalt mix
17 or something on some of the potholes that were
18 actually located on the easement.

19 Q Was this just normal maintenance --

20 A Yes, it was.

21 Q -- to the easement?

22 A Yes, it was.

23 Q Was it to keep the easement in a safe
24 ingress/egress?

25 A Yes, yes, it was.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Okay, okay. When was the last time you
3 were on Meredith Lane?

4 A Looking for a specific date or an
5 approximate amount of time?

6 Q Approximate, just approximate.

7 A One month ago.

8 Q Okay. Was the easement in fairly good
9 condition at that time?

10 A Yes, it appeared to be well maintained.

11 Q Now, when you say 'well maintained',
12 that sounds like it's in pretty good condition,
13 correct?

14 A Yes.

15 Q Okay.

16 A You can --

17 Q Okay. Have the -- is it your opinion
18 that everyone who has access to Meredith Lane
19 has participated in some type of maintenance of
20 the easement over the years, is that -- is that
21 fair to say?

22 A Ben, I can't say. I've never -- the
23 only individual that I've ever seen do anything
24 to the roadway was Ed Chalmers.

25 Q Okay. How about Mr. Gecy, I know this

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 is kind of weird with me being the witness or
3 seller and the pro se litigant, but I'm going to
4 refer to myself in the third person, so how did
5 you feel when you got news of Mr. Gecy's
6 proposed subdivision on 7 -- 6.8 acres next to
7 your property?

8 A How did I feel?

9 Q Yeah.

10 A Felt normal.

11 Q Okay. How did you feel when news was
12 expressed when Mr. Gecy was no longer going to
13 propose his or complete his ten to 12 lot
14 subdivision and possibly sell it to Mr. Hamner,
15 did you have any feelings then?

16 A Actually, I wasn't aware that you were
17 doing that so I didn't understand that you were
18 actually, you know, planning to do that, so this
19 is --

20 Q Planning to do what?

21 A Some subdivision.

22 Q Okay.

23 A I knew you had several lots on the
24 property but I wasn't aware that you were
25 looking to develop.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Did you and I ever have any
3 disagreements over Meredith Lane?

4 A Yes, we did.

5 Q Okay. And what were those
6 disagreements?

7 A In reference to the easement that was
8 located on Meredith Lane.

9 Q Okay. Did you ever talk to Diana or Ed
10 Chalmers about Jaime's purchasing my seven acres
11 and what was needed for Jaime's financing?

12 A No, I did not.

13 Q Okay. Did you ever talk with Jaime?

14 A Did I ever talk with Jaime.

15 Q Yes.

16 A I spoke with -- I have met with him and
17 spoke with him.

18 Q What was Jaime trying to solicit when
19 you spoke with him?

20 MR. HOLLOWAY: Objection to the
21 form of the question.

22 BY MR. GECY:

23 Q You can answer the question, Mr.
24 Ferguson.

25 A He didn't try to solicit anything.

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Okay.

3 A He was not trying to --

4 Q Was he passing out a road maintenance
5 agreement for Meredith Lane?

6 A No, he was not.

7 Q Okay. What was Mr. Hamner doing in the
8 area?

9 A I don't know.

10 Q Okay. Did you -- you said you had a
11 discussion with him. What did you guys discuss?

12 A I didn't have a discussion. I met him
13 before on the property. He did have a question
14 regarding the maintenance of the roadway.

15 Q Okay. What was the question?

16 A The question was overhanging trees and
17 the ability to bring a boat in if he wanted to.

18 Q Okay. And why was he asking you that?

19 A Well, he was concerned that -- that if
20 he -- would he have the ability to cut back tree
21 branches, you know, and if he were to bring a
22 boat into the area.

23 Q Okay. And what did you tell him?

24 A I told him that we could -- we could
25 formulate a road maintenance agreement that

1 GECY - J. FERGUSON (DIRECT EXAMINATION)
2 would allow him to be able to cut back trees and
3 I don't recall the actual height over the
4 roadway that was discussed. In fact, I believe,
5 I'm not absolutely positive, but I believe that
6 there was a road maintenance agreement, which I
7 haven't seen laid my eyes on in who knows how
8 long.

9 Q Yeah, yeah.

10 A That would give him the ability that if
11 he needed to maintain the property or that
12 easement in any particular condition that there
13 would not be an issue as far as him navigating
14 his vehicles or boats or anything else, that it
15 would -- that he would have the ability to do
16 those things.

17 Q Okay. Did you ever sign an agreement
18 to help Mr. Hamner out with his financing to
19 purchase?

20 A No.

21 Q You did not?

22 A I did not sign any agreement to help
23 him purchase --

24 Q Did you sign --- yeah, you didn't
25 co-sign his loan?

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 A No, I did not.

3 Q Did you ever sign a road maintenance
4 agreement for Mr. Hamner or have you ever signed
5 a road maintenance agreement on 10 Meridith
6 Lane?

7 A Yes, I did sign a road maintenance
8 agreement for that -- for the existing roadway
9 on Meridith Lane.

10 Q Did you know that agreement dealt with
11 Mr. Hamner's purchase, in any way or form?

12 A I don't know that it dealt with his
13 purchase. I did remember something to the
14 effect that the -- there was an issue regarding
15 the bank and the bank had some concerns over the
16 roadway and the maintenance and condition of the
17 roadway.

18 Q Okay.

19 A And I believe that was the -- that was
20 the formulation of that road maintenance
21 agreement to be able to allow him to have some
22 sort of control in actually maintaining the
23 roadway, other than egress and egress on the
24 roadway.

25 Q That's right, that's right. And who --

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 where did you develop that opinion from? How
3 did you -- who told you there was a bank issue?

4 A No one told me that there was a bank
5 issue but Robert Hamner stated that the bank --

6 Q Who is Robert Hamner?

7 A Apparently he is the individual which
8 I've met one time.

9 Q Is it Jaime Hamner or Robert? I think
10 we're talking about Jaime Hamner.

11 A Okay. Well, one of the Hamners, which
12 I met one time.

13 Q Yeah.

14 A You know, I'm trying to recall him.

15 Q It's Jaime Hamner.

16 A Okay.

17 Q I'm not trying to confuse you.

18 A Okay, all right. Jaime Hamner had
19 mentioned to me regarding the bank, there
20 possibly could be some issues with the bank,
21 securing the loan and the bank had some
22 concerns. It was not a -- he didn't state it as
23 being a roadblock or a fumbling block or
24 anything to allow us to move forward but they
25 had some concerns about if the road became, I

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 don't know the word we're looking for, unable to
3 egress or digress across the property due to
4 poor road maintenance conditions.

5 Q Okay. Well, looking at that picture of
6 Meredith Lane, we've had three and-a-half years
7 or three years go by. Has that property changed
8 any in three years?

9 A It appears to be the same --

10 Q Okay.

11 A -- as it always has.

12 Q Why would a person with the bank be
13 worried about that if they have no experience in
14 that line of work?

15 A I don't know.

16 Q Okay, okay, that's okay. Did Diana or
17 Ed Chalmers ever tell you that they would not
18 sign any agreement to maintain 10 Meredith Lane
19 or Meredith Lane property?

20 A We never discussed any signing of any
21 type of maintenance agreement or anything like
22 that --

23 Q Okay.

24 A -- with any of them.

25 Q Is it your testimony that Mr. Chalmers

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 was already maintaining the property, in some
3 way or form, the easement, on a limited basis,
4 right?

5 A Yes.

6 Q Okay.

7 A This is based upon just verbal.

8 Q Okay, okay.

9 A Which I had no issues with.

10 Q Okay. Do you remember meeting Benjamin
11 Gecy and Sam from the surveying company and his
12 assistant on Meredith Lane?

13 A Yes, I do.

14 Q Okay. What happened in that meeting
15 that day?

16 A There were some discussion regarding
17 the amount of usage on the easement.

18 Q Okay. Did you and I resolve maybe some
19 differences that we had on that day?

20 A I believe we did.

21 Q Okay. Did I -- did Mr. Gecy call Jaime
22 Hamner on his cell phone, that day, and ask you
23 to speak with him of the news, do you recall?

24 A I do recall there was a phone call
25 made. I --

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 Q Did you speak with Mr. Hamner?

3 A I don't recall if I spoke to him or
4 not. I apologize. I -- I can't remember.

5 Q Okay, all right. How many other people
6 participated in the meeting between you and I on
7 Meredith Lane that day, was it more than Sam and
8 his assistant from the surveying company? It's
9 not a trick question.

10 A I know. I'm -- I'm trying to recall.
11 I thought it was just -- I thought it was me,
12 you and Sam.

13 Q Okay. Do you remember what the date
14 of -- do you remember the date of that
15 meeting --

16 A No, no.

17 Q -- at that time?

18 A No, I do not.

19 Q Okay.

20 A In fact, I'm still trying to recall
21 that conversation. My memory's not that great
22 but I'm just -- I can't remember everything --

23 Q Okay.

24 A -- that was discussed.

25 Q The other question I have for you, did

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 you sign the road maintenance agreement after
3 that meeting or before that meeting, Mr.
4 Ferguson?

5 A That was before the meeting.

6 Q You signed the agreement before the
7 meeting?

8 A I believe the agreement was signed
9 before the meeting on the road maintenance.

10 Q Okay. I'm going to have to go get some
11 e-mails here. I might have to keep you a little
12 longer on this, Mr. Ferguson, than I wanted.

13 When we had that meeting you said that
14 we discussed some different areas of the roadway
15 that could be utilized --

16 A Uh-huh.

17 Q -- weren't those agreements to be
18 formed into the road maintenance agreement?

19 MR. WEGMANN: Object to the form.

20 MR. GECY: Yeah, excuse me.

21 BY MR. GECY:

22 Q Our discussions on Meredith Lane, that
23 day, was the meeting set up to develop the
24 agreement of how Meredith Lane would be used for
25 you to sign it, sign a road maintenance

1 GECY - J. FERGUSON (DIRECT EXAMINATION)
2 agreement?

3 MR. HOLLOWAY: Same objection.

4 BY MR. GECY:

5 Q You can answer the question.

6 A I recall discussing builders utilizing
7 the existing roadway to get materials into the
8 property, not in reference to persons that
9 residing on Meredith Lane and how they were
10 going to maintain the existing roadway.

11 Q Okay, all right. I might identify some
12 e-mails.

13 (Whereupon, an off-the-record
14 discussion was held.)

15 (Whereupon, Plaintiff's Exhibit
16 Numbers 33 through 35 was marked
17 for identification.)

18 BY MR. GECY:

19 Q Plaintiff's Exhibit Number 33 I have
20 circled an area right there, Number 1 in that
21 e-mail string. Mr. Ferguson, can you tell me
22 what it says for the record, please.

23 A It says, 'Number 1; Survey from
24 Christensen-Khahil of 3-29-10.'

25 Q Okay. Is Christensen-Khahil the

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 surveyor that was on Meredith Lane in that
3 meeting that day?

4 A Yes.

5 Q That you met with Mr. Gecy?

6 A Yes.

7 Q What was Sam, the surveyor, doing that
8 day on Meredith Lane? Was he just there to help
9 us with our disagreements or was he surveying
10 the easement?

11 A He was surveying the easement.

12 Q Okay. What does the day say in that
13 circled area that Sam may have completed --

14 A March 29th 2010.

15 Q Okay, all right. And for the record, I
16 don't know that that was the day he completed it
17 so I don't know what day we met but I'm going to
18 go get my phone records because that will tell
19 us when we called Jaime Hamner but tell me what
20 else -- I want you to read the e-mail starting
21 at the top, tell me who it's from, who it's sent
22 to and then finish it up at the end with who
23 it's from and then read me the contents for the
24 record and please speak clearly.

25 A From Doug Jacobs sent Monday April 5th

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 2010 at 3:20 p.m. to Benjamin Gecy, Care of
3 Bruce W. VanHorn, Subject re: RMA.

4 'Ben, I will need a couple of items to
5 go with this RMA so I can -- so I can submit it
6 to the underwriter.

7 Number 1; Survey from
8 Christensen-Khahil of 3-29-10. (Does this show
9 what is paved and what is not?)

10 Number 2; Over review/bird's eye view
11 of Meredith Lane from subject property to James
12 F. Burns showing what properties are adjacent
13 and included in RMA.

14 And Number 3; copies of the tax records
15 showing ownership that match Number 2. Thanks,
16 Doug.'

17 Q Okay. What was the date of that
18 e-mail, Mr. Ferguson?

19 A The date of the -- this e-mail was sent
20 Monday April 5th 2010.

21 Q You read -- can you read, for the
22 record, this is a Plaintiff's Exhibit Number 35.
23 Please read me who that e-mail is from and who
24 it's to for the record, Mr. Ferguson.

25 A From Jaime Hamner sent Saturday March

1 GECY - J. FERGUSON (DIRECT EXAMINATION)

2 27th 2010 to Ben Gecy. Subject; House.

3 Attachments, certification.dot.text.

4 'Ben, if all goes with John Ferguson
5 this is the color (green) we would like the
6 house with the black shutters. I believe there
7 is a house near the house you built on Kaitlyn's
8 Way that has these same colors. We really like
9 this porch and hope you can replicate it. This
10 is not exactly like your house but I thought it
11 had some similar qualities. Just throwing this
12 out there for -- as an idea.'

13 Q What was the date on that e-mail, Mr.
14 Ferguson?

15 A March 27th 2010.

16 Q Does it sound like you and I have had a
17 meeting yet in that e-mail?

18 A Not that I can tell.

19 Q Okay, okay.

20 MR. GECY: I don't have any other
21 questions.

22 CROSS-EXAMINATION

23 BY MR. WEGMANN:

24 Q I just got a couple of quick ones.

25 Mr. Ferguson, do you know who owns the

1 WEGMANN - J. FERGUSON (CROSS-EXAMINATION)

2 road, who physically owns the road? Not the
3 easement, but which one of the owners on
4 Meredith Lane physically has title to the road?

5 A I do.

6 Q Okay. And you're sure of that?

7 A Yes.

8 Q Okay.

9 MR. WEGMANN: That's all I got.

10 MR. GECY: I'm going to close out
11 this deposition. Thank you Mr.
12 Ferguson. Appreciate it, man.

13 (Whereupon, the deposition of
14 John Ferguson was concluded at
15 approximately 9:45 a.m.)
16
17
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1
2 CERTIFICATE3
4 STATE OF GEORGIA:5 CHATHAM COUNTY:
6

7 I, Kyle J. Saniga, Court Reporter and
8 Notary Public in and for the above county and
9 state, do hereby certify that the foregoing
10 testimony was taken before me at the time and
11 place herein-before set forth; that the witness
12 was by me first duly sworn to testify to the
13 truth, the whole truth, and nothing but the
14 truth, that thereupon the foregoing testimony
15 was later reduced by computer transcription; and
16 I certify that this is a true and correct
17 transcript of my stenographic notes so taken.

18 I further certify that I am not of
19 counsel to either party, nor interested in the
20 event of this cause.
21

22
23 _____
24 Kyle J. Saniga, CCR

25 Notary Public, B-2038

Savannah, Georgia

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994



PLAINTIFF'S
EXHIBIT

995 ³⁰² Ferguson

Ben Gecy

From: Ben Gecy [ben@beaufortlending.com]
Sent: Tuesday, April 06, 2010 4:58 PM
To: 'MICHELLE L. FLUDD'
Subject: FW: rma comments from doug
Attachments: _Certification_.txt

Please print for Kenny

Kenny

I have had it with this guy..Look at these new comments

Benjamin Gecy

Owner

ben@beaufortlending.com

GMC Mortgage

Phone: 843-524-2404

Fax: 843-524-2414

-----Original Message-----

From: Doug Jacobs [<mailto:Doug.Jacobs@scbtonline.com>]

Sent: Monday, April 05, 2010 3:20 PM

To: Ben Gecy

Cc: Bruce W Vanhorn

Subject: RE: rma

1, I will need a couple of items to go with this RMA so I can submit it to the underwriter:

1. Survey from Christensen-Khahil of 3/29/10 (does this show what is paved and what is not?)
2. Overview/birds eye view of Meredith Lane from subject property to James F. Byrnes showing what properties are adjacent and included in RMA.
3. Copies of the tax records showing ownership that match #2.

