

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

RECEIVED
SEP 22 2016
S.C. SUPREME COURT

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Petitioners,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

APPENDIX: VOLUME II

John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
(803) 324-8100
Attorney for Petitioners

Other Counsel of Record:
S. Sterling Laney, III
Matthew Todd Carroll
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, SC 29601

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

RECEIVED
APR 06 2015
SC Court of Appeals

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Cross-Defendant.

RECORD ON APPEAL:
VOLUME II

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
Attorney for Appellants

S. Sterling Laney, III
Hugh M. Claytor
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, SC 29601
864 255-5417
Attorneys for Respondent

RECEIPT, AGENT CERTIFICATION AND CANCELLATION PAGE

Purchaser Receipt

Important: Read Carefully

Name of subdivision: **EDGEWATER**

OILSR Number:

Date of Report: **3/24/08**

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received By:

Date:

Street Address:

City: State: Zip Code:

If any representations are made to you which are contrary to those in this Report, please notify the:
Office of Interstate Land Sales Registration
HUD Building, 451 Seventh Street, S.W.
Washington, D.C. 20410

Agent Certification

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot: Block: Section:

Name of salesperson:

Signature:

Date:

Purchase Cancellation

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of subdivision: **EDGEWATER**

Date of contract:

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature Date

RECEIPT, AGENT CERTIFICATION AND CANCELLATION PAGE

Purchaser Receipt

Important: Read Carefully

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Name of subdivision: EDGEWATER

Date of contract:

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature Date

HUD APPROVED RESCISSION PROCESS

Within thirty (30) days of the date of this letter you must notify Craft's Edgewater Settlement Administrator in writing via certified mail if you would like to rescind your purchase contract.

Within eighty (80) days from the date of this letter Craft Development, LLC ("Craft") will determine the economic feasibility of repurchasing lots based on the number of lot owners that request rescission.

You will be notified by Craft in writing within twenty-one (21) days of its completion of the results of the economic feasibility study as they pertain to your request for rescission.

If Craft determines that it is economically feasible to repurchase your lot and return the entire lot purchase price to you, less any previously paid cash payment Craft escrowed for prepaid interest or previously paid financing incentives paid at closing by Craft, Craft will coordinate the transfer of the property with you. This transfer will occur within thirty (30) days of the completion of the economic feasibility study. This option will require you to execute a General Warranty Deed transferring the property back to Craft as well as pay any outstanding taxes, homeowner's association assessments and loans on the property at the time of the transfer to insure Craft will take fee simple title to the property free and clear of liens or other encumbrances.

If Craft determines that it is NOT economically feasible to repurchase your lot, you will be given immediate notice of such determination and be required to inform Craft, in writing, within fourteen (14) days of which of the following options you elect to utilize:

- a. Craft Development will market the lot at the original purchase price. The lot will be placed for sale for at least three hundred sixty-five (365) days. Upon resale of the lot, the entire resale price, less any previously paid cash payment Craft escrowed for prepaid interest or previously paid financing incentives paid at closing by Craft will be remitted to you, the original purchaser. No real estate commissions, closing costs, or fees of any kind for the resale of the property will be deducted from the refunded amount except in the event that an unaffiliated co-broker brings a purchaser, in which event, a commission of not more than 5% of the purchase price may be deducted from the sale proceeds and paid to the unrelated co-broker; or
- b. Craft will market the lot at a price stipulated or agreed upon by you, the original purchaser. The lot will be placed for sale for up to three hundred sixty-five (365) days. If upon resale of the lot, the resale price is less than the original purchase price minus any previously paid funds held in escrow for prepaid interest or previously paid financing incentives paid at closing by Craft, then you will

receive the entire resale purchase price and the previously paid interest and incentives will not be deducted from the amount you receive. No real estate commissions, closing costs, or fees of any kind for the resale of the property will be deducted except in the event that an unaffiliated co-broker brings a purchaser, in which event, a commission of not more than 5% of the purchase price may be deducted from the sale proceeds and paid to the unrelated co-broker.

If the lot does not sell after three hundred sixty-five (365) days on the market, Craft will buy back the lot upon delivery by the owner of a general warranty deed conveying clear title. This will require all taxes, homeowner's association assessments and loans on the property to be paid in full prior to the delivery of the deed to insure Craft will take title to the property free and clear of liens or other encumbrances. Craft will execute a purchase money promissory note to you in the amount of the original purchase price, less any cash payment from Craft escrowed for prepaid interest or financing incentives paid at closing by Craft. The note will provide that it will be paid in full within twenty-four (24) months from its date and will be secured by a first lien purchase money mortgage.

Purchasers who elect to rescind their purchase contracts, may elect to stay in Edgewater's homeowners association and use the amenities at the Edgewater subdivision until they receive full payment from Craft, provided the purchaser remains in good financial standing with Edgewater's homeowners association. Purchasers who elect to rescind may also elect to withdraw, at no charge, from the homeowners association and stop using subdivision amenities.

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley
Corey M. Ayer
John F. Fisher
Judith Carlson Fisher
Lisa Lee Smith
Ryan M. Wingard
A. Janelle Dooley

*American Board of Trial Advocates
*Certified Circuit Court Mediator



DAVIS, FRAWLEY, ANDERSON,
MCCAULEY, AYER,
FISHER & SMITH, LLC

ATTORNEYS AND COUNSELORS AT LAW

Ryan@oldcourthouse.com

February 8, 2011

W. L. Loomis
Robert K. Boudright
George S. Nicholson, Jr.

Francis G. Jones
(1919 - 1963)

Hubert E. Long
(1921 - 2004)

Since 1961

Mr. & Mrs. Ronald Pappas
P. O. Box 79354
Charlotte, NC 28271

Re: Edgewater Settlement Administrator Package

Dear Mr. & Mrs. Pappas:

I am writing you in regard to a letter and package you received from the Edgewater Settlement Administrator. In that package you were notified of Craft Development, LLC's violation of the Interstate Land Sales Act ("ILSA") and its "Settlement" with the Department of Housing and Urban Development ("HUD").

The Settlement Agreement posted on HUD's website conflicts in some respects with the Administrator's Letter and the process reflected in Exhibit B of the Administrator's package. Our firm contacted HUD and obtained a copy of a "Modified Settlement Agreement", which is enclosed with this letter for your further review and information.

If you are receiving this letter from this firm, you have made some inquiry to our firm about legal services in this matter. Many of you have asked important questions regarding the possible remedies described in the Administrator's letter. Our firm is willing to engage in your representation on this matter as described in this letter and in the enclosed "Legal Services Engagement and Fee Agreement". However, before our firm can represent you, we need a written fee agreement to be sure you understand the scope of our representation and the fee agreement terms.

At this point, we do not know whether Craft, assuming you choose to rescind, has the assets to repurchase your property, nor do we know how long this process may take. By the very terms of Exhibit B of the package, the process to rescind may take up to three (3) years to materialize.

A lot of time will need to be spent on this matter until everyone's lot is repurchased, if that is the ultimate outcome. Much of the time we spend will benefit everyone as a group; however, we will need to spend time on each individual file as well. In the past, our firm has worked on other issues involving Edgewater on a collective basis. This allowed everyone to share the benefits of legal representation, but they only paid for a small portion of the total bill.

Old Courthouse Place | 140 East Main Street | Post Office Box 489 | Lexington, South Carolina 29071-0489 | Telephone: (803) 369-2612 | Facsimile: (803) 369-7478 | www.oldcourthouse.com

Our firm's proposed representation in this matter consists of a two part modified contingency fee for work on your personal situation, with a shared hourly rate based fee for work on group or common issues. In other words, after each similarly situated Client signs our "Legal Services Engagement and Fee Agreement", work we do that benefits the group will be split equally among all members of our group of Clients. This will keep everyone's cost as low as possible and reduce duplicate billing. The "Group" fees will be based upon hourly rates, plus costs and will be billed monthly. In addition to the hourly work for the group, our firm will work on everyone's individual claim based on a contingency fee plus cost. Our firm's modified contingency fee will be 15% of the amount each lot owner recovers from Craft. We believe this fee arrangement will be the most efficient for each individual and for the group because any work that we do that benefits the group will be split among everyone while any individual work will be based on a contingency fee, which means if the owner does not collect, then no additional money is owed for our representation on the individual matters.

Enclosed please find our firm's "Legal Services Engagement and Fee Agreement" and a form to use to document to our firm your decision concerning the election of whether you wish to rescind your purchase of a Lot in Edgewater based on the process set forth in the Administrator's Letter and Package and HUD's Modified Settlement Agreement. If you choose to hire our firm, please elect your remedy and sign each form and then return the signed forms to me as soon as possible. Once we receive your signed fee agreement and form electing your remedy, we will notify Edgewater's Settlement Administrator of your election.

This is a time sensitive matter, so please send the forms back to me by February 16, 2011. Also, if you choose to not hire our firm, please note that the Administrator's Letter and HUD's Modified Settlement Agreement gives you thirty (30) days from the date on the letter (January 28, 2011 - according to the Letters we have seen at this time) to notify Edgewater's Settlement Administrator of your election.

Additionally, when our firm represents a group such as this, a potential for conflicts of interest may arise. One such conflict could be a situation where Craft may repurchase or settle with one lot owner before another lot owner. Furthermore, when our firm represents a group of clients in common representation, everyone needs to know some of the advantages of group representation as well as the risks. Our firm has worked on different issues involving Edgewater for almost 2 years, so we are familiar with the Development. Also, when we represent a group like this another benefit is shared legal cost for work that benefits the group as well as a reduced contingency fee based on the volume of work. If each Client has separate legal representation then they may incur additional cost associated with their representation that cannot be split among a group. One risk of common group representation is that the attorney client privilege is common to the group and does not attach between counsel and an individual client to the exclusion of other clients with common representation. Information obtained that is material to the representation of the group will be disclosed within the group. If any clients in our group become adverse to any other clients in our group, our firm could be required to cease representation of all clients in the group and information obtained during the common representation would not be privileged. By your decision to join our group of clients, you are agreeing to waive any potential conflicts of interest with other clients in our group and you

March 19, 2011

Wells Fargo Bank, N. A.
P.O. Box 4233
Portland, Oregon 97208-4233

Wells Fargo Servicing Center
Home Equity Payment Processing
MAC B6955-01B
P.O. Box 31557
Billings, MT 59107-1557

Re: Loan Number
Ronald and Camine Pappas

To Whom It May Concern:

Enclosed is information pertaining to the above-mentioned loan and property relative to a violation and settlement action involving HUD and the original developer and seller of the property/community. Please review this in its entirety as it affects the current relationship between you and us.

As you can see in the document from the settlement administrator and HUD, the developer/seller of the property violated HUD requirements to provide pertinent information relative to the property and the offering to sell the property. HUD required the developer to disclose this information to all 321 of the buyers in the community in an agreement with the developer in 2008. The developer did not. In December 2010, we received the enclosed information from the settlement administrator and only then did we learn about the violations and the agreements with HUD of 2008 and 2010.

In this transaction, we relied on the Wachovia's/Wells endorsement and due diligence to support the values of this community by their participation as a preferred lender in this community and their support of the developer's program. Wachovia/Wells chose the appraiser and additionally provided special first year financing to entice buyers to close these loans.

We requested a copy of the appraisal before and at the closing. We were told that the loan was supported by the appraisal. Your loan officer, and the closing agent also told us, that the appraisal would be forwarded to us after closing. It was not. Not providing this at or before closing is a violation of RESPA.

Wells Fargo Bank, N. A.
P.O. Box 4233
Portland, Oregon 97208-4233

Wells Fargo Servicing Center
Home Equity Payment Processing
MAC B6955-01B
P.O. Box 31557
Billings, MT 59107-1557

March 19, 2011,
Page 2.

By circumstance we have recently been able to review some of the appraisals from some of the other transactions in this community, most of which were Wachovia/Wells providers. Some of the comparables were from properties as much as 40 miles away. These are not supporting comparables.

In recent telephone conversations with some of your solutions team members as a result of letters received by us from you and calls initiated by us, we outlined this issue and were promised that we would receive a return phone call to discuss the matter. No one has called to discuss the matter. The only calls that we have received are calls to demand payment, or calls that leave "empty" voice messages. Our phone records can verify these calls.

We are demanding a resolution of this issue. We are firm in our belief that not only did Wachovia/Wells violate several lending law requirements, but also did not appropriately follow stipulated lending guidelines and requirements.

Please contact us in writing at your earliest opportunity. Our mailing address is P.O. Box 79354, Charlotte, NC 28271.

Ronald P. Pappas

Cc: Gerald Mc Naught, esq.

[Track & Confirm](#)[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: EG55 4676 478U S
Guaranteed Delivery Date/Time: March 24, 2011, 12:00 PM
Class: Express Mail®
Status: Delivered

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Your item was delivered at 5:01 am on March 24, 2011 in PORTLAND, OR 97208 to WELLSFARGO BEAV EXP. The item was signed for by G HEFJN.

Detailed Results:

- Delivered, March 24, 2011, 5:01 am, PORTLAND, OR 97208
- Notice Left (No Authorized Recipient Available), March 24, 2011, 2:36 am, PORTLAND, OR 97208
- Arrival at Post Office, March 24, 2011, 2:36 am, PORTLAND, OR 97208
- Processed through Sort Facility, March 23, 2011, 11:49 pm, PORTLAND, OR 97238
- Processed through Sort Facility, March 23, 2011, 3:11 pm, SEATTLE, WA 98168
- Acceptance, March 23, 2011, 11:28 am, ISSAQUAH, WA 98027

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email.

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UNITED STATES POSTAL SERVICE

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PO ZIP Code 98027	Day of Delivery Next ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th ☐ 6th ☐ 7th ☐ 8th ☐ 9th ☐ 10th ☐ 11th ☐ 12th ☐ 13th ☐ 14th ☐ 15th ☐ 16th ☐ 17th ☐ 18th ☐ 19th ☐ 20th ☐ 21st ☐ 22nd ☐ 23rd ☐ 24th ☐ 25th ☐ 26th ☐ 27th ☐ 28th ☐ 29th ☐ 30th ☐ 31st	Postage \$ 18.30
Date Accepted 03-23-11	Scheduled Date of Delivery Month 03 Day 24	Return Receipt Fee \$
Time Accepted 11:20	Scheduled Time of Delivery Morning ☒ Noon ☐ 1 PM ☐ 2 PM ☐ 3 PM ☐ 4 PM ☐ 5 PM ☐ 6 PM ☐ 7 PM ☐ 8 PM ☐ 9 PM ☐ 10 PM ☐ 11 PM	Insurance Fee \$
Flat Rate ☐ or Weight ☐	Int'l Alpha Country Code	Acceptance Emp. Initials AK

FROM: (PLEASE PRINT) PHONE: **704 942 7188**
RONALD A. DAPPAS
P.O. Box 79354
CHARLOTTE, NC 28271

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Post Office To Addressee

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Mo. Day			
Delivery Attempt	Time	☐ AM ☐ PM	Employee Signature
Mo. Day			
Delivery Date	Time	☐ AM ☐ PM	Employee Signature
Mo. Day			

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Express Mail Corporate Acct. No. ☐

Federal Agency Acct. No. or
 Postal Service Acct. No.

TO: (PLEASE PRINT) PHONE ()

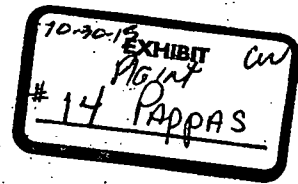
WELLS FARGO BANK, N.A.
P.O. Box 4233
PORTLAND, OREGON

ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES)

9 7 2 0 8 + 4 2 3 3

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

PIGMAN APPRAISAL GROUP
P.O. BOX 430
FORT MILL, SC 29716
803-396-8787



May 10, 2006

WACHOVIA BANK, NA
300 FIDELITY PLAZA
NORTH BRUNSWICK, NJ
08905

Property - LOT 311 EDGEWATER
LANCASTER, SC 29720
Borrower - RONALD PAPPAS
File No. -
Case No. -

Dear Wachovia Bank, NA:

In accordance with your request, I have personally inspected, made a Complete Appraisal, and prepared a Summary Appraisal Report of the real property located at LOT 311 EDGEWATER, LANCASTER, SC.

The purpose of the Summary Appraisal is to provide an opinion of the market value of the property described in the body of this report.

Enclosed, please find the Summary Appraisal which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data, led the appraiser to the conclusion that the market value, as of May 10, 2006 is :

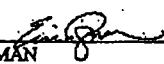
\$230,000

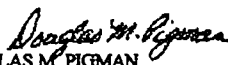
The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

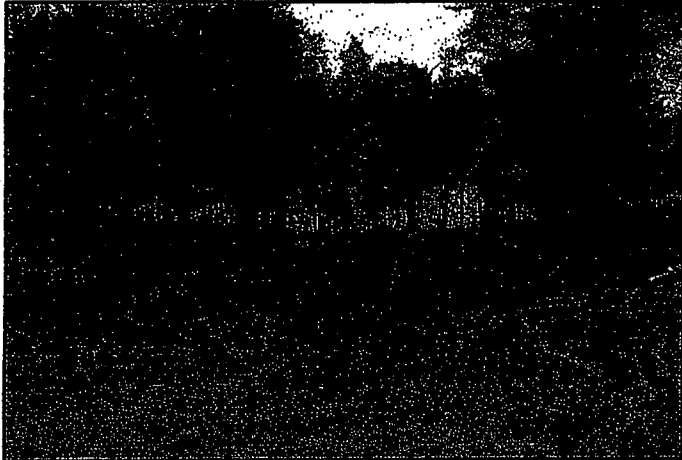
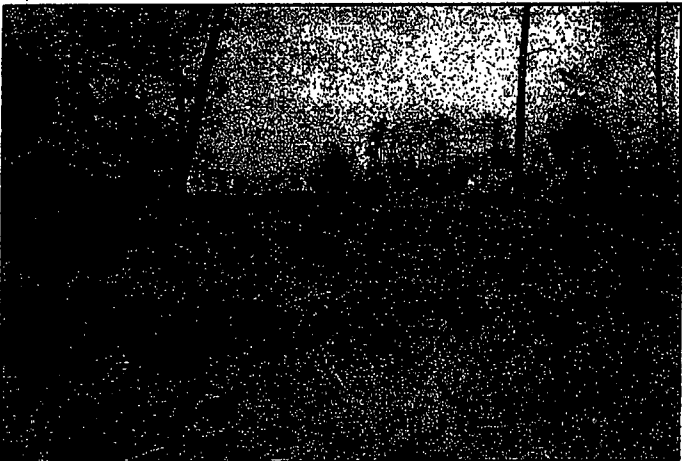
It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

Respectfully submitted,

PIGMAN APPRAISAL GROUP


ERIC J. PIGMAN
SC License #AA 4714


DOUGLAS M. PIGMAN
SC License #L3076

PHOTOGRAPH ADDENDUM				File No.
Borrower or Owner RONALD PAPPAS				
Property Address LOT 311 EDGEWATER				
City	LANCASTER	County	LANCASTER	State SC
Zip Code				29720
Lender or Client WACHOVIA BANK NA				
		FRONT VIEW OF SUBJECT PROPERTY		
		REAR VIEW OF SUBJECT PROPERTY		
		STREET SCENE OF SUBJECT PROPERTY		

PIGMAN APPRAISAL GROUP

Complete Appraisal Analysis - Summary Appraisal Report

LAND APPRAISAL REPORT

File No.

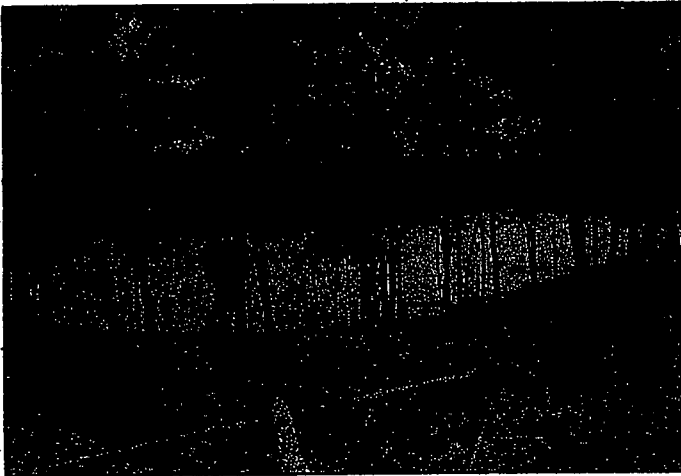
Circle No. 0107.00 Map Reference LOT 311

IDENTIFICATION	Broker RONALD PAPPAS		Circle No. 0107.00		Map Reference LOT 311																																																																																	
	Property Address LOT 311 EDGEWATER		County LANCASTER		State SC																																																																																	
	City LANCASTER		Zip Code 29720																																																																																			
	Legal Description DEED BOOK 259, PAGE 110; PLAT 2004-600																																																																																					
NEIGHBORHOOD	Sale Price \$ 229,000		Date of Sale 3/29/2006		Loan Term N/A																																																																																	
	Actual Real Estate Taxes N/A-NEW		(4) Loan charges to be paid by seller N/A		Other easements N/A																																																																																	
	Lender/Client WACHOVIA BANK, NA		Address 300 FIDELITY PLAZA, NORTH BRUNSWICK, NJ 08905																																																																																			
	Occupant VACANT		Appraiser E. PIGMAN		Instructions to Appraiser APPRAISE 1 TRACT OF VACANT LAND																																																																																	
	AT MARKET VALUE																																																																																					
	Location		☐ Urban ☐ Suburban ☐ Rural		☐ Good ☐ Avg. ☐ Fair ☐ Poor																																																																																	
	Build Up		☐ Over 75% ☐ 25% to 75% ☐ Under 25%		☐ Employment Stability ☐ Convenience to Employment ☐ Convenience to Shopping ☐ Convenience to Schools ☐ Adequacy of Public Transportation ☐ Recreational Facilities ☐ Adequacy of Utilities ☐ Property Compatibility ☐ Protection from Detrimental Conditions ☐ Police and Fire Protection ☐ General Appearance of Properties ☐ Appeal to Market																																																																																	
	Growth Rate		☐ Rapid ☐ Steady ☐ Declining																																																																																			
	Property Values		☐ Increasing ☐ Stable ☐ Over 6 Mths																																																																																			
	Demand/Supply		☐ Shortage ☐ In Balance ☐ Over 6 Mths																																																																																			
SITE	Marketing Time		☐ Under 3 Mths ☐ 4-6 Mths																																																																																			
	Present Land Use		☐ % 1 Farm ☐ % 2-4 Farm ☐ % Apts ☐ % Condo ☐ % Commercial																																																																																			
	Change in Present Land Use		☐ % Industrial ☐ 100% Vacant ☐ Not Used ☐ Used ()																																																																																			
	Predominant Occupancy		☐ From VACANT ☐ Owner ☐ Tenant																																																																																			
	Single Family Price Range		☐ \$ N/A to ☐ \$ N/A ☐ Predominant Value ☐ N/A																																																																																			
	Single Family Age		☐ N/A to ☐ N/A ☐ Predominant Age ☐ N/A																																																																																			
	Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, noise) THE EDGEWATER SUBDIVISION IS LOCATED ON 3400 ACRE FISHING CREEK RESERVOIR. NO FACTORS NEGATIVELY AFFECTING THE VALUE OF THE SUBJECT WERE OBSERVED ON THE DATE OF THE INSPECTION.																																																																																					
	Dimensions SEE PLAT = 0.576 ACRES +/-																																																																																					
	Zoning Classification PDD-PLANNED DEVELOPMENT DISTRICT																																																																																					
	MARKET DATA ANALYSIS	Highest and best use		☐ Present use ☒ Other (specify) SINGLE FAMILY HOME		☒ Present improvements ☐ do not conform to zoning regulations																																																																																
Public		☒ Street Access ☐ Surface DIRT - See Comment ☒ Maintenance ☐ Storm Sewer ☐ Sidewalk		☐ Private ☐ Private ☐ Private ☐ Private ☐ Private																																																																																		
Gas		☒ Street Access ☐ Surface DIRT - See Comment ☒ Maintenance ☐ Storm Sewer ☐ Sidewalk		☐ Private ☐ Private ☐ Private ☐ Private ☐ Private																																																																																		
Water		☒ Street Access ☐ Surface DIRT - See Comment ☒ Maintenance ☐ Storm Sewer ☐ Sidewalk		☐ Private ☐ Private ☐ Private ☐ Private ☐ Private																																																																																		
San. Sewer		☒ Street Access ☐ Surface DIRT - See Comment ☒ Maintenance ☐ Storm Sewer ☐ Sidewalk		☐ Private ☐ Private ☐ Private ☐ Private ☐ Private																																																																																		
Underground Elec. & Tel.		☒ Street Access ☐ Surface DIRT - See Comment ☒ Maintenance ☐ Storm Sewer ☐ Sidewalk		☐ Private ☐ Private ☐ Private ☐ Private ☐ Private																																																																																		
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RECONCILIATION	Drainage		☒ Public ☐ Private		☐ Public ☐ Private																																																																																	
	Is the property located in a HUD identified Special Flood Hazard Area?		☒ No ☐ Yes																																																																																			
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*** See Additional Comments ***																																																																																						
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Final Reconciliation: BASED ON THE QUALITY AND QUANTITY OF THE INFORMATION GATHERED FOR THIS REPORT, THE FINAL OPINION OF MARKET VALUE IS BASED ON THE SALES COMPARISON APPROACH. THE COST AND INCOME APPROACHES TO VALUE ARE INAPPLICABLE AND THEREFORE NOT USED.																																																																																						
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Appraiser(s)		Review Appraiser (if applicable)																																																																																				
Signature		Signature																																																																																				
Name ERIC J. PIGMAN		Name DOUGLAS M. PIGMAN																																																																																				
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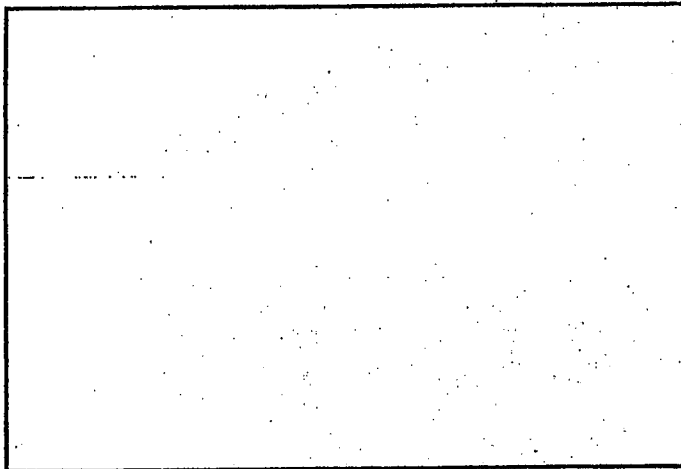
PIGMAN APPRAISAL GROUP

PHOTOGRAPH ADDENDUM

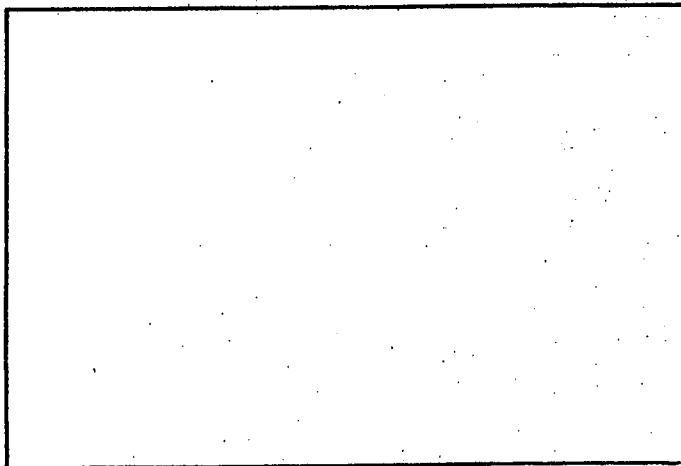
Borrower or Owner **RONALD PAPPAS**
Property Address **LOT 311 EDGEWATER**
City **LANCASTER** County **LANCASTER** State **SC**
Lender or Client **WACHOVIA BANK, NA**

Zip Code **29720**

**LOT 311 EDGEWATER
WATER VIEW**



**1047 J.W. WILSON ROAD
WORKSHOP**



File No.
ADDITIONAL COMMENTS

Escrower or Owner RONALD PAPPAS				
Property Address LOT 311 EDGEWATER				
City LANCASTER	County LANCASTER	State SC	Zip Code 29720	
Lender or Client WACHOVIA BANK NA				

Scope of the Appraisal

THE PURPOSE OF THIS REPORT IS TO PROVIDE THE REFERENCED CLIENT (IDENTIFIED AS THE INTENDED USER) WITH AN OPINION OF THE MARKET VALUE OF THE PROPERTY BEING APPRAISED. THE INTENDED USE OF THIS REPORT IS TO ASSIST THE INTENDED USER IN EVALUATING THE SUBJECT PROPERTY AS COLLATERAL IN A REAL ESTATE LENDING TRANSACTION.

THIS OPINION IS BASED ON A REASONABLE MARKETING AND EXPOSURE TIME OF 3 - 6 MONTHS. TO DEVELOP THIS OPINION, THE APPRAISER HAS MADE A PERSONAL INSPECTION OF THE INTERIOR AND EXTERIOR OF THE SUBJECT PROPERTY, AS WELL AS AN EXTERIOR INSPECTION OF ALL COMPARABLE SALES USED IN THIS REPORT. THE SUBJECT IMPROVEMENTS WERE MEASURED BY THE APPRAISER, AND SUFFICIENT DIGITAL PHOTOGRAPHS WERE TAKEN TO ADEQUATELY CHARACTERIZE THE PROPERTY BEING APPRAISED, AS WELL AS THE COMPARABLE SALES. THE SUBJECT NEIGHBORHOOD WAS ALSO INSPECTED DURING THE SELECTION OF COMPARABLE SALES.

Legal

LEGAL DATA USED IN THIS REPORT IS TAKEN FROM THE PUBLIC RECORD IN THE CLERK OF COURT (DEED AND PLAT), TAX ASSESSOR (PROPERTY RECORD CARD) AND TAX COLLECTOR (TAXES) OFFICES IN THE COUNTY COURTHOUSE. THESE SOURCES ARE CONSIDERED BY THE APPRAISER TO BE RELIABLE.

Neighborhood

THE EDGEWATER SUBDIVISION IS BEING DEVELOPED BY MONROE, NC BASED COMPANY, CRAFT DEVELOPMENT. THE MASTER PLAN OF THE SUBDIVISION INCLUDES 16,499 HOMES. THE FIRST PHASE OF THE SUBDIVISION IS UNDER WAY WITH WATERFRONT LOTS FRONTING ON FISHING CREEK RESERVOIR, AS WELL AS SMALLER INTERIOR WATERVIEW AND NON WATERVIEW LOTS. WORLD RENOWNED GOLF COURSE DESIGNER PETE DYE HAS SIGNED A LETTER OF INTENT TO DEVELOP AND 18 HOLE GOLF COURSE ON PART OF THE PROPERTY, WITH SOME HOLES OVERLOOKING THE LAKE. THE PLAN ALSO HAS A CLUBHOUSE, COMMUNITY POOL, AND COMMUNITY MARINA SLATED FOR FUTURE DEVELOPMENT.

NO HOME CONSTRUCTION HAS STARTED AS OF THE DATE OF INSPECTION. THE INFORMATION GIVEN IN THE NEIGHBORHOOD SECTION I.E. SGL FAM PRICE RANGE AND SINGLE FAMILY AGE ARE NOT APPLICABLE AT THIS TIME AS NO HOMES HAVE BEEN BUILT OR SOLD YET.

Site

ZONING INFORMATION WAS PROVIDED TO THE APPRAISER BY THE LOCAL PLANNING AND ZONING OFFICE.

THE SITE DIMENSIONS ARE FROM A PLAT OF THE SUBJECT TAKEN FROM THE PUBLIC RECORD.

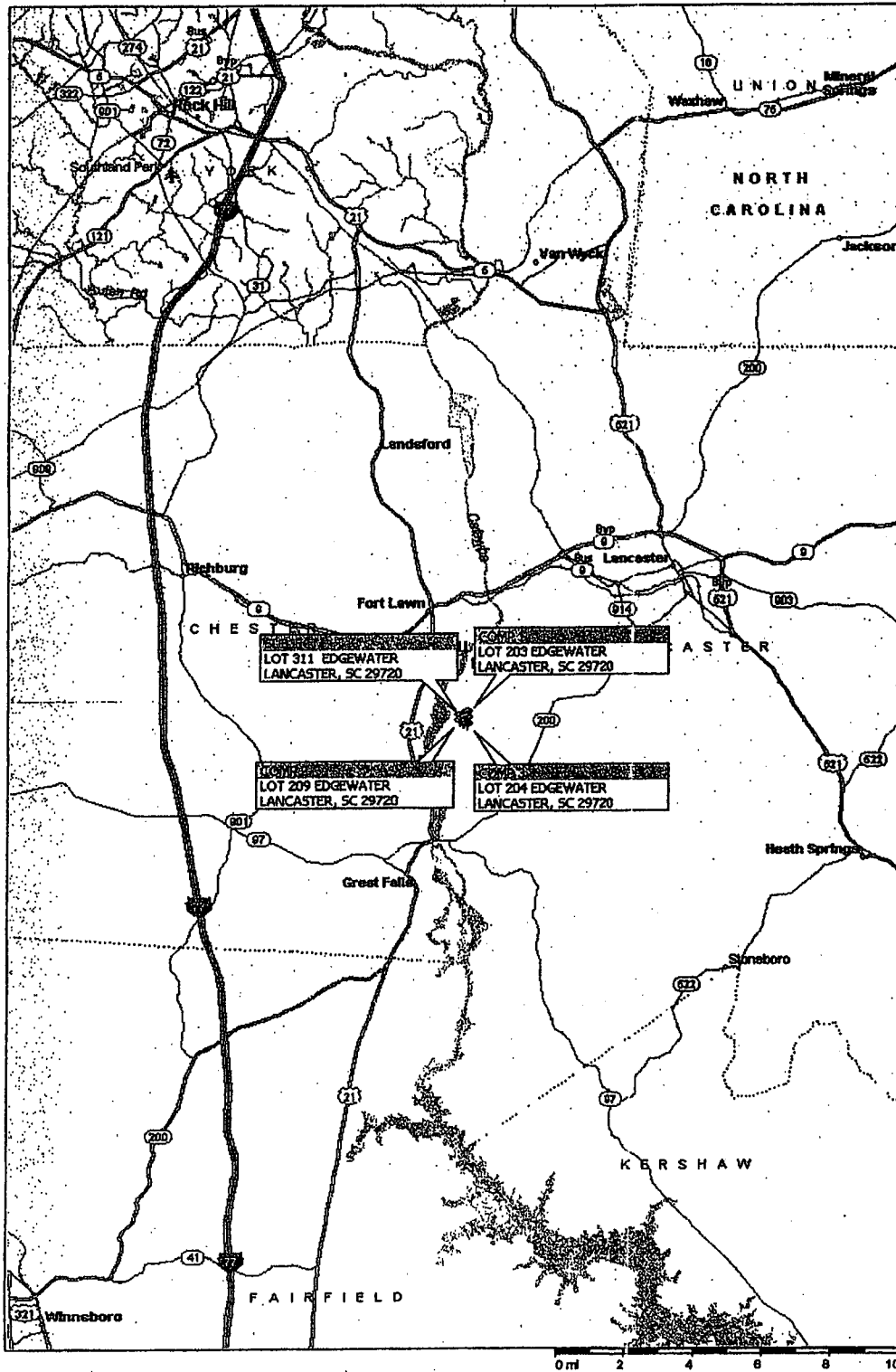
FLOOD MAP DATA WAS TAKEN FROM FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD MAPS ON FILE IN THE APPRAISER'S OFFICE AND INTERFLOOD.COM.

THE INFRASTRUCTURE IS CURRENTLY UNDER CONSTRUCTION IN THE SUBJECT PROPERTIES PHASE OF THE SUBDIVISION. IT WILL ON A PAVED ASPHALT ROAD LIKE THE REST OF THE SUBDIVISION WHEN COMPLETED.

Comments on Market Data

ALL THREE COMPARABLES ARE LOCATED IN THE SAME SUBDIVISION AS THE SUBJECT.

MAP ADDENDUM



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 © Copyright 2003 by Geographic Data Technology, Inc. All rights reserved. © 2004 NAVTEQ. All rights reserved. This data includes information taken with permission from Canadian authorities © Her Majesty the Queen in Right of Canada.

DEFINITION OF MARKET VALUE:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concessions but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION**CONTINGENT AND LIMITING CONDITIONS:**

is subject to the following conditions:

The appraiser's certification that appears in the appraisal report

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. The separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.

6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.

9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.

10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

APPRAISER'S CERTIFICATION:

The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION:

If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED:LOT 311 EDGEWATER LANCASTER SC 29720**APPRAISER:**

Signature: _____

Name: ERIC J. PIGMANDate Signed: May 10, 2006

State Certification #: _____

or State License #: AA 4714State: SCExpiration Date of Certification or License: 6/30/2006**SUPERVISORY APPRAISER** (only if required):

Signature: _____

Name: DOUGLAS M. PIGMANDate Signed: May 10, 2006

State Certification #: _____

or State License #: L3076State: SCExpiration Date of Certification or License: 06/30/2006☒ Did☐ Did Not Inspect Property

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Wells Fargo Bank, N.A. s/b/m to Wachovia Bank,
N.A.,

Plaintiff,

vs.

Ronald P. Pappas a/k/a Ronald Peter Pappas and
Camine Pappas,

Defendant(s).

IN THE COURT OF COMMON PLEAS

FILED
CHANGE OF COURT
OF COURT
P 29 873

JUN 20 A 11:45

COMPLAINT
COURT OF COMMON PLEAS
LANCASTER, SC
(Non-Jury)

FORECLOSURE
OF REAL ESTATE
MORTGAGE

(Deficiency Judgment Demanded as to Defendant
Ronald P. Pappas (a/k/a Ronald Peter Pappas) and
Camine Pappas)

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, Wells Fargo Bank, N.A. s/b/m to Wachovia Bank, N.A., is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendants Ronald P. Pappas a/k/a Ronald Peter Pappas and Camine Pappas are residents and citizens of the County of Lancaster, State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Lancaster, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on July 22, 2009, Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Camine Pappas (hereinafter "Borrower(s)") made, executed, and delivered to Wachovia Bank, National Association (hereinafter "Lender") a certain Fixed Rate Note in writing (hereinafter "Note"), wherein and whereby Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Camine Pappas promised to pay to Wachovia Bank, National Association, the principal sum of \$210,954.69, together with interest at the rate of 5.5% per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid.



B&S No.: 11-11664

5. In order to secure the payment of said Note, the said Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Camine Pappas (hereinafter "Mortgagor(s)"), did on the same date, to wit, July 22, 2009, make, execute, and deliver to Wachovia Bank, National Association, its successors and assigns, a certain mortgage (hereinafter "Mortgage") securing the below described real property, including any and all improvements to the property, located in the County and State aforesaid (hereinafter "Property"):

All that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of Lancaster, being designated as Lot 311 of Edgewater Subdivision, as shown on a plat of property shown in Plat Book 2005 at Page 559 in the Office of the Register of Deeds for Lancaster County, South Carolina, to which plat reference is hereby made for a more particular description.

Derivation: This being the same property conveyed to Ronald P. Pappas by deed from Craft Development, LLC dated May 30, 2006 and recorded July 28, 2006 in Book 346 at Page 342 in the Office of the Register of Deeds of Lancaster County, South Carolina.

Parcel Number: 0127C-0B-016.00

Property Address: Edgewater, Lot 311, Lancaster, SC 29720

6. Said Mortgage was dated July 22, 2009 and recorded on July 23, 2009 in Book 2135 at Page 99, in the Lancaster County Registry.
7. Thereafter the Mortgage and its accompanying Promissory Note were transferred to the Plaintiff herein by assignment and/or corporate merger.
8. The Mortgage evidences and secures the repayment of money advanced by the Lender to, or on behalf of, the Mortgagor(s) and constitutes a valid first lien on the Property.
9. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, Plaintiff alleges upon information and belief, that the loan does not qualify for a modification under the above foreclosure prevention program because the subject Property is not the primary residence of

the homeowner (or it is vacant land).

10. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant(s) prior to the commencement of this action.
11. In and by the terms of said Note and the Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.
12. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said Note be placed in the hands of an attorney for collection after default.
13. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker(s) of its Note, Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Carmine Pappas. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.
14. The installments of principal and interest falling due from and after January 21, 2011, have not been paid although demand for the payment thereof has been made. The Plaintiff, as holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of \$207,077.68, together with interest at the rate of 5.5% per annum, the current/modified rate of interest, from the date of the last payment, together with reasonable attorneys fees for the collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs

for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

15. Upon information and belief, said information having been obtained from the records of Lancaster County, South Carolina, the Defendant(s) below named has/have or may claim to have some interest in or lien upon the Property by virtue of the matters and things herein below alleged, to-wit:

A. None known.

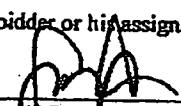
WHEREFORE, Plaintiff prays judgment that:

- A. The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
- B. Appoint a Receiver to collect the rents, issue, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.
- C. Plaintiff's Mortgage be declared a valid first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, together with attorney's fees and for the costs of this action.
- D. The Property be sold according to law and the practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:
 - First, to the costs and expenses of the within action and said sale;
 - Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and
 - Third, the surplus, if any, be distributed according to law;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Camine Pappas, in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

E. For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Lancaster County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Property without delay, and to keep the successful bidder or his assigns in such peaceable possession.


Ronald F. Johnson, Jr, SC Bar #16931
Mark A. Pearson, SC Bar #15926
Brian L. Campbell, SC Bar #74521
• Suzanne E. Brown, SC Bar #76440
Jason L. Branham, SC Bar #72902
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 6, 17, 11
Wilmington, North Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Wells Fargo Bank, N.A. s/b/m to Wachovia Bank,
N.A.,

Plaintiff,

vs.

Ronald P. Pappas a/k/a Ronald Peter Pappas, and
Carmine Pappas,

Defendant(s).

IN THE COURT OF COMMON PLEAS
C/A NOTICE OF COMPLIANCE 873
OF COURT

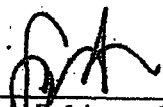
CERTIFICATE OF COMPLIANCE

WITH SOUTH CAROLINA
SUPREME COURT ORDER

NO 2011-05-02-01
CLERK OF COURT
LANCASTER, SC
(Non-owner occupied property)

The undersigned attorney for the Plaintiff does hereby certify as follows:

1. That this is an action for the foreclosure of real property; and
2. That the Administrative Order of the Supreme Court of South Carolina dated May 2nd, 2011 (2011-05-02-01) does not apply in this case because the real property is not an "owner occupied property/dwelling" as defined in the Order.



Ronald F. Johnson, Jr, SC Bar #16931
Brian L. Campbell, SC Bar #74521
• Suzanne E. Brown, SC Bar #76440
• Jason L. Branham, SC Bar #72902
Brock & Scott, PLLC
3800 Fernandina Road Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Attorneys for Plaintiff

Dated: 6/12/11
Wilmington, North Carolina

B&S No.: 11-11664

NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended

- The amount of the debt as of June 17, 2011, is the principal sum of \$207,077.68; with, interest from the date that the last payment was made, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
- The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
- The debt is described in the Complaint attached hereto and will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
- If the debtor notifies the creditor's law firm within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
- If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
- Requests may be made in writing addressed to Brock & Scott, PLLC, 3800 Fernandina Road, Suite 110, Columbia, SC 29210; by telephone at (803) 454-3540; by fax to (803) 454-341; or by email to SCFCLTeam@brockandscott.com.
- This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

***** THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS*****

B&S No.: 11-11664

NOTICE REGARDING MILITARY SERVICE

If you are currently or have within the last nine (9) months been in the military service AND joined after signing the mortgage (aka Deed of Trust or Security Deed) that is now in foreclosure, please notify this office immediately.

You may be entitled to some protections under the Servicemembers Civil Relief Act. When contacting this office as to your military service, you must provide us with positive proof as to your military status.

B&S No.: 11-11664

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

WELLS FARGO BANK, N.A.,
s/b/m to Wachovia Bank, N.A.,

Plaintiff,

vs.

RONALD P. PAPPAS,
a/k/a Ronald Peter Pappas, and
CAMINE PAPPAS,

Defendants.

RONALD P. PAPPAS,
a/k/a Ronald Peter Pappas, and
CAMINE PAPPAS,

Cross-Plaintiffs.

vs.

WELLS FARGO BANK, N.A., and
CRAFT DEVELOPMENT, LLC,
a North Carolina limited liability company,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

AMENDED ANSWER

COUNTERCLAIMS AND CROSS-CLAIM

CLERK OF COURT
LANCASTER, SC

SEP 29 P 2:22

FILED
OFFICE OF CLERK
OF COURT

JURY TRIAL REQUESTED

29
C. A. No. 11-CP-~~4~~0873

Come now the Defendants RONALD P. PAPPAS, also known as Ronald Peter Pappas, and CAMINE PAPPAS (hereafter, unless other indicated, "the Defendants"), and for their Answer, Counterclaims and Cross-Claim herein would allege as follows:

FACTUAL BACKGROUND:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.
2. The Defendants/Cross-Plaintiffs are residents of Lancaster County, South Carolina.

3. The Plaintiff/Cross-Defendant WELLS FARGO BANK, N.A., as successor to Wachovia Bank, N.A., (hereafter also "WELLS FARGO") is a banking corporation authorized to do business in the State of South Carolina.

4. The Cross-Defendant CRAFT DEVELOPMENT, LLC (hereafter also "CRAFT" and "CRAFT DEVELOPMENT") is a North Carolina limited liability company authorized to do business in the State of South Carolina, and having Blackwell, Trimall, LLC located at 201 West Dunlap Street, Lancaster, South Carolina 29720 as its Registered Agent.

5. On knowledge and information, both Cross-Defendants WELLS FARGO and CRAFT DEVELOPMENT, respectively, are developer within the definition set forth in 15 U.S.C. §1701(4), and Edgewater Subdivision, of which the subject real property sought to be foreclosed is a part, is a subdivision within the definition set forth in 15 U.S.C. §1701(3).

FOR A FIRST DEFENSE:

6. Each and every allegation of the Plaintiff's Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.

7. Defendants admit that they are the owners of the real property which is the subject of this action; the residence of the individual Defendants; the location of the subject real property; and that they are collectively the executing parties on the Notes and Mortgage attached as exhibits to the Complaint herein.

8. As to the remaining allegations of the Complaint herein as to:

corporate identity of any parties,

the terms and validity of the mortgage and notes sought to be foreclosed herein,

the existence of any breach on the part of the Defendants,

the expenditure of monies by the Plaintiff in order to preserve its rights,

the rights of Plaintiff as to recovery of any monies expended or the liability of the Defendants for such monies,

the existence and priority of recorded liens senior and/or junior to that of the said

Defendants, or any other matter alleged or referenced in the Complaint herein, or

the said Defendants' participation in the Home Affordable Modification Program (HMP),

the said Defendants:

admit all matters herein which are of public record, and
allege that they are without sufficient information, knowledge or belief as to the remaining
factual allegations to respond and therefore denies the same and demands strict
proof thereof.