Thanks

Doug

PLAINTIFF'S
EXHIBIT

33
Ferguson

MICHELLE L. FLUDD

From: "Ben Gecy" <ben@beaufortlending.com>
To: "MICHELLE L. FLUDD" <tottie_chel@hargray.com>
Sent: Friday, March 19, 2010 10:19 AM
Attach: Certification.txt
Subject: FW:/hamner

Michelle

It appears the RMA is Ok the way Kenny and I discussed...Please see below on the title insurance...Does this affect Kenny?

Benjamin Gecy
Owner
ben@beaufortlending.com
GMC Mortgage
Phone: 843-524-2404
Fax: 843-524-2414

-----Original Message-----

From: Doug Jacobs [mailto:Doug.Jacobs@scbtonline.com]
Sent: Friday, March 19, 2010 8:12 AM
To: Ben Gecy
Cc: Bruce W Vanhorn
Subject: RE: map/hamner

Ben, After discussing this with Bruce, we the bank can only do this loan if there is a Road Maint Agreement and there cannot be any exceptions to the Title Insurance Policy.

Thanks
Doug

-----Original Message-----

From: Ben Gecy [mailto:ben@beaufortlending.com]
Sent: Thursday, March 18, 2010 10:19 PM
To: Doug Jacobs
Subject: RE: map/hamner

Doug

You were checking to see if this was a problem with your underwriter?..

I need to know if there is a "what if" on this scenario as well. I have agreed to personally pursue the options discussed on Wednesday but would like to know what the underwriter says...Please advise

Benjamin Gecy
Owner
ben@beaufortlending.com
GMC Mortgage
Phone: 843-524-2404



997

8/19/2010

Ben Gecy

From: Jaime Hamner [jaimehamner@yahoo.com]
Sent: Saturday, March 27, 2010 12:58 AM
To: Ben Gecy
Subject: HOUSE
Attachments: _Certification_.txt

Ben,

If all goes well with John Ferguson, this is the color (green) we would like the house with the black shutters. I believe there is a house, near the house you built, on Kaitlyn's Way that has these same colors. We really like this porch and hope you can replicate it. This is not exactly like your house but I thought it had some similar qualities. Just throwing this out there for as an idea. I know because of all the delays we have not had a chance to sit down and talk again. Let me know what you think.

Thanks,
Jaime

Testimonial - Howdy... This prospective renters/buyers to go as often as I needed. I have re

☐	☐	☐	☐	☐
☐				
☐	Homes for Sale or Rent near U.S. Military Bases			
☐	DETAILS			

3/26/2010 11:48:21 PM

[Home](#) > [States](#) > [South Carolina](#) > [Parris Island MC Recruit Depot](#) > [Details](#)

w/Real Estate Agent

Price: \$474,900.00

Beaufort, SC - Old Barn Rd.
4 Bed, 3 Bath (Single Family)

Description:

Like new beautiful home has hardwood floors, gas fireplace, upscale kitchen with granite countertops, large pantry and high-end appliances. Large master suite boasts a huge walk-in closet and master bath with whirlpool tub. A screened porch, over-sized 2 car garage and large lot add to the appeal of this spacious home. The property is located just minutes from a county boat ramp and is zoned for the following schools: Coosa

PLAINTIFF'S EXHIBIT

35 Ferguson

[< back](#)

[next >](#)

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT

6 BENJAMIN GECY,
7 Plaintiff,

8
9
10 vs.

CIVIL ACTION NUMBER
2011-CP-07-1778

11
12
13
14 SOUTH CAROLINA BANK & TRUST,
15 JAIME HAMNER AND DEBORAH HAMNER,
16 Defendants.

COPY

17 -----/
18 The deposition of DIANA CHALMERS, a
19 witness in the above-entitled cause, taken
20 pursuant to Notice and agreement, before Kyle J.
21 Saniga, Certified Court Reporter and Notary
22 Public, at the Offices of GMC Mortgage, 1857
23 Ribaut Road, Port Royal, South Carolina, on the
24 12th day of February 2014, commencing at or
25 about the hour of 2:40 p.m.

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999

1
2 **APPEARANCES OF COUNSEL:**

3 **PRO SE:**

4 **BENJAMIN GECY**
5 **GMC Mortgage Services**
6 **1857 Ribaut Road**
7 **Port Royal, South Carolina 29935**
8 **ben@beaufortlending.com**
9 **843.441.0668**

10 **FOR THE DEFENDANT SOUTH CAROLINA BANK and**
11 **TRUST:**

12 **THOMAS A. HOLLOWAY, ESQUIRE**
13 **Harvey & Battéy, PA**
14 **1001 Craven Street**
15 **Beaufort, South Carolina 29902**
16 **tholloway@harveyandbattey.com**
17 **843.524.3109**

18 **FOR THE DEFENDANTS JAIME AND DEBORAH HAMNER:**

19 **JAMES J. WEGMANN, ESQUIRE**
20 **Mikell, Weidner, Wegmann & Harper, LLC**
21 **6 Professional Village Circle**
22 **Beaufort, South Carolina 29907**
23 **wegmannj@beaufortlaw.com**
24 **843.521.0004**

25 **I N D E X**

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DOCUMENTARY EVIDENCE

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PX-37	E-mail from Ed Chalmers, dated April 16, 2010	4

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 DIANA CHALMERS,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 (Whereupon, Plaintiff's Exhibit
6 Number 37 was marked for
7 identification.)

8 DIRECT EXAMINATION

9 BY MR. GECY:

10 Q This is the deposition of Diana
11 Chalmers witness in Civil Case Number
12 2011-CP071778 conducted by Benjamin Gecy, pro
13 se, for plaintiff, February 12th 2014 at
14 2:40 p.m.

15 Ms. Chalmers, let's go over a few
16 housekeeping rules here. Do you understand that
17 your testimony is under oath today?

18 A Yes, sir.

19 Q Okay. If you do not understand one of
20 my questions please ask me to rephrase it, do
21 not answer it until I ask a question that you
22 understand. Is that understood?

23 A Yes, sir.

24 Q Do not ask any of the other attorneys
25 for advice, ask me, Benjamin Gecy. I know it's

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 a little weird that I'm a pro se litigant, so
3 sometimes I'll refer to myself in the third
4 person. I know it's kind of unusual but it is
5 what it is.

6 Do you have any attorneys representing
7 you here today?

8 A No, sir.

9 Q Do you have an attorney representing
10 you in anything, any other matter right now?

11 A No.

12 Q Please make verbal responses. The
13 court reporter cannot record head nods or hand
14 signals so please try to speak clearly for the
15 record.

16 Also, do you understand that I'm
17 conducting this as a pro se litigant?

18 A Yes, sir.

19 Q Do you know what a pro se individual
20 litigant is or pro se is?

21 A You want me to say it like I understand
22 you're a lawyer representing your --

23 Q I'm not a lawyer.

24 A I didn't meant to say that. You're
25 representing yourself.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q I'm representing myself, okay.

3 Please state your full name for the
4 record.

5 A Diana Chalmers.

6 Q Okay. What is your birth date?

7 A 12-7 1969.

8 Q All right. Where were you born?

9 A Doylestown, Pennsylvania.

10 Q Okay. Are you known by any other
11 aliases or names?

12 A Just my maiden name.

13 Q What is that?

14 A Zirby. (Phonetic)

15 Q Okay. Please give your educational
16 background from beginning to end and state if
17 you are currently enrolled in school anywhere.

18 A Beginning to end?

19 Q Grade school from --

20 A From Pre-K to high school, which I
21 graduated high school, that's it.

22 Q No college courses?

23 A (Witness shakes head.)

24 Q Advanced courses?

25 A Huh-uh.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Do you hold any professional licenses?

3 A No, sir.

4 Q Any teaching certificates?

5 A No, sir.

6 Q Okay. Have you ever been in the
7 military?

8 A No, sir.

9 Q Okay. Where do you live, currently?

10 A I live on 8 Meredith Lane, Beaufort,
11 South Carolina.

12 Q Okay. Have you ever been involved in a
13 lawsuit?

14 A No, sir.

15 Q Have you ever been -- have you ever
16 received service for any type of lawsuit or
17 subpoena?

18 A No, sir.

19 Q Okay. Did one of -- did a
20 representative of this case serve you with a
21 document --

22 A No, sir.

23 Q -- for deposition?

24 A No, sir.

25 Q Okay. Did your husband receive that

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 document?

3 A Yes, sir.

4 Q Okay. How many affidavits have you
5 signed or statements -- have you ever signed an
6 affidavit?

7 A Yes, sir.

8 Q Okay. How many of those have you
9 signed?

10 A Just one.

11 Q Okay. Who asked you to sign that
12 affidavit?

13 A Someone at Harvey & Battey.

14 Q Who was that person?

15 A I guess it was Tom.

16 Q Mr. Holloway?

17 A Yes, sir.

18 Q Okay. Did he call you?

19 A (Witness shakes head.)

20 Q Did he e-mail you?

21 A No, sir.

22 Q Did he come to your house?

23 A No, sir.

24 Q How did he contact you?

25 A Actually I called him. I don't know,

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 when all this started.

3 Q Okay. Why did you call him?

4 A I guess because it was in reference to
5 you wanting me to sign a road agreement.

6 Q Okay. When did I ask you to sign a
7 road maintenance agreement?

8 A I don't know. This -- I don't know.

9 Q Okay.

10 A A couple years ago.

11 Q Okay. Could it have been in April of
12 2010?

13 A Could have been.

14 Q All right. Let me give you a copy of
15 your sworn affidavit and I think the dates --
16 you state your dates in that affidavit. Okay.

17 First of all, this is Plaintiff's
18 Exhibit Number 15. This is Mr. Holloway's
19 signature on the last page.

20 Can you tell me what the date of Mr.
21 Holloway's -- date is down there that he
22 testifies or witnesses your statement?

23 A It's 7 of November 2011.

24 Q Okay. So that's November 7th of 2011?

25 A Uh-huh, yes.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Okay. And you said you called Mr.
3 Holloway --

4 A Uh-huh.

5 Q -- to sign this document?

6 MR. HOLLOWAY: What's that exhibit
7 number?

8 MR. WEGMANN: 15.

9 MR. HOLLOWAY: Is that to --
10 excuse me, to which --

11 BY MR. GECY:

12 Q How long did it take you --

13 MR. HOLLOWAY: -- to which --

14 BY MR. GECY:

15 Q -- to contact Mr. Holloway from your
16 e-mail to Mr. Gecy?

17 MR. HOLLOWAY: Excuse me, to which
18 deposition is that number 15? What's
19 it say on the front of that?

20 MR. GECY: It's not, plaintiff's.

21 MR. HOLLOWAY: I understand.

22 Plaintiff's 15 from another
23 deposition?

24 MR. GECY: It's Plaintiff's

25 Exhibit 15.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 MR. WEGMANN: Hamner.

3 MR. HOLLOWAY: Hamner?

4 BY MR. GECY:

5 Q Okay, okay. November 7th 2011, okay.

6 Is that your signature on that
7 affidavit?

8 A Yes, sir.

9 Q Okay. What is your timeframe, in simple
10 mathematic form, from April 2010 to November of
11 2011? How many months is that, just a
12 guesstimate, is that over a year?

13 A No.

14 Q It's not. How long is it?

15 A I don't know. I don't know, three -- I
16 don't know, April to November.

17 Q From April 2010 to November 7th of
18 2011.

19 A Is that -- it's over a year.

20 Q Okay.

21 A Yes.

22 Q Is that approximately 16 months?

23 A Sure.

24 Q Just approximately is a general?

25 A Yes.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Pretty close, right, not exact?

3 A Uh-huh.

4 Q Okay. Why did you wait a year
5 and-a-half to contact Mr. Holloway about an
6 issue of a road maintenance agreement?

7 A Because it -- I don't know. I --
8 honestly I don't remember.

9 Q You just woke up one day and wanted to
10 go to Harvey & Battey?

11 MR. WEGMANN: Object to the form.

12 BY MR. GECY:

13 Q Did you just wake up and want to go to
14 Harvey & Battey to sign an affidavit that you'd
15 never signed before and swear under oath for
16 statements --

17 A I --

18 Q -- on November 7th 2011, is that what
19 you wanted to do?

20 A Yes.

21 Q Did anyone else ask you to go to Harvey
22 & Battey to sign a statement or to review
23 anything?

24 A No.

25 Q Okay. I'm going to ask you, again, why

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 did you go to Mr. Holloway on that date?

3 A Because it all came back to the road
4 agreement with you.

5 Q A year and-a-half later?

6 A I think it took us that long because
7 you were building that house and it took us that
8 long.

9 Q Took who? Who is 'us'?

10 A It took you that long, you, Ben Gecy.

11 Q To?

12 A To try to get that road agreement
13 signed.

14 Q Okay. So it's your statement that the
15 house that I was -- I'm building out there,
16 currently, had something to do with Mr. Hamner's
17 transaction?

18 A I'm not -- I don't know. All I know is
19 that I'm here because of some road agreement
20 that I didn't sign.

21 Q Okay. Is it a fact that you sent me an
22 e-mail agreeing to sign a road maintenance
23 agreement?

24 A I don't think so.

25 Q Okay. You don't think so?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A I don't know. Ed took care of all that
3 so I'm not sure what he put in it.

4 Q Okay. Did you send an e-mail to me
5 agreeing to sign a road maintenance agreement
6 with any conditions?

7 A Again, like I said, I don't know
8 because Ed took care of all of that.

9 Q Okay. Well, did Ed sign an affidavit
10 with Mr. Holloway? Did he go over there that
11 day with you?

12 A No, sir.

13 Q You went by yourself?

14 A Yes, sir.

15 Q Did Mr. Holloway influence you to sign
16 that document?

17 A No, sir.

18 Q Did anyone influence you to sign it?

19 A No, sir.

20 Q Why did he -- why did he tell you it
21 needed to be in an affidavit form?

22 A I don't remember. I don't know.

23 Q Okay.

24 A This all comes back to a road
25 agreement, that's all.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Did Mr. Holloway ever tell you that the
3 bank didn't need a signed road maintenance
4 agreement?

5 A I was told that you needed them to sign
6 that agreement.

7 Q Who told you that?

8 A You did.

9 Q Okay. But did Mr. Holloway, the day
10 that you went over to sign this, did he tell you
11 the bank didn't need -- they didn't even need a
12 road maintenance agreement for signature?

13 A I don't remember.

14 Q You don't remember?

15 A I trusted what y'all were telling me.

16 Q Did you trust what Mr. Holloway told
17 you to do?

18 A Uh-huh and I trusted you.

19 Q What did you trust me with?

20 A I thought you were telling me the truth
21 about what needed to be done. You were in my
22 house telling me what needed to be done.

23 Q Okay. And what was that? What needed
24 to be done?

25 A Something about you were -- had

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 somebody need --- needed those things signed
3 because of the house you were building they
4 needed to be approved or something.

5 Q So maybe it was the bank's requirement.
6 Is that possible?

7 MR. HOLLOWAY: Objection to the
8 form.

9 BY MR. GECY:

10 Q Is it possible that I was communicating
11 with you on a bank condition?

12 A But you didn't tell that to me. All I
13 know --

14 Q Okay.

15 A You're -- the guy that was trying to
16 buy the house was all you were talking about and
17 he -- that's all I know.

18 Q Did you ever confirm with Mr. Hamner
19 that he was doing VA financing on that loan?

20 A I did speak to Mr. Hamner. He came to
21 my house.

22 Q When was that?

23 A I don't know. He was there --

24 Q Was that before or after you sent the
25 e-mail, you and Ed sent the e-mail to me?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A I don't know.

3 MR. HOLLOWAY: Objection to the
4 form.

5 BY MR. GECY:

6 Q Okay. Was that before or after you
7 signed the affidavit with Mr. Holloway?

8 THE WITNESS: I don't know. I
9 don't remember.

10 BY MR. GECY:

11 Q That might be a problem.

12 MR. HOLLOWAY: Ask questions.
13 That's an improper statement. Be
14 respectful.

15 BY MR. GECY:

16 Q So nobody ever told you -- did anyone
17 at Harvey & Battey ever tell you that the bank
18 didn't need your signature?

19 A I -- Ben, I don't remember.

20 Q Okay.

21 A This was so long ago.

22 Q This is Plaintiff's Exhibit Number 37,
23 okay.

24 Can you tell me who that e-mail came
25 from?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 MR. WEGMANN: Excuse me. What's
3 the date on that?