FOR A SECOND DEFENSE AND COUNTERCLAIM:

9. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.
10. This Second Defense and Counterclaim is brought against Plaintiff for actual and statutory treble damages based on the Plaintiff's violation of Title 39, Chapter 5 of the South Carolina Code of Laws (hereafter the Unfair Trade Practices Act or "UTPA"), in the negligent presale inspection of the subject real property which is the subject of this action.
11. On knowledge and information, the actions of the Plaintiff, by and through its agents, servants, and employees, have an impact, either direct or indirect, upon the public interest as defined by S. C. Code § 39-5-10(b) (West) and by the holding of the South Carolina Court of Appeals in *Noack Enterprises, Inc. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct.App. 1986).
12. On knowledge and information, the actions and words of the Plaintiff and its agents, servants and employees show a pattern of behavior by the Plaintiff consistent with a deliberate pattern of such actions both in the past and planned in the future.
13. On knowledge and information, the actions of the Plaintiff have the potential for repetition within the meaning of *Noack* and of the Supreme Court of Washington cited in that case, *Anhold v. Daniels*, 94 Wash.2d 40, 614 P.2d 184 (1980).
14. On knowledge and information, the actions of the Plaintiff as set out herein constitute an unfair or deceptive method, act or practice in the conduct of a trade or commerce as defined by S. C. Code § 39-5-20 (West).

15. On knowledge and information, the Real Estate Appraiser used by the Plaintiff in connection with the Defendant's purchase of the subject real property in May, 2006 was licensed by the State of South Carolina or possessed a license recognized by the SC Real Estate Appraisers Board.

16. On knowledge and information, the possession of a Real Estate Appraiser's license by, or recognized by, the SC Real Estate Appraisers Board imposes on the appraiser so used a duty of reasonable care to the Defendants as purchasers to use that knowledge, skill and care that is generally used in similar appraisals and circumstances by appraisers in South Carolina and in states having similar appraisal standards, which duty the said appraiser so used by the Plaintiff breached in one or more of the ways set out or referenced herein, any one of which was a departure from the accepted standard of care for real estate appraisers.

17. On knowledge and information, the actions of the Plaintiff entitle the Defendants to damages in the amount of three times the actual damages sustained by reason of the Plaintiff's unfair or deceptive methods, acts or practices, as defined by S. C. Code § 39-5-140(a) (West).

18. On knowledge and information, the actions of the Plaintiff entitle the Defendants to an award of reasonable attorney's fees and costs under the provisions of S. C. Code § 39-5-140(a) (West).

19. In the course of the transaction the Plaintiff has committed or engaged in one or more of the following unfair and/or deceptive acts or practices in violation of Title 39, Chapter 5:

- a. knowingly misrepresenting the value of the subject real estate in the appraisal furnished to the Defendants;
- b. negligently appraising the value of the subject real property when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. using methods of appraisal that included, but did not disclose the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value;

- d. failing to supply the Defendants with a copy of the Real Estate Appraisal; and
- e. failing to supply the Defendants with a copy of the Real Estate Appraisal after their request therefor.

FOR A THIRD DEFENSE, SET-OFF OR COUNTERCLAIM:

- 20. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.
- 21. This Third Defense, Set-off or Counterclaim is brought against Plaintiff for violation of the Real Estate Settlement and Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.* and on the law of contracts.
- 22. On knowledge and information, both the original mortgage loan transaction between Plaintiff and the Defendants in May, 2006 and the refinance in 2009 were "federally related mortgage loans" as that term is defined in RESPA, 12 U.S.C. § 2602(1).
- 23. On knowledge and information, the Plaintiff's funding and origination of these transactions were "settlement services" as that term is defined in RESPA, 12 U.S.C. § 2601(3).
- 24. On knowledge and information, as part both transactions, the Defendants paid the Plaintiff fees for obtaining two respective real estate appraisals, the cost of which increased their mortgage payments without providing them with any real economic benefit. Copies of the respective HUD closing statements are attached hereto and incorporated herein.
- 25. On knowledge and information, 12 U.S.C. § 2605(e) permits a buyer or borrower to obtain information about the servicing of their mortgage account by providing a written inquiry to the servicer.
- 26. The Defendants provided both oral and written inquiries to the Plaintiff, as their servicer under RESPA, with requests to obtain and review the real estate appraisals for which they were charged at closing.
- 27. On knowledge and information, the said written inquiry to the Plaintiff contained all information required under 12 U.S.C. § 2605(e)(1)(B) and Reg. X, 24 C.F.R. § 3500.21(e)(2).
- 28. The Plaintiff as servicer under RESPA has never responded to the qualified written request of the Defendants, in violation of 12 U.S.C. § 2605(e)(2), nor to their oral requests.

29. On knowledge and information, the Plaintiff's violation of RESPA entitle the Defendants to an award of their actual damages and/or for a set-off thereof, and for their attorney's fees, as per 12 U.S.C. § 2605(f)(1) and (3).

30. On knowledge and information, the Plaintiff's violation of its contractual duty under the Mortgage Loan contract and the Mortgage Refinancing contract entitle the Defendants to an award of their actual damages.

FOR A FOURTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM:

31. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.

32. This Fourth Defense, Counterclaim and Cross-Claim is brought against Plaintiff and Cross-Defendant CRAFT DEVELOPMENT to enforce their rescission of the mortgage loan and for breach of contract due to Plaintiff's misrepresentations set out and referenced herein. This action arises under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§1701 1720.

33. In or about May, 2006, the Cross-Plaintiffs, without having been furnished a property report as required by 15 U.S.C. §1703(a), signed an agreement for a deed with Cross-Defendant, CRAFT DEVELOPMENT, for Lot 311 of the Edgewater Subdivision, as shown at Plat Book 2005 at Page 559 in the Office of the Clerk of Court for Lancaster County, South Carolina, that is, the real property which is the subject of this foreclosure action.

34. The Cross Defendant CRAFT DEVELOPMENT is a developer within the definition set forth in 15 U.S.C. §1701(4), and Edgewater Subdivision is a subdivision within the definition set forth in 15 U.S.C. §1701(3).

35. The Cross Defendant WELLS FARGO is a developer within the definition set forth in 15 U.S.C. §1701(4) in that ,

36. On or after January 28, 2011, a printed property report or information pursuant thereto was furnished to the Defendants. A copy of those documents is attached hereto and incorporated herein.

37. As of the date of this Complaint, the Defendants had paid to CRAFT DEVELOPMENT, in accordance with the Agreement to Purchase, the full sum of Two-Hundred Twenty-Nine Thousand and no/100 (\$ 229,000.00) Dollars, financing the sum of Two-Hundred Six Thousand and no/100 (\$ 206,000.00) Dollars through the Plaintiff. To the Plaintiff, as the financing bank, to CRAFT

DEVELOPMENT as a down-payment and to the Edgewater Homeowners Association, the Defendants had paid or repaid approximately One-Hundred Twenty-Five and no/100 (\$125,000.00) Dollars on these transactions.

38. Upon learning of the failure and misrepresentations of CRAFT DEVELOPMENT as the seller of the subject real property, as to its failure to comply with the above-cited Federal Statutes, as to its funding of the amenities which were to be part of the subdivision, and its violation of the HUD requirements as to the development of the subdivision of which the subject real property is part, the Defendants gave notice of their rescission of the purchase contract. A copy of that notice is attached hereto and incorporated herein.

39. Upon being advised of the legal effect of the Plaintiff's violations of RESPA and of the South Carolina UTPA, and upon being advised of the legal effect of CRAFT DEVELOPMENT's violations of the Interstate Land Development Act cited above, and of RESPA and of the South Carolina UTPA, and based upon the material nature of the representations made (or which were allegedly made) by the Plaintiff's agent, servant or employee supplying the real estate appraisal, the Defendants gave oral and written notice of their rescission of the sale and of the mortgage loan agreement.

40. On knowledge and information, the Defendants have completed all actions requested of them by H.U.D. and CRAFT DEVELOPMENT to evidence and effect the said rescission.

41. The Plaintiff has, to date, refused to cancel the sale and mortgage loan contract and return the money paid by or on behalf of the Defendants for the subject real property and on their mortgage loan.

42. On knowledge and information, the said failure and refusal of CRAFT DEVELOPMENT constitute a violation of 15 U.S.C. 1703(a).

43. On knowledge and information, the said failure and refusal of CRAFT DEVELOPMENT entitle the Defendants to a rescission of the said Agreement of sale, pursuant to 15 U.S.C. §1703(c) and to a refund of all sums paid to CRAFT DEVELOPMENT thereunder.

44. On knowledge and information, the said failure and refusal of CRAFT DEVELOPMENT entitle the Defendants to a refund of all sums paid to CRAFT DEVELOPMENT under their agreement, and to an award of interest, court costs, a reasonable amount for attorney's fees, independent appraisers' fees,, and travel to and from the property, pursuant to 15 U.S.C. §§1703(c) and 1709(c).

FOR A FIFTH DEFENSE AND COUNTERCLAIM:

45. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.

46. This Fifth Defense and Counterclaim is brought against Plaintiff for fraud by misrepresentations and concealments of material fact.

47. On knowledge and information, the actions referenced herein constitute misrepresentations or concealment by the Plaintiff of the following facts:

- a. that the value of the subject real estate was not that of the appraisal furnished to the Defendants;
- b. that the value of the subject real property had been negligently appraised when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. that the methods of appraisal used for the subject real property included, but did not disclose, the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value; and
- d. that the Defendants would be supplied with a copy of the said Real Estate Appraisal.

48. The facts referenced in the paragraphs above were material facts.

49. On knowledge and information, the Plaintiff made the misrepresentations and/or concealments of material facts set out and referenced herein with full knowledge of their falsity or with reckless disregard of the truth.

50. The misrepresentations and/or concealments of material fact set out and referenced herein was committed by the Plaintiff willfully, wantonly and with reckless disregard of the rights of the Defendants.

51. On knowledge and information, the Plaintiff intended that the Defendants rely upon the misrepresentations and/or concealments of material fact set out and referenced herein.

52. The Defendants did rely on the misrepresentations and/or concealments of material fact of the Plaintiff set out and referenced herein.

53. On knowledge and information, the Defendants had a right to rely on the truth of the said misrepresentations and/or concealments or material fact in that the premises and the actions of the Plaintiff were under the Plaintiff's control and the Plaintiff could reasonably be expected to know their truth and validity.

54. The Defendants have suffered damages as a proximate result of such misrepresentations, and/or concealments of material fact as are set out and referenced herein.

FOR A SIXTH DEFENSE AND COUNTERCLAIM:

55. All matters, set out elsewhere in this Complaint and consistent herewith, are realleged hereby as fully as if set out herein.

56. This Sixth Defense and Counterclaim is brought against Plaintiff for negligent misrepresentations and concealments of material fact.

57. On knowledge and information, the actions referenced herein constitute misrepresentations by the Plaintiff of the following facts:

- a. that the value of the subject real estate were that of the appraisal furnished to the Defendants;
- b. that the value of the subject real property had been properly appraised when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. that the methods of appraisal used for the subject real property included, and/or disclosed, the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value; and

- d. that the Defendants would be supplied with a copy of the said Real Estate Appraisal.

58. The actions of the Plaintiff referenced herein constitute concealment or omission by the said Plaintiff of the following facts:

- a. that the value of the subject real estate was not that of the appraisal furnished to the Defendants;
- b. that the value of the subject real property had been negligently appraised when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. that the methods of appraisal used for the subject real property did not include, and/or disclose, the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value; and
- d. that the Defendants would be supplied with a copy of the said Real Estate Appraisal.

59. The said representations and/or concealments of material fact were false.

60. The Defendants were ignorant of the falsity of the Plaintiff's representations and/or concealments of material fact referenced above.

61. The Plaintiff had a pecuniary interest in making the representations and or concealing the material facts referenced above.

62. The Plaintiff had a duty of care to see that they communicated truthful information to the Defendants.

63. The Plaintiff breached its duty of care by failing to exercise due care in its said actions and communications.

64. The Defendants justifiably relied on the above representations and concealments of the Plaintiff, in that the premises and the actions of the Plaintiff were under the Plaintiff's control and the said Plaintiff could reasonably be expected to know their truth.

65. The Defendants have suffered the pecuniary losses set out or referenced above as the proximate result of their reliance upon the representations and/or concealments of material fact by the Plaintiff referenced above.

WHEREFORE the said Defendants RONALD P. PAPPAS and CAMINE PAPPAS pray:

AS TO THE PLAINTIFF'S ACTION FOR FORECLOSURE HEREIN:

A. That this Court inquire into and determine all matters set out in the Complaint herein, including, but not limited to, all questions relating to the seniority of recorded liens on the subject real property, and

B. That the orders of the Court herein accord the said Defendant all protections normally accorded to persons in the position of the said Defendant.

AS TO THE SECOND DEFENSE AND COUNTERCLAIM (UTPA):

C. Award the Defendants three times their actual damages sustained pursuant to S.C. Code Ann. § 39-5-140(a) (West) against the Plaintiff;

D. Award the Defendants exemplary and punitive damages against the Plaintiff, by reason of the Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

E. Award the Defendants their reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 39-5-140(a) (West), to be paid by the Plaintiff;

AS TO THE THIRD DEFENSE, SET-OFF OR COUNTERCLAIM (RESPA):

F. Allow the Defendants their actual damages and their attorney's fees, as per 12 U.S.C. § 2605(f)(1) and (3), against the Plaintiff;

AS TO THE FOURTH DEFENSE (RESCISSION UNDER ILSDFA):

G. Declare the rescission of the Defendants' Agreement of Sale with Cross-Defendant CRAFT-DEVELOPMENT and their Mortgage loan contract with the Plaintiff;

H. Award the Defendants their actual damages against the Plaintiff;

I. Award the Defendants a refund of all sums paid to CRAFT DEVELOPMENT under their agreement, and to an award of interest, court costs, a reasonable amount for attorney's fees, independent appraisers' fees, and travel to and from the property, pursuant to 15 U.S.C. §§1703(c) and 1709(c).

AS TO THE FIFTH DEFENSE AND COUNTERCLAIM (FRAUD):

J. Award the Defendants their actual damages sustained by reason of the Plaintiff's fraudulent actions and concealments as referenced herein;

K. Award the Defendants exemplary and punitive damages against the Plaintiff, by reason of the Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

AS TO THE SIXTH DEFENSE AND COUNTERCLAIM (NEGLIGENT MISREPRESENTATION):

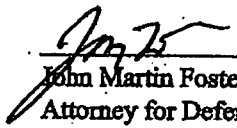
L. Award the Defendants their actual damages sustained by reason of the Plaintiff's negligent misrepresentations and concealments as referenced herein;

M. Award the Defendants exemplary and punitive damages against the Plaintiff, by reason of the Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

AS TO ALL DEFENSES, COUNTERCLAIMS AND CROSSCLAIMS:

N. Include a prayer for any other relief to the Defendants which may be authorized under other causes of action; and

O. Award or allow the Defendants such other and further relief as this Court may deem just and proper.


John Martin Foster
Attorney for Defendants PAPPAS

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, South Carolina 29730

Post Office Box 106
Rock Hill, South Carolina 29731-6106

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

September 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

WELLS FARGO BANK, N.A., Successor
by Merger to WACHOVIA BANK, N.A.,

Plaintiff,

v.

RONALD P. PAPPAS, a/k/a
Ronald Peter Pappas, and
CAMINE PAPPAS,

Defendants.

RONALD P. PAPPAS, a/k/a
Ronald Peter Pappas, and
CAMINE PAPPAS,

Cross-Plaintiffs,

v.

WELLS FARGO BANK, N.A., and
CRAFT DEVELOPMENT, LLC,
a North Carolina limited liability company,

Cross-Defendants.

FILED
OFFICE OF CLERK
IN THE COURT OF COMMON PLEAS

C.A. NO. 2011-CP-29-873
FILED

CLERK OF COURT
LANCASTER, SC

**PLAINTIFF WELLS FARGO'S
AMENDED REPLY TO DEFENDANT
PAPPAS' AMENDED ANSWER
COUNTERCLAIMS AND CROSS-CLAIM**

Plaintiff Wells Fargo Bank, N.A. s/b/m to Wachovia Bank, N.A. ("Wells Fargo"), by and through the undersigned counsel, and for an Amended Reply to Defendants Ronald P. Pappas and Camine Pappas' (collectively, the "Borrowers") Amended Answer, Counterclaim and Cross-Claim (the "Counterclaim"), states as follows:

FOR A FIRST DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

The Counterclaim fails to state facts sufficient to constitute a cause of action upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

(General Denial)

Wells Fargo denies all allegations not hereinafter specifically admitted. As to the correspondingly numbered Paragraphs to the Counterclaim, Wells Fargo responds as follows:

AS TO THE DEFENDANTS' FACTUAL BACKGROUND

1. No response is required as to Paragraph 1 of the Counterclaim. To the extent a response is required, denied.
2. Wells Fargo admits the allegations contained in Paragraph 2.
3. Wells Fargo admits the allegations contained in Paragraph 3.
4. Paragraph 4 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.
5. Wells Fargo specifically denies that it is a "developer" as defined under 15 U.S.C. §1701(4) and demands strict proof thereof.

AS TO THE DEFENDANTS' FIRST DEFENSE

6-8. Paragraphs 6-8 of Defendants' Counterclaims consist of the Defendants' Defenses to the Complaint and therefore require no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations contained in Paragraphs 6-8, those allegations are denied and the allegations of the Complaint are re-alleged as if set forth fully herein.

AS TO THE DEFENDANTS' SECOND DEFENSE AND COUNTERCLAIM

9. As to Paragraph 9 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 8 of the Counterclaim as if fully restated herein.

10. The allegations of Paragraph 10 of the Defendants' Counterclaim state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

11. Wells Fargo denies the allegations contained in Paragraph 11.

12. Wells Fargo denies the allegations contained in Paragraph 12.

13. Wells Fargo denies the allegations contained in Paragraph 13.

14. Wells Fargo denies the allegations contained in Paragraph 14.

15. Responding to the allegations of Paragraph 15, Wells Fargo admits only that the appraiser used in connection with the Defendants purchase of the subject real property was licensed by the State of South Carolina. Wells Fargo denies the remaining allegations of Paragraph 15.

16. The allegations of Paragraph 16 of the Defendants' Counterclaim state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

17. The allegations of Paragraph 17 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

18. The allegations of Paragraph 18 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

19. Wells Fargo denies the allegations contained in Paragraph 19 and specifically listed in subparts a-e.

AS TO THE DEFENDANTS' THIRD DEFENSE, SET-OFF OR COUNTERCLAIM

20. As to Paragraph 20 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 19 of the Counterclaim as if fully restated herein.

21. The allegations of Paragraph 21 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

22. The allegations of Paragraph 22 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

23. The allegations of Paragraph 23 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

24. Responding to the allegations of Paragraph 24, Wells Fargo admits only that the Defendants paid a fee for appraisal associated with the loan which is the subject of this foreclosure. Wells Fargo denies the remaining allegations of Paragraph 24.

25. The allegations of Paragraph 25 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same and demands strict proof thereof.

26. Wells Fargo denies the allegations contained in Paragraph 26 and demands strict proof thereof.

27. Answering the allegations of Paragraph 27 of the Defendants' Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief as to the sufficiency of any alleged "written inquiry" and therefore denies the same. To the extent a response is required, Wells Fargo denies that 12 U.S.C. §2605(e) applies to the loan which is the subject of this foreclosure and therefore, denies that the alleged written inquiry was sufficient under 12 U.S.C. §2605(e)(1)(B) or Reg. X, 24 C.F.R. §3500.21(e)(2).

28. In response to the allegations contained in Paragraph 28, Wells Fargo lacks knowledge sufficient to form an opinion or belief as to Wells Fargo's response to the alleged written inquiry and therefore denies the same. To the extent a response is required, Wells Fargo denies that 12 U.S.C. §2605(e) applies to the loan which is the subject of this foreclosure and therefore, denies that the alleged written inquiry was required under 12 U.S.C. §2605(e)(1)(B) or Reg. X, 24 C.F.R. §3500.21(e)(2).

29. The allegations of Paragraph 29 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

30. Wells Fargo denies the allegations contained in Paragraph 30.

AS TO THE DEFENDANTS' FOURTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM

31. As to Paragraph 31 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 30 of the Counterclaim as if fully restated herein.

32. The allegations of Paragraph 32 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

33. Paragraph 33 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.

34. The allegations of Paragraph 34 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

35. Wells Fargo denies the allegations contained in Paragraph 35.

36. Paragraph 36 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.

37. Responding to the allegations of Paragraph 37, Wells Fargo admits only Defendants applied for financing with Wells Fargo's predecessor Wachovia Bank, N.A., which was approved and the funds were utilized in purchasing the real property which is the subject of this foreclosure. Wells Fargo denies the remaining allegations of Paragraph 37.

38. Paragraph 38 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.

39. Wells Fargo denies the allegations contained in Paragraph 39.

40. Answering the allegations of Paragraph 40 of the Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief, and therefore denies the same.

41. Responding to the allegations of Paragraph 41, Wells Fargo denies that it has any obligation to cancel its mortgage loan as a result of the Defendants' agreement with Craft Development, LLC.

42. The allegations of Paragraph 42 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

43. The allegations of Paragraph 43 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

44. The allegations of Paragraph 44 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

AS TO THE DEFENDANTS' FIFTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM

45. As to Paragraph 45 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 44 of the Counterclaim as if fully restated herein.

46. The allegations of Paragraph 46 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

47. Wells Fargo denies the allegations contained in Paragraph 47.

48. The allegations of Paragraph 48 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

49. Wells Fargo denies the allegations contained in Paragraph 49.

50. Wells Fargo denies the allegations contained in Paragraph 50.

51. Wells Fargo denies the allegations contained in Paragraph 51.

52. Answering the allegations of Paragraph 52 of the Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief, and therefore denies the same.

53. Wells Fargo denies the allegations contained in Paragraph 53.

54. Wells Fargo denies the allegations contained in Paragraph 54.

AS TO THE DEFENDANTS' FIFTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM

55. As to Paragraph 55 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 54 of the Counterclaim as if fully restated herein.

56. The allegations of Paragraph 56 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

57. Wells Fargo denies the allegations contained in Paragraph 57 and specifically listed in subparts a-d.

58. Wells Fargo denies the allegations contained in Paragraph 58 and specifically listed in subparts a-d.

59. Wells Fargo denies the allegations contained in Paragraph 59.

60. Wells Fargo denies the allegations contained in Paragraph 60.

61. Wells Fargo denies the allegations contained in Paragraph 61.

62. In response to the allegations contained in Paragraph 62, Wells Fargo admits so much which alleges that it has a duty to communicate truthfully. The remaining allegations contained in Paragraph 62 are denied.

63. Wells Fargo denies the allegations contained in Paragraph 63.

64. Wells Fargo denies the allegations contained in Paragraph 64.

65. Answering the allegations of Paragraph 65 of the Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief, and therefore denies the same.

AS TO THE PRAYER FOR RELIEF

Wells Fargo denies that the Defendants are entitled to any of the relief prayed for in Paragraphs A through O on pages 11-13 of the Counterclaim.

FOR A THIRD DEFENSE
(Waiver)

Wells Fargo states that the Defendants have waived their claims against Wells Fargo through their conduct.

FOR A FOURTH DEFENSE
(Assumption of the Risk)

The Defendants' claims against Wells Fargo are barred because the Defendants knew and understood the cost, risk, and potential rewards of purchasing the property and therefore assumed the risk associated with purchasing the property.

FOR A FIFTH DEFENSE
(Compliance with Applicable Law)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that any actions taken and/or procedures followed by Wells Fargo concerning the Defendants were reasonable, done in good faith and authorized by contract or law, and therefore the Defendants are precluded from recovering against Wells Fargo.

FOR A SIXTH DEFENSE
(Good Faith)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo has at all times acted in good faith and in compliance with any laws and contracts.

FOR A SEVENTH DEFENSE
(Prior Breach)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that some or all of the Defendants' claims are barred by the Defendants' prior breach of the parties' contract.

FOR AN EIGHTH DEFENSE
(Regulated Industry)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that it operates within a regulated industry and therefore, is exempt from liability under the South Carolina Unfair Trade Practices Act.

FOR A NINTH DEFENSE
(Public Interest Not Affected)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the acts alleged by Defendants in their Counterclaim, which are expressly denied, to not affect the public interest but are essentially private in nature, and therefore the South Carolina Unfair Trade Practices Act is inapplicable.

FOR A TENTH DEFENSE
(Failure to Perform)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants failed to perform under the Promissory Note and Mortgage, and therefore, Defendants' claims must be dismissed.

FOR AN ELEVENTH DEFENSE
(Compliance with the Note and Mortgage)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that it performed all of its obligations under any alleged loan contract and/or in procuring any alleged loan contract. Wells Fargo pleads the terms and conditions of any alleged loan contract as a complete defense and bar to this action.

FOR A TWELFTH DEFENSE
(Bona Fide Error)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that if and to the extent any of its purported acts or omissions violated federal or state laws, which is expressly denied, such acts were unintentional and resulted from bona fide

error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Accordingly, Wells Fargo is not liable to Defendants for any such purported acts or omissions.

FOR A THIRTEENTH DEFENSE

(Consent)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that Defendants' claims are barred, in whole or in part, by the doctrine of consent.

FOR A FOURTEENTH DEFENSE

(Constructive Trust)

Further answering the Counterclaim and without waiving any other defenses, if and to the extent Wells Fargo's claims are barred by the doctrine of unclean hands, which is expressly denied, Wells Fargo is entitled to a constructive trust for all amounts owed on the Note and Mortgage.

FOR A FIFTEENTH DEFENSE

(Unclean Hands)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants' claims against Wells Fargo are barred because of the Defendants' own conduct and/or the equitable doctrine of unclean hands.

FOR A SIXTEENTH DEFENSE

(Laches)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants' claims against Wells Fargo are barred, in whole or in part, under the doctrine of laches.

FOR A SEVENTEENTH DEFENSE
(Waiver and/or Estoppel)

Further answering the Counterclaim and without waiving any other defense, Wells Fargo states that the Defendants' claims against Wells Fargo are barred in whole or in part, under the doctrines of waiver and/or estoppel.

FOR AN EIGHTEENTH DEFENSE
(Offset)

Further answering the Counterclaim and without waiving any other defense, Wells Fargo states that to the extent the Defendants are entitled to recover damages against Wells Fargo, which is expressly denied, Wells Fargo is entitled to set off the damages caused by the Defendants' breach of the promissory note against any amount Wells Fargo is required to pay on the claims asserted by the Defendants.

FOR A NINETEENTH DEFENSE
(Speculative Damages)

Further answering the Counterclaim and without waiving any other defense, Wells Fargo states that the Defendants' claim for damages is speculative and therefore disallowed under South Carolina law.

FOR A TWENTIETH DEFENSE
(Failure to Mitigate)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants are legally obligated to mitigate their damages. Upon information and belief, Wells Fargo can show that the Defendants have failed to mitigate their damages and are therefore barred from recovery based on this failure.

FOR A TWENTY-FIRST DEFENSE
(Economic Loss Rule)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo is informed and believes that the Defendants' claims, to the extent they may seek to recover only economic losses in tort, are barred by the economic loss doctrine.

FOR A TWENTY-SECOND DEFENSE
(Punitive Damages Improper)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Counterclaim fails to set forth a claim for punitive damages upon which relief may be granted.

FOR A TWENTY-THIRD DEFENSE
(Punitive Damages Improper)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that to the extent the Defendants' Counterclaim asserts a demand for punitive damages, Wells Fargo specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003).

FOR A TWENTY-FOURTH DEFENSE
(Punitive Damages Improper)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that to the extent that the Defendants' Counterclaim seeks punitive damages, Wells Fargo affirmatively pleads the following in regard to punitive damages:

- (a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth

Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution;

- (b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution;
- (c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution;
- (d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution; and
- (e) The Defendants' claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A TWENTY-FIFTH DEFENSE
(Statute of Frauds)

Further answering the Counterclaims and without waiving any other defenses, Wells Fargo states that the Defendants' claims are barred, in whole or in part, by the Statute of Frauds.

FOR A TWENTY-SIXTH DEFENSE
(Statute of Limitations)

Further answering the Counterclaims and without waiving any other defenses, Wells Fargo states that the Defendants' claims are barred, in whole or in part, by the applicable statutes of limitations of such claims.

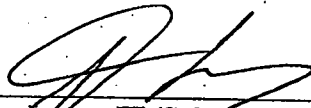
FOR A TWENTY-SEVENTH DEFENSE
(Reservation and Non-Waiver)

Wells Fargo reserves the right to assert any and all other defenses to Defendants' Counterclaims, both factual and legal, as may be justified by information subsequently obtained.

WHEREFORE, Wells Fargo prays as follows:

- 1) That the Court enter judgment in favor of Wells Fargo on its Complaint;
- 2) That the Defendants have and recover nothing of Wells Fargo, and that the Counterclaim be dismissed with prejudice;
- 3) That the costs of this action be taxed to the Defendants;
- 4) That the Court award Wells Fargo's attorneys' fees as permitted by law; and
- 5) That the Court order such other and further relief as it deems just and proper.

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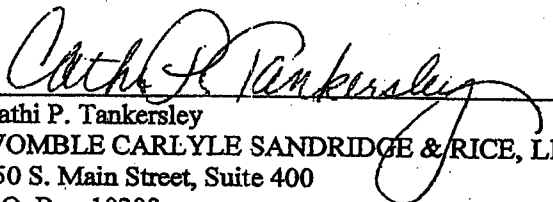
This 30 day of November, 2011
Greenville, South Carolina

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 30th day of November, 2011, a copy of the attached **WELLS FARGO'S AMENDED REPLY TO DEFENDANT PAPPAS' ANSWER COUNTERCLAIM AND CROSS-CLAIM** was served by causing to be deposited a copy of the same via United States Certified Mail, postage prepaid, addressed to the following:

John Martin Foster
The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Attorney for Defendants Ronald P. Pappas and Camine Pappas


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1 THE COURT - 2011-CP-29-00873, Wells Fargo vs.
2 Pappas. Pappas, Pappas. Let's see, this is Mr. Foster.
3 Is that right? Am I right?

4 MR. FOSTER - Yes, sir, and Mr. Laney.

5 MS. HUNT - Ms. Hunt, Your Honor, here on behalf
6 of Greg Shelton.

7 THE COURT - All right and say that name again.
8 I'm sorry, ma'am.

9 MS. HUNT - Amy Hunt.

10 THE COURT - And, yes, sir, your name again?

11 MR. LANEY - It is Sterling Laney. I'm
12 representing Wells Fargo in this matter.

13 THE COURT - All right, and this is Wells Fargo's
14 motion for summary judgment. Is that correct?

15 MR. LANEY - Yes, sir, Your Honor. I think I -- I
16 don't know if you ---

17 THE COURT - Motions for supplemental proceeding
18 and response to Motion of C. I don't know what that means.

19 MR. LANEY - I think Mr. Foster also has a motion
20 to supplement his pleadings ---

21 THE COURT - Okay. All right.

22 MR. LANEY - --- in addition to our motion for
23 summary judgment.

24 THE COURT - I see it. All right. Thank you.
25 Which was filed first?

1 MR. FOSTER - The summary judgment I believe, sir.

2 MR. LANEY - I believe the summary judgment was
3 filed first.

4 THE COURT - All right, I'll be glad to hear from
5 you. Yes, sir.

6 MR. LANEY - Okay. Thank you, Your Honor. Again,
7 Sterling Laney with the firm of Womble, Carlyle, Sandridge
8 and Rice representing Wells Fargo Bank in this mortgage
9 foreclosure matter, Your Honor. We are here to hear our
10 motion for summary judgment this morning and I do want to
11 make it clear this is a mortgage foreclosure matter, but
12 just to give you a little background on context which I
13 think is important, for purposes of our motion today, this
14 is not a mortgage foreclosure action that involves
15 somebody's residence or a premises. This involves a vacant
16 lot, lot 311 in the Edgewater Subdivision which is a
17 partially completed lot here in Lancaster County I believe;
18 we took deposition of the Defendant, Ronald Pappas, at the
19 end of October, 2013 and he testified there were
20 approximately 50 or so houses built; the golf course was in
21 -- so is a partially completed subdivision.

22 THE COURT - Most of them I hear about up here are
23 partially completed it seems like.

24 MR. LANEY - Yes, there's a -- it is not a unique
25 situation, Your Honor ---

1 THE COURT - They're very different in Lexington.
2 Most of them in Lexington though are mobile as opposed to
3 not being partially completed. Be that as it may, Mr.
4 Laney, go right ahead.

5 MR. LANEY - Okay. I understand exactly what
6 you're saying, Your Honor. The other -- I do want to make
7 sure that the -- Your Honor understands that point, because
8 significant because some of the defendant's counterclaims
9 relate to whether or not Wells Fargo provided -- and at
10 that time it was Wachovia, Your Honor, so if I use those
11 terms interchangeably, I'm referring to the same -- the
12 same institution -- but the defendant's counterclaims are
13 that Wachovia at the time and now Wells Fargo did not
14 provide him with a copy of the appraisal, and there were
15 two different loans. We're foreclosing upon the 2009
16 refinance of the initial purchase loan which was done in
17 2006, and there was an appraisal done in May of 2006, and
18 then there was another valuation of property done in 2009
19 when the refinance was done. And Mr. Pappas has complained
20 that he has not -- he was not provided the 2006 appraisal
21 until a couple of months before his deposition, October,
22 2013, and has not yet been provided a copy of the valuation
23 that was used for 2009. And we cited in our memorandum --
24 I hope Your Honor had an opportunity to see it; I have
25 another copy if you need it, Your Honor.

1 THE COURT - Yes, sir. Would you hand it up,
2 please.

3 MR. LANEY - I will. Bear with me, Your Honor.
4 If I may, Your Honor, I'm also handing up a copy of
5 24CFR3500.5 which is a portion of The Equal Credit
6 Opportunity Act Reg. B which provides that RESPA -- that
7 there are certain exemptions to RESPA which is the code
8 section of the Real Estate Settlement Procedures Act which
9 is what Mr. Pappas is complaining about, and states under
10 Exemption B number 4, Vacant Land, any loans secured by
11 vacant or unimproved property is exempt from RESPA. And we
12 also attached as Exhibits and handed up as part of our
13 memorandum 12CFR202.14 which states that a person's
14 entitled to a copy in the appraisal on a loan that is to be
15 secured by a lien on a dwelling, and dwelling means a
16 residential structure that contains one to four units
17 whether or not that structure is attached to real property,
18 so the whole point of saying that, Your Honor, is Mr.
19 Pappas was not entitled to receive a copy of the appraisal
20 even though he was not a party to the appraisal either.
21 The appraisal was ordered Wachovia. He admitted that in
22 his deposition; it was provided to Wachovia by Pigman ---

23 THE COURT - And he wasn't entitled to see a copy.

24 MR. LANEY - He was not entitled to see a copy
25 because he was -- he used all of his loan proceeds to buy

1 lot 311, Your Honor, so with it being vacant land, it's an
2 exemption to the RESPA requirements to provide a copy of an
3 appraisal upon a request.

4 THE COURT - Can the borrower ask for a copy and
5 receive it?

6 MR. LANEY - He can, Your Honor, but it's at the
7 discretion of the creditor whether or not to provide that.
8 It's not -- there is no duty and therefore there can be no
9 liability that flows from refusing or just not providing
10 it.

11 THE COURT - I was just curious, what is the
12 custom within the banking industry for providing or giving
13 a copy of an appraisal to a party?

14 MR. LANEY - I would be hesitant to speak on
15 behalf of the entire banking industry, but I think it
16 depends on the particular financial institution. I think
17 some ---

18 THE COURT - Well, then perhaps -- I mean Wells
19 Fargo or Wachovia.

20 MR. LANEY - I think it depends also on the loan
21 officer and -- but I think it's not -- it would not be
22 uncommon to provide it if it is requested, Your Honor, but
23 sometimes they choose not too or if it's missing or
24 whatever. You certainly don't have a duty to find it and
25 provide it in these kind of cases. The second context, in

1 addition to this being a vacant piece of property we're
2 foreclosing upon and not somebody's home or residence is
3 that Mr. Pappas is a sophisticated purchaser and borrower.
4 This is not an uneducated person who was conned into buying
5 a piece of property that he had never seen or did not
6 understand what he was purchasing. He makes his livelihood
7 as a real estate developer. He testified that he has
8 worked for many of the largest homebuilders throughout the
9 country, including D-R Horton, Jim Walters Homes. He was
10 the Atlantic Region President for Jim Walter Homes
11 supervising over 250 employees at one time. He also worked
12 as a real estate broker, Your Honor, and also when he was
13 in California, worked for Butterfield Savings & Loan as the
14 construction vice-president in that financial institution.
15 This is a man that understands the lending process, buys
16 property on a frequent basis and develops that property as
17 well, Your Honor. He has stated at the time that he
18 purchased lot 311 in March -- or he entered in a contract
19 March, 2006, he had bought 20 other properties, five of
20 which were investment properties, vacant properties, two of
21 which were in this area in the Waxhaw area. He paid cash
22 for those. He did not finance those, and he did not get an
23 appraisal for either one of those properties in entering
24 into the contract and entering into the purchase. I think
25 that -- I think all that's significant when he hear what

1 his claims are against Wachovia. Your Honor, as I said,
2 this involves lot 311 Edgewater Subdivision. The seller,
3 Ms. Hunt, represents Craft Development LLC. They were the
4 developer and the seller of this subdivision. Mr. Pappas
5 testified to that on page 11 of his deposition; he also
6 testified that he went to several events; they were put on
7 by Craft Development, marketing it; he went to at least two
8 of those events, one in Ballantyne up in Charlotte, another
9 one at the property, and he testified that he visited the
10 property at least four times before he entered into the
11 contract, so he was familiar with the property; he has his
12 background as a real estate developer. He sees this; he's
13 gone to the sales events put on by Craft Development, and
14 in March 29th, 2006 he executes a purchase agreement to buy
15 and sell which is attached as an exhibit to the memorandum,
16 Your Honor, and agrees to buy lot 311 for two hundred and
17 twenty-nine thousand dollars. Now, significantly, Wachovia
18 is not a party to that agreement. Wachovia is not
19 mentioned in that agreement. There is no contingency that
20 the property appraised for the purchase price or appraised
21 for a certain amount that can be found in the four corners
22 of that document, and also significantly, especially when I
23 bring the case law up in just a little bit, Your Honor, he
24 did not -- he testified very candidly that he did not
25 negotiate the purchase price with anyone at Wachovia. He

1 dealt only with Craft Development to come up with that
2 purchase price of two hundred and twenty-nine thousand
3 dollars. He did not speak. He admits that in his request
4 to admit number 11. He did not speak with a Wachovia
5 employee prior to executing that agreement, and he did not
6 apply for the Wachovia loan until after he had entered into
7 this agreement, so he negotiates a purchase price with
8 Craft Development to buy lot 311 for two hundred and
9 twenty-nine thousand dollars, then after he signs that
10 agreement, signs that contract, he then approaches Wachovia
11 and asks to be approved for a loan in order to buy lot 311.
12 He was approved for that loan, and as part of that process,
13 Wachovia ordered an appraisal from Pigman Real Estate
14 Appraisals, a local appraisal group here in Lancaster
15 County, and they provided an appraisal date of May 10th,
16 2006. So that's over a month after he executed this
17 contract and negotiated the purchase price they received an
18 appraisal from Mr. Pigman's appraisal group saying that the
19 lot's worth two hundred and thirty thousand dollars, and
20 they approved Mr. Pappas for a loan of two hundred and six
21 thousand one hundred dollars, and on May 30th, 2006 he
22 entered into a loan closing; he received the deed for lot
23 311. He executed a promissory note and a mortgage in favor
24 of Wachovia for two hundred and six thousand one hundred
25 dollars. Now, the terms were a three year note paying

1 6.75% interest, going to pay interest only for three years
2 and had a balloon payment at the end of three years.
3 Basically, is an uneventful three year between 2006 and
4 2009 except as we know, the real estate economy is
5 collapsing and things are happening and values of
6 properties are going down and that affects many developers;
7 that affects many borrowers, affects lots of folks related
8 in the real estate industry, also affects a lot of
9 homeowners. The development as it is today was not
10 completed; roads and certain infrastructure all is
11 completed. He testified that there's roads; there's
12 utilities; there's sewer. There is a golf course; there's
13 50 houses; however, this is a very large piece of property.
14 They were contemplating, you know, over a thousand homes
15 being built there, and so the rest of the homes have not
16 been built by purchases of those lots. Mr. Pappas has not
17 tried to build anything; he has not tried to develop this
18 lot, but he realize that his maturity date's coming, and so
19 he calls -- he testified on page 57 of his deposition that
20 he called Wachovia and asked them to extend his loan, and
21 Wachovia agreed to do that. So in July of 2009 a new note
22 and a new mortgage was executed by Mr. Pappas and his wife.
23 This was in the amount of two hundred and ten thousand,
24 nine hundred and fifty-four dollars and seventy-five cents,
25 Your Honor, and Mr. Pappas quite candidly in his deposition

1 at page 59 and 60 admits that he and his wife executed that
2 note. He admits that they executed the mortgage; he admits
3 they received the loan proceeds from Wachovia, and he
4 admits that in early 2011, January or February of 2011 he
5 stopped making payments on that note and mortgage, and he
6 stated that since that time he has not attempted to make a
7 payment on that note and mortgage. So, Your Honor, our
8 first ground -- we're moving for summary judgment as to all
9 the counterclaims against us, but we're also asking for
10 summary judgment as to our foreclosure action, at least as
11 to liability, and we would submit that there is absolutely
12 zero question of fact, and so under the standards of Rule
13 56 there's no question of material fact in this case, that
14 quite candidly Mr. Pappas has admitted and acknowledged the
15 debt; he's admitted and acknowledged he executed the loan
16 documents and he has admitted and acknowledged that he
17 voluntarily just ceased to make payments on the loan and
18 that he has no intention of making the payments on the
19 loan. He also stated that he did not have the money --
20 enough money at this time to repay the loan in full, and so
21 we would ask Your Honor to grant summary judgment as to
22 liability on our foreclosure action, because there simply
23 is no dispute at all about our right to foreclosure on our
24 mortgage and seek a deficiency judgment after the, you
25 know, the judicial sale of the property. Now, Mr. Pappas -

1 - this lawsuit was filed in June, 2011, and in September,
2 2011, Mr. Pappas filed an amended answer and counterclaims,
3 and in those counterclaims he alleged five counterclaims.
4 He alleged unfair trade practices; he alleged violation of
5 Interstate Land Sales Act, also known as ILSA. He alleged
6 violations of the Real Estate Settlement Procedures Act,
7 RESPA, which we discussed a little bit previously, and he
8 also alleged fraud and negligent misrepresentation. Your
9 Honor, the testimony and the facts I've laid out to you
10 show that there is absolutely zero question of fact that
11 Mr. Pappas cannot prevail on any of these counterclaims due
12 to his own testimony at his deposition and due to the
13 documents that are in the record and attached to the
14 memorandum that you have before you. In addition to RESPA,
15 which we've talked about, which this type of loan is exempt
16 from and therefore does not apply and thus there can be no
17 liability for failure to provide the appraisal to Mr.
18 Pappas in this case, Wachovia is also not liable under the
19 Interstate Land Sales Act, because in order to be liable
20 under that Act, you have to show that the party being
21 charged with violation is either a developer or an agent
22 for the developer. Mr. Pappas candidly acknowledged in his
23 deposition that Craft Development was the developer; on
24 page 11 and on page 44 he states they're the developer,
25 they were the seller and they are the ones who were

1 supposed to put the amenities into the subdivision, not
2 Wachovia. In order for an agent to be liable, they have to
3 either sell or lease lots in the subdivision or use efforts
4 to sell or lease lots in a subdivision. Also, we cited the
5 case of Thompson vs. Bank of America which on the subject
6 it says, that banks can only be held liable if they go
7 beyond the ordinary course of dealing and participating in
8 the actual development, marketing or sale of the property.
9 Mr. Pappas acknowledged he has no evidence that Wachovia
10 engaged in any selling or any leasing of any lots in the
11 Edgewater Subdivision. In this case he also stated that
12 the mark -- any marketing was put on by Craft Development
13 and he acknowledged that they are the developer of this
14 property. For those reasons, there is simply -- can be no
15 liability flow to Wachovia or Wells Fargo for alleged
16 violation of the Interstate Land Sales Act, so they're
17 exempt from the RESPA. That doesn't apply to them, and
18 also ILSA simply does not apply to the bank in the
19 circumstance. It is not a situation -- there's zero
20 evidence, no testimony, no documents, nothing that would
21 show that Wachovia engaged in any -- took it out of the
22 ordinary course of banking in this matter. Your Honor,
23 that just leaves us with fraud and negligent
24 misrepresentation, and both of them -- failure to prove any
25 element of -- of fraud is -- or negligent misrepresentation

1 is fatal to a -- to a party's case. In order to prove
2 fraud, you've got to show a representation, its falsity,
3 its materiality, knowledge of its falsity or reckless
4 disregard of its truth, intent, that the representation be
5 acted upon, the hearer's ignorance of its falsity, the
6 hearer's reliance on its truth, the hearer's right to rely
7 on their own, and the hearer's consequent and proximate
8 injury. Failure to prove of any of these elements is
9 fatal. That's O'Shields vs. Southern Fountain Mobile Homes
10 which is a seminal case on that, Your Honor, but I was
11 citing out of King v. Oxford, which is a 1984 Court of
12 Appeals decision from Oconee County. And it's significant
13 in King v. Oxford and in West v. Gladney which we cited in
14 our memorandum, as well as Carolina Chloride v. Richland
15 County, they all state that one cannot relate -- rely,
16 excuse me -- upon a misstatement of facts of the truth as
17 easily within your reach, and the Courts do not set for the
18 purpose of relieving parties who refuse to exercise
19 reasonable diligence or discretion to protect their own
20 interest. A party must avail himself of the knowledge or
21 means of knowledge open to him. The Court will not protect
22 a person who with full opportunity to do so will not
23 protect himself. And, Your Honor, I stated -- everything
24 I've stated about Mr. Pappas to say this is a
25 sophisticated, knowledgeable purchaser and borrower in this

1 case. He visited this property four to six times before
2 executing the purchase contract and before applying for the
3 initial loan. In answer to Ms. Hunt's questions in the
4 deposition, he acknowledged that he had traveled to this
5 property at least a hundred times by the time he was
6 deposed, which if you back that out and cut it maybe in
7 half to when he refinanced the property, he had been down
8 there at least 40 or 50 times. He only lives 45 miles away
9 from this property in Waxhaw, so this is somebody who's
10 very familiar with the state of this subdivision, the
11 physical condition of the subdivision and is not just able
12 to look at it, he's able to understand what that means
13 because of his occupation as being a real estate developer
14 and all the other occupations that he held prior to buying
15 this property and also being a sophisticated purchaser and
16 investor in real estate. He also acknowledged in his
17 request to admit, which we've handed up and attached to our
18 memorandum that they were not prevented from independently
19 ascertaining the value and they did not use any efforts to
20 independently ascertain the value of the property. As I
21 stated before, Mr. Pappas did not receive the 2006
22 appraisal til a couple of months before his deposition in
23 October, 2013, therefore, over seven years after he
24 executed this contract, over seven years after he entered
25 into the initial loan and over four years after the re-

1 finance he saw the 2006 appraisal for the first time. The
2 case -- the case that's really on all fours and squares
3 with this case we have is Robertson v. First Union National
4 Bank which is 350 South Carolina 339, and Your Honor, I'm
5 happy to hand up a copy of this decision.