4 MR. GECY: April 16th, 2010.

5 BY MR. GECY:

6 Q All right, thank you.

7 Have you had any conversations with
8 Jaime Hamner in the last three years?

9 A I don't know.

10 Q You don't know?

11 A He was only at my house once.

12 Q When was that?

13 A I don't remember.

14 Q Did he discuss with you the need for a
15 road maintenance agreement to buy the land next
16 door?

17 A All he talked about what how he liked
18 -- what the neighborhood was like, how long we
19 lived there, that was about it.

20 Q Did he ever talk about his VA financing
21 with you?

22 A No, sir.

23 Q Okay. Plaintiff's Exhibit Number 37, I
24 want you to read that highlighted area right
25 there for the record, please. Speak loudly.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A From the beginning?

3 Q Yes.

4 A 'When you initially approached us in
5 regards to the aforementioned agreement you
6 explained it was required by the Hamner's to
7 obtain VA financing. We spoke with Jaime Hamner
8 and he confirmed this.'

9 Q Okay. Does that say you confirmed, you
10 and Ed confirmed with me about his VA financing?

11 MR. HOLLOWAY: I'm going to
12 object. Ask her to see who that e-mail
13 was from. You're mischaracterizing
14 your question. You said you and Ed.
15 That e-mail's from Ed.

16 MR. GECY: I'm asking --

17 MR. HOLLOWAY: No.

18 MR. GECY: -- the questions.

19 MR. HOLLOWAY: No. You cannot ask
20 false questions.

21 BY MR. GECY:

22 Q What does it say at the bottom, in
23 regards, Ed and Diana Chalmers?

24 MR. HOLLOWAY: Who's it from?

25 MR. GECY: Okay. Let me conduct

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 my deposition then you can ask her
3 questions.

4 MR. HOLLOWAY: You ask your
5 questions honestly.

6 MR. GECY: I'm going to ask my
7 questions. I'm getting to it, Tom.
8 You can ask your questions after I'm
9 done. You're interrupting me and I
10 object to that. All right.

11 BY MR. GECY:

12 Q Who does that e-mail say it's from?

13 A Ed and Diana Chalmers.

14 Q Are you Diana Chalmers?

15 A Yes, sir.

16 Q Okay. Now, can you read the
17 highlighted area for me once again.

18 A The whole thing?

19 Q Yes.

20 A 'When you initially approached us in
21 regards to the aforementioned agreement you
22 explained it was required by the Hamner's to
23 obtain VA financing. We spoke with Jaime Hamner
24 and he confirmed this.'

25 Q Okay. What does it say right after

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 that, the highlighted area?

3 A After that whole sentence?

4 Q Yeah, what's circled?

5 A 'We have no problems signing the
6 agreement.'

7 Q Okay. I thought you -- did you say, in
8 your affidavit, that you never -- is it a fact
9 that you state in your affidavit that you will
10 never -- you never agreed to sign a road
11 maintenance agreement?

12 A Is that what it says in my affidavit?

13 Q Well, let's take a look.

14 Did Mr. Holloway go over this affidavit
15 with you? Did Mr. Holloway go over the
16 affidavit with you?

17 A Yes, sir, yes.

18 Q Did he ask you the questions?

19 A For what?

20 Q For the affidavit, the answers that you
21 gave and the statements, did he ask you
22 questions?

23 A Yeah, I guess, when I went to sign it.

24 Q Okay. I want to you read me this
25 statement right here that you swore under oath

1 GECY - D. CHALMERS (DIRECT EXAMINATION)
2 was true. This is exhibit -- Plaintiff's
3 Exhibit Number 15. Read that highlighted area
4 for the record and tell me if that's a true
5 statement.

6 A 'Further I advised Mr. Gecy that I had
7 no intention of signing the document then or any
8 time in the future.'

9 Q Okay. Is that what the e-mail says?

10 A I didn't send that e-mail.

11 Q Okay. Who sent the e-mail?

12 A My husband. I told you.

13 Q Okay. Is your name -- does the end of
14 the e-mail say that -- what does the end of the
15 e-mail say, the salutation?

16 A Ed and Diana Chalmers.

17 Q What does the salutation say and then
18 the name underneath that with the address?

19 A It says, 'Regards Ed and Diana
20 Chalmers, 8 Meredith Lane.'

21 Q Okay. Are you Diana Chalmers?

22 A I am.

23 Q Do you know anybody else that works at
24 Harvey & Battey?

25 A No, sir.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q You understood when you signed that --
3 did you understand that upon signing -- when you
4 made these seven statements did you know you
5 were under oath?

6 A Yes, sir.

7 Q Okay. Do you think that your
8 statements in that affidavit are true?

9 A I haven't seen it but if you'd give me
10 a chance to read it I can tell you if it's true
11 or not. I don't know. I haven't seen this in
12 --

13 Q This is Plaintiff's Exhibit Number 15.
14 Review that document for us, please.

15 A They're true.

16 Q They're true?

17 A Uh-huh.

18 Q Okay. Read number three for the record
19 in the affidavit. Please speak clearly.

20 A 'Approximately, in April, 2010, Ben
21 Gecy came to my home on several occasions and
22 asked me to sign a "Road Maintenance Agreement"
23 for Meredith Lane. Mr. Gecy explained that --
24 he, Mr. Gecy, explained that the agreement was
25 necessary before he could sell a vacant lot on

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Meredith Lane to Mr. and Mrs. Hamner.'

3 Q Is that your statement or Mr.
4 Holloway's statement?

5 A No, that's -- because you had come to
6 my house.

7 Q I'm ask --

8 MR. HOLLOWAY: Let her answer.

9 MR. WEGMANN: She's answered.

10 BY MR. GECY:

11 Q Is that your statement or Mr.
12 Holloway's statement?

13 A You came to my house. I don't know how
14 else to answer it.

15 Q I understand that. Is that your
16 statement or Mr. Holloway's statement?

17 A That's mine.

18 Q That's your statement?

19 A Yes, sir.

20 Q Okay. Did you use the word
21 'approximately in 2010'?

22 A If I signed it, then yes.

23 Q Okay. We talked about this in the
24 beginning, approximately means?

25 A I'm not stupid, Ben.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q General.

3 A I'm not stupid.

4 Q General. I'm trying to identify -- I'm
5 not calling you stupid but you're using general
6 terms in an affidavit and I'm trying to get to
7 the point, all right.

8 Approximate timeframe, April of 2010,
9 could it have been late March 2010 when you say
10 'approximately'?

11 A I don't know because you came to my
12 house so many times.

13 Q Okay. Well, I'm just saying maybe one
14 of those times, could that have been at the end
15 of March 2010 when you say 'approximately'?

16 A Sure, yes.

17 Q Okay, okay. That's all I'm trying to
18 determine.

19 And when you say 'approximately' it's
20 just general. You give no definite date, you
21 came this date, this time.

22 Did you give -- in your statement, did
23 you give an exact date and time that I visited
24 your house?

25 MR. HOLLOWAY: Objection to the

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 form of the question. You can answer.

3 BY MR. GECY:

4 Q You have to answer the question.

5 A Okay. Say it again.

6 Q In your affidavit, did you, in number
7 three, state an exact time and date that I
8 visited your house?

9 A It says right here 'approximately in
10 April 2010'.

11 Q Is that an exact date?

12 A It's an approximation.

13 Q Okay, okay. Not an exact date?

14 A An approximation.

15 Q Okay, all right. So I guess what
16 you're -- is it your testimony that the
17 affidavit, it speaks for itself, your statements
18 speaks for itself?

19 A This affidavit?

20 Q That you signed?

21 A Yes.

22 Q Okay. Is it a fact that the -- that
23 the e-mail from you and Ed states that you will
24 sign -- you have agreed to sign a road
25 maintenance agreement contingent upon something

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 else?

3 A I didn't sign it.

4 MR. HOLLOWAY: Objection to the
5 form of the question. You can answer.

6 BY MR. GECY:

7 Q Is it a fact that the e-mail you sent
8 to Gecy states you will sign a road maintenance
9 agreement?

10 A I didn't send an e-mail. I said,
11 before, Ed took care of all of that.

12 Q Listen to my question, please.

13 In the e-mail that says 'Regards, Ed
14 and Diana Chalmers', Plaintiff's Exhibit 37,
15 does that document say 'We have no problem
16 signing the agreement'?

17 A That's correct.

18 Q Okay. Are you either Ed or Diana
19 Chalmers?

20 A Yes.

21 Q Okay. Does that e-mail also state that
22 you confirmed with Hamner on his VA financing?

23 A If that's what it says in the e-mail.

24 Q If that's what it says. The document
25 speaks for itself, is that what you're saying?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 MR. HOLLOWAY: Objection to the
3 form.

4 THE WITNESS: If that's what it
5 says that's what it says.

6 BY MR. GECY:

7 Q Okay. So did you agree or not agree to
8 sign a road maintenance agreement, at any time?

9 A No. I said I would not sign it.

10 Q Are there any documents that have been
11 sent from your residence that agree to sign any
12 road maintenance agreement from --

13 A There's one from my husband.

14 Q Okay.

15 A I didn't send it. I didn't send any of
16 it.

17 Q You had nothing to do with that e-mail?

18 A Huh-uh.

19 Q Okay. Can you read number four of your
20 affidavit for the record, please.

21 A 'On the first visit I advised Mr. Gecy
22 that I would need to review the matter with my
23 husband.

24 Q Okay. Do you review all matters with
25 your husband?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A No.

3 Q Okay. Does he make decisions on your
4 behalf without speaking to you?

5 A Sometimes, if need be.

6 Q Okay. Did he make a decision to send
7 this e-mail out?

8 A Apparently he did.

9 Q Okay. Is Mr. Chalmers on the title to
10 your property?

11 A Yes.

12 Q Okay. So he has ownership in your
13 property -- does Mr. Chalmers have ownership in
14 your property located on Chalmers -- located on
15 Meredith lane?

16 A I don't know. I'm not sure.

17 Q Is Ed Chalmers on the deed to your
18 property?

19 A I want to say no.

20 Q Okay. Has Mr. Chalmers ever been on
21 the deed to your property?

22 A At this point I'd -- I'm not sure but
23 I'd have to say no.

24 Q Okay. Do you -- what is the address of
25 your property on Meredith Lane?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A It is 8 Meredith Lane.

3 Q Do you own that by yourself?

4 A I do.

5 Q Okay. So does that mean that no one
6 else is on the title?

7 A Ben, I don't know.

8 Q Just asking.

9 A I'm having to say, no, I do not know.

10 Q Yes or no. You don't know, that's
11 fine.

12 A I don't know.

13 Q Okay. It's not a trick question.

14 A I don't know.

15 Q Usually when people own property they
16 know but that's okay.

17 Do you know if married couples commonly
18 don't have the other party on the deed to a
19 property?

20 A I don't know.

21 Q All right. Is there any particular
22 reason you wouldn't have your husband on the
23 title to your property?

24 A I don't know.

25 Q You don't know?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A Huh-uh.

3 Q When did you buy 8 Meredith Lane?

4 A 2001, maybe.

5 Q Did you obtain a mortgage on that
6 property?

7 A Yes, sir.

8 Q Okay. Who completed that mortgage for
9 you?

10 A I don't know. It was a local company
11 here in Beaufort.

12 Q Do you still have a mortgage on that
13 property today?

14 A Yes, sir.

15 Q Did Mr. Chalmers sign that mortgage
16 with you, Ed Chalmers?

17 A I don't know.

18 Q Did Mr. -- was Mr. Chalmers at the
19 closing when you closed on the property?

20 A Yes, sir.

21 Q Did he sign any documents with you at
22 the closing?

23 A I don't know. It was with Henry Ann --
24 Henry Ann. (Phonetic)

25 Q Have you refinanced the mortgage since

- 1 GECY - D. CHALMERS (DIRECT EXAMINATION)
2 then?
3 A Yes, sir.
4 Q Did Mr. Chalmers, Ed Chalmers go with
5 you to that closing?
6 A They came to the house.
7 Q Okay.
8 A We didn't have to go.
9 Q Who was that loan with?
10 A I don't remember. I don't know.
11 Q What year was that?
12 A (Witness shakes head) Back a couple of
13 years ago, maybe five, six years ago.
14 Q Okay. Did Mr. Chalmers sign the
15 documents?
16 A Ben, I don't know.
17 Q What is the rate on your mortgage right
18 now?
19 A I have no idea.
20 Q Do you know what the payment is per
21 month?
22 A I don't know, 1,200, maybe.
23 Q Excuse me?
24 A 1,200.
25 Q Can you speak up for the record.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A Sorry. 1,200 maybe.

3 Q Do you know what the exact payment is?

4 A No.

5 Q Do you make the mortgage payment every
6 month?

7 A I pay it online.

8 Q Okay. How long have you been doing
9 that?

10 A A year, maybe.

11 Q Okay. How many years was your
12 mortgage?

13 A I guess 30.

14 Q Okay. Could it be 15?

15 A It could be.

16 Q Could it be 20? Could it be an
17 adjustable rate mortgage?

18 A No, it's not.

19 Q You're certain of that?

20 A Uh-huh.

21 Q Because when you close do you look to
22 make sure that rate is a fixed rate when you
23 close?

24 A Well, Henry Ann tells me all that so
25 she made sure that it was not an adjustable.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Is that the attorney's job to make sure
3 the client's signing the correct documents?

4 A You talking about Henry Ann?

5 Q Any attorney, especially Henry Ann
6 representing you?

7 A Yeah, I guess.

8 Q Yeah. And you're certain that your
9 mortgage is a fixed rate?

10 MR. HOLLOWAY: Objection to the
11 form.

12 BY MR. GECY:

13 Q Are you certain that your mortgage is a
14 fixed rate?

15 A Yes, sir.

16 Q Okay. How are you certain of that?

17 A Because I just -- I just know because a
18 fixed rate it would never go up so I always made
19 sure it didn't go up.

20 Q Okay.

21 A I have the same payment.

22 Q So you have that same certainty with
23 these statements that you made in this affidavit
24 that you signed?

25 A Yeah.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Did you make sure that all seven lines
3 that you have documented in there were accurate
4 and truthful?

5 A Yes, sir.

6 Q Okay, all right, good. What does Mr.
7 Chalmers do for a living?

8 A He is a night auditor for the Marriott.

9 Q Okay. How long have you been married?

10 A 16 years.

11 Q Have you ever been divorced?

12 A No, sir.

13 Q Has Mr. Chalmers ever been divorced?

14 A Yes, sir.

15 Q Okay. Does Mr. Chalmers have any
16 felonies --

17 A No, sir.

18 Q -- in his background?

19 A No, sir.

20 Q Has he ever been arrested?

21 A No, sir.

22 Q In your affidavit, number six, what did
23 you mean when you stated 'I had no intention of
24 signing the document then or any time in the
25 future'?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A Just meant I wasn't going to sign the
3 document, the road agreement.

4 Q Why? Why were you not going to sign
5 it?

6 A Because we had -- because you were
7 already building the house and we had asked you
8 to put money into an escrow in case you messed
9 up our road or my property and you chose not to
10 do that so we chose not to sign it.

11 Q So is it a fact that if I would have
12 done what you asked me to do you would have
13 signed the road maintenance agreement?

14 A Probably.

15 Q Probably?

16 A Uh-huh.

17 Q Read the final highlighted area,
18 Plaintiff's Exhibit Number 37. Can you read
19 that entire paragraph for me, please.

20 A 'In summation we have no problem
21 signing the road maintenance agreement to help
22 the Hamner's obtain financing. We are only
23 asking to have written responsibility for any
24 damages incurred to Meredith Lane by you, your
25 company vehicles or any subcontractors you use

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 on the project.'

3 Q Okay. In the beginning of that
4 sentence why does it say you have no problem in
5 signing the road maintenance agreement?

6 A Because I didn't write it.

7 Q All right. Why -- in that e-mail, with
8 yourself and Ed, Ed and Diana Chalmers' name at
9 the bottom, what does it say -- you got me on
10 that one. You got me on that one.

11 Does the e-mail state that you -- does
12 the e-mail state that Ed and Diana Chalmers will
13 sign the road maintenance agreement to help
14 Hamner?

15 A It doesn't state that in there, no.

16 Q Read -- read that again in the
17 beginning.

18 MR. HOLLOWAY: Can we stipulate
19 that it just says what it says?

20 MR. GECY: No, you can't.

21 THE WITNESS: 'In summation we
22 have no problem signing the road
23 maintenance agreement to help the
24 Hamner's obtain financing.'

25 BY MR. GECY:

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Stop. What does that mean?