6 THE COURT - Please do.

7 MR. LANEY - I'm also happy to hand up any of the
8 other decisions that I've cited, Your Honor, King vs.
9 Oxford, West vs. Gladney and Carolina Chloride vs. Richland
10 County. I believe all of those -- those four cases when
11 taken together pretty much leave us here with the zero
12 doubt that there's any question of fact in this matter.
13 But, Your Honor, in the Robertson case you had something
14 very, very similar. You had a borrower, a purchaser, who
15 entered into a contract for some commercial property down
16 in the lower part of the state. I believe it was in
17 Charleston County. And they negotiated the purchase price
18 with the seller, and then they go to the bank, First Union,
19 and they apply for a loan. They get the loan; they don't
20 see the appraisal, and then there's a downturn in the
21 economy, the building -- the commercial building falls into
22 disrepair, they go to try to refinance the loan and a new
23 appraisal's done and it comes in significantly lower than
24 the original appraisal.

25 THE COURT - Is this the case you're referring to?

1 MR. LANEY - Robertson? Yes, sir, Your Honor.

2 THE COURT - Anderson vs. Citizen's Bank.

3 MR. LANEY - Oh, I apologize, Your Honor.

4 THE COURT - I was just noticing ---

5 MR. LANEY - I've got two -- that's the unfair
6 trade practices. I apologize.

7 THE COURT - Right. That's what I -- I noticed --
8 now Charlie Smith, Jr., one of the defendants in this case
9 was I believe either a homicide victim or the victim of
10 murder. Bill Prince was either a homicide victim or a
11 victim of murder down in Florence County, kind of a
12 fascinating criminal case, and I also note the Honorable
13 Judge Edward B. Cottingham tried this case, so it's got to
14 be some great law in this, no doubt about that.

15 MR. LANEY - Yes, you ---

16 THE COURT - Very succinct I might add.

17 MR. LANEY - I'm glad I could bring up some good
18 memories for you. I apologize -- I read -- I read the s-o-
19 n too quick at the end when I was looking through my cases
20 and I apologize.

21 MR. FOSTER - I'm not quite sure the Judge is
22 saying these are pleasant memories.

23 MR. LANEY - Okay, Your Honor, I'm going to bring
24 up with your permission the Robertson case, the King vs.
25 Oxford and the Carolina Chloride ---

1 THE COURT - Sure.

2 MR. LANEY - --- matter and also will bring up a
3 West vs. Gladney case. Those are the four cases that we're
4 relying on extensively in this matter. And I apologize for
5 the delay in getting ---

6 THE COURT - Oh, no, that's all right. I just
7 wanted to make sure I was tracking ---

8 MR. LANEY - Yes, sir. You know, it's very
9 important. It's some great language in there, so I
10 certainly want you to be familiar with it.

11 THE COURT - Thank you, Mr. Laney.

12 MR. LANEY - Yes, sir. In the Robertson case
13 which is a Justice Hearn decision and a appeal from Judge
14 Dennis of West Charleston County, and is a First Union
15 National Bank, within this case as I've stated, Your Honor,
16 they entered into a purchase and sale agreement and then
17 went to the bank and approached the bank for a loan; the
18 bank gets an appraisal, approves the loan for 80% of the
19 appraised value and provides that to them; some years go
20 by, the property declines in value and they ask for a
21 refinancing and the bank offers it to them, but based on
22 the new appraisal, which has a much significantly lower
23 amount which means they would have to bring some money to
24 the table in order to refinance and they can't do that, and
25 so they -- they and I guess kind of in a pre-emptive

1 strike, before the bank can file an action for foreclosure,
2 file an action for civil conspiracy, unfair trade
3 practices, fraud and negligent misrepresentation, so we
4 have unfair trade practices, fraud and negligence
5 misrepresentation along very similar lines that we have in
6 this case which Mr. Pappas is bringing here. And as we've
7 already stated, if you fail to prove just one element of
8 fraud or no to (sic) misrepresentation, that's fatal to the
9 claim, and again, the Robertson -- and when -- talking
10 about summary judgment in the subparagraph (a) cites that
11 again and cites to the Foxfire Village case as holding
12 that, --- but they say, you know, here in this case it's
13 clear the appellants have not established a requisite
14 element for fraud, appellants lack of reliance is glaringly
15 absent; the purchase price for the commercial property was
16 already agreed upon before appellants approached the bank
17 for a loan -- exactly like the situation of Mr. Pappas --
18 significantly appellants did not receive a copy of the 1993
19 appraisal until 1998 -- five years difference there --
20 we've got seven and four, depending on which loan you're
21 looking at here, and therefore, appellants could not have
22 relied upon the appraisal in purchasing the property. And
23 that goes to the heart of what Mr. Pappas is complaining
24 about. He's complaining that we had a negligently
25 performed, either using negligent methods or providing him

1 with negligent value through the appraisal, and that is
2 what his damages flow from, and Your Honor, under the
3 holding of Robertson we have the same problem here.
4 Reliance is just glaringly absent, because Mr. Pappas could
5 not have relied upon the 2006 appraisal or the 2009
6 valuation of the property which -- which is the subject of
7 his, you know, affidavit and response to our motion for
8 summary judgment. He states he still hadn't been provided
9 that and he may be able to get an expert now who would say
10 that the appraisal method, you know, was not proper or that
11 it could only lead to a conclusion that the value of the
12 property was less than what he refinanced the property for.
13 And in response we would say that's completely irrelevant;
14 it doesn't matter. First of all, when served him with
15 discovery back in the summer of 2012, asked if he had an
16 expert -- he was asked in his deposition if he had hired an
17 independent appraiser or anybody to produce anything that
18 showed that the appraisal by Mr. Pigman was inaccurate or
19 that the value -- and he said, -- candidly again -- Mr.
20 Pappas very candidly in his deposition said, I'm not
21 questioning the value of this; I just think that the was
22 saying that it was going to be a lot -- the value was going
23 to be when it was completed. And we walked through the
24 appraisal which is attached to the copy to the memorandum
25 and showed that actually the appraiser stated that he had

1 been out there just like Mr. Pappas, knew that the
2 subdivision was not yet completed and the amenities had to
3 be performed and that he did not have a pecuniary interest
4 in providing the appraisal and Mr. Pappas acknowledged all
5 that. So I would state in anticipation that other counsel
6 adversary will rely on that affidavit that he filed with
7 the Court a couple days ago, we would state that it's --
8 this Court looks at it, the expert -- even if the expert
9 testified, can't contradict (sic) the facts which have
10 been testified to by Mr. Pappas. He can only testify as to
11 opinions. Counsel can only advocate on behalf of the
12 party. The party and fact witnesses testified about the
13 facts in this case. Mr. Pappas has testified about the
14 facts in this case. The facts are not in dispute, and
15 under those, you simply cannot show -- there's zero
16 evidence -- there's not a shred of paper from this Court,
17 there is not any testimony that can be referenced in Mr.
18 Pappas's deposition that says there was a false statement -
19 - there was a statement, that it was false at the time it
20 was made, that he was ignorant of the veracity of that
21 statement and/or that he relied upon it in deciding to
22 purchase lot 311 or that he relied upon it in refinancing
23 the lot in 2009. There just simply is nothing in front of
24 this Court that can dispute the facts that we've set forth
25 here today. Therefore, under Rule 56, summary judgment's

1 entirely proper under all the causes of action. The final
2 element, unfair trade practices is also addressed by the
3 appellant court here. First, our position is it doesn't
4 apply to national charter banks and we've handed up under
5 the Anderson case, which I handed up to you a little
6 earlier, the footnote holds that they follow the Federal
7 Trade Commission and the Federal Trade Commission, the --
8 the South Carolina Unfair Trade Practices Act follows the
9 Federal Trade Commission's guidance. Federal Trade
10 Commission states that they do not regulate nationally
11 chartered banks. While Anderson has been overruled, Your
12 Honor, that secondary finding in that footnote has not been
13 overturned, and I handed and attached to the memorandum at
14 least three different Circuit Court Judges in the State who
15 have held and followed that, Judge Russo, Judge Burch,
16 Judge Dukes, have all acknowledged that that secondary
17 holding in Anderson has not been disturbed, and therefore,
18 unfair trade practices does not apply to Wachovia or Wells
19 Fargo, but even more-so as the Robertson Court held where
20 you simply just have conduct which only affects the parties
21 to the transaction, that's not a basis for a unfair trade
22 practices claim, that's exactly what we have here. Any of
23 the complaint of conduct would only affect Wachovia and Mr.
24 Pappas, and therefore, none arrised (sic) with unfair trade
25 practices, and moreover, there's simply no evidence in

1 front of this Court that there has been an unfair or
2 deceptive act and is set forth by -- or promulgated by
3 Wachovia or Wells Fargo so ---

4 THE COURT - Thank you. Thank you, Mr. Laney.
5 Anything from Ms. Hunt?

6 MS. HUNT - Your Honor, with respect to the
7 summary judgment motion we don't have a position, don't
8 really have ---

9 THE COURT - Thank you. Mr. Foster?

10 MR. FOSTER - Thank you, Your Honor. Your Honor,
11 first of all, in these longer motions I always like to ask
12 the Court, does the Court wish to take a break before we
13 get into this? I know we've been at this for a while. I
14 expect to take a while also.

15 THE COURT - If you need a break I don't mind
16 taking one.

17 MR. FOSTER - I do not need one, sir. I am asking
18 the Court.

19 THE COURT - I don't need one. Thank you. How
20 about our court reporter? You all right, Mrs. Broom?

21 COURT REPORTER - I'm fine, Judge. Thank you.

22 THE COURT - All right, we'll press on.

23 MR. FOSTER - Sir, procedurally, counsel has
24 referred several times to Mr. Pappas's deposition. Has the
25 Court possessed a copy of that deposition?

1 THE COURT - I believe I do, yes, sir.

2 MR. LANEY - I have the original transcript, Your
3 Honor, if you'd like me to hand that up.

4 THE COURT - Yes, deposition transcript of Ronald
5 Pappas.

6 MR. LANEY - Okay.

7 MR. FOSTER - Sir, let me simplify matters
8 somewhat. We are not going to dispute any of the arguments
9 that are advanced on behalf of RESPA or on behalf of the
10 Interstate Land Sales Act. We have I'm afraid plenty of
11 the arguments on the other matter -- matters I should say.
12 Your Honor, if I could approach and hand to the Court some
13 items. I presume the Court has a copy of my affidavit. If
14 not, I have the original.

15 (Documents handed up to the Court.)

16 THE COURT - Thank you. All right.

17 (Discussion is held between counsel which was not
18 reporter.)

19 MR. FOSTER - Counsel has requested to clarify and
20 I don't want to play those games.

21 (Discussion is held between counsel which was not
22 reported.)

23 MR. FOSTER - Your Honor, let me go to the
24 question - the second -- the second refinancing, because I
25 think we're getting to heart of this matter and that's

1 where I believe we have a problem. As I've stated in my
2 affidavit, which the Court has been sent and which I've
3 handed up, we have alleged the failure to give us this
4 document. We have requested it by way of deposition, by
5 way of discovery. We have been assured by counsel that if
6 it was available, it would be turned over. As of this date
7 it has not been turned over. The argument made is, it
8 doesn't matter, you're already into it. Our comeback to
9 that is, if there was vital information that we had the
10 right to receive -- and I don't think there's any question
11 of that -- we paid for that appraisal; we went to the
12 appraiser they picked. That appraisal had to say in 2009,
13 as counsel has adequately stated, after the great debacle
14 of 2008 and the real estate failure, it had to say one of
15 two things; either it had to reflect the old value and
16 therefore was prima facie incorrect or had to reflect a new
17 value which we maintain would be less than that which was
18 refinanced. Therefore, a piece of information necessary to
19 my client's decision over whether to enforce his rights at
20 that time of whether to refinance was not turned over, has
21 not to this day been turned over, and in spite of that fact
22 we stand here arguing about a motion of summary judgment.
23 Now, I've handed up some documents to the Court. I wanted
24 to go through those, and I hope I do not spend too much
25 time on this, but it is a matter that I think needs to be

1 emphasized. We have conceded the points about RESPA, the
2 procedures involved in the land sale. We have conceded the
3 point about the Interstate Land Sales contract -- Sales Act
4 insofar as it refers to Wells Fargo. Wells Fargo is here
5 today to say, we are not subject to South Carolina Unfair
6 Trade Practices Act because we are a national bank; because
7 we are a national bank we do not have to answer to the fact
8 that today, as counsel said, what is it six years after the
9 original transaction, four years after the refinance -- if
10 my dates are wrong, the Court has them -- we don't have to
11 answer to the fact that we have not turned over something
12 that we required you to get and we required you to pay for
13 them. We do not have to give you that appraisal or if we
14 didn't do it, nothing matters. Well, as I understand it --
15 and I've turned these over to the Court, but I'll try to go
16 through them I hope cogently -- there is indeed a provision
17 in the South Carolina Unfair Trade Practices Act refers to
18 decisions of the Federal Trade Practice -- the Federal
19 Trade Commission. I have indeed handed up the language
20 from the Federal Trade Commission, 15, Section 45, that
21 says that it does not cover banks, savings and loan
22 institutions described in Section 57-A-F3 which is national
23 banks. That's what this document says. If the Court will
24 look at the next item however, it will find that evidence
25 to the fact that that portion of the federal bureaucracy,

1 the comptroller of the currency in department of the
2 treasurer, which is in charge of regulating national banks
3 has, in fact, made those banks subject to the Federal Trade
4 Commission Act. I cited to you and have handed up 12,
5 Section 34.3, (c) in that Act, the national banks are not
6 engaged in unfair, deceptive practices within the meaning
7 of Section 5 of the Federal Trade Commission Act. So as so
8 often with federal law, as so often perhaps I should say
9 with the Internal Revenue Code, if you can't get to there
10 next door, you go around the block. There is indeed an act
11 that says we don't cover banks, but the entity that covers
12 banks says, we're going to make you subject to that act;
13 we're going to make you subject to that commission. We've
14 handed up Your Honor two cases, and I assure you not by
15 means of my looking at them, they both happen to be against
16 Wells Fargo National Bank. To summarize, both the --
17 pardon me for pausing -- both the United States Court of
18 Appeals for the Ninth Circuit and for the as I recall
19 Seventh Circuit, in recent cases have held pursuant to a
20 federal -- pardon me -- to the Supreme Court decision in --
21 I beg your pardon for pausing here, but I want to cite it
22 properly -- I believe I may have handed counsel my one copy
23 of the document, but I will try to sound semi-intelligent.
24 Thank you. Counsel is a gentleman. I'm sure it will come
25 back -- no, that's not the one. Thank you. Your Honor,

1 the Supreme Court in this decision specifically address the
2 question of what is and is not exempt or precluded under
3 the designation of a national bank. It specifically stated
4 there are things that are not precluded. What we've handed
5 up -- what is not precluded specifically is the State
6 coverage of contracts and torts. In both the Seventh
7 Circuit and the Ninth Circuit -- and I wish to be clear,
8 these are west coast cases -- I know of no contrary
9 precedent. In both these case, the Federal Circuit Courts
10 have said in effect -- I'm quoting here from Gutierrez --
11 we've tried to mark it -- I beg pardon -- as the Supreme
12 Court explained -- I'm skipping within the case a regime
13 exclusive administrative oversight by the comptroller while
14 honoring the fact rather merely in theory, congress's
15 decision not to preempt substantive state law, and of
16 course in this case in Gutierrez it goes on to state that
17 it does not preclude unfair trade practices. In Wigod --
18 hoping I'm pronouncing it correctly --- the Seventh Circuit
19 in that case stated, Ocwen, the case they're citing --
20 stands for the principle that HOLA, the national banks,
21 preempts generally applicable to the state law only when
22 they, quote, could interfere with federal regulation. I --
23 that is, those that actually conflict with the regulatory
24 program. Again, I refer the Court to language which we've
25 handed up which states in effect -- not in effect -- just

1 flatly states, that certain things are not precluded. The
2 state laws about contracts, about torts, what else are we
3 talking about, are not precluded. Counsel cites a decision
4 of the State in 1986. He cites various decisions that have
5 been decided in various Circuit Courts since that time the
6 same proposition, in amongst great many other things. I
7 commend him, but I would suggest that I do not believe he
8 can cite any appellant cases. If I am incorrect, I stand
9 to be corrected. He cannot in my opinion cite any federal
10 cases; he cannot cite any state cases on the appellant
11 level that have confirmed that opinion in light of the
12 later regulations of the federal courts, in light of the
13 later statements of federal courts, -- pardon me -- later
14 precedents. The decision in Anderson was based on
15 proposition as existed at that time, that national banks
16 were excluded under the first federal law -- and I'm
17 quoting to Your Honor -- and therefore, they were precluded
18 from SCUTPA. Later decisions have held -- and I believe I
19 am capable of saying have held unanimously -- that they are
20 not so precluded. What do we allege in this case? We
21 allege that we entered into two transactions with this
22 bank. On both occasions we have stated we asked for the
23 appraisal. On both occasions we were not given the
24 appraisal. In this case the bank seeks to foreclosure a
25 refinancing from 2009, if I remember correctly. Their

1 argument is, we cannot claim fraud, because you cannot rely
2 upon what you can't see. That I believe mischaracterizes
3 what we're saying. We have the right to assume that if we
4 went to an appraisal they required, that that appraisal
5 would be taking place in proper universally recognized
6 methods and that it would be as far as such things can be
7 accurate. I go back to my argument. One of two facts had
8 to occur with that appraisal in 2009. Either it stated the
9 original value and was prima facie inaccurate, or it stated
10 a lesser value and that lesser value was not disclosed to
11 us. We relied upon the bank's honesty; we relied upon its
12 proper procedures in getting an appraisal and getting a
13 proper appraisal. The argument we have is, based upon the
14 information we now have and based upon the bank's refusal
15 to turn over that document or failure, is that that
16 document could not have been those items, could not have
17 fulfilled those purposes. It was either inaccurate or it
18 was accurate and it was concealed. I argue to this court,
19 that is a prima facie case for an unfair and deceptive
20 trade practice. It is the basis for a claim of negligent
21 misrepresentation and fraud, not of what was in the
22 appraisal, but that the appraisal would be accurate and
23 would be done according to the proper methods. And we have
24 no way to confirm or deny that fact because we still do not
25 have the appraisal. Counsel argues that my client was

1 already bound. That I believe will not quite serve. In
2 2009, yes, as counsel states, he applied to refinance the
3 loan. Had he been given an accurate information at the
4 time, had the appraisal come in and had either been
5 obviously incorrect or a lesser figure, he would've had the
6 ability to act at that time and to enforce his legal rights
7 at that time. The appraisal was not turned over; an
8 appraisal was not given, and of course at this point we
9 still do not have it. We believe we have prima facie cases
10 for unfair trade practice not precluded for fraud and
11 negligent misrepresentation. That is our position, sir.

12 THE COURT - Thank you. Thank you very much, Mr.
13 Foster. Mr. Laney?

14 MR. LANEY - Yes, sir. Thank you, Your Honor.
15 I'll try to be brief. Your Honor, Robertson,
16 notwithstanding counsel's able argument to the contrary
17 very much controls the situation we have here today. Mr.
18 Pappas negotiated to purchase lot 311 on March 29th, 2006,
19 perhaps -- negotiated the purchase price, enters into the
20 purchase price. In the contract which the Court has in
21 front of it, Your Honor, has nothing in it -- and I was
22 listening very carefully -- there's absolutely nothing
23 there to state that there's a contingency upon lot 311
24 appraising for the purchase price. That was the -- that
25 was done. He then applies for financing and is granted,

1 and Mr. Pappas candidly in response to my questions and Ms.
2 Hunt's questions in his deposition states that the
3 appraisal was ordered by Wachovia. The contract, the
4 relationship -- anything that exists was solely between
5 Wachovia and the appraiser. It was not between Mr. Pappas
6 and the appraiser. I would state that that's a
7 mischaracterization to say that they went through the
8 appraisal we chose. Mr. Pappas didn't even know the
9 man's name until his memory was refreshed at his deposition
10 when he saw the appraisal. Again he did not see it until
11 two months prior to his deposition at the earliest, Your
12 Honor. So simply put, there cannot have been any reliance
13 on the appraisal, all the methods of the appraisal which he
14 then tries to, you know, kind of circumvent, says it's not
15 the actual value, it must have been the methods of the
16 appraiser which we haven't had a chance to review. Well,
17 he's had the 2006 appraisal since a few months before his
18 deposition and there is absolutely nothing in the record,
19 Your Honor, challenging the methods of that appraisal or
20 anything that would suggest that Mr. Pigman did not give an
21 accurate appraisal at the time. So, Your Honor, there has
22 been no false statement provided; there has been no
23 reliance on a false statement to the detriment of the party
24 and the, quote, West vs. Gladney and King vs. Oxford. If
25 the truth is easily within one's reach, one cannot rely

1 upon a misstatement of fact. Even if there was a
2 misstatement of fact, King vs. Oxford and West vs. Gladney
3 hold that if you can find that out on your own -- and Mr.
4 Pappas candidly admitted he could've done independent
5 valuation to determine the value of lot 311 or determine
6 the value of the lot at the time he refinanced the loan --
7 he was traveling down there. He's a sophisticated real
8 estate developer and buyer. He understands, and he says, I
9 didn't hire my own appraiser; I didn't make any efforts to
10 independently ascertain the value of that property. And,
11 Your Honor, Robertson also doesn't rely upon the arguments
12 that the unfair trade practice does not apply to national
13 banks; instead they go on the premise that it was not an
14 unfair or deceptive act because nothing deceptive was
15 provided to the borrower before he agreed to buy the
16 property and accept the loan which was offered to him and
17 it can only in fact -- it did not affect the public
18 interest, because it only affected the transaction between
19 the parties, and I would submit to you that this case is
20 exactly under the four corners of Robertson and under the
21 holding of Robertson that summary judgment should be
22 granted on behalf of Wells Fargo for unfair trade
23 practices, fraud and negligent misrepresentation in this
24 matter. And, Your Honor, quite honestly I don't understand
25 the argument that somehow he had already entered into a

1 loan contract with a balloon payment and maturity date
2 being due on June 1st, 2009 and somehow our not providing
3 him an appraisal which he's now conceded RESPA -- he says
4 he has no claims under RESPA, so us not providing an
5 appraisal we had no duty to provide to him somehow kept him
6 from exercising his legal rights in 2009 instead of now.
7 There's not a statute of limitations issue here, and I
8 guess he was going to bring his lawsuit in 2009 versus
9 2011, which again, there could not have been any reliance
10 on the 2006 appraisal, but I really don't see where that
11 argument advances anything on its behalf, Your Honor. I'm
12 missing the argument in total there as to how -- somehow
13 not seeing any valuation of the property from the 2009
14 refinance that's hindered Mr. Pappas from advancing any
15 legal rights for making a decision. He either was going to
16 have to pay off the loan, fight the foreclosure action that
17 came in 2009 or refinance, and he chose to refinance and he
18 got an additional three years to try to be able to pay off
19 his property. Unfortunately, you know, that didn't work
20 out, and he is now coming up with very creative ways to try
21 to keep from repaying Wachovia the money that was due on
22 the loan. And he -- he, -- again, just to point out very
23 candidly, he said -- Wachovia has honored everything it
24 stated it would do with regard to the loan. There is no
25 question about the loan terms being adhered to and then he

1 had got the benefit of his bargain as far as the loan goes,
2 so now it's time for Mr. Pappas to honor his part of the
3 agreement and repay Wachovia or allow them to take judicial
4 process here and foreclosure upon this lot, sell it and be
5 allowed to pursue any deficiency judgment that remains
6 under the sale of the property. Thank you, Your Honor.

7 THE COURT - Thank you. Thank you very much.
8 Anything, Mr. Foster?

9 MR. FOSTER - We believe we've stated our
10 position, Your Honor. If there's anything the Court had,
11 I'd be happy to answer it.

12 THE COURT - Thank you. Thank you very much. All
13 right, as to the two federal regulations, those have been
14 abandoned by the defendant in that regard. As to the
15 unfair trade practices and looking the language from the
16 Robertson irre -- not irrespective -- I don't mean it like
17 that -- with the background of Gutierrez and the other,
18 whose name I cannot pronounce right now or recall, that Mr.
19 Foster has presented to the Court, I'm not even ruling on
20 that issue, because I find that under the South Carolina
21 Uniform Trade Practices Act, unfair methods of competition
22 and unfair deceptive acts or practices and the conduct of
23 any trade or commerce are deemed unlawful. A plaintiff
24 bringing a private cause of action under UTPA must allege
25 and prove the defendant's action adversely affected the

1 public interest, citing Daisy Outdoor Advertising vs.
2 Abbot. Therefore, conduct which only affects the parties
3 to the transaction provides no basis for a unfair trade
4 practices claim, citing Jeffries vs. Phillips. I find no
5 evidence of any act the practice that is unfair or one that
6 affects the public interest, so I'm granting the summary
7 judgment on the Unfair Trade Practices Act. Also as to the
8 others, I'm also granting motion for summary judgment as to
9 fraud, which of course as we all know requires clear and
10 convincing evidence. That's not the standard I'm using.
11 I'm obviously using the standard of Rule 56 whether or not
12 there's any genuine issue of any material fact is
13 appropriate. There is no genuine issue of material fact
14 and the moving party is entitled to judgment as a matter of
15 law. I find that the moving party, Wachovia, is entitled
16 to judgment as a matter of law both as to the fraud and the
17 negligent misrepresentation. They're also entitled to
18 foreclosure. I would ask you, is there a Master in
19 Lancaster County?

20 MR. FOSTER - No, sir.

21 MR. LANEY - I think we have to refer to a Special
22 Referee.

23 THE COURT - All right. Well, they should have a
24 Master, but be that as it may, that's just my comment. If
25 y'all -- well, I'm referring it to a Special Referee. If

1 y'all would agree on whoever that may be, or if there is
2 any other motions that may come up. If you'll prepare the
3 Order, please, ---

4 MR. LANEY - Yes, sir.

5 THE COURT - --- Mr. Laney, e-mail it
6 simultaneously to Mr. Foster, to Ms. Hunt, to my law clerk,
7 not to me, to my law clerk.

8 MR. LANEY - Yes, sir. I got that the second time
9 --- I'm sorry, Your Honor.

10 THE COURT - Thank you so much. Thank you. Thank
11 you, Mr. Foster. It's always -- I always enjoy your
12 presentations.

13 MR. LANEY - Thank you, Your Honor.

14 (End of transcript)

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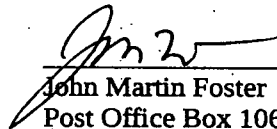
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CRTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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April 2, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

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SC Court of Appeals

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Cross-Defendant.

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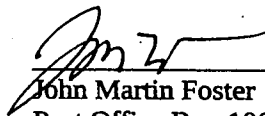
I certify that I have served one (1) copy of the Record on Appeal, on the following party
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by depositing the same with the United States mail, with sufficient first class postage

attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.



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April 3, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

Wells Fargo Bank, N.A.,
Successor, by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

SUPPLEMENTAL RECORD ON APPEAL

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Page 5 1 P-R-O-C-E-E-D-I-N-G-S 2 It is hereby stipulated by and between Counsel for 3 the respective parties that deposition will be held 4 open for the purposes of inquiries about issues 5 which may be produced at a later time. 6 Whereupon, 7 RONALD PAPPAS, 8 having been first duly sworn, 9 was examined and testified as follows: 10 DIRECT EXAMINATION 11 BY MR. LANEY: 12 Q. Mr. Pappas, my name is Sterling Laney, and I'm an 13 attorney from Greenville, South Carolina. I 14 represent Wells Fargo Bank in this foreclosure 15 action that's been brought in regards to a note and 16 mortgage that you and your wife executed in favor 17 of Wells Fargo Bank concerning Lot 311 in Edgewater 18 subdivision here in Lancaster -- well, not here -- 19 but in Lancaster County. 20 A. Wachovia Bank, at the time. 21 Q. Yes. At the time, it was Wachovia Bank. And from 22 time to time, I'll refer to the bank -- I'm 23 referring to the Wachovia Bank loan that you took 24 out -- 25 A. And I'll remember --	Page 7 1 A. I understand. 2 Q. If you don't, I'll assume you understood my 3 question and that your answer is a response to that 4 question. Are you taking any medications today? 5 A. No, sir. 6 Q. Any reason that you can't sit for your deposition 7 today that you're aware of? 8 A. No, sir. 9 Q. Okay. Also, now that the deposition's begun, I 10 would ask that you direct any questions about the 11 deposition to me rather than to your attorney. I 12 don't imagine I'm going to get into anything that 13 would be privileged, but if so, Mr. Foster will 14 certainly raise it. And if he instructs you not to 15 speak or raises -- He may raise an objection from 16 time to time, but unless he instructs you not to 17 answer, please go ahead and answer the question 18 after he puts his objection on the record. 19 All right. As we mentioned in the beginning, 20 this lawsuit involves a loan that you and your wife 21 took out from Wachovia Bank. The loan that we're 22 here about today is one that you -- the note 23 mortgage that you signed in 2009. But the original 24 impetus for all this went back to around March of 25 2006; is that correct?
Page 6 1 Q. -- by way of merger. It's now Wells Fargo Bank. 2 A. I'm remember to do the same. 3 Q. Okay. Have you ever been deposed before? 4 A. Yes. 5 Q. Okay. So you're familiar with what we're doing 6 here today. You've been placed under oath. You're 7 testifying just as if you were at trial in this 8 case. In fact, your testimony can be used at trial 9 should there be a trial in this matter. I'll be 10 asking you a series of questions. I need you to 11 answer out loud to those questions. The court 12 reporter will be taking down everything that we 13 say. I will do my best -- sometimes I'm not as 14 good at it -- I will do my best not to interrupt 15 you or speak at the time that you're speaking. I 16 would ask that you do the same thing so that -- 17 It's very hard for her to do her job when we have 18 two or more people speaking at the same time. If 19 for any reason I ask you a question that you don't 20 understand or that -- sometimes as lawyers, we just 21 don't ask very well-crafted questions, or well- 22 constructed questions -- please ask me to rephrase 23 it, or if for some reason your mind wanders for 24 whatever reason, just ask me to restate the 25 question.	Page 6 1 A. I believe those dates are correct. 2 Q. Okay. And in March 2006, you and your wife became 3 interested in purchasing Lot 311 in Edgewater 4 subdivision in Lancaster, South Carolina? 5 A. Yes. 6 Q. Okay. Tell me how you came to be aware of 7 Edgewater subdivision and what lead you to decide 8 you wanted to purchase Lot 311 in that subdivision. 9 A. There were a series of mailings that came to our 10 house -- 11 Q. Okay. 12 A. -- and representing offerings by what's now known 13 as Craft, representing what they had to offer down 14 in the Edgewater community. 15 Q. Okay. 16 A. And so they had several dates and several marketing 17 programs that were held in fairly large venues. 18 Ballantyne Resort was one of them that I attended, 19 and also, two or three of them at the Edgewater 20 community, itself. And what they had offered was 21 something that I was looking for as a waterfront 22 property. And we were looking to replace another 23 waterfront that we had once had, so it was a 24 personal purchase. And we liked what they 25 represented. They had several -- the marketing

Page 9 1 representatives. It was a big room. There might 2 have been 500, 600 people in the room. 3 Q. Okay. 4 A. They had a very well-orchestrated presentation 5 process, showing films on the wall and pictures and 6 graphics on the walls, power-point type of 7 presentations, probably a very well-versed sales 8 and marketing team that they had describing all of 9 the things that they were selling at that property. 10 Q. Okay. 11 A. Club houses, docks, buildings, restaurants, an 12 equestrian center, golf course, and all backed up 13 by the large collateral material that they handed 14 out to everybody. 15 Q. Okay. 16 A. Again, demonstrating everything that they had. It 17 was just a nice property to look at. It seemed 18 like that's something we wanted to do. And so as 19 we started to discuss that with some of the 20 membership of the sales team there, it was brought 21 up by them that they had a program that was 22 endorsed by two or three lenders in that community 23 that would offer programs to close the property 24 before all of the construction activity was 25 completed by the developer.	Page 11 1 at other venues throughout the Charlotte and 2 Columbia regions. 3 Q. Okay. And you're using the word they a lot. Tell 4 me who they is? 5 A. Well, why don't we just call it the developer for 6 now. 7 Q. Who is the developer? 8 A. As we know it, it's Craft. 9 Q. Okay. 10 A. We'll call it Craft. 11 Q. Craft Development? 12 A. We'll call it Craft Development. 13 Q. And you've filed a cross-claim against Craft 14 Development. Is that who we're referring to? And 15 I'm just trying to make sure we're not referring to 16 anybody else. 17 A. Well, they're the seller. They're the developer of 18 the property. They offered the property. So if we 19 can keep it in that context, then I'll just go with 20 Craft. Is that okay with you? 21 Q. Okay. That's fine. Kind of like Wachovia has now 22 become Wells Fargo. 23 A. Right. 24 Q. I just want to make sure we're talking about the 25 same folks here.
Page 10 1 Q. Okay. 2 A. That was probably one of the key deciding factors 3 that we had. And that representation is that we 4 could purchase and close backed by a pretty large 5 organization. Wachovia was a pretty well-known 6 bank, as is Wells today. 7 Q. Okay. Where did this meeting take place? I know 8 you've mentioned Ballantyne and the property. 9 Where were you when this meeting took place? 10 A. Well, there was more than one. 11 Q. You went to more than one? 12 A. I went to more than one. 13 Q. Okay. Tell me where the locations of those 14 meetings were. 15 A. It was at the Ballantyne Resort, one of them. 16 Q. Okay. 17 A. And at least two of them over on the property. 18 Q. Okay. 19 A. They had set up a staging area adjacent to some of 20 the waterfront lots and had helicopters giving 21 tours of the property showing all the amenity 22 locations from the air. The Ballantyne Resort, 23 again, was the other venue. I do know and remember 24 from some of the marketing materials that were 25 mailed out that they had done these presentations	Page 12 1 A. And I think Craft Development, LLC may be the 2 correct entity. 3 Q. If it is. 4 A. Okay. 5 Q. Okay. After you attended these two and three 6 meetings, what happened next? And tell me where 7 were you living at this time. 8 A. In Waxhaw, North Carolina. 9 Q. All right. Do you still live at that location? 10 A. I do not. 11 Q. Where do you live currently? 12 A. I live -- you want an address? 13 Q. Yes, sir. 14 A. 19217 Mallard, M-a-l-l-a-r-d, Drive, Fort Mill, 15 South Carolina 29707. It's also known as Indian 16 Land. 17 Q. I'm familiar with it. Okay. Tell me, do you and 18 your wife have any children? 19 A. I have two children. My wife and I together, no. 20 Q. Okay. Do they live here in South Carolina? 21 A. They do not. 22 Q. Okay. Do you have any other relatives in Lancaster 23 County with the last name other than Pappas? 24 A. Yes. 25 Q. What are their names?

Page 13 1 A. My father-in-law. 2 Q. Okay. 3 A. Edward Thrasher. 4 Q. Thrasher? Okay. Anyone else? 5 A. Other than the last name of Pappas, no. 6 Q. Pappas or Thrasher? 7 A. Well, my mother now lives with us today. 8 Q. Okay. Okay. Do you attend a church in Lancaster? 9 A. No. 10 Q. Okay. Are you a member of any clubs or social 11 organizations? And I'm just asking for jury 12 purposes if we get to a jury trial. 13 A. I'm on the -- I'm on the Lancaster County Planning 14 Commission. 15 Q. Okay. Outside of the being a member of the 16 Planning Commission, are you a member of Rotary or 17 anything like that? 18 A. No. 19 Q. Okay. Where are you currently employed? 20 A. I'm self-employed. 21 Q. Self-employed? What's the name of your business? 22 A. I just do it under my own name. 23 Q. Okay. Just Ronald -- Not under Ronald Pappas, LLC 24 or anything like that? 25 A. That's correct.	Page 14 1 Q. Okay. What do you do? 2 A. I'm in the real estate development business. 3 Q. Tell me about that. What do you develop? 4 A. Small residential pieces -- 5 Q. Okay. 6 A. -- that I've purchased. 7 Q. When you say purchased, what do you mean by that? 8 A. Sorry. I'm -- 9 Q. No. That's fair. I'm just trying to figure out do 10 you buy it, or does someone else buy it and you 11 develop it for them? 12 A. They're my own properties. I buy them for myself. 13 Q. Okay. And when you say small, how many residential 14 units -- 15 A. Sometimes, a single lot at a time. Sometimes, up 16 to maybe five acres. 17 Q. Okay. 18 A. Most of my life has been a balance between being in 19 business for myself as a builder and developer or 20 working for some of the larger public home building 21 companies in the country. 22 Q. I saw in your responses to discovery that you'd 23 worked for Jim Walter Homes. 24 A. I did. 25 Q. How long did you work for them?	Page 15 1 A. Just under a year. 2 Q. Okay. Okay. What other large home builders did 3 you work for? 4 A. D.R. Horton. 5 Q. How long did you work for D.R. Horton? 6 A. About three and a half years, I guess it was. 7 Q. Okay. Can you give me just a time frame for both 8 the different folks? 9 A. Jim Walter Homes was '04 and '05. 10 Q. Okay. 11 A. D.R. Horton was about, oh, '02 through '05 or '02 12 through '04. 13 Q. Okay. 14 A. Before that, I worked for Weyerhaeuser Real Estate. 15 I ran one of their homebuilding groups called 16 Quandrick Homes. I was with the real estate entity 17 from '97 to about 2002. I also had a part interest 18 in the real estate brokerage in the Seattle 19 marketplace. 20 Q. Okay. I was going to ask you. I saw a Washington 21 address. 22 A. The D.R. Horton and the Weyerhaeuser were both in 23 Washington. 24 Q. Washington. Okay. And I apologize if I didn't 25 catch it. Did you say there was a name of a real	Page 1 estate entity? What was the name of it? 2 A. Yes. It was called Windermere Rhiness. 3 Q. Windermere. Okay. Was that also in Washington? 4 A. It was in Seattle. 5 Q. Okay. When did you move to Waxhaw? 6 A. In 2004 is when I moved to the Charlotte region. 7 Bought the house in Waxhaw in February of 2005. 8 Q. Okay. So since 2004, you've lived either in the 9 Charlotte region or Fort Mill? That's really the 10 Charlotte region, but. 11 A. That's correct. 12 Q. Okay. In 2006, the spring of 2006, who were you 13 working for? 14 A. Myself. 15 Q. Okay. 16 A. Right. 17 Q. Since 2005, have you been self-employed? 18 A. That's correct. 19 Q. Okay. Doing the same thing you're doing right now? 20 A. That's correct. 21 Q. Okay. Just for D.R. Horton and Jim Walter Homes, 22 what was your job title and duties? 23 A. At Jim Walter Homes, I was Atlantic Region 24 President. 25 Q. What does that mean?
--	---	--	---

Page 17

1 A. My --
2 Q. Is that from New Jersey all the way down or so?
3 A. Yes. It was a six-state region, basically from
4 Washington D.C. through Tampa, and from Memphis to
5 the coast.
6 Q. Pretty large region.
7 A. It was.
8 Q. What were your duties as --
9 A. As Region President, I had 25 or more small
10 divisions. Mine was -- I call it a dirt-to-
11 doorknobs responsibility. I had a full bottom line
12 responsibility, full profitability responsibility,
13 if that helps you. I can go through a long
14 dissertation. My entire job as a president of the
15 company was to obviously manage that company and
16 grow it and make it profitable.
17 Q. Sure. How many employees did you have reporting to
18 you on average?
19 A. At that time, or on average over time?
20 Q. Over time, just time.
21 A. I've had as many as 250 report, or that I was
22 responsible for. The direct reports would move on,
23 obviously.
24 Q. And just tell me a brief -- I know Jim Walter Homes
25 is out of business, went out of business about 2009

Page 18

1 or so.
2 A. That's correct.
3 Q. Can you just tell us, the court reporter, what they
4 basically did, they're business?
5 A. They were an on-your-lot builder.
6 Q. Okay.
7 A. Their primary business model was to provide shelter
8 housing, if you will, --
9 Q. Okay.
10 A. -- to those who might have been credit challenged.
11 And they would also finance the deal.
12 Q. Okay. Were you involved in any of the financing
13 aspect of the business? I imagine you were as
14 President of the division.
15 A. Just as that.
16 Q. Okay. Did you have to approve any loan
17 applications?
18 A. Not necessarily directly.
19 Q. Okay. If it was a one somebody needed to take an
20 exception or something, would they have to come up
21 to you to get approval?
22 A. Our sales and marketing group would be responsible
23 for that putting together under the parameters that
24 we had the financing on the property --
25 Q. Okay.

Page 19

1 A. -- to guidelines that we already had. If there was
2 any exception to anything, it wasn't my decision,
3 necessarily, to approve or disapprove. My sales
4 team or my finance team would usually make that
5 call.
6 Q. I gotcha. And then monthly and quarterly, you're
7 probably looking at the reports --
8 A. That's correct.
9 Q. -- to see, and could ask why did we do this or do
10 that?
11 A. Yes.
12 Q. Okay. So then in the spring of 2006, what was the
13 reason you moved back, or moved to -- I don't know
14 where you're from originally.
15 A. It was a job offer at the Jim Walter.
16 Q. The Jim Walter was the reason you moved?
17 A. It was.
18 Q. Okay. And just tell me briefly where you received
19 your education from.
20 A. How far back?
21 Q. High school, college.
22 A. I went to high school in Villa Park, California,
23 Orange County, California.
24 Q. All right.
25 A. Went to junior college at Orange Coast College in

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1 Costa Mesa, California.
2 Q. Okay.
3 A. Went to Cal State Fullerton.
4 Q. What degree did you get from Cal State?
5 A. I left before my degree.
6 Q. Okay. Have you received any other educational
7 training?
8 A. Real estate licenses.
9 Q. Okay. What real estate licenses do you hold?
10 A. I hold none.
11 Q. Okay. Have you received any training in real
12 estate appraisals?
13 A. No.
14 Q. Okay. You've never performed an appraisal then?
15 A. That would be correct.
16 Q. Okay. Okay. That brings us to the spring of 2006.
17 After you've attended the couple of meetings that
18 you described, what happened next?
19 A. With dialog with the sales and marketing group that
20 they had hired and the sales gal who was assigned
21 to us, we entered into a Purchase and Sell
22 Agreement.
23 Q. Okay.
24 A. And obviously, the involvement of the bank was key
25 to us making that buying decision. And we had then



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Page 21 1 been referred to one of their representatives, one 2 of the bank's representatives at the time. I 3 believe it was actually down either in Columbia or 4 on the coast somewhere, the marketing center. I 5 don't recall his name right now. I want to say his 6 first name was Richard, but I don't recall his name 7 right now. And he explained the program of what 8 they offered; that they were going to allow the 9 developer, Craft, the developer entity, to have us 10 close early, and that they were going to support 11 that by putting together a program that would allow 12 us to close early and they would make the payments 13 for it until the construction was completed. 14 Q. Okay. 15 (Whereupon, Purchase and Sell 16 Agreement was entered as 17 Plaintiff's Exhibit #2) 18 Q. I'm going - these were pre-marked when we were - 19 he was going to take your deposition a few months 20 ago. So this is Plaintiff's Exhibit #2. I'm going 21 to hand that to you. Please take a moment to look 22 it over. Start on the second page. It's the 23 Purchase and Sell Agreement you just referred to, 24 but I'd like you to confirm that. 25 A. Looks like the one.	Page 23 1 - \$206,100.00? 2 A. That was the original. 3 Q. Okay. Back in 2006; correct? 4 A. That's correct. 5 Q. Okay. And Mr. Pappas, Wachovia is not a party to 6 this agreement; are they? 7 A. On the Purchase and Sell Agreement? 8 Q. Correct. 9 A. The Purchase and Sell Agreement is between me and 10 the seller. 11 Q. I'm just making sure Wachovia is not a party to 12 this agreement. 13 A. Okay. Yes. 14 Q. That would be yes, they are not a party? 15 A. Yes. 16 Q. Okay. And flipping back to page 23, the cover page 17 of this Plaintiff's Exhibit #2, on the bottom it 18 says lender information. It indicates Ron - I'm 19 reading. Please correct me if I'm wrong. (reading) 20 Ron wants faxed to Wachovia and SunTrust to compare. 21 Do you see that? 22 A. I do. 23 Q. Okay. So at that time you signed the contract and 24 agreed upon the purchase price of \$229,000.00, you 25 did not have an agreement with Wachovia, or had not
Page 22 1 Q. Okay. Now I'm looking at page two of this 2 document. It looks like this agreement's dated 3 March 29, 2006? 4 A. This page two? 5 Q. Yes, sir. No. I apologize. It's the second page 6 of the document that's entitled Agreement to Buy 7 and Sell Real Estate. 8 A. It's page 24? 9 Q. Yes. The bottom says page 24. Yes, sir. Is the 10 date of the contract March 29th, 2006? 11 A. Yes. 12 Q. Okay. And it's between you, Ronald P. Pappas, and 13 Craft Development, LLC as the seller. You're the 14 purchaser? 15 A. Yes. 16 Q. Okay. And this is to purchase Lot 311 in Edgewater 17 subdivision? 18 A. Yes. 19 Q. Okay. And the purchase price is \$229,000.00? 20 A. Yes. 21 Q. Okay. And essentially, the terms were you were 22 going to pay \$22,900.00 down in earnest money or as 23 a down deposit, and then receive two-hundred-and- 24 six thousand - the balance that was due. And 25 that's the loan you're referring to with Wachovia -	Page 1 applied to them yet, to receive a loan from 2 Wachovia; correct? 3 A. The offering - and there's another part to the 4 collateral material that they had offered - the 5 offering was this financing package. 6 Q. Okay. But my question is, you had agreed to this 7 purchase price to buy Lot 311, two-hundred-twenty- 8 nine thousand - 9 A. That's correct. 10 Q. - before you applied for a loan with Wachovia. 11 A. Well, it was actually in conjunction with that. 12 There was not a separate - wasn't going to go hunt 13 for a loan. 14 Q. I understand, but you could have gone with SunTrust. 15 A. Those were the more than - it's either SunTrust or 16 Wachovia or actually another lender that was in the 17 offering from the seller. 18 Q. Okay. But my question is, you had not reached an 19 agreement with Wachovia for them to be your lender 20 at the time you signed that Purchase Agreement to 21 Buy and Sell Real Estate. 22 A. Well, the Wachovia or SunTrust, the closing on it 23 would be subject to their loan. 24 Q. That's not my question, Mr. Pappas. I appreciate 25 you trying to answer, but you need to answer my

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1 question. The question is, you didn't have an
2 agreement with Wachovia to fund the purchase of your
3 lot at the time you executed that agreement with
4 Craft Development.
5 A. That would be fair.
6 Q. Okay.
7 A. Yes.
8 Q. After you signed the Agreement to Buy and Sell Real
9 Estate, you then sent the agreement, pursuant to the
10 cover page of Plaintiff's Exhibit 2, to SunTrust and
11 Wachovia so you could compare their loan packages
12 and decide which one you wanted to go with.
13 A. Nothing went to SunTrust.
14 Q. Okay. Even though you wanted to fax to SunTrust?
15 A. That isn't my writing, though. That's Jennifer's
16 writing. That's the sales agent's writing. Those
17 are her notes on the -- this is her worksheet.
18 Q. Okay. You didn't want to compare loans?
19 A. Wachovia, from what they offered, and again, looking
20 at documents that aren't here, or trying to recall
21 the documents that aren't here, --
22 Q. Uh-huh.
23 A. -- there was a lending program, which I'm going to
24 be certain that you're aware of. There was a
25 lending program offered by the seller. And there

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1 was a sheet that says here's the program that we are
2 offering for this deal, for this purchase. They
3 asked me which one I wanted to choose.
4 Q. Okay.
5 A. I went to Wachovia.
6 Q. Okay. On March 29th, 2006, you had not yet spoken
7 to Wachovia about being approved for their financing
8 though; correct?
9 A. I had spoken to a representative of Wachovia at the
10 presentation meetings. And that person is the one
11 who described to me the program that they had. They
12 had their representatives at each one of the -- I
13 call them dog and pony shows -- but they had their
14 representatives, banking representatives, at each
15 one of the presentation venues, Ballantyne and at
16 the lake front.
17 (Whereupon, Plaintiff's Requests for
18 Admissions was entered as Plaintiff's
19 Exhibit #1)
20 Q. Mr. Pappas, I'm going to show you what's been marked
21 as Plaintiff's Exhibit #1. These were Requests for
22 Admit which were served upon you awhile back in this
23 lawsuit. And in the #11, you were asked to admit
24 that you did not speak with any Wachovia employee
25 prior to agreeing to purchase Lot 311. And you

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1 admitted that as true. Do you see that? And these
2 were responded to about a year-and-a-half ago, May
3 2012.
4 A. We did talk to them. I don't know how this is
5 construed or what the question was, saying that
6 Wachovia's agents were on the sites.
7 Q. Did they help you negotiate the purchase price?
8 A. No.
9 Q. Okay. Did you discuss the terms of the contract
10 with them in any way?
11 A. They described their program.
12 Q. But that's not my question. The question is, did
13 you discuss the Agreement to Buy and Sell Real
14 Estate with a Wachovia employee prior to executing
15 it?
16 A. Well, I'm not sure I understand your question.
17 Q. Okay.
18 A. And maybe we can kind of pick it apart a little bit,
19 which is fine.
20 (Whereupon, Agreement to
21 Buy and Sell Real Estate
22 was entered as Exhibit #2)
23 Q. Sure. What I'm trying to say is when you received
24 this contract that's the Agreement to Buy and Sell
25 Real Estate, Plaintiff's Exhibit #2, did you discuss

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1 this was a Wachovia employee before you executed it?
2 A. That part is -- that is correct. I did not.
3 Q. Okay. Your discussions and negotiations of the
4 purchase price and everything was solely between you
5 and the seller, Craft Development, LLC?
6 A. Yes.
7 Q. Okay. At the time you purchased this, how many
8 other properties had you bought, personally?
9 A. Lifetime things?
10 Q. Yes, sir.
11 A. Twenty.
12 Q. Okay. Outside your primary residence that you've
13 lived in, were the rest of them investment
14 properties?
15 A. Not all of them.
16 Q. Okay.
17 A. Some of them.
18 Q. About how many, roughly, percentage of the 20
19 properties were investment properties?
20 A. Five.
21 Q. Okay. What were the other 15 for?
22 A. Some were properties that we were planning to build
23 on, ourselves.
24 Q. Okay. Where were the five or so investment
25 properties located?