3 A It means what it says. In summation --
4 whatever the e-mail says.

5 Q What does 'we' stand for?

6 A More than one person.

7 Q Okay. Are Ed and Diana Chalmers more
8 than one person?

9 A Yes, sir.

10 Q Okay. So when someone says 'we' that
11 means more than one?

12 A Yes, sir.

13 Q Who else was Ed referring to when he
14 said 'we'? Was it your children?

15 A (Witness shakes head.)

16 Q Was it John Ferguson?

17 A I don't know.

18 Q Okay. Could it have been you?

19 A It could have.

20 Q Okay. That's what we're trying to get
21 to.

22 So you could have agreed to sign the
23 road maintenance agreement per the e-mail?

24 MR. HOLLOWAY: Objection to the
25 form of the question. You can answer.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 THE WITNESS: Say it again.

3 BY MR. GECY:

4 Q Is it possible the e-mail could speak
5 for both Ed and Diana in saying 'We had no
6 problem signing the road maintenance agreement
7 to help Jaime'?

8 A I didn't send the e-mail. I didn't
9 write it. I didn't send it.

10 Q Okay. Why -- why did you sign an
11 affidavit? Was it to help Jaime Hamner?

12 A No. I was there for a road agreement
13 that we -- you were trying to get me to sign a
14 road agreement that I didn't want to sign.

15 Q All right. In November of 2011 I came
16 to your house. I badger -- did I badger you for
17 a year and-a-half about a road maintenance
18 agreement?

19 Did Benjamin Gecy contact you, after
20 April 2010, in any way or form, about a road
21 maintenance agreement?

22 A I don't know the dates. All I know is
23 that you were at my house on multiple occasions.

24 Q Okay. And you stated, in your
25 affidavit, that was approximately in April 2010,

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 is that correct?

3 A It could have been --

4 Q Okay.

5 A -- one of those dates you were there.

6 Q You signed your affidavit in
7 November 2011, a year and-a-half later. Did you
8 have any contact with Benjamin Gecy since then?

9 A I don't know.

10 Q You don't know?

11 A You were at my house so many times.

12 Q Okay.

13 A I can't tell you all the times.

14 Q Did you state, in your affidavit, that
15 I came to your house in approximately 2011
16 requesting a road maintenance agreement?

17 A If that's what it says.

18 Q I'm asking, does the affidavit state
19 that? And you can review it. Review all seven.

20 Does it state that in approximately
21 2011 I came to your house asking for a road
22 maintenance agreement?

23 A 2010.

24 Q Approximately. What does it say in
25 2010?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A Approximately in April 2010.

3 Q Okay. Do you have any correspondence
4 or does Ed have any correspondence from Benjamin
5 Gecy from April 2010 until November of 2011,
6 approximately one and-a-half years have gone by,
7 any requests for any road maintenance
8 agreements?

9 A I don't know what you're asking me.

10 Q I'm asking you if I came to your house
11 or contacted you about a road maintenance
12 agreement in a year and-a-half period from
13 April 2010 to November 2011? How long is that?

14 A Over a year.

15 Q Over a year.

16 A Yeah, yeah.

17 Q Did Benjamin Gecy contact you during
18 that year about a road maintenance agreement?

19 A Ben, I don't know. I don't know. I
20 don't -- I can't -- you were there so many
21 times --

22 Q Okay.

23 A -- is what I keep telling you.

24 Q In your affidavit it says

25 'approximately 2010'.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A Yes.

3 Q Does it say I came after that date?

4 Could approximately 2010 mean January of 2011?

5 A I guess it could.

6 Q Could it mean -- could approximately
7 April 2010 mean February of 2011, eight months
8 later? Ten months later?

9 A I guess.

10 Q Okay. Could approximately April 2010
11 mean that I came to your house in April of 2011,
12 a year later?

13 A What are you trying to ask me?

14 Q I'm asking you a question. I'm asking
15 you what approximately means. Is it three days?
16 Is it five days or is it a year and-a-half?
17 What does 'approximately' mean?

18 MR. HOLLOWAY: Objection to the
19 form of the question.

20 BY MR. GECY:

21 Q What are you defining approximately as
22 in that statement?

23 A I guess it -- approximately means
24 around about.

25 Q Around about.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A Close to.

3 Q How many days or how many months are
4 you referring to there?

5 A I don't know.

6 Q You don't know?

7 A Huh-uh.

8 Q Well, that's why I keep asking you
9 questions because you don't know but you signed
10 an affidavit under oath.

11 A Uh-huh.

12 Q And you don't know what the affidavit
13 says. That's a problem.

14 MR. WEGMANN: Objection to the
15 form.

16 MR. HOLLOWAY: Objection. Ask
17 questions.

18 BY MR. GECY:

19 Q Did Mr. Gecy contact you in the year of
20 2011 about a road maintenance agreement or Ed
21 Chalmers?

22 THE WITNESS: I can't speak for Ed
23 but I don't know.

24 BY MR. GECY:

25 Q Why did a year and-a-half go by and you

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 decide -- why did you wait a year to sign the
3 affidavit? Why did you wait a year and-a-half
4 to sign the affidavit at Harvey & Battey?

5 A Because it took us forever with this
6 road maintenance thing with you.

7 Q Did communication stop approximately
8 April 2010?

9 A With who?

10 Q Between Gecy and the Chalmers family?

11 A I don't know.

12 Q Does your statement say that Gecy
13 repeatedly came to your property in the year of
14 2011?

15 A No. It says you came approximately in
16 April 2010. Ben Gecy came to my home on several
17 occasions.

18 Q That's not 2011, is it?

19 A No.

20 Q April 2010 and November 7th 2011 is a
21 long period of time, isn't it?

22 A Yes, sir.

23 Q Do you have any communication, via
24 e-mail, from Mr. Gecy between April --

25 approximately April 2010 and the exact date of

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 this affidavit, November 7th 2011?

3 A What do you mean do I have any like
4 e-mails --

5 Q Yes.

6 A -- or anything like that? Oh, I don't
7 think so.

8 Q Do you and Mr. Chalmers, your husband,
9 use the same e-mail address?

10 A Yes, sir.

11 Q Frequently?

12 A Yes, sir.

13 Q Always?

14 A Yes, sir.

15 Q Okay. Can Mr. Gecy -- could Mr.
16 Gecy -- Plaintiff's Exhibit Number 1, it's an
17 illustration from the Beaufort County records.
18 This is the Gecy/Hamner transaction. Looks like
19 Chalmers property is there. Do you recognize
20 this layout?

21 A I do.

22 Q Does that look like your property
23 location on Meredith Lane?

24 A Yes, sir.

25 Q Do you have an easement on Meredith

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Lane?

3 A I believe I do.

4 Q Do you know what an easement is?

5 A It means the people behind me have
6 access.

7 Q Does it mean you have access?

8 A Yes, sir.

9 Q Okay. How do you know that?

10 A I think when we bought the house I
11 remember hearing something of an easement.

12 Q Did Mr. Chalmers sign for that
13 easement?

14 A I don't know.

15 Q Okay. Does Mr. Chalmers work on that
16 easement?

17 A Yeah. You mean do we drive on it, like
18 we --

19 Q Does he repair it? Make improvements
20 to it? Fill in potholes, in any way or form?

21 A Yes, sir.

22 Q Have you ever maintained anything on
23 that easement, improved anything?

24 A Yes, sir.

25 Q Okay. Have you done that since you

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 bought the property?

3 A Yes, sir.

4 Q Okay. Why do you do that?

5 A Because there was a house being built
6 back here and they had these big trucks that put
7 potholes and broke the pipes underneath on the
8 lane that we had to fix.

9 Q Okay. So, that property back there, it
10 damaged Meredith Lane?

11 A Yes, sir.

12 Q Okay. When was that?

13 A I don't know, back a couple years ago.

14 Q Okay. Was it after April 2010 or
15 before April 2010?

16 A I don't know. They were working on it
17 for quite awhile.

18 Q Okay. Was it after April 2010?

19 A I don't know.

20 Q When you first saw Mr. Jaime Hamner,
21 was there a house on the property of Mr. Gecy?

22 A I think the house was already being
23 built.

24 Q So when Mr. Hamner came to your house
25 the only time you met him the house was already

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 being built, is that your testimony?

3 A Yes, sir.

4 Q Okay. You're certain of that?

5 MR. HOLLOWAY: Objection to the
6 form.

7 BY MR. GECY:

8 Q Are you certain of that?

9 A I'm guessing. I don't know but I
10 believe the house was already being built.

11 Q Would you sign an affidavit stating
12 that today if Mr. Holloway prepared it?

13 A I don't -- I don't know.

14 Q Yes or no?

15 A No.

16 MR. HOLLOWAY: You can answer.

17 MR. WEGMANN: You can answer the
18 question.

19 BY MR. GECY:

20 Q Why would you not sign it?

21 A Because I don't want to sign anything
22 without being prepared to sign it. If I need a
23 lawyer I get a lawyer.

24 Q Okay. Did you get a lawyer to sign the
25 affidavit that Mr. Holloway asked you to sign?

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 A No, sir.

3 Q Why not?

4 A Once again, I trusted what you were
5 telling me and I trusted what Tom was saying.

6 Q What if Mr. Holloway gave you bad
7 advice, do you think you'd need an attorney?

8 A I don't think Tom would give me bad
9 advice.

10 Q Do you think Mr. Gecy would give you
11 bad advice?

12 A Yes, I do.

13 Q Okay. Why is that?

14 A Because of the dealings that I had with
15 him on the road agreement.

16 Q What type of dealings?

17 A I asked him to put money aside to fix
18 the road while he was building this house and he
19 chose not to.

20 Q Okay. And that -- is that a bad
21 business dealing?

22 A I think so.

23 Q Did Mr. Gecy injure you, in any way?

24 A No, sir.

25 Q Did you sign the affidavit to injure

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Mr. Gecy?

3 A No, sir.

4 Q Did you sign the affidavit to help Mr.
5 Hamner?

6 A No, sir.

7 Q Did you sign the affidavit to help
8 yourself?

9 A No.

10 Q Did you sign the affidavit to help Ed?

11 A No, sir.

12 Q Did you sign the affidavit to help the
13 residents of Meredith Lane?

14 A No.

15 Q Did you sign the affidavit to stop the
16 trucks from coming down Meredith Lane?

17 A They had already come down the lane.
18 They had already wrecked the lane.

19 Q Did Mr. Gecy have a right to come down
20 that lane?

21 A I guess so.

22 Q Okay. Well, why was that a problem for
23 you? Did you own -- did you own Meredith Lane?
24 Do you own Meredith Lane?

25 A I think at some point I do.

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 Q Okay.

3 A My side of the road I do own.

4 Q Okay. Can you restrict Mr. Gecy from
5 getting to his property with that ownership?

6 A I did not restrict him from --

7 Q I'm asking you a question. Can you --

8 MR. HOLLOWAY: Let her finish her

9 answer.

10 BY MR. GECY:

11 Q Can you restrict Mr. Gecy from getting
12 to his property?

13 A I don't think I can.

14 Q Okay. Does Mr. -- does Mr. Gecy have
15 full access rights to that road?

16 A I don't know. I don't know what's in
17 your -- this piece of property. I don't know
18 anything about this side of the road or this
19 property, it's not mine.

20 Q Would you be surprised if you and Mr.
21 Gecy had the same title and same easement with
22 the same language in it?

23 A No.

24 Q You would not be surprised with that?

25 MR. HOLLOWAY: Objection to the

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 form.

3 THE WITNESS: I don't know.

4 BY MR. GECY:

5 Q Would you be surprised that Mr. Gecy
6 has an easement, a 50 foot easement that says he
7 can do whatever he wants to on Meredith Lane?

8 A Then why wouldn't you sign that road
9 agreement?

10 Q Okay. Your e-mail or the e-mail sent
11 from your house states why. It was for Mr.
12 James Hamner's financing. That's what the
13 e-mail stated that came from you and Ed
14 Chalmers.

15 MR. WEGMANN: Objection to the
16 form.

17 BY MR. GECY:

18 Q That's the purpose of the e-mail.

19 MR. HOLLOWAY: Objection to the
20 form.

21 BY MR. GECY:

22 Q Is that not the purpose of the e-mail
23 that you provided there?

24 A I don't understand your question.

25 MR. WEGMANN: I think that calls

1 GECY - D. CHALMERS (DIRECT EXAMINATION)

2 for a mischaracterization. She said
3 she didn't provide it.

4 BY MR. GECY:

5 Q What was the purpose of the road
6 maintenance agreement in that e-mail?

7 A Wait, say it again?

8 Q What was the purpose of the road
9 maintenance agreement as you and Ed Chalmers
10 described in the e-mail. Was it to help Mr.
11 Hamner with his financing?

12 A I don't understand what you're asking
13 me.

14 Q Read this statement, again, for the
15 record, the highlighted area for the record.

16 A 'When you initially approached us in
17 regards to the aforementioned agreement you
18 explained it was required by the Hamners to
19 obtain VA.'

20 Q Stop. What does that statement say?

21 A You explained it was by the Hamners --
22 I guess so he could get financing.

23 Q So the road maintenance agreement --
24 was the road maintenance agreement required for
25 Hamners financing? Is that what the e-mail

1 WEGMANN - D. CHALMERS (DIRECT EXAMINATION)

2 says?

3 A I guess.

4 Q Is that an e-mail that came from Ed and
5 Diana Chalmers --

6 A I did not send it.

7 Q -- on April 16th 2010?

8 A I did not send it.

9 Q I know you did not send it but is that
10 what the e-mail says?

11 A That's what the e-mail says.

12 Q Okay, thank you. That's what we were
13 trying to get to.

14 MR. GECY: I don't have any other
15 questions.

16 CROSS-EXAMINATION

17 BY MR. WEGMANN:

18 Q Just to be clear, since he stopped you,
19 on a number of occasions from reading the rest
20 of it, would you read the entire sentence that's
21 circled that starts with 'we'.

22 A 'We have no problem signing the
23 agreement provided you agree to sign the
24 addendum in regards to responsibility for
25 damages incurred to the road during the

1 WEGMANN - D. CHALMERS (DIRECT EXAMINATION)

2 construction of the Hamner home. You stated one
3 of the objections you had to the addendum was
4 the fact that it would nullify the road
5 maintenance agreement.'

6 Q Prior to today, have you ever seen
7 Plaintiff's Exhibit 37 before?

8 A No, sir.

9 Q That e-mail? Today would be the first
10 time?

11 A Yes, sir.

12 Q All right. Up until today, have you
13 ever signed a road maintenance agreement for
14 Meredith Lane?

15 A No, sir.

16 Q All right. Up until today, to your
17 knowledge, has your husband ever signed a road
18 maintenance agreement for Meredith Lane?

19 A No, sir.

20 Q All right. To the best of your
21 recollection, did my client -- I represent Mr.
22 and Mrs. Hamner and I apologize, didn't say that
23 upfront.

24 A Okay.

25 Q Did either of my clients ask you to

1 WEGMANN - D. CHALMERS (DIRECT EXAMINATION)

2 sign a road maintenance agreement?

3 A No, sir.

4 Q Okay. Up until today, did either of my
5 clients ever ask you to sign an affidavit in
6 this matter?

7 A No, sir.

8 MR. WEGMANN: I have nothing
9 further.

10 MR. HOLLOWAY: No questions.

11 MR. WEGMANN: Thank you.

12 (Whereupon, the deposition of
13 Diana Chalmers was concluded at
14 approximately 3:35 p.m.)

15

16

17

18

19

20

21

22

23

24

25

1
2 CERTIFICATE
3

4 STATE OF GEORGIA:

5 CHATHAM COUNTY:
6

7 I, Kyle J. Saniga, Court Reporter and
8 Notary Public in and for the above county and
9 state, do hereby certify that the foregoing
10 testimony was taken before me at the time and
11 place herein-before set forth; that the witness
12 was by me first duly sworn to testify to the
13 truth, the whole truth, and nothing but the
14 truth, that thereupon the foregoing testimony
15 was later reduced by computer transcription; and
16 I certify that this is a true and correct
17 transcript of my stenographic notes so taken.