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1 A. Over time, some here in the Carolinas, Waxhaw.
2 Q. Okay.
3 A. Some were in Utah. Some were in Washington, Idaho,
4 California.
5 Q. The ones that were in the Waxhaw area, about what
6 time frame did you purchase those?
7 A. Same year that I purchased this property.
8 Q. Okay. About 2006?
9 A. Yes.
10 Q. Okay. Do you still own those properties?
11 A. I do.
12 Q. Okay. Where are they located?
13 A. One's in Waxhaw and the other one's in Mineral
14 Springs.
15 Q. Where's Mineral Springs?
16 A. Just east of Waxhaw.
17 Q. Okay. Thank you. What kind of properties? Are they
18 vacant lots? Did they --
19 A. They were vacant lots.
20 Q. -- have structures on them? Okay. And what were
21 the purchase prices of those in 2006?
22 A. One, the Mineral Springs one, was about eighty-two-
23 thousand, and the Waxhaw one was ninety-five.
24 Q. Okay. Between 2006 and say 2009, what happened to
25 the values of those properties?

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1 A. Well, it depends. Some of them were improved. Some
2 of them were not. They definitely diminished.
3 Q. Okay. Was that due to the economic bubble burst of
4 2008 that did that to a lot of real estate
5 properties?
6 A. Oh, yeah. That's a big question. So likely. I
7 mean we can point fingers at, you know, anybody in
8 the government or anything on that.
9 Q. Right.
10 A. But was there one smoking gun on it? Probably not.
11 Q. All right. For a variety of reasons, depending on
12 what's your favorite one to point at, the real
13 estate market and real estate values declined
14 between 2006 and 2009.
15 A. Generally speaking, yes.
16 Q. And being a real estate developer and builder, I'm
17 sure that you were personally affected more so than
18 say somebody like me as an attorney would be?
19 A. Depends on where you live.
20 Q. Fair enough. Fair enough. Did you see an impact on
21 your business due to that?
22 A. Yes.
23 Q. Okay. What kind of impact did you have?
24 A. There just wasn't any ability to really move
25 forward, or, you know, with those values on the

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1 properties declining, --
2 Q. Yes.
3 A. -- equity positions had changed. So in some cases,
4 I know you would have foreclosures in neighborhoods
5 around you that affected your ability to, you know,
6 achieve a value on a product if you were going to
7 put it out there.
8 Q. Right. Okay. Did you take out a loan or finance
9 the purchase of those two properties?
10 A. Did not.
11 Q. You did not? You bought those without financing?
12 A. That's correct.
13 Q. Okay. Did you contract for and receive an appraisal
14 for those properties?
15 A. No.
16 Q. Okay. So it's fair to say you decided to -- you
17 negotiated the purchase price and decided to buy
18 those properties without the benefit of an appraisal
19 for either one of them?
20 A. Based on my own experience, yes.
21 Q. Sure. Out of everyone in the room, you probably
22 have more real estate experience than anyone else as
23 far as developing and building properties. I don't
24 know Mr. Foster. He may --
25 MR. FOSTER: Is that a question?

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1 MR. LANEY: It's not a question. I withdraw
2 the statement.
3 BY MR. LANEY: (Resuming)
4 Q. Okay. Just so we stay on the same page before I
5 move on, if you'd go back to Exhibit #1, Mr. Pappas,
6 #12, which is on the final page, page four of the
7 document, you were ask to admit that the Defendants
8 did not make any efforts to independently ascertain
9 the value of Lot 311 prior to agreeing to purchase
10 Lot 311. The response that was provided to us was
11 the Defendants admit that they made no effort to
12 independently ascertain the value of the subject
13 real property. And you said you were relying on the
14 independent professional opinion of the appraiser to
15 whom you were referred and whom you paid. Who was
16 the appraiser for Lot 311?
17 A. I, in fact, just recently saw the appraiser. There
18 is his name.
19 MR. FOSTER: No. It's not there?
20 WITNESS: No. You had it on your --
21 MR. FOSTER: Does Counsel mind, or shall we go
22 forward? It's your depo.
23 MR. LANEY: I don't mind. I'm not sure what
24 we're looking for, but --
25 WITNESS: The appraisal.

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1 MR. LANEY: Do we have a copy of the appraisal?
2 MR. FOSTER: I think we've been sent one, if I
3 can find it.
4 MR. LANEY: Let's go off the record for a
5 second.
6 (Off the record)
7 (Whereupon, Pigman Appraisal
8 Group Document was marked as
9 Plaintiff's Exhibit #14)
10 BY MR. LANEY: (Resuming)
11 Q. All right, Mr. Pappas. We're back on the record.
12 A. Are we talking about the appraisal?
13 Q. Yes, sir. Mind you, you're still under oath. There
14 is a document which has been marked as Plaintiff's
15 Exhibit #14. The top of it says Pigman Appraisal
16 Group from Fort Mill, South Carolina. It appears to
17 be dated May 10th, 2006, the property description of
18 Lot 311 Edgewater, which is the subject property of
19 the mortgage foreclosure; is that correct?
20 A. It looks that way.
21 Q. Okay. Well, Lot 311 is the one you purchased from
22 Craft; correct?
23 A. Yes.
24 Q. Okay. And it appears that this was submitted by
25 Eric Pigman and Douglas Pigman, and indicates an

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1 appraised value, market value as of May 10th, 2006,
2 to be \$230,000.00. Do you see that?
3 A. I see that.
4 Q. And when was the first time you saw this appraisal?
5 A. When we requested it two months ago, three months
6 ago.
7 Q. Okay. Within the last couple of months was the
8 first time you saw this appraisal?
9 A. Yes.
10 Q. Okay.
11 MR. FOSTER: For the record, the Deponent
12 turned to me in an interrogatory manner. I,
13 obviously, cannot answer.
14 MR. LANEY: Okay. Fair enough.
15 BY MR. LANEY: (Resuming)
16 Q. Mr. Pappas, do you have any reason sitting here
17 today, October 30, 2013, to say that the value, the
18 market value that the appraiser placed on Lot 311
19 on May 10th, 2006, was inaccurate?
20 A. Do I have any reason to say today that was
21 inaccurate?
22 Q. Yes, sir. What evidence, if any, do you have that
23 the market value which the appraiser placed on Lot
24 311 of \$230,000.00 on May 10th, 2006 was inaccurate
25 on the day it was provided, May 10th, 2006?

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1 A. Provided to them.
2 Q. Who's them?
3 A. You guys, I guess. Wachovia.
4 Q. Okay. Yes, sir.
5 A. I mean looking at it from when I just saw it, I'd
6 probably start to question a little bit, you know,
7 about how there are comparables and where they were
8 taken from.
9 Q. Okay. Well, let's look at the comparables there.
10 One is like 203 Edgewater. Same subdivision. And
11 comparable two is like 209 in the same subdivision.
12 And comparable three is like 204 in the same
13 subdivision. Appear to have sales prices of two-
14 twenty-nine, two-forty-nine-nine, and two-zero-nine,
15 respectively. Do you have an issue with those
16 comparables being used?
17 A. Based on how he looks like he's done his work, all
18 of these properties, if they're all -- and I don't
19 know the properties specifically -- but all of them
20 were about in the same stage then of construction
21 when he did his appraisal, --
22 Q. Okay.
23 A. -- which were incomplete.
24 Q. Okay. And you had visited this property; correct?
25 A. That's correct.

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1 Q. So the stage of construction was well known to you
2 at the time you signed your Agreement to Buy and
3 Sell Real Estate; correct?
4 A. That's correct.
5 Q. Okay. And you were working as a real estate
6 developer at the time you signed that Agreement to
7 Buy and Sell Real Estate; correct?
8 A. I was self-employed. Correct.
9 Q. Okay. It appears from the appraisable that all
10 those comparables were closed sells. They were not
11 pending sells, but had actually been closed and were
12 taken from the courthouse records. Would you agree
13 with that?
14 A. Looks that way.
15 Q. And the loan in 2006 that you requested from
16 Wachovia was \$206,100.00; correct?
17 A. That was the loan they offered.
18 Q. Okay. And that was the loan you accepted?
19 A. Yes.
20 Q. And your purchase price for Lot 311 was \$229,000.00;
21 correct?
22 A. Yes.
23 Q. And the appraised value of Lot 311 came \$1,000.00
24 more than your purchase price; correct?
25 A. From what this says, yes.



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1 Q. Do you have any reason to believe that this isn't -
2 that there's some other document that shows another
3 value of the property?
4 A. No.
5 Q. Okay. The appraisal report that we have,
6 Plaintiff's Exhibit 14, reflects a market value of
7 \$230,000.00.
8 A. That's what it says.
9 Q. Right.
10 A. Fair enough.
11 Q. And I'm asking you, outside of you've mentioned the
12 comparables, what other evidence or documentation do
13 you have that would support anything saying that's
14 not accurate, and that being Plaintiff's Exhibit 14?
15 A. If you could rephrase the question. I mean I'm not
16 saying that his work - There were no other
17 appraisals that I've seen on it. I'm not saying
18 that his number doesn't represent what his
19 estimation of value was at the time.
20 Q. Okay. And he is Eric and Douglas Pigman who have
21 South Carolina Real Estate Appraisal licenses;
22 correct?
23 A. Seems that way.
24 Q. Okay. You do not have a real estate appraisal
25 license; correct?

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1 A. That's correct.
2 Q. Okay. And the reason I'm asking is that we're here
3 on a mortgage foreclosure matter. And you have
4 defenses and allegations against Wachovia saying
5 that the appraisal they received was inaccurate and
6 that the evaluation was not correct. And I'm asking
7 you - this is my one chance to get to ask you
8 questions - why are you saying that?
9 A. This appraisal, however he arrived at his numbers,
10 his methodology is one thing. This property was not
11 complete -
12 Q. Okay.
13 A. - at the time. We all know that. We can check
14 construction documents, records. The offering that
15 both the seller and Wachovia offered to finance was
16 for a property to be completed. How he
17 substantiated his values with the properties that
18 weren't completed, I'd probably certainly question
19 whether or not that was realistic to expect if the
20 bank then accepted a value on a property at
21 \$230,000.00 that was incomplete. Based on what was
22 going to be complete?
23 Q. Give me just one second, please. Okay. Thank you.
24 On - I'm not sure which page of the appraisal.
25 One, two, three, four. On page five of the

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1 appraisal, it's the Additional Comment section.
2 A. Okay.
3 Q. It describes the neighborhood. And you see about
4 midway down?
5 A. Yes.
6 Q. And states that the Edgewater subdivision is being
7 developed by Monroe, North Carolina-based company,
8 Craft Development. It states the first phase is
9 underway with waterfront lots fronting on fishing
10 creek reservoir; smaller interior water view and
11 non-water view lots; indicates that a pete dye golf
12 course. There's been a letter of intent to develop
13 the 18-hole golf course, which I believe has
14 actually been put in; hasn't it?
15 A. It is in. I don't know to what stage between this
16 and what actually is in place.
17 Q. Right. But as of today, in October 2013 -
18 A. There's a golf course there.
19 Q. All right. Okay. The plan also has a clubhouse,
20 community pool and community arena slated for future
21 development. So it acknowledges that's in the
22 future. No home construction has started. So it
23 appears - and it also, he states that he personally
24 inspected the property. So it appears the appraiser
25 was aware of that at the time he made the appraisal

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1 report; correct?
2 A. Seems to be.
3 Q. Okay. Also in the appraiser certification, which is
4 the very last page of this exhibit, see paragraph
5 six, will you please read that paragraph for us?
6 A. This is on the last page?
7 Q. Yes, sir. Paragraph six.
8 A. This is the appraiser?
9 Q. Yes. Certification. Have you had a chance to read
10 it?
11 A. It's a little wordy, but sure.
12 Q. Okay. Do you mind publishing that for the court
13 reporter what it says in paragraph six? Can you
14 just read it out loud?
15 A. Read it for what the appraiser's speaking?
16 Q. Yeah. What the appraiser is saying. Yes, sir.
17 A. His statement says he was not require to report a
18 predetermined value or direction that favors the
19 cause of the client, or any related party and any
20 amount of the value estimate, attainment of a
21 specific result or the occurrence of a subsequent
22 event in order to receive my compensation and/or
23 employment for performing an appraisal. I did not
24 base the appraisal report on a requested minimum
25 evaluation, a specific valuation, or that I need to

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1 approve a mortgage loan (as read).
2 Q. Thank you. Okay. And now I'm getting back to the
3 crux of my question. And that is you've made some
4 serious allegations as to Wachovia, saying that they
5 should not be entitled to collect on their loan
6 which you and your wife executed in their favor.
7 And the basis for that -- and we'll go through your
8 complaints in just a second -- but roughly, the
9 basis is you felt that the appraisal gave an
10 incorrect value for Lot 311. And my question is,
11 what evidence do you have that the value Mr. Pigman
12 placed on Lot 311 on May 10th, 2006 was incorrect?
13 A. I don't think we're questioning the value of the
14 appraisal since I've not seen it until just
15 recently.
16 Q. Sure.
17 A. Okay. If you want to talk about the crux of the
18 dispute that I have with it, it's simply Wachovia
19 offered a program to all the sellers, not just me,
20 or all the buyers, rather. Not just me. Who ever
21 they chose. Either SunTrust, Wachovia, or another
22 lender. And I don't recall if there was a third
23 one. I seem to want to recall that there was a
24 third one. You've got to remember this was 2006.
25 Q. I understand.

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1 A. Okay.
2 Q. I understand.
3 A. And offering a program to have financing in place on
4 lots that are unfinished, unfinished lot values that
5 are basically assumed by an appraisal before they're
6 done. The lots are clearly, even in these xeroxed
7 photographs, the lots are clearly not done. They're
8 not completed.
9 Q. Right.
10 A. Construction inspection records will determine at
11 what stage each one of the lots were based on.
12 Construction inspection reports that would come over
13 and say where they're done. The promise that I
14 relied on, both from the seller and from Wachovia,
15 is all the amenities were going to get in. I'm not
16 talking necessarily today. And again not seeing
17 this 'til recently, we're not talking about this
18 value.
19 Q. Okay.
20 A. We're talking about -- seems like that the
21 appraiser, in his reports, names off all these
22 things that are going to be completed. All the
23 collateral material that was provided to us during
24 this whole process seemed to show what was going to
25 be completed. My conversations with -- and in

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1 difference to what is here may be a mistake as what
2 was done -- their Wachovia representatives at each
3 one of those meetings, they represented you can
4 close this before we put all the amenities in,
5 before we finish the project.
6 Q. Who was?
7 A. Wachovia.
8 Q. Wachovia was going to put all the amenities in?
9 A. No, no, no. I said Wachovia was going to close it.
10 Q. Okay.
11 A. Wachovia was going to close the loan --
12 Q. Right.
13 A. -- without those amenities being in place, giving
14 the developer this time, was their statement, giving
15 the developer the time to complete the project.
16 Q. Okay.
17 A. We probably can both agree that this \$230,000.00
18 value could never be substantiated for an
19 undeveloped lot.
20 Q. Well, I don't know if I would agree to that since
21 people such as yourself were buying those lots for
22 that amount.
23 A. The same way. They were relying -- they weren't
24 buying raw unfinished land. They were buying
25 completed lots, the offering. They were buying

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1 completed lots with the amenities. That's what they
2 bought. You ask any one of them, and I'm sure
3 you're going to go through the process.
4 Q. Whose job was it to finish the amenities?
5 A. Craft's.
6 Q. Okay.
7 A. Or their representatives. But Craft is the seller.
8 We'll just keep it as Craft.
9 Q. Okay. So why are you saying Wachovia, and now Wells
10 Fargo, did something wrong and you don't have to pay
11 them back based upon that?
12 A. Because they represented that they supported this
13 development. They closed on the loan --
14 Q. Okay.
15 A. -- without having the amenities in place. They
16 closed on it based on all of those things being in
17 place.
18 Q. Okay.
19 A. They're not.
20 Q. I understand that.
21 A. They backed the program. They supported it. They
22 had a reason to close that loan early. They also
23 had the underlying financing.
24 Q. In March 2006, you had an opportunity to go look at
25 the property on more than one occasion.



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Page 45 1 A. That's correct. 2 Q. Okay. And you signed the Purchase and Sell 3 Agreement. 4 A. That's correct. 5 Q. Okay. Knowing everything about it being 6 uncompleted? 7 A. Knowing that I have a lender who's going to close 8 the loan with a promise from the developer that it's 9 going to be completed and have these values. 10 Q. And if it doesn't get completed, why does that mean 11 you don't have to pay Wachovia back? 12 A. They didn't give me -- they represented that they 13 were supporting this deal. 14 Q. Okay. How did they not support it? 15 A. There's no amenities there. 16 Q. Okay. How was that Wachovia's fault? 17 A. They represented -- they represented the value based 18 on those amenities being there. They did it. 19 Q. They who? 20 A. I didn't order the appraisal. 21 Q. Right. 22 A. This is Wachovia's appraisal. 23 Q. Right. 24 A. Okay. 25 Q. You didn't even see it before you closed?	Page 47 1 everything I have. So you can show me where 2 Wachovia told you that the amenities were going to 3 be put into place. 4 A. There's -- What I have that I remember is an 5 offering letter of preconstruction financing by 6 Wachovia. 7 Q. I apologize. 8 A. That's okay. 9 Q. I didn't hear that last part. 10 A. What I have is an offering letter that was part of 11 this sales package that we all received that 12 described the preconstruction -- preconstruction 13 loan closing from Wachovia. 14 Q. Okay. 15 MR. FOSTER: Would you like to have the 16 Deponent look through your -- 17 MR. LANEY: Well, if you don't mind, we can 18 take just a minute, because I'm not familiar with 19 the document that he's referring to. And it may be 20 that I've seen it and we're just missing each other. 21 MR. FOSTER: We'll go off the record. 22 (Off the record) 23 A. Whatever you have here, and I'm coordinating the 24 two, our documents, your documents, and then there's 25 one, two, three references to what Edgewater offers
Page 46 1 A. Didn't even get to see it before I closed, even 2 though we asked for it. 3 Q. And didn't see it before you agreed to pay 4 \$229,000.00 for Lot 311? 5 A. Based on what they said was going to be there. 6 Q. Who is they? 7 A. Wachovia. 8 Q. Wachovia told you that it was going to be there. 9 A. Wachovia said that we're going to close this loan 10 early to allow the developer to complete the 11 project. This is the offering that they had. It's 12 in writing. I've got the collateral material. 13 Q. Can you show me where it says that? 14 A. I don't have it now. I've got a box that is as 15 thick as yours. 16 Q. I have what's been produced to us in discovery of 17 this case which is a lot of documentation from 18 Edgewater and from the flyers and things that you 19 went to. Would it be part of that? 20 A. I don't know what you have, so I can't say it is. 21 (Whereupon, 153 Pages of a Group 22 of Documents was marked as 23 Plaintiff's Exhibit #13). 24 Q. This is what has been marked Plaintiff's Exhibit 13. 25 I'm happy to let you look through. This is	Page 1 on special financing, it doesn't seem to be in here, 2 the details of that special financing. 3 BY MR. LANEY: (Resuming) 4 Q. Sure. 5 A. But certainly in the Wachovia offering, it wasn't 6 just, you know, a ghost document. It says here, 7 we're going to do this and this and this and this 8 and this. That's the special offering. I don't see 9 that in your package here, -- 10 Q. Okay. 11 A. -- the descriptive on the special offering. 12 Q. Okay. 13 A. It may be in there, but 175 pages -- 14 Q. Sure. I understand. And thank you for taking the 15 time to look through all that. Okay. Who was -- 16 MR. FOSTER: For the record, I believe there's 17 actually 149 pages. 18 MR. LANEY: Fair enough. They definitely are 19 marked. And the last one I see is 153, but -- in 20 addition to the actual responses. 21 BY MR. LANEY: (Resuming) 22 Q. Nonetheless, who was the employee? You say you 23 spoke to a Wachovia employee on the property. Did 24 you speak to a Wachovia employee every time that y 25 went to the property?