18 I further certify that I am not of
19 counsel to either party, nor interested in the
20 event of this cause.
21

22
23 _____
24 Kyle J. Saniga, CCR

25 Notary Public, B-2038

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Ben Gecy

From: Edward H chalmers [decsbeach@embarqmail.com]
Sent: Friday, April 16, 2010 12:00 PM
To: Ben Gecy
Subject: RE: FW: Scan from a Xerox WorkCentre
Attachments: _Certification_.txt

Ben

Pursuant to our phone conversation this morning I just want to state our position regarding the Road Maintenance Agreement you proposed us signing. When you initially approached us in regards to the aforementioned agreement you explained it was required by the Hamners to obtain VA financing. We spoke with Jamie Hamner and he confirmed this. We have no problem signing the agreement provided you agree to sign the addendum in regards to responsibility for damages incurred to the road during the construction of the Hamner home. You stated one of the objections you had to the addendum was the fact that it would nullify the Road Maintenance Agreement. I don't understand why you would object if the only intent of the agreement is to facilitate the VA loan for the Hamner's home.

Once the Road Agreement is signed and filed we become contractually obligated to repair road damage, even if it is done by construction equipment.

In summation, we have no problem signing The Road Maintenance Agreement to help the Hamner's obtain financing. We are only asking you to take written responsibility for any damages incurred to Meridith Lane by you, your company vehicles, or any subcontractors you use on the project.

We are only looking for you to live up to what you told us was the reason for the agreement, as well take responsibility for any damages your company or it's agents may do to Meridith Lane, nothing more, nothing less.

If you don't choose to sign the addendum, we'll just have to agree to disagree.

Regards

Ed and Diana Chalmers
8 Meridith Lane
Beaufort SC 29907----- Original Message -----

**PLAINTIFF'S
EXHIBIT**

37
D. Chalmers

From: Ben Gecy

To: 'Edward H chalmers'

Sent: Fri, 16 Apr 2010 09:20:59 -0400 (EDT)

Subject: RE: FW: Scan from a Xerox WorkCentre

1056

COPY

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

BENJAMIN GECY,)
Plaintiff,)
-versus-) Civil Action Number
SOUTH CAROLINA BANK &) 2011-CP-07-1778
TRUST, JAIME HAMNER and)
DEBORAH HAMNER,)
Defendants.)

Deposition of **BENJAMIN GECY**, taken by
Counsel for the Defendant South Carolina Bank &
Trust on the 4th day of February, 2014, at the
Law Offices of Harvey & Battey, P.A., 1001 Craven
Street, Beaufort, South Carolina, commencing at
approximately 10:03 a.m.

Bettye Anderson & Associates

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APPEARANCES

For the Plaintiff: Benjamin Gecy, Pro Se
1857 Ribaut Road
Port Royal, South Carolina 29935

For the Defendant
S.C. Bank & Trust: Thomas A. Holloway, Esquire
HARVEY & BATTEY, P.A.
Post Office Box 1107
Beaufort, South Carolina 29901

For the Defendants
Jaime Hamner & Deborah Hamner: James J. Wegmann, Esquire
MIKELL, WEIDNER, WEGMANN &
HARPER, LLC
6 Professional Circle
Beaufort, South Carolina 29907

Reported by: Matthew Hazen Anderson
Notary Public/Court Reporter

Also present: Jaime Hamner
Dave Jacobs

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1	19-page exhibit consisting of a civil action cover sheet and the summons and verified complaint in this action	44
2	1-page document consisting of two emails, one dated March 8, 2010, from Ben Gecy to Bruce W. Vanhorn, and one dated March 9, 2010, from Bruce Vanhorn to Ben Gecy (Bates Stamped Number SCB&T 105)	57
3	1-page email dated March 9, 2010, to Doug Jacobs from Ben Gecy (Bates Stamped Number SCB&T 104)	58
4	1-page document consisting of two emails, one dated March 4, 2010, to Bruce Vanhorn from Ben Gecy, and one dated March 5, 2010, to Ben Gecy from Bruce Vanhorn (Bates Stamped Number Gecy 00374)	59
5	6-page document entitled "New Construction Contract," dated February 3, 2010 (Bates Stamped Numbers Gecy 00146 through 00151)	85
6	5-page document entitled "Agreement to Buy and Sell Real Estate (For General Use and Lots/Acreage," dated February 3, 2010 (Bates Stamped Numbers Gecy 00152 through 00156)	85
7	1-page document addressed to "Mr. Tootle" from Jaime Hamner (Bates Stamped Number Gecy 00107)	97

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9	1-page document containing five emails dated February 23, 2010, and February 24, 2010, between Ben Gecy and Doug Jacobs (Bates Stamped Number Gecy 00381)	118
10	1-page email dated April 6, 2010, from Ben Gecy to Michelle L. Fludd (Bates Stamped Number Gecy 00039)	121
11	9-page document entitled "Road Maintenance Agreement" (Bates Stamped Numbers SCB&T 92 through SCB&T 100)	124
12	1-page document containing emails between Ben Gecy and Doug Jacobs dated February 12, 2010, February 21, 2010, and February 22, 2010 (Bates Stamped Number SCB&T 85)	124
13	1-page email dated March 6, 2010, to Benjamin Gecy from Michelle L. Fludd (Bates Stamped Number SCB&T 91)	125
14	1-page document containing emails dated March 6, 2010, and March 7, 2010, between Ben Gecy and Doug Jacobs (Bates Stamped Document SCB&T 101)	126
15	1-page document containing emails dated April 1, 2010, and April 5, 2010, between Ben Gecy and Michelle Smith Flood and one between Ben Gecy and Doug Jacobs (Bates Stamped Number SCB&T 114)	136

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16	1-page of handwritten notes prepared by the witness for Carey Kerney (Bates Stamped Number Gecy 00027)	137
17	1-page letter dated 4/6/10 to Ken Tootle from Benjamin Gecy (Bates Stamped Number Gecy 00141)	143
18	1-page document consisting of two emails, one dated March 8, 2010, to Bruce Vanhorn from Ben Gecy, and a second email dated March 9, 2010, from Bruce Vanhorn to Ben Gecy (Bates Stamped Number Gecy 00378 and 00379)	147
19	1-page email dated January 26, 2010, to Doug Jacobs from Ben Gecy (Bates Stamped Number SCB&T 65)	155
20	1-page map from Beaufort County dated 3/17/2010 (Bates Stamped Number SCB&T 41)	159
21	1-page document entitled "Statement of Credit Denial, Termination, or Change" dated 03/10/2010 (Bates Stamped Number SCB&T 38)	170
22	1-page document entitled "Addendum"	181

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1 BENJAMIN GECY, called as a
2 witness, having been first duly sworn, was examined and
3 testified as follows:

4 MR. HOLLOWAY: Mr. Gecy, for the record, I'm
5 Tom Holloway. I know we know each other. I represent
6 SCB&T in this action that you are the plaintiff in.
7 I'm here to ask you questions pursuant to the rules,
8 and pursuant to the rules, I'm required to instruct
9 you of certain things.

10 This is a deposition. The testimony you
11 give will be the same as if you were in court and may
12 be used in a trial or for court purposes. If you have
13 any questions, please let me know. I'm not trying to
14 confuse you with my questions, so if my questions do
15 confuse you, or you have any questions whatsoever, let
16 me know, and I'll do my best to answer them.

17 If you need a break, please take a break.
18 Just let me know. During the pendency of your
19 deposition, you're not allowed to discuss your
20 testimony or the substance of your testimony with
21 anyone. Do you understand that?

22 WITNESS: I do. I would just like to make a
23 statement for the record, that I am representing
24 myself pro se.

25 MR. HOLLOWAY: Okay.

1 WITNESS: So if there is a question that
2 is not relevant to the subject matter, I'm going to
3 object, and I might not answer it.

4 And, also, for the record, I did let you
5 guys know that I did not agree with this deposition
6 and the timing of it. There is the discovery that's
7 still out there. I'm reserving the right to extend
8 and supplement this deposition for some other time
9 down the road.

10 MR. HOLLOWAY: Okay. Mr. Gecy, the rules
11 provide that the only relevant objection during a
12 deposition is to the form of the question. All other
13 questions must be answered. And then, should you want
14 to strike that or eliminate from the record, then it's
15 up to you to make a motion before the Court --

16 WITNESS: Fair enough.

17 MR. HOLLOWAY: -- to do that; okay?

18 WITNESS: Fair enough.

19 MR. HOLLOWAY: And I know you're
20 representing yourself pro se, but are you receiving
21 any advice from legal counsel at all --

22 WITNESS: No.

23 MR. HOLLOWAY: -- in this case?

24 WITNESS: No, I'm not.

25 MR. HOLLOWAY: You do not have a legal

1 adviser?

2 WITNESS: No, I do not.

3 MR. HOLLOWAY: Who is preparing your forms
4 for you?

5 WITNESS: Benjamin Gecy, pro se.

6 MR. HOLLOWAY: Where are you getting the
7 forms to use?

8 WITNESS: South Carolina Judicial Conduct,
9 or South Carolina Judicial website.

10 MR. HOLLOWAY: Okay. And how about the
11 rules that you cite? Where are you obtaining those?

12 WITNESS: Well, those are clearly documented
13 on the South Carolina Court site.

14 MR. HOLLOWAY: So all of your research and
15 all of your motions and all of your forms are obtained
16 solely by you, without benefit of legal counsel or --

17 WITNESS: One hundred percent, absolutely.

18 MR. HOLLOWAY: Okay. Let's go into your
19 background a little bit.

20 DIRECT EXAMINATION

21 BY MR. HOLLOWAY:

22 Q Where were you born?

23 A Allendale, South Carolina.

24 Q Okay. What's your birth date?

25 A 3/27/74. March 27th, 1974.

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1 Q Okay. And who are your parents?

2 A Robert Gregory Gecy; Kathy Luann Houck Gecy.

3 Q And where are they located now?

4 A Kathy has -- since being remarried, she lives
5 here in Beaufort. She married a David Hortman, so her
6 new name now is Kathy Gecy-Hortman. My father lives in
7 Greenville. He's married to Connie Rogers Gecy, and they
8 live in the Simpsonville area.

9 Q Okay. And where were you raised?

10 A Beaufort, South Carolina.

11 Q When did you move to Beaufort from Allendale?

12 A I was approximately six years old.

13 Q Okay. And where did you live in Beaufort?

14 A We had a few different residences growing up.
15 Almost all of them are in the Mossy Oaks area.

16 Q Okay. Do you have any relatives here in
17 Beaufort?

18 A I have two brothers.

19 Q And I assume their last name is Gecy?

20 A Yeah.

21 Q Do you have any relatives that don't have the
22 last name Gecy in --

23 A Brothers.

24 Q -- Beaufort?

25 A Sisters.

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1 Q In Beaufort. Any relatives in Beaufort that have
2 different last names than you?

3 A Relative? Define "relative."

4 Q Somebody that's related by blood or marriage.

5 A I don't -- yeah, I don't -- not to my knowledge.

6 Q Are you a member of any churches in Beaufort?

7 A We're a member of Sea Island Presbyterian, and
8 we're currently attending Tidal Creek Fellowship.

9 Q Are you a member of any social clubs?

10 A I don't think that I am right now.

11 Q What social clubs have you been a member of in
12 Beaufort?

13 A Would the Yacht Club be considered a social club?

14 Q I believe it would.

15 A Yeah, the Yacht Club. Is the USGA considered a
16 social club? The United States Golf Association?

17 Q Okay.

18 A I'm still a member of that. I don't know how my
19 membership stands with the Yacht Club, so -- I think that
20 expired here a couple of days ago, and I didn't renew my
21 dues, so --

22 (Brief interruption. Doug Jacobs enters the
23 conference room.)

24 BY MR. HOLLOWAY:

25 Q -- The Yacht and Sailing Club?

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1 A (Witness nods head; no verbal response.)

2 Q Have you ever been a member?

3 A Yeah. Yes.

4 Q Are you a member currently?

5 A I don't think I am.

6 Q Okay. The YMCA?

7 A Several years ago, I was.

8 Q Okay. The Boys and Girls Club?

9 A No.

10 Q Rotary?

11 A No. Cat Island, South Carolina National Golf
12 Club, or whatever.. The Sanctuary Golf Club. I'm a member
13 of that. I have a social membership there.

14 Q Are you a member of any other golf clubs?

15 A Secession Golf Club.

16 Q When did you become a member of Secession?

17 A About -- a few days ago, I received my letter in
18 the mail.

19 Q Congratulations.

20 A Thank you.

21 Q Do you have any other memberships that have been
22 applied for? That are pending?

23 A I don't know that I do.

24 Q Okay. What is your educational background?

25 A I went to Mossy Oaks Elementary School, Lady's

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1 Island Middle School, graduate of Beaufort High School in
2 1991. I attended Beaufort -- or Brevard Junior College,
3 and graduated from Coker College with a bachelor's degree
4 in communications.

5 Q When did you graduate from Coker?

6 A I think it was 1997, the Spring of 1997.

7 Q And what years were in at Brevard?

8 A '93 and '94.

9 Q Why did you leave there?

10 A It's a two-year institution.

11 Q Did you obtain a degree?

12 A I didn't need to have a two-year degree to move
13 on.

14 Q That's a no?

15 A That's a no.

16 Q And what was your degree from Coker in?

17 A Communications.

18 Q That's a bachelor of arts?

19 A Yes.

20 Q Okay. Do you have any additional education,
21 advanced education, after Coker?

22 A No, I wouldn't. Nothing that's documented.

23 Q Okay. Do you have any professional licenses or
24 certifications?

25 A I have a mortgage brokers license with the State

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1 of South Carolina.

2 Q Okay. When did you obtain that?

3 A I think it was probably in 1999.

4 Q Okay. And what was involved to obtain your
5 mortgage brokers license in the State of South Carolina?

6 A I can't recall what was required back in 1998.

7 Q Was there a test?

8 A No. I don't think there was a test back then.

9 Q Was there an application?

10 A There was an application.

11 Q Was there a credit report?

12 A I'm not sure if they had that stipulation in
13 there in 1998..

14 Q What is required of you to maintain your -- do
15 you still maintain your bankers license?

16 A Well, it's not a bankers license. It's a --

17 Q Excuse me. A mortgage --

18 A -- mortgage brokers license.

19 Q -- brokers license?

20 A Yes, I do.

21 Q Okay. And what's required to maintain it?

22 A You have to complete a certain amount of
23 continuing education and then reconfirm the application
24 and pay the fee.

25 Q Is that a yearly requirement?

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1 A It is a yearly requirement.

2 Q Are you current?

3 A Yes, I am.

4 Q Have you ever been the subject of a complaint
5 before the brokers board?

6 A I don't believe that I have.

7 Q Okay. Do you have any other professional
8 licenses?

9 A I have a contractors license with South Carolina.

10 Q Is that a residential contractors license?

11 A A residential builders license.

12 Q Okay. And when did you obtain that?

13 A Probably anywhere from four to seven years ago.
14 I don't know the exact date.

15 Q And what was required by you to obtain that
16 license from the State of South Carolina?

17 A They did require a test, a pretty good test; and
18 then, you know, the application and pay your fee -- bond.

19 Q Is your license current?

20 A The last time I checked it was -- about six
21 months ago.

22 Q Has it ever been subject to a complaint or
23 discipline?

24 A I don't think it has.

25 Q Okay. Were you -- did you attend schooling or--

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1 any course work to learn material for the test?

2 A No. I spent about six years working in the
3 industry, flipping houses and doing stuff individually,
4 before I actually got my license, so --

5 Q Did you ever work as a contractor, or for a
6 contractor, prior to taking the test?

7 A I worked for my brother's company.

8 Q Okay. And what did you do there?

9 A We just bought and sold property and hired and
10 fired subs.

11 Q Did you ever do any manual labor in construction?

12 A Um-hum.

13 Q What did you do?

14 A I've done some trim work, air conditioning work.

15 Q Do you have any other --

16 A A little bit of flooring.

17 Q Oh, I'm sorry.

18 A A little bit of flooring installation, a little
19 bit of sheetrock, a little bit of framing. Just general
20 things associated with building a house.

21 Q Okay. Do you have any other professional
22 licenses or certifications, or have you ever had any,
23 other than the two you told me about?

24 A I was a professional baseball player, but I don't
25 think they give you a card for that.

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1 Q Okay. We'll get to your work history in a little
2 bit. Do you have any other -- well, do you, or have you,
3 ever had any other licenses?

4 A I've had a Georgia mortgage brokers license.

5 Q Okay. When was that?

6 A 1997 to approximately 1999.

7 Q And what's the status of that?

8 A We -- well, I sold that company and no longer
9 operating in Georgia.

10 Q Okay. Do you have a realtors license?

11 A I do not.

12 Q Have you ever had one?

13 A Yes, I have.

14 Q What happened to it?

15 A I let it expire.

16 Q Why?

17 A I just didn't want to go back and do any of the
18 renewals or anything like that.

19 Q Okay. Had you ever had a complaint before the
20 realtors board?

21 A I don't think so.

22 Q Okay. Do you intend to seek reinstatement of
23 your realtor's license?

24 A Possibly, yeah, at some later date.

25 Q Do you now, or have you had, an insurance brokers

1 license?

2 A No, I have not.

3 Q Have you ever applied for one?

4 A No, I have not.

5 Q Okay. Are there any other licenses that you have
6 now, or had in the past, or ever applied for through the
7 State of South Carolina?

8 A None that I know of.

9 Q Okay. Tell me what your work history is,
10 starting from when you graduated from Coker College
11 forward.

12 A I was in the minor leagues for approximately a
13 year and a half.

14 Q With what --

15 A Sonoma Crushers in the California league, the
16 Western league. I spent a season there. And then I signed
17 a contract with the Chillicothe Paints in Ohio, and it was
18 a short stint, and decided that I was going to go back and
19 finish up my one semester to get my degree.

20 After my degree, I took a job with Chase Mortgage
21 Brokers in Charleston as a loan officer. I got promoted to
22 a manager very quickly, opened up a Savannah location.
23 Then I left, shortly after that, to open my own business in
24 Georgia.

25 Q- What was your business in Georgia called? --

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1 A Getzy Mortgage Services, d/b/a GMC Mortgage.

2 Q Okay. And what happened with that company?

3 A I opened up -- when I finally got my South
4 Carolina license, I opened up a South Carolina branch in
5 the same location that I'm in right now, and eventually
6 sold that to some of the employees over in Georgia.

7 Q Okay.

8 A Shortly after I moved over into South Carolina.

9 Q All right. And what did you do? When was that?
10 When did you come to South Carolina?

11 A It was around 1999.

12 Q Okay. And what's your work history since then?

13 A That's it.

14 Q You have operated --

15 A I've been a mortgage broker --

16 Q -- GMC Mortgage Services?

17 A -- and River City Real Estate & Development since
18 then. I've had one job with the mortgage company and
19 another job with, you know, the River City Developers,
20 River City Real Estate -- those two entities.

21 I had a real estate license that I hung with
22 Harbor Island Realty, which kind of complemented the
23 subdivisions that we were building at the time out in
24 Ridgeland.

25 Q Who operates Harbor Island Realty?

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1 A Paul Barber.

2 Q Okay. You've never had your own real estate
3 shop?

4 A No.

5 Q So when you were a broker on the Jaime Hamner to
6 Mr. Poole transaction, you were operating under Harbor
7 Island Realty's license?

8 A I wasn't -- I was never a broker. I was a
9 salesman/agent. I'm not sure who the license was. I had
10 my license with Harbor Island for a period of time, which
11 transferred over to Palmetto Real Estate with Richard Poore
12 and his group, Jeff Pinckney, and I'm not sure, during that
13 period of time, if it was Harbor Island or Palmetto Real
14 Estate there. Those were the only two companies that that
15 real estate license was held with.

16 Q Have you ever been the owner of a company, or a
17 member, or a partner in any entity in South Carolina?

18 A Yes.

19 Q What companies have you been associated with?
20 LLCs? Partnerships? Legal entities?

21 A I was a member of the -- I believe it was an LLC
22 with an insurance company, G&S Insurance Company. We had a
23 very short stint with me as an owner to the LLC. I was not
24 a licensed insurance agent and didn't participate in any of
25 the insurance. I just offered some space and was an owner

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1 of that company.

2 Q Who owned the company with you?

3 A A lady named Stacy. Things just didn't work out.
4 It didn't look like we were going to have enough revenue to
5 support her family needs and what I expected.

6 Q What is --

7 A So it only lasted approximately six months or so.

8 Q What is Stacy's last name?

9 A I don't -- I don't remember her last name. That
10 was a long time ago.

11 Q GMS. What does that stand for?

12 A G and S.

13 Q G and S?

14 A Yeah.

15 Q What does that stand for?

16 A I -- you know, maybe Gecy and Stacy. I don't
17 know. I don't know how she came-up with that name, or I
18 came up with that name, at that time.

19 Q What years did this entity operate?

20 A I don't recall.

21 Q And did it actually broker or sell any insurance
22 products?

23 A Yeah, we -- I think we did book a few policies.

24 Q Through what insurance companies?

25 A I don't know. I wasn't in charge of any of that.

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1 That was all her responsibilities, as the insurance broker.

2 Q Was this business located in the same business --
3 or the same location you operate your mortgage business?

4 A Yes.

5 Q And you don't remember Stacy's last name?

6 A I do not.

7 Q And she was -- she's from Beaufort?

8 A I don't know that she was from Beaufort. She
9 lived here when we formed our agreement.

10 Q Does she still live here?

11 A I don't know. I haven't seen her since the day
12 we parted ways.

13 Q Any other companies that you've been associated
14 with? Entities? Partnerships?

15 A I don't think so.

16 Q Okay. How about GMAC Mortgage?

17 A Who's GMAC Mortgage?

18 Q You told me you were operating a business --

19 A GMC Mortgage.

20 Q GMC Mortgage; okay.

21 A Getzy Mortgage Company. That's a d/b/a. The
22 articles of incorporation are Getzy Mortgage Services, LLC,
23 d/b/a GMC Mortgage.

24 Q Okay. And who are the members of --

25 A I'm the 100 ---

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1 Q -- that LLC?

2 A -- percent member.

3 Q Okay. And is that a South Carolina company?

4 A It's a Georgia company.

5 Q Is it currently in good standing?

6 A Yes, it is.

7 Q Okay. How do you spell that? Is that G-E-C-Y?

8 A G-E-T-Z-Y.

9 Q G-E-T-Z-Y. Why do you spell it differently than
10 your last name?

11 A That's the correct pronunciation of my last name,
12 and the attorney who filled out the paperwork, I guess,
13 assumed that that's how the last name was spelled and how I
14 wanted it. So I was excited to get into business -- this
15 was my first company -- and when the articles came back
16 with the tax ID number, I wanted to be a d/b/a, anyways,
17 and I was authorized to operate as a d/b/a, GMC, so it
18 didn't appear to be a big deal.

19 Q Okay. Getzy Mortgage has been operating for how
20 long?

21 A I believe since 1997.

22 Q Okay. And what is the business of Getzy
23 Mortgage?

24 A Origination of mortgage -- residential mortgage
25 loans.

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1 Q Has it been that since 1997?

2 A Yes.

3 Q Has it done any other type of work other than
4 origination of mortgage loans?

5 A No. That's the primary focus of the business.

6 Q All right. And who do you place borrowers with
7 to fund the loans that you originate?

8 A I place them with national companies that are
9 wholesale lenders.

10 Q Okay. Can you --

11 A That we actually have to get approved with.

12 Q Can you tell me those companies?

13 A We've probably had 80 or 90 of them since I
14 started, so I can't name all of them.

15 Q Who are you using now?

16 A We've got a few. We've got a Sierra Pacific
17 Mortgage Company. We've got a Flagstar Mortgage Company.
18 We've got a United Wholesale Mortgage Company. I'd have to
19 look in the portfolio. Some of them we use; some of them
20 we don't.

21 Q Okay. Describe the process for me. Let's assume
22 I'm a borrower and I want to get a loan to buy a piece of
23 property and I come to you. What do you do?

24 A We take an application from the customer, and
25 then we pull the credit bureau -- evaluate the credit.

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1 Once we evaluate the credit and, I guess, the direction the
2 customer wants to go in, we try to place that with one of
3 the lenders we think has the best programs and best rates
4 available for them.

5 Q Okay. And lenders have certain requirements that
6 they ask for from the borrowers or applicants; right?

7 A All lenders have guidelines that they have to go
8 by.

9 Q Okay. And do you facilitate the conversation
10 between the potential borrower and the lender?

11 A What do you mean by "facilitate?"

12 Q Well, if the lender says, "One of my requirements
13 is that I need tax returns," do you tell your --

14 A Well, we follow --

15 Q -- client that they need to give you tax returns
16 and then you provide those to the lender?

17 A We follow instructions from the underwriter and
18 the bank -- in writing, those instructions -- and we do
19 communicate those underwriting guidelines or underwriting
20 stipulations to the borrower to see if the borrower can
21 fulfill those. And we do take that information and we
22 review it, and then we submit it to the underwriter for
23 their final review.

24 Q My point is that the borrower, or the potential
25 borrower, provides the information to you, and you're the

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1 conduit to the --

2 A We're the middle person. We're the broker.

3 Q The borrower does not have the relationship with
4 the lender?

5 A That's correct.

6 Q Okay. Were you acting as an originator at any
7 time for Mr. and Mrs. Hamner?

8 A I don't believe that I was.

9 Q Why not?

10 A They had seeked (sic) applications with another
11 institution -- that they applied with them. I don't recall
12 that, you know, they ever applied with us. Maybe we did
13 pull a credit bureau just to see what their background was,
14 and qualifications there, as far as, you know, going
15 forward with some type of contract. But I don't think that
16 we ever pursued an application for them. All we did was --
17 I think we did a credit evaluation on them.

18 Q Are there any regulations on pulling a credit
19 report on someone that's not an applicant?

20 A No. We had authorization from Mr. and Mrs.
21 Hamner to pull a credit bureau.

22 Q You did?

23 A Yeah.

24 Q Okay. Why didn't you offer to provide mortgage
25 services to them for the --

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1 A Because we don't do construction loans.

2 Q But you were selling them a piece of real estate;
3 right?

4 A Um-hum. We don't do lot loans.

5 Q You've never done lot loans?

6 A No.

7 Q And you've never done a construction loan?

8 A We have done one construction loan.

9 Q Okay. Did you --

10 A About 12 years ago, 13 years ago.

11 Q Did you act as a mortgage broker for the
12 purchaser of the Hamners' property?

13 A I did.

14 Q Okay. And tell me about that.

15 A We closed the loan, as a the mortgage company,
16 for the purchaser.

17 Q So you were the realtor?

18 A I was the realtor for the buyer.

19 Q You were the realtor for the buyer, but not the
20 seller?

21 A Not the seller.

22 Q And did --

23 A The seller said that they didn't need any
24 representation. He could represent himself.

25 Q Okay. Do you have any documents, disclosure

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1 documents, related to that?

2 A Yes, I do.

3 Q Okay. I would ask that you provide those to me
4 after --

5 A Okay.

6 Q -- the deposition.

7 A I think you already have them, but I'll be glad
8 to provide them again.

9 Q Super. Well, you can just -- all the discovery
10 that was ever provided by Mr. Pendarvis' office is Bates
11 stamped.

12 A We have never entered in an agreement to
13 represent Jaime Hamner, nor his wife, on the 11 Southern
14 Magnolia land.

15 Q You never did?

16 A Never.

17 Q Okay.

18 A And that was at the request of Mr. and Mrs.
19 Hamner.

20 Q And you have that in writing, you've told me?

21 A I don't have that statement in writing, but I've
22 got the documentation that shows that I'm just representing
23 the buyer.

24 Q Okay. And you represented the buyer in the
25 purchase and you represented the buyer in a mortgage

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1 origination?

2 A I'm not sure that I represented them as the
3 mortgage broker. I'd have to go back and look at our
4 applications. But I know I played a role in helping them
5 with the financing.

6 Q Did it go through your company?

7 A Yes, it did.

8 Q Okay. So did you receive a commission?

9 A Yeah. We have multiple loan officers in the
10 company, so I don't know if another loan officer handled
11 the mortgage side of things or not. I'll have to look and
12 see what the final application was.

13 Q Would your company have received a commission in
14 originating that?

15 A We did. We did.

16 Q And you're the sole owner of that company?

17 A That's correct.

18 Q Okay. Did you receive a commission from the sale
19 of the real estate from the Hamners to Mr. Poole?

20 A I received a buyer's commission.

21 Q Okay. And how much commission did you receive?

22 A I believe it was three percent.

23 Q Okay. Have you ever been arrested?

24 A No.

25 Q Have you ever been charged with a crime?

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1 A Let me step back. I think I was arrested as a
2 juvenile for spray painting by my father-in-law a long time
3 ago. I don't know if that's still on the record or
4 whatever. But me and some kids had a little spray painting
5 incident and they did -- to prove a point, my father-in-law
6 did lock us up. I don't know if that's anything on my
7 record or not.

8 Q Who is your father-in-law?

9 A He's deceased now. It's Roger Karr. He was a
10 captain in the police department in Port Royal.

11 Q Is that your wife's father?

12 A It wouldn't be my father-in-law. It would be my
13 stepfather. Excuse me.

14 Q Okay. So you're kin to some people named Karr in
15 the area?

16 A I don't think that I am any longer, because my
17 mom's not married to the Karrs. She's now married to David
18 Hortman.

19 Q Does she --

20 A I was at one time.

21 Q Does your wife -- does her family live in the
22 area or maintain a home here?

23 A No, they do not.

24 Q Do you have -- you don't have any in-laws on your
25 wife's side of the family that live in Beaufort County or --

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1 maintain a home here?

2 A No.

3 Q Okay. Have you ever been sued?

4 A Yes.

5 Q Okay. Start from the oldest and move forward.

6 What was the first time you were sued?

7 A I believe the first time I was sued by -- it was
8 by a -- I forget the guy's name. Alvarez? Carlos Alvarez.

9 Q What was that about?

10 A It was about a builder keeping Mr. Alvarez's
11 money that we had pre-approved from an application before
12 the home had started. Mr. Alvarez had changed his
13 employment, could not document his immigration status
14 accurately, and as we got into the process, during
15 construction, it was obvious that his change in employment
16 and some other items with his immigration wasn't going to
17 allow our company to close the loan. The builder kept his
18 \$5,000 or \$4,500 worth of earnest money, and we were sued
19 over that as not properly fulfilling our obligations to the
20 loan commitment we had from the very beginning.

21 Q Okay. And what was the result?

22 A I settled it.

23 Q It was against you or GMC Mortgage or --

24 A I'm not sure who all it was against, but I ended
25 up settling it individually.

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1 Q What was the settlement?

2 A It was just a settlement.

3 Q What were the terms of the settlement?

4 A It eliminated a verdict.

5 Q I understand what a settlement is. What were the
6 terms of the settlement? What did you pay?

7 A I don't -- I mean, I object to that. I mean, it
8 doesn't matter.

9 Q You can object, but you have to answer the
10 question.

11 A I paid approximately \$30,000 to settle it.

12 Q For the builder keeping \$4,500?

13 A Um-hum.

14 Q Okay. Was that an allegation of fraud or deceit
15 against you?

16 A No, not that I know of.

17 Q What was the allegations?

18 A I think it was a breach of fiduciary duty.

19 Q Were you represented?

20 A Yes, I was.

21 Q Who represented you on that?

22 A The wonderful James Moss.

23 Q Why do you say "wonderful?"

24 A He did a great job.

25 Q Okay. What other litigation have you been sued

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1 for?

2 A I believe that I'm in litigation with Hilton
3 Smith -- Somerset Point Homeowners Association. I'm not
4 sure that they have a suit against me. I know I have a
5 suit against them, as a plaintiff. There were some filings
6 going back and forth that are of great subject matter right
7 now in litigation, and I'm not sure if they've dropped
8 their counterclaim or suit against me, but I do have -- I
9 am a plaintiff against them in an action. And whether
10 they've counterclaimed or not, I'm unaware of that right
11 now.

12 Q What are the facts that surround that litigation?

13 A You'll have to ask Rob Mathison on that.

14 Q Okay. Rob represents you?

15 A Yes.

16 Q What are your claims?

17 A Well, you'll have to ask Rob Mathison.

18 Q You don't know what your claims are? You don't
19 know why you're suing them?

20 A Well, I'll refer that to my attorney, Rob
21 Mathison.

22 Q Is it a contract or --

23 A I'll let Rob Mathison explain that. It's all in
24 the public records, so you're free to take a look at it.

25 Q Is Hilton Smith a person or is that the name of

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1 the --

2 A Hilton Smith is the individual who is the primary
3 developer in Somerset Point Subdivision. He's the
4 president of the HOA.

5 Q And is the person that is a party to this action
6 -- is it you, individually? Is it River City Developers --

7 A I believe Benjamin Gecy --

8 Q -- or is it real estate --

9 A -- is the plaintiff in that one.

10 Q Does Benjamin Gecy own real estate in that
11 association?

12 A Not any longer.

13 Q Did you at one time?

14 A Um-hum.

15 Q And is the litigation surrounding the real estate
16 and the association?

17 A Yes, it is.

18 Q Okay. How long has that case been going on?

19 A A couple years now.

20 Q Was it stayed in the bankruptcy?

21 A Absolutely.

22 Q Are there any other lawyers involved other than
23 Rob? Do you know?

24 A The defendant's lawyer is Mitch Griffith.

25 Q Okay.

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1 A Alysoun Eversole played a major role in the
2 initial filings on their side, and another attorney for
3 Mitch's firm -- I forget his firm. He picked it up after
4 Alysoun. And then another young attorney at Mitch
5 Griffith's firm handled it from there, and I think it's
6 kind of rolled over to Mitch's plate now, so --

7 Q Any other litigation that you've been sued for?

8 A I've had some foreclosures filed against me.

9 Q Okay. Anything else?

10 A I've had some unsecured creditors file suit that
11 were eliminated, because I had filed bankruptcy, and they
12 had interfered with the automatic stay, so I guess those
13 were maybe expunged or dismissed.

14 Q Explain that. I don't understand that. You had
15 creditors sue you that were -- and those claims were
16 extinguished in the bankruptcy?

17 A Well, when you file bankruptcy, there's what's
18 called an "automatic stay," that protects the debtor from
19 creditors harassing them and trying to collect on the debt.
20 I had one of my creditors file a suit against me after I
21 filed bankruptcy.

22 Q Okay.

23 A As soon as they were -- checked their mail or
24 were notified, they immediately dismissed the case.

25 Q Okay. So you've had debt collections that were

1 extinguished in bankruptcy, is what you're saying?

2 A Yes.

3 Q Okay. Did Jim Moss ever sue you?

4 A Yeah. Jim did file a complaint against me, which
5 we settled a few days later.

6 Q Okay. What was that about?

7 A I felt that Jim was a little unreasonable with
8 his fees, considering that he called me the day of the
9 trial and told me that they were picking the jury, and I
10 knew nothing about it. I was very -- very upset with the
11 way Jim had prepared for the case, and we ended up losing
12 that case, although I thought Jim did a pretty good job
13 with what he had. I just think that there was a lack of
14 preparation and, you know, I think it was totally
15 inconvenient for me to call me on a Monday, telling me
16 that I have trial, when I was in blue jeans in my office
17 and I needed to immediately get down there and help pick
18 the jury.

19 Q What case was that?

20 A That was the Carlos Alvarez case that we settled
21 on.

22 Q That case went to trial?

23 A Yes.

24 Q Was there a verdict?

25 A There was a verdict. And Judge Mullen allowed me

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1 to settle it to -- I guess she was going to -- the award
2 was too high, and she was going to make a decision to
3 reduce the award, and she gave me the opportunity, if I
4 wanted to settle it, that it would -- the way I understood
5 it, it would eliminate the verdict and the judgment.

6 Q What was the verdict?

7 A It was just unfair trade practices -- forty or
8 fifty thousand dollars.

9 Q Was it trebled after that?

10 A I don't think so.

11 Q So he sued you for unfair trade practices and got
12 a verdict?

13 A No. He got a breach of fiduciary duty.

14 Q Okay. And after the trial, there was a
15 settlement?

16 A Yes, there was.

17 Q And the settlement after the trial, you paid
18 \$30,000?

19 A That is correct.

20 Q Okay. And then Jim sued you for not paying his
21 bill?

22 A I believe that was his pleadings.

23 Q Okay. And then you guys settled that amongst
24 yourselves? No trial?

25 A Yeah, we--- we settled.

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1 Q Hence, the "wonderful Jim Moss?"

2 A Yeah. And now we're best friends again.

3 Q Okay. Have you ever sued anyone or -- are there
4 any other suits that people have sued you for that you
5 haven't told me about?

6 A No. Tom, I mean, I've had a hard bankruptcy for
7 the last year or year and a half, and I can't -- you know,
8 there's a lot of things that were happening, that the
9 bankruptcy played its role and stopped, and I was grateful
10 of that. So, I mean, there might be something else out
11 there that I can't recall. I know there's a -- you know, a
12 list down in the judicial index, or whatever you call it
13 down there, that would list all that, so I would just ask
14 you to refer to that.

15 Q Okay. Are there any cases --

16 A That's what all the cases are for.

17 Q -- that are not in Beaufort County?

18 A No.

19 Q Have you sued anyone?

20 A Obviously so.

21 Q Okay. Tell me the suits that you've brought.

22 A I've sued Re/Max and some owners of Re/Max a
23 while back. Jim Moss represented me in that case.

24 Q What was that for?

25 A What was that for? Slander. It was-a slander --

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1 libel case.

2 Q What were your allegations?

3 A The representatives of -- I actually sued Michael
4 Jordan, also. Michael Jordan and Re/Max, and, I believe,
5 representatives of Re/Max -- that they were defamating
6 (sic) me and slandering my name here locally.

7 Q Michael Jordan, the lawyer?

8 A The lawyer.

9 Q The one that's in prison?

10 A That's him.

11 Q Okay. And what was the result of that case?

12 A We did not win that case.

13 Q Was there a trial?

14 A There was a trial.

15 Q And who represented you in that case?

16 A Jim Moss, and he got paid on that case.

17 Q When was that?

18 A Probably two or three years from the Alvarez
19 case. I mean, it could have been -- that was after my --
20 ooh. We had a child that was aborted and I had to go to
21 trial right after that. That was about eight years ago.

22 Q Okay. Are there any other cases that you've sued
23 people on?

24 A I've sued Hilton Smith.

25 Q Okay. And that's pending?

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1 A That is pending. I've counterclaimed Normandy
2 Corporation in a foreclosure suit, which was during the
3 middle of my bankruptcy, I guess. Yeah. I guess I didn't
4 counterclaim them as an individual and maybe I -- maybe it
5 was just the company. I'm not sure. Rob wrote that
6 complaint, so I would ask you to refer to him.

7 Q Rob represents you in that case?

8 A It's over. We've settled that case.

9 Q Did he represent you in the case?

10 A Yes, he did.

11 Q Okay. And was that in state court?

12 A That is a state court action.

13 Q Okay.

14 A I'm suing Michael Cerrati and Bank of the Ozarks
15 in federal court currently. That's pending, getting ready
16 to go to trial.

17 Q Okay. Tell me about that.

18 A We've --

19 Q Is that the one you mentioned the other day on
20 the telephone --

21 A Yeah. Yeah.

22 Q -- conference?

23 A We've -- you know, during the bankruptcy, which,
24 you know, in all due respect to you -- I mean, you were
25 very concerned to not proceed in any manner with this case,

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1 as it was stayed, until it got restored, and I respected
2 that, because that is the law. Another attorney that's
3 licensed here did not take that same approach.

4 Q Are you saying it's Michael Cerrati?

5 A Yes. And he proceeded with a judicial action
6 to take property from me and -- counterclaims from me, and
7 some other personal items or claims that were mine,
8 individually, that we felt he didn't have the right to do
9 under the bankruptcy guidelines, under the automatic stay,
10 and under the discharge injunction. And we informed him of
11 that, and we informed the parties in the hearing of that,
12 and they continued to proceed with it, although I did not
13 want to go that route. I gave them more opportunities to
14 settle it, and they basically told me to fly a kite and
15 forced me to spend more monies on attorneys that I really
16 didn't have. And Mike Matthews accepted it and it's been
17 going on about five or six months now. We're getting ready
18 to go to trial over it.

19 Q Do you have a trial date?

20 A I think they're going to establish that February
21 11th. They've got some hearing here February 4th -- some
22 pretrial, and maybe that's just when the facts are due.
23 But there are pretrial motions are February 11th.

24 Q That's in bankruptcy court?

25 A That is in bankruptcy court.

1 Q And Mike Matthews represents you?

2 A Mike Matthews represents me, yeah.

3 Q Okay.

4 A The Bank of the Ozarks is the plaintiff and
5 Michael Cerrati.

6 Q Do you have other litigation pending with the
7 Bank of the Ozarks?

8 A I do have a state court action, which is a
9 counterclaim to a foreclosure they filed against River City
10 Real Estate on 13 acres and Benjamin Gecy, which they were
11 seeking a deficiency judgment, and that was the -- you
12 know, the violation that we allege was over that state
13 court action. I had counterclaims in that state court
14 action, and we felt that they wrongfully filed the motion
15 and interfered with some of my rights to due process, and
16 I'm just seeking relief in the courts for that.

17 Q Okay. Anything else that you can think of?

18 A Yeah. I filed a contempt of court against Mr.
19 Cerrati in the state court action, pro se. I don't know if
20 that's a suit or whatever, but --

21 Q That's in the same case or is that --

22 A That's in the same case, and that's in the state
23 court.

24 Q That's pending here in Beaufort County?

25 A Waiting to be heard.

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1 Q Okay.

2 A And I did that all by myself, believe it or not.

3 Q You're getting to be quite a lawyer.

4 A Who knows?

5 Q Are any of the foreclosures that you mentioned
6 still pending other than the Bank of the Ozarks' case?

7 A I don't think so.

8 Q What's the status of the Meridian Road -- or
9 Meredith Road property?

10 A I don't -- what do you mean "the status"?

11 Q Do you own it?

12 A Yeah.

13 Q Is it in foreclosure?

14 A I have not been served any foreclosure paperwork.

15 Q Do you know if a foreclosure's been filed?

16 A I do not.

17 Q Who's the -- who holds the mortgage on that?

18 A TD Bank.

19 Q Are you paying the mortgage payments?

20 A I have been, on and off; right now, I'm not
21 current on that mortgage.

22 Q Okay. Can you think of any other litigation that
23 we haven't talked about?

24 A I think that's enough. I can't think of anything
25 else.

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1 Q Okay.

2 A But if I do think of something else, I'll be glad
3 to supplement the question, or whatever the proper language
4 is for that. How do you actually do that, Tom, if there's
5 a --

6 Q You can just send me a letter telling me what --

7 A Okay. I do have the right to review the
8 deposition. If I see there's other things that need to be
9 added, I have a certain period of time to supplement that;
10 right?

11 Q Well, I believe the rules say you have a right to
12 read and sign, and it's not for purposes of adding things
13 that you didn't testify to or that you didn't say, but to
14 clarify maybe a clerical mistake or --

15 A Yeah.

16 Q -- misunderstanding from the typing portion.

17 A Okay.

18 Q Okay?

19 A Understood.

20 Q Let's talk about the case that's pending before
21 the court. You filed a complaint in the circuit court,
22 through Mr. Pendarvis, alleging certain causes of action,
23 and now you're representing yourself; right?

24 A Yes, I am.

25 Q Okay. What are the causes of action that you --

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1 have pending against SCB&T and Mr. and Mrs. Hamner?

2 A I'll let you refer to the document that I filed
3 there.

4 Q Okay. Well, you're the plaintiff and you're --

5 A That's right.

6 Q -- the person that brought the action, and I want
7 to know what your understanding is of the action that you
8 brought.

9 A Well, my understanding is illustrated in that
10 document, so I'm going to refer to that document.

11 Q Okay.

12 MR. HOLLOWAY: Would you mark that, please?

13 (WHEREUPON, a document was marked as
14 Defendant's Exhibit Number 1 to the Benjamin Gecy
15 Deposition.)

16 BY MR. HOLLOWAY:

17 Q I'm showing you what's been marked as Defendant's
18 Exhibit Number 1, if you want to take a moment to review
19 that, and tell me if you know what that document is.

20 A (Witness peruses document.) It looks like a
21 civil action cover sheet demanding a jury trial.

22 Q Okay.

23 A It's got "breach of contract" checked on it.

24 Q All right. Is that the lawsuit -- if you go
25 back in the pages, is that the action that you've brought

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1 against the defendants in this case that we are about --

2 A It looks like the summons and complaint.

3 Q And what are your allegations, Mr. Gecy, against
4 the parties in this case?

5 A The document says "tortious interference with
6 contract, breach of contract, civil conspiracy, negligent
7 misrepresentation, unfair trade practice."

8 Q Okay. What is it that you allege that these
9 defendants did? What is the conduct that you allege that
10 these defendants did to be responsible to you under these
11 causes of action in the complaint?

12 A I spent a lot of money with attorneys
13 illustrating that in that document, so I'm going to let
14 you read that and make your own determination on it.

15 Q Mr. Gecy, respectfully, I'm allowed to answer
16 (sic) the questions and you have to answer the questions to
17 the best of your ability. If you don't know the answer or
18 you can't describe what the causes of action are, what the
19 underlying facts are, you can say that you don't know or
20 you don't have an answer, but you have to answer the
21 questions.

22 A I can't accurately answer that question now based
23 on -- there is more production that I've requested, that I
24 have not received. So, once I receive that, I can give you
25 a better answer, a more accurate answer, as far as what I'm

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1 alleging there.

2 Q Well, you filed this complaint on April 15th of
3 2011.

4 A That's right.

5 Q On April 15th of 2011, you thought you had
6 sufficient information to file a verified complaint. If
7 you'll go to the back page, there's a verification on
8 there. Is that your signature?

9 A That is my signature.

10 Q And it says, "Personally appeared before me
11 Benjamin Gecy, who, first being duly sworn, says that he is
12 the plaintiff in the foregoing action, and that he has read
13 the verified complaint, that the statements contained
14 therein are true and to the best of his knowledge, except
15 as to those stated to be based on information and belief,
16 as to which, he believes those matters to be true." Did
17 you sign that?

18 A I did sign it.

19 Q And you swore to it?

20 A And I swore to it. And these documents here, and
21 the ones that are in here, speak for themselves. If you'd
22 like for me to read the entire document for the record, I'd
23 be glad to do that.

24 Q No. I want you to tell me, in your own words,
25 what you allege that these defendants did that gave rise to

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1 this lawsuit.

2 A I think that would be an attorney/client
3 privilege that Mr. Pendarvis and I were involved in.

4 Q I'm not asking you to tell --

5 A I don't have the answer for you.

6 Q I'm not asking you to tell me --

7 A I don't have an answer.

8 Q -- what you and Mr. Pendarvis talked about. I'm
9 asking you to tell me what it is that these defendants did
10 to you that gives rise to this lawsuit that you filed, and
11 that you swore, back in 2011, were true and accurate.

12 A I can't answer that right now.

13 Q Why not?

14 A I can't answer the question.

15 Q You don't know what the defendants did that gave
16 rise to this?

17 A No. I know what the defendants did.

18 Q Okay. Tell me.

19 A Which ones?

20 Q Tell me what the Hamners did that gave rise to
21 your causes of action.

22 A I believe the Hamners breached a contract that we
23 had on a piece of property and a construction agreement to
24 build a home.

25 Q Okay. And what were the breaches?

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1 A I've got an entire paragraph in there. Would you
2 like me to read it to you?

3 Q If you need to, you certainly can.

4 A Okay. Well, let's find out where that is.

5 Q You certainly can refer to the document at any
6 time.

7 A (Witness peruses document.) It looks like the
8 second cause of action, Defendants Jaime and Deborah Hamner
9 only, breach of contract.

10 "Gecy entered into a binding contract with the
11 Hamners, known as the agreement to buy and sell real estate
12 for 100 Meredith Lane.

13 "Gecy entered into a binding contract with the
14 Hamners, known as the new construction agreement for 10
15 Meredith Lane. Gecy fulfilled all necessary preconditions,
16 if any, of the contracts with the Hamners.

17 "The Hamners failed to perform and thereby
18 unjustifiably breached the agreement to buy and sell real
19 estate for 10 Meredith Lane. As a direct and proximate
20 result of the Hamners' breach of their contractual duties
21 by the actions and omissions as specified herein, Gecy
22 sustained actual, consequential, and incidental damages in
23 an amount to be determined by the jury at the trial of this
24 case."

25 Q Okay. Tell me how you believe the Hamners

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1 breached the agreement to buy and sell real estate for 10
2 Meredith Lane.

3 A I don't believe they performed their duties, as a
4 buyer, to the contract.

5 Q Okay. What were their duties?

6 A Would you like to provide me with the contract
7 and we can go over that?

8 Q We can do that. I want to know what you know
9 from your own memory. If you don't have any memory, you
10 can tell me, "I don't have any memory."

11 A Well, I mean, it's clearly written right there
12 what they do.

13 Q Tell me what you understand that they did to
14 breach the contract, as you just read it, under this cause
15 of action.

16 A The Hamners signed an agreement to buy property.
17 They did not buy it.

18 Q Okay. And what was the cause of them not buying
19 the property, under your understanding?

20 A Well, it's obvious that opinions vary on that.

21 Q What is your opinion? You brought this lawsuit.

22 A Yeah. I believe that they did not close because
23 of issues they had with their local bank.

24 Q The bank did not fund the application for
25 financing? Is that what you're saying?

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1 A Considering that I didn't think that the Hamners
2 had that amount of cash available, I think that's exactly
3 right.

4 Q Okay. And was financing that's approved by the
5 bank required under the contract that you had with them as
6 a contingency?

7 A The financing was a contingency.

8 Q So if the bank did not provide financing, how
9 were the Hamners in breach of contract?

10 A Well, that's -- that's the argument that we have
11 here.

12 Q I understand that's --

13 A Yeah.

14 Q -- that's an argument here, but what is your
15 answer? How do you allege that through a breach that the
16 financing contingency was not met?

17 A I believe the bank made false statements, did not
18 allow the contract to go through, or the closing to go
19 through.

20 Q Okay. What bank -- false statements do you
21 allege the bank made to --

22 A Requiring a road maintenance agreement in the
23 manner that they continued to impose on the transaction.

24 Q Okay. And what are the false statements that the
25 bank made regarding a road maintenance agreement that

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1 prohibited the transaction?

2 A The bank and Doug Jacobs, and possibly Bruce
3 Vanhorn, continued to inform me and the Hamners that they
4 needed a road maintenance agreement signed by all parties,
5 and I think that's a misrepresentation or a false
6 statement.

7 Q Okay. Why is it a misrepresentation? Why is it
8 false?

9 A Because that's not what the requirements are.

10 Q If the bank said that they required a road
11 maintenance agreement for the road, how would it be false
12 if that were --

13 A Because that's -- the loans that they were doing,
14 the guide -- that's not what the guidelines say.

15 Q Okay. Well, what if the bank had their own rule
16 that said, "We need a road maintenance agreement. Our
17 underwriting requires that." Would that be false?

18 A I would like to see those, and we've asked you
19 guys to produce those, and we haven't seen anything.

20 Q Do you have some sort of agreement with the bank
21 to provide -- did you have some sort of agreement with
22 SCB&T that they would unconditionally provide financing to
23 the Hamners under this contract?

24 A No. I have a commitment that the last remaining
25 item was a fully executed, signed road maintenance

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1 agreement by all parties, that Bruce and everyone had
2 agreed it could be in that closing condition.

3 Q Okay.

4 A I feel that that's a misrepresentation of the
5 road maintenance requirements for any loan.

6 Q Okay. Is there anything else that you feel is a
7 misrepresentation?

8 A Maybe the appraisal that Patrice Moody did.

9 Q Okay. Tell me about that.

10 A Well, I think considering that Patrice Moody
11 lived right next door to the property, she had a conflict
12 of interest on that property. And I don't know if that's
13 a misrepresentation, but I think she should have recused
14 herself, and I think the bank should have notified me, as
15 the seller, that it had been assigned -- and maybe they
16 picked her -- that my direct neighbor was doing my
17 appraisal.

18 Q Do you allege that you have a relationship with
19 SCB&T as a seller, under this contract, to be involved in
20 the transaction, to direct who does the appraisal, and
21 under what condition the appraisals are done?

22 A I think I have a right, as the seller, to order
23 the appraisal.

24 Q What is the right that you have as the seller?

25 A --That I'm allowed to appraise my property at any

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1 time.

2 Q I understand that. Are you alleging that you
3 have some rights to direct a lender in this transaction as
4 to what appraisal methods they use or what appraisal
5 persons they hire to appraise the property --

6 A No. I mean, I think I received --

7 Q -- on behalf of an applicant

8 A I think I received the, you know, authorization
9 and approval to order another appraisal on this
10 transaction.

11 Q Well, we'll get to that. I'm just asking you
12 what you understand. Do you believe that the bank is
13 obligated to you in any way to follow your request in their
14 appraisal practices and in their lending practices to an
15 applicant, such as the Hammers?

16 A Yeah, I think the appraiser -- I think the bank
17 does have a standard duty of care to me, as the seller,
18 absolutely, and to the contract -- for all parties involved
19 with the contract.

20 Q And what -- do you have authority for that?

21 A Authority for what?

22 Q For your position that the bank in this
23 transaction owes you a duty of care.

24 A I don't have any authority, I mean, if that's --
- 25 you know, they have it. The burden's on them.

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1 Q All right. So it's your position that the bank
2 misrepresented their need for a road maintenance agreement
3 and that's why this contract failed to close?

4 A I believe that's a major part of it.

5 Q Okay. Is there anything else?

6 A I'd have to refer back to the complaint and
7 review it and see what my other allegations are in there.

8 Q Okay. Well, if your allegations are that the
9 bank didn't allow this to close because of a road
10 maintenance agreement, how does that make Mr. Hamner
11 responsible to you if it was the bank that prevented the
12 closing before the contract expired?

13 A That's a good question. Maybe Mr. Hamner might
14 not be responsible here. Maybe it's the bank. Maybe Mr.
15 Hamner's got a cause of action against the bank.

16 Q And that would be for?

17 A Negligent misrepresentation and interference with
18 his contract.

19 Q Okay. How did the bank -- how did SCB&T
20 interfere with the contract?

21 A By improperly misrepresenting the road
22 maintenance requirements for that property and saying that
23 that was the last condition needed when it probably wasn't
24 the last condition.

25 Q Okay. Any other misrepresentations?

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1 A Not that I can think of, but I'll reserve the
2 right to let you know if they come to mind.

3 Q If it wasn't the last misrepresentation -- or the
4 last condition, what were the other conditions that you're
5 referring to?

6 A I'm not sure. Whatever conditions -- I mean, it
7 seemed like the subject of what was a problem here was the
8 road maintenance agreement. That's what the bank issued a
9 denial on, from what I've seen.

10 Q What about the appraisal? Did the appraisal --
11 was the bank satisfied with the appraisal?

12 A The bank was satisfied with the appraisal. Yes,
13 they were.

14 Q They were?

15 A (Witness nods head; no verbal response.)

16 Q Did you see the Patrice Moody appraisal?

17 A Yeah, I did.

18 Q And did you receive notice from someone that that
19 appraisal was deficient and not satisfactory for this loan
20 that was applied for?

21 A No, I didn't.

22 Q You didn't?

23 A No. All I got was the appraisal was okay, and if
24 I wanted to order a new appraisal and delay the closing
25 some more, we would allow you to do that. And I did that,

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1 and that appraisal was accepted by all the parties.

2 Q Doug Jacobs and/or Bruce Vanhorn didn't notify
3 you that the Patrice Moody appraisal was deficient and
4 would not satisfy the loan request in this matter?

5 A No, that's not what they notified me of.

6 Q What did they notify you?

7 A They notified me -- actually, I had to call them.
8 I checked on the appraisal, and I noted that my contract
9 was \$150,000 for the land. The appraiser, who I mentioned
10 in my email has a conflict of interest appraising my
11 property next door, appraised it at 115. Bruce had
12 informed me that it did appraise at the total number of
13 both contracts and it was okay; however, we are not going
14 to over-disburse the \$115,000 land value, which left
15 approximately \$35,000 left of my money. What was going to
16 happen with that is, it was going to be held to the end.

17 Although I was okay with that, I was concerned
18 that if Mr. Hamner fired me, my money would be held with
19 the bank in his account and I may have to hire litigation
20 or fight to get those monies funded to me if I couldn't
21 fulfill the construction side of things. And that was the
22 only concern. So it was really from a seller's side of
23 things, the concern, and the bank was prepared to close the
24 loan even with that appraisal.

25 Q But you were not?

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1 A So I was never notified that that appraisal was
2 not good enough.

3 Q You're saying that the bank was prepared to close
4 the loan for the Hamners under the Patrice Moody appraisal,
5 but you were not, because you didn't want to leave money on
6 the table?

7 A No, I didn't say that. I had a concern over it,
8 and I wanted Bruce to work out a different situation of how
9 I could fully get my monies up front for the land contract,
10 because that's what we signed. I did not care to have my
11 money at the end, but if push came to shove, I would agree
12 to that. But I thought, in all fairness, since a neighbor,
13 totally adjacent to my property, bashed my property,
14 created an unbiased appraisal -- or a biased appraisal, I
15 felt the value was higher. And Bruce allowed me to order a
16 new appraisal, and once I provided that, there was no other
17 discussions, as far as that appraisal not being
18 satisfactory.

19 Q You realize that there's emails going back and
20 forth as to this whole transaction?

21 A That's right. That's right.

22 MR. HOLLOWAY: Would you mark this, please?

23 (WHEREUPON, a document was marked as
24 Defendant's Exhibit Number 2 to the Benjamin Gecy
25 Deposition.)

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1 BY MR. HOLLOWAY:

2 Q I'm showing you what's been marked as Defendant's
3 Exhibit Number 2.

4 A (Witness peruses documents.) Okay.

5 Q Does that email accurately reflect the appraisal
6 issue that went back and forth between you and Bruce
7 Vanhorn?

8 A It does to a certain extent. This is before we
9 had our meeting with all the parties -- Jaime, Bruce and
10 Doug. And I ordered the appraisal through one of their
11 approved appraisers, and I submitted that at that meeting,
12 and they allowed that appraisal to --

13 Q That email does not provide that you are entitled
14 to go out and get your own appraisal, does it?

15 A But I did that, and they accepted that.

16 MR. HOLLOWAY: Mark that, please.

17 (WHEREUPON, a document was marked as
18 Defendant's Exhibit Number 3 to the Benjamin Gecy
19 Deposition.)

20 WITNESS: And if they hadn't accepted it, we
21 wouldn't have gone for another month saying that the
22 last condition to the loan was a properly executed
23 road maintenance agreement.

24 BY MR. HOLLOWAY:

25 Q March 9th, 2010, from you to Doug Jacobs. "Doug,

1 hopefully, Ms. Moody can adjust her report with the comps
2 provided. Please keep me posted. I did review the report
3 and feel that my property and plan was not given accurate
4 value. I believe another appraisal is warranted since the
5 value of the land was not met. I'm very aware that she has
6 the right to this opinion, and I respect that, but her
7 report does not work for the transaction between the buyer
8 and seller. Also, I need a copy -- the plan copy back, as
9 I am running out of copies. Defendant's Exhibit Number 3."
10 Is that accurate?

11 A That's accurate, but I will -- for the record,
12 her report did appraise the property for the complete
13 amount of the sales contract on the land and the
14 construction price, which was adequate for the closing.

15 Q Okay.

16 MR. HOLLOWAY: Mark this, please.

17 (WHEREUPON, a document was marked as --
18 Defendant's Exhibit Number 4 to the Benjamin Gecy
19 Deposition.)

20 BY MR. HOLLOWAY:

21 Q The bank did not accept that appraisal as
22 adequate, did they?

23 A No. I think they did.

24 Q Mr. Hamner did not accept that as adequate. The
25 purchase and sale contract for land was \$150,000. The

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1 Patrice Moody contract provided for -- her appraisal
2 provided for \$115,000, didn't it?

3 A I don't know that it's Mr. Hamner's decision to
4 make that. I mean, he had a complete appraisal that was
5 approximately 15, \$20,000 higher than his combined sales
6 price.

7 Q How many contracts were there?

8 A Two contracts.

9 Q Okay. And one was for \$150,000 for real estate;
10 correct?

11 A That's right.

12 Q And the other contract was for construction of a
13 home?

14 A That's right.

15 Q Two separate and distinct contracts?

16 A And there should have been two separate
17 appraisals, and that wasn't done. Now, the order that
18 came over from SCB&T asked for a land contract -- land
19 appraisal. Patrice Moody never did that. She did a
20 combined appraisal, appraising the land and the home
21 together, on a different report.

22 Q March 4th, 2010, 5:29 p.m., from Ben Gecy to
23 Bruce Vanhorn. "Bruce, I just spoke with Doug and I wanted
24 to get a breakdown confirmation of the \$150,000 lot
25 contract. I am expecting to receive \$150,000 for the title

1 to the land, and the remaining amount to be disbursed in
2 construction monies on the bank draw basis. Please give me
3 a call to discuss."

4 This was Bruce's reply, March 5th. "Ben, We
5 can only disburse \$115,000 for the lot portion of the
6 transaction at closing because that's the amount of the
7 appraised value; otherwise, we would be overdisbursing for
8 the land and the loan in general at closing. We already
9 are funding almost 100 percent of the construction loan, so
10 we certainly can't overdisburse the closing.

11 "Based on what has happened with banks the last
12 two years, and also in our portfolio locally, I cannot
13 authorize an overdisbursement on the construction loan."
14 Do you see that?

15 A Did you miss the part "we are okay with getting
16 another appraisal done"?

17 Q That's not on Exhibit 4.

18 A Okay. That doesn't tell me that they're
19 rejecting the appraisal. It tells me that he's going to
20 move forward, disburse \$115,000, and then save the
21 reserves, which is what was agreed, and disburse that at
22 the end so that there would be no overdisbursement.

23 Q Mr. Gecy, what makes you think that you have an
24 agreement with the bank for anything? Mr. Hamner is the
25 borrower, not you.

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1 A The bank is -- the bank is a party to the
2 contract. You know, they're providing financing. That
3 statement right there only tells me that they're going to
4 fund \$115,000. There's a total contract price of
5 approximately 307,000. So when they get to the end,
6 they're going to have \$35,000 left over, and when the
7 project is complete, they're going to release the remaining
8 funds.

9 And that's exactly what Bruce and I discussed,
10 and that's how banks operate in that particular situation.
11 I thought the appraisal was unfair, not because of the
12 value, but because of the person who did it next door, and
13 I thought there was -- it was a biased appraisal. And I
14 deserved, as a seller, to have somebody that was a
15 disinterested third party, not living next door, appraise
16 my land.

17 Q And you hired someone to go appraise the
18 property; correct?

19 A I did, after Bruce allowed me to do that.

20 Q Ben, if you are willing to pay for the appraisal
21 and delay the closing some more, then we are okay with
22 getting another appraisal done, and we will have one of our
23 approved appraisers do it.

24 A Okay. Murray Steen is one of their approved
25 appraisers.

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1 Q You never went through the bank -- through their
2 processes. You just went and got your own appraisal and
3 gave it to the bank?

4 A That's right. And the bank accepted that and
5 they never denied that appraisal.

6 Q What do you have in all those papers in front of
7 us, in all of your records, that --

8 A What do you have?

9 Q -- says the bank accepted the Steen appraisal as
10 part of their process?

11 A I have the statements for the last 30 days that
12 say that that was accepted by saying that the road
13 maintenance agreement was the only condition. If they had
14 rejected the appraisal, they would have obviously said that
15 the appraisal -- they wouldn't have gone forward with that
16 and they would have denied it. And the denial that I got
17 right around that period of time wasn't a rejection for the
18 appraisal. It was a rejection for the road maintenance
19 agreement.

20 Q Mr. Gecy, you weren't denied anything. You
21 weren't a party to the application.

22 A The denial that I received on behalf of the buyer
23 said he was rejected for not having a valid road
24 maintenance agreement, not because of the appraisal.

25 Q Okay.

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1 A The appraisal was never rejected to me, to Ken
2 Tootle, to anyone else. They were moving forward with
3 that.

4 Q All right.

5 A And they accepted the Murray Steen appraisal, and
6 that's what they were going off of. If we were to provide
7 their misrepresentations of the road maintenance agreement
8 and have it closed, they were going to fund the \$150,000 as
9 agreed to in the contract.

10 Q Do you have any writing to support that position
11 -- any piece of writing from the bank that supports that
12 position?

13 A I don't know. Do I? In the production I've
14 provided, is it in there?

15 Q I've seen not one piece of paper that says that.

16 A Okay. I'll be glad to review all of the emails
17 and production that I've produced and see if I can find
18 that in there.

19 Q Okay. Let's talk about the road maintenance
20 agreement. You understand that that was a condition of
21 financing from the bank to the Hamners; correct?

22 A I don't know that that was a condition. I mean,
23 they said it was, and that's part of the reason for my
24 complaint.

25 Q Okay.

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