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1 A. They were there. There was a representative at each
2 one of those. It seems that the sales organization
3 wanted to have the lender representative there for
4 people to discuss the program.
5 Q. Do you remember the name of the employee that you
6 spoke with you were there?
7 A. I want to say it was Richard. I think I remember
8 that's the name. I just --
9 Q. Richard Park that I see you identified in your
10 answers to interrogatory?
11 A. Might have been. I'd have to --
12 Q. I believe that's who your loan officer was.
13 A. Yeah. It was always Richard.
14 Q. Was it the same person who was your loan officer as
15 who was on the property, or was it someone
16 different?
17 A. There was more than one team.
18 Q. Okay. And there were other banks who were out there
19 as well; correct, SunTrust being one of them?
20 A. There were probably several. They seemed to group
21 themselves in almost like a food court.
22 Q. Okay. So an area where the lenders were set up and
23 it was more than Wachovia, multiple lenders.
24 A. I seem to remember it that way.
25 Q. Okay. When you went to look at Lot 311 or the other

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1 lots in the subdivision, was anybody from Wachovia
2 with you?
3 A. To tour the property?
4 Q. Yes, sir. That was just Craft Development
5 personnel?
6 A. That's correct.
7 Q. Okay. Or agents of Craft Development. All right.
8 We've talked about the Purchase and Sell Agreement.
9 What were the substance of your conversations with
10 Wachovia employees while you were at the property?
11 A. I wanted to understand their program.
12 Q. Okay.
13 A. Give me the descriptors, you know, of what the
14 financing is. Their whole, we'll call it their
15 whole offering, was to have the luxury, if you will,
16 of being able to close a property early, before the
17 amenities are in, with this program.
18 Q. Outside of discussing the financing program with the
19 Wachovia folks, did ya'll talk about anything else?
20 A. Did I talk about anything else with who? I'm sorry.
21 Q. With the Wachovia employees.
22 A. No. The details were fairly clear from them that
23 they were going to allow the developer to complete
24 the property and close this loan early.
25 Q. Okay. What do you mean by allow the developer to

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1 complete the property?
2 A. That was their words. Actually, they said it in
3 several presentations.
4 Q. They were going to allow the developer to complete
5 the property?
6 A. Seemed to be their choice of words.
7 Q. Okay. Do you know who spoke those words?
8 A. Richard was one of them.
9 Q. Okay. And if you're able to recall his last name,
10 will you provide it to your attorney? All right.
11 How did you locate Lot 311 or decide upon that lot
12 to purchase?
13 A. I was looking for a waterfront lot.
14 Q. Okay.
15 A. And I found it on a map.
16 Q. Okay. No one from Wachovia helped you locate that
17 lot.
18 A. That's correct.
19 Q. Okay. No one from Wachovia recommended that lot to
20 you.
21 A. That's correct.
22 Q. Okay. Were you banking with Wachovia at the time
23 you took out this loan?
24 A. I don't believe so.
25 Q. Okay. So you had no other banking relationship with

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1 them?
2 A. That's correct.
3 Q. Okay. Who was your bank of choice at the time,
4 2006?
5 A. Probably Wells.
6 Q. Was it? Okay. Prior to the merger?
7 A. Might have been.
8 Q. Okay. How about 2009? Was it still Wells, or?
9 A. I don't recall.
10 Q. Outside the Wachovia loan, did you have any other
11 loans with Wachovia between 2006 and 2009?
12 A. I don't believe so.
13 Q. Okay. Okay. We've talked about this a little bit,
14 but just help me. You went out to the property two
15 times prior to purchasing it?
16 A. Several times.
17 Q. Several times. Okay. To launch events or sales
18 events, as they call it?
19 A. Launch events, sales events, right. Their
20 promotional events.
21 Q. Okay. Other than those two events, when did you go
22 visit the property?
23 A. Maybe -- maybe two other times just to walk the lot.
24 Q. Okay. Were you with anyone at the time you went
25 out?

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1 A. Not always. Sometimes with -- once, with the
2 salesperson, Jennifer.
3 Q. Okay. And who does Jennifer work with or for?
4 A. She was with a part of the sales team.
5 Q. Okay. Not a Wachovia employee?
6 A. That's correct.
7 Q. Okay. I'm just trying to keep it all clear.
8 A. I understand you.
9 Q. Okay. And the purpose of those visits was simply to
10 look at your lot?
11 A. Just to help locate them, because they were not
12 clearly marked at the time.
13 Q. Okay.
14 A. They were still grading. The construction stakes
15 were either missing or knocked down during the
16 grading process.
17 Q. How many lots were being constructed or developed at
18 this time?
19 A. I don't know.
20 Q. Okay. Paved roads?
21 A. Nothing was in.
22 Q. Okay. What's the condition of the property today?
23 A. Streets and lots.
24 Q. So there are paved roads --
25 A. There are paved roads.

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1 Q. -- on the lots. There are some houses out there?
2 A. There is a few, only a few.
3 Q. Okay. Zero to ten, ten to 20?
4 A. Fifty, maybe, on the entire property.
5 Q. Okay. It's a pretty large property.
6 A. It's a huge property.
7 Q. Okay. So about 50 houses in there?
8 A. Possibly.
9 Q. Okay. And the golf course has been completed now?
10 A. The course, itself. I don't know about the
11 clubhouse, you know, what was the offering, what was
12 there today.
13 Q. Right. Okay. I was going to ask you, is the
14 clubhouse, do you know if it's been completed?
15 A. I don't know to what standard it was, comparing it
16 to what was offered and what's there today.
17 Q. Okay. But is there a clubhouse there today?
18 A. There's building there today.
19 Q. You would call it a clubhouse?
20 A. Well, it's always been referred to as a temporary
21 building.
22 Q. Okay. What's the purpose of the building? I mean
23 what do people use it for?
24 A. It's a staging area for carts, I guess. I've only
25 been out there a couple of times to the clubhouse,

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1 itself.
2 Q. Okay. So prior to going to play golf, you would
3 come there to get your cart?
4 A. Yes. A staging area.
5 Q. Restaurant in there at all, or?
6 A. I don't even know if they offer food.
7 Q. Okay. Fair enough. Do you play golf?
8 A. You could call it that.
9 Q. Okay. Have you played that course?
10 A. I have not.
11 Q. Okay. Okay. Why did you buy Lot 311? What was the
12 purpose?
13 A. The purpose is for a family home on that lot.
14 Q. Okay. You were planning to live there?
15 A. Yes.
16 Q. Okay. You weren't planning on reselling it?
17 A. No. I was replacing a waterfront lot that I had
18 sold up in Idaho.
19 Q. Okay. Did you live on your waterfront lot in Idaho?
20 A. No.
21 Q. Okay.
22 A. We moved here.
23 Q. When you purchased the lot, all of the loan proceeds
24 were used to buy the lot, correct?
25 A. When I purchased the lot, all the loan proceeds?

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1 Q. Yes.
2 A. Yeah. I never saw them. They went directly to --
3 Q. The seller?
4 A. -- disbursement. Yeah.
5 Q. Okay. You weren't intending to use any of the loan
6 proceeds to build your residence?
7 A. That's correct.
8 Q. Okay. And there's never been a structure built on
9 Lot 311, correct?
10 A. Today, I guess that's true. I mean I'm saying that
11 a little facetiously, because they've actually built
12 on some lots that were not theirs. Somebody built
13 on the wrong lots. I haven't been out there in a
14 little while. So today, my recollection is there's
15 no building on it.
16 Q. The last time you saw Lot 311, it did not have a
17 structure on it?
18 A. That's correct.
19 Q. Okay.
20 A. Fair enough.
21 Q. All right. And then you took out a loan from
22 Wachovia for \$206,100.00 in May of 2006,
23 thereabouts, and purchased Lot 311 from Craft
24 Development.
25 A. Yes.

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1 Q. Okay. And you paid on that loan for approximately
2 three years. It was a three-year interest only
3 balloon payment?
4 A. That first loan was a three-year note.
5 Q. Okay. And then in 2009, the balloon payment was
6 coming due.
7 A. That's correct.
8 Q. Were you able to make that balloon payment?
9 A. I had called them to ask if they wanted to extend
10 it.
11 Q. Okay. And what did they say?
12 A. Went through a very long process with them.
13 Q. Okay.
14 A. It took like three or four months to go through.
15 End result is they extended the loan.
16 Q. Okay. In 2009.
17 A. Yes.
18 Q. Could you have repaid the balloon payment in 2009
19 when it came due?
20 A. Could I have repaid it? Do you mean could I have
21 paid it?
22 Q. Yes. Could you have paid the balloon payment that
23 was due?
24 A. Not easily.
25 Q. Okay. But you could have?

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1 A. I might have.
2 Q. Okay. What is your monthly income today?
3 MR. FOSTER: I believe I have to make some
4 noises at this point. Is there relevance to that
5 question?
6 MR. LANEY: Yes. He's asked for a rescission
7 of the contract and I'm trying to see if he has an
8 ability to repay it or if he's tendered to an offer
9 to it, which is an element of rescission.
10 MR. FOSTER: Preserving my objections, -
11 MR. LANEY: Sure.
12 MR FOSTER: -- If the gentleman can answer to
13 the best of his ability.
14 WITNESS: Restate.
15 BY MR. LANEY: (Resuming)
16 Q. What is your monthly income today?
17 A. Zero.
18 Q. Okay. Is that because you're not selling any houses
19 or developing any houses, or are you retired? You
20 said you were self-employed, but.
21 A. I am.
22 Q. Okay. Why is it zero?
23 A. Well, I don't have a monthly, regular monthly,
24 income.
25 Q. Okay.

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1 A. Mine's reliant on selling a parcel of land or an
2 ownership in a property that I have and deriving my
3 income from that.
4 Q. Okay. Are you in a position today to repay Wells
5 Fargo on this lot?
6 A. No.
7 Q. Okay.
8 (Whereupon, 2009 Mortgage
9 was marked as Plaintiff's
10 Exhibit #9)
11 (Whereupon, 2009 Note was
12 marked as Plaintiff's
13 Exhibit #10)
14 Q. Exhibits 9 and 10, which is the Note and Mortgage
15 from 2009.
16 A. Okay. This is 9 and 10?
17 Q. Yes, sir.
18 A. Okay.
19 Q. Do you recognize those documents?
20 A. Vaguely, yes. I do.
21 Q. Okay. Do they represent the Note and Mortgage for
22 the 2009 refinance with Wachovia?
23 A. They seem to.
24 Q. Okay. And if you would turn to the signature pages,
25 can you identify your signature on those two

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1 documents?
2 A. Yes.
3 Q. Okay. And is that your wife's signature? And you're
4 referring to Exhibit 9 now, right?
5 A. I'm on Exhibit 9 on the signature page. Yes.
6 Q. That is your wife's signature, as well?
7 A. Yes.
8 Q. Okay. And then on Exhibit 10, could you just
9 acknowledge that you and your wife executed the
10 note, as well?
11 A. Yes.
12 Q. Okay. And my understanding is you made payments for
13 a period of time after you entered into this
14 refinance in 2009; is that correct?
15 A. Yes.
16 Q. Okay. And then you stopped making payments at some
17 point?
18 A. That's correct.
19 Q. Okay. And you have not made payments since when? I
20 just need an approximate date.
21 A. 2011.
22 Q. Okay.
23 A. In January of 2011, somewhere around there.
24 Q. Early 2011, you stopped making payments?
25 A. I believe. I'm not exact on it. Look in the

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1 checkbook.
2 Q. That's fine. You have not made any payments on this
3 loan since the early part of 2011.
4 A. That's correct.
5 Q. Okay. Have you attempted to make any payments on
6 this loan since then?
7 A. No.
8 Q. Okay. And you understand pursuant to -- and I can
9 show you the default provisions in there. One of
10 the remedies if there's a default for nonpayment is
11 Wells Fargo, now the successor to Wachovia, has a
12 right to foreclose on the mortgage and to seek a
13 judgement on the note against you and your wife?
14 A. Yes.
15 Q. Okay. And you understand that's the subject of this
16 lawsuit. They are foreclosing on the mortgage.
17 A. Of your side of it, yes.
18 Q. Yes. The bank is. Okay. Okay. And you were
19 represented by McMillan and Terry in that closing.
20 A. Yes.
21 Q. Who was the --
22 A. They were -- they were just a closing agent that a
23 friend of mine uses up in Charlotte, and so we used
24 them.
25 Q. Okay.

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1 A. The bank --
2 Q. I was going to ask you how you chose somebody.
3 A. -- had asked me to find somebody.
4 Q. Sure. Okay. So you chose McMillan and Terry to
5 represent you.
6 A. Yes.
7 Q. Okay. And in 2008, I believe Phil Murdoch was the
8 closing attorney?
9 A. Unfortunately.
10 Q. Why do you say unfortunately? I do not know Mr.
11 Murdoch.
12 A. It was a fiasco.
13 Q. Why was it a fiasco?
14 A. I wish I knew.
15 Q. Just the whole closing was a fiasco?
16 A. Yeah.
17 Q. Really?
18 A. Yeah.
19 Q. Okay. Did you know Mr. Murdoch before you had that
20 closing?
21 A. No. It was set up by the seller.
22 Q. Okay. Can you elaborate on what made it a fiasco?
23 A. Documents weren't ready. As you can see and is
24 still evidence today, my name is the only one on the
25 property.

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1 Q. Right.
2 A. We asked them to correct that several times. They
3 just washed their hands of it.
4 Q. Okay. I have not looked at the deed. Is the deed
5 just in your name?
6 A. Uh-huh.
7 Q. Okay. Did you have any trouble understanding the
8 loan documents or knowing what you were executing --
9 A. No, as far as the loan documents.
10 Q. -- given your background?
11 A. The loan documents, no.
12 Q. Okay. And so you understood that you were being
13 asked to make 35 payments starting in August 2008,
14 and there was going to be a balloon payment of
15 \$203,120.00 due in July of 2012?
16 A. Yes.
17 Q. You were aware of that?
18 A. Yes.
19 Q. Okay. Why did you stop making payments, Mr. Pappas?
20 A. We got a notification from what was called the
21 Edgewater Settlement Administrator. And that notice
22 referred to a violation of Federal law with respect
23 to the offerings of this property. And in it was
24 discovered one document that was fairly interesting.
25 And in referring back to all of the marketing

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1 efforts that were put forth on the property at the
2 time that I acquired it originally, 2006, looked at
3 it originally, one of the most interesting documents
4 that's in there is a statement by the seller that
5 they had only agreed to put in the streets and
6 utilities. That was it. This was their Federal
7 filing that was probably put into place, I want to
8 say, sometime in 2010, or even -- I take that back.
9 I'll say 2010. I just don't remember the exact date
10 of that document.
11 Q. Right. And when you say the seller, are you
12 referring to Craft?
13 A. I'd be referring to Craft as far as the identity.
14 (Whereupon, Notice of Right
15 To Cure was marked as
16 Plaintiff's Exhibit #11)
17 Q. Okay. I apologize. I'm going to skip out of line.
18 I want to come back to what you just said, but I
19 meant to show you this. This is Plaintiff's Exhibit
20 #11. It's a Notice of a Right to Cure. I just want
21 to -- I can refer back to the request I've already
22 introduced. I think we've discussed it. You
23 acknowledged receiving that, but I just want to make
24 sure that you have and that is accurate.
25 A. I believe so.

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1 Q. Okay. And it's dated February 2011, which would be
2 about the time you indicated you stopped making
3 payments?
4 A. Right. I had sent -- to continue the dialog, I
5 guess, I sent two registered letters when we
6 received the information from the Settlement
7 Administrator group. And I had sent two registered
8 letters to outside of -- well, I guess even backing
9 up further, I had called the lender several times to
10 talk about some of the information that we had been
11 hearing about and receiving. Got no response. In
12 fact, several phone calls that I've had from them,
13 unfortunately, they're phone calls, and not recorded
14 phone calls, with we'll have somebody call you right
15 away. No. I've certainly got my outbound calls to
16 to a Wells number during those time periods to show
17 how many times I've called them and it was an
18 attempt to call. Having not got any response from
19 them saying that they'll call me back, we're going
20 to talk about this, we're going to do whatever we're
21 going to do, in frustration, I sent out two
22 registered letters later on after that. March,
23 probably.
24 Q. 2011?
25 A. I believe so.

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1 Q. There about?
2 A. I saw them in your documents in there again.
3 Q. There in the 153 pages?
4 A. They're in there.
5 Q. Okay.
6 A. And you know, described the problem to them. I said
7 we need to have discussion about this.
8 Q. Okay. Do you recall any of the individuals that you
9 spoke with at Wachovia?
10 A. I probably have some notes on some, but I don't
11 recall them. And there was calls from -- I was
12 going to say -- I can't remember who it is, how
13 many. I'd have to look to see, you know, what I
14 have, notes on who I talked to, --
15 Q. Sure.
16 A. -- things like that. Mostly, I would have some
17 notes on that, very fragmented, just some notebook
18 notes. When I then got the letter, then I addressed
19 the letter to the sender of the letter.
20 Q. Does the letter essentially convey all of your
21 concerns and what you would have said in any oral
22 conversation?
23 A. The letter would put them on notice that we had some
24 concerns and we had received these. I gave them
25 copies of the documents that we received from this

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1 group called the Settlement Administrator Group.
2 (Whereupon, Letter of Delinquent
3 Account was marked as
4 Plaintiff's Exhibit #12)
5 Q. Okay. We'll come back to that, but I have to show
6 you one last -- this is Exhibit #12, which is
7 another letter indicating that your account is
8 delinquent and putting you on notice that they may
9 refer --
10 A. I used to get these standard letters all the time,
11 even when I was talking to them.
12 Q. Okay.
13 A. Sorry.
14 Q. No. That's fair enough.
15 A. I mean I asked them several times, I said why do you
16 keep sending me letters when we're talking?
17 Q. But you did receive the --
18 A. I did.
19 Q. -- Right to Cure and the Notice of Default and --
20 MS. HUNT: What is the date of Exhibit 12?
21 MR. LANEY: Exhibit 12 is February 22nd, 2011
22 and Exhibit 12 is May 26th, 2011.
23 MS. HUNT: Thank you.
24 BY MR. LANEY: (Resuming)
25 Q. And you do not deny at that time you were not making

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1 payments on the loan?
2 A. That would be correct.
3 Q. Okay. All right. Okay. Now you've been telling me
4 why you stopped making payments. And did you see in
5 the documents that have been produced to us,
6 Plaintiff's Exhibit #13, the 153-or-so page set,
7 that Edgewater Settlement, I think you said,
8 Administrator sent to you -- did you see that
9 document in here?
10 A. I don't know if it was in there or another document.
11 Q. Okay.
12 A. There's several. There's several documents in
13 there. Which one are you referring to?
14 Q. I'll show you. I think it is in here and I just
15 want to make sure we're talking apples to apples.
16 Okay. I'll try not to lose these here. I'm
17 referring -- it starts on page 79 of the production
18 set in the bottom right corner. It's entitled
19 Settlement Agreement. It was a Settlement
20 Agreement. And then right behind that on page 83 is
21 a letter dated January 28th, 2011 addressed to
22 Property Owner, that is from Edgewater Settlement
23 Administrator.
24 A. What page are you on? I'll look at a copy, unless
25 you want to hand me that one.

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1 Q. Eight-tee. Seventy-nine is where the Settlement
2 Agreement starts, and then the 83 is the letter from
3 the Edgewater Settlement Administrator.
4 A. Uh-huh.
5 Q. And my question is, is that the document you were
6 referring to that you received in early 2011 that
7 led you to stop making payments on your Wachovia
8 loan?
9 A. I'm trying to remember the date, --
10 Q. Sure.
11 A. -- If that was the first letter. It may have been
12 the first letter.
13 Q. Okay. So is it fair to say this is the document you
14 were referring to earlier in your testimony?
15 A. I gave a copy of this to the bank when I finally
16 contacted them. I sent the letters in the mail.
17 Q. Okay. On page 79 right before that letter, the
18 document entitled Settlement Agreement --
19 A. This is page 79?
20 Q. Page 79 of the production. Yes, sir. See that
21 document, Mr. Pappas?
22 A. On page 79?
23 Q. Yes. That agreement. And given your positions
24 prior in life as a president and being a real estate
25 developer and having seen, I'm sure, plenty of

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1 agreements, I'm asking you if you could look and
2 tell me who the parties to that agreement are? And
3 I think they're defined in the first paragraph.
4 A. They are between -- that Settlement Agreement is the
5 HUD and Craft.
6 Q. Okay. It doesn't appear to me, and I want to make
7 sure you agree with me, that Wachovia/Wells Fargo
8 are a party to this Settlement Agreement. Would you
9 agree with that?
10 A. That statement would be accurate.
11 Q. Okay. Now I'm going down to one, two, three, four,
12 five, the fifth whereas clause on page 79. Do you
13 see that. It states (reading) Whereas Craft
14 Development is the developer of the Edgewater
15 subdivision.
16 A. Yes. I see it.
17 Q. Okay. Do you agree with that statement?
18 A. As it's written here, yes.
19 Q. Okay. And nowhere in here -- and please take your
20 time to look through -- I do not see any reference
21 to Wachovia or any other lender. And the letter
22 that we refer to, page 83, indicates that there was
23 a sales agent for Edgewater subdivision for Craft
24 Development -- was Edgewater Sales, which handled
25 the marketing. Do you see that? It's the last

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1 sentence in the first paragraph -- Edgewater Sales
2 handled the marketing for Edgewater for Craft. And
3 the last sentence of the second paragraph states
4 that there was an unintentional violation of ILSA by
5 Craft's agent, Edgewater Sales. Do you see that?
6 A. I'm familiar with it.
7 Q. Okay. And that's a letter written by Edgewater
8 Settlement Administrator?
9 A. And you know who that is.
10 Q. I do not. Who is that?
11 A. The address is Craft's attorneys.
12 Q. Okay. I was not familiar with that address. That's
13 Craft's attorneys? Okay. Do you know this Davis,
14 Frawley, Anderson?
15 A. I don't remember the name, quite frankly, right now.
16 Q. Okay. Fair enough. They appear to have an address
17 in Lexington, South Carolina, that I saw, so. Okay.
18 Nonetheless, in the letter, Wachovia is not
19 mentioned at all; are they?
20 A. In this letter, they're not.
21 Q. Okay. Turning over to page 88 of these documents is
22 a Modified Settlement Agreement. The reason I'm
23 asking about that is because in the letter on page
24 83, it refers to the Modified Settlement Agreement.
25 On the second page, it says HUD is required,

Page

1 pursuant to the terms of the Modified Settlement
2 Agreement entered into between Craft and HUD, that
3 you are to be provided with a property report.
4 A. Second page?
5 Q. Second page of that letter. I apologize.
6 A. I've got three pages. So, let's see.
7 MR. FOSTER: You're on the letter, I believe.
8 BY MR. LANEY: (Resuming)
9 Q. I'm on the letter, page 83. I'm sorry. It refers
10 to a Modified Settlement Agreement which I believe
11 starts on page 88, but that's what I was trying to --
12 -- If you will, look at the second page, the personal
13 paragraph.
14 A. All right.
15 Q. Let's see. Turn over one page, page 84.
16 A. Okay.
17 Q. It's referring to the terms of a Modified Settlement
18 Agreement entered into between Craft and HUD that
19 indicates you're to be provided with a HUD Property
20 Report.
21 A. It does refer to that, yes.
22 Q. Okay. And you were provided with a HUD Property
23 Report; correct?
24 A. In 2011?
25 Q. Yes, sir. The date of this is January 2011.

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1 A. Right. We were not provided a Property Report at
2 the time of the purchase.
3 Q. Okay. Do you know the date you received that
4 Property Report?
5 A. On this letter.
6 Q. Okay.
7 A. It came in the package with that letter.
8 Q. Okay. Came with that letter?
9 A. Right.
10 Q. Okay. Thank you. And the Modified Settlement
11 Agreement was included in that, as well?
12 A. Well, I've got to remember which one is, because in
13 that package, or maybe in one of the packages, we
14 ended up seeing -- we, being some of the owners that
15 received this -- we noticed that there were two
16 agreements between HUD and Craft; one in '07 or '08,
17 and this other one in 2010, if I remember the dates
18 correctly. And that's the first time we'd ever seen
19 those or were even aware of them.
20 Q. Sure. It appears to me that on page 79, the
21 Settlement Agreement that we were referring to there
22 was dated 2008.
23 A. You're on 78 or '97
24 Q. Seventy-nine, the second page, the signature page,
25 is dated '08.

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1 MR. FOSTER: One over -- If I may be allowed.
2 MR. LANEY: You are.
3 MR. FOSTER: You went too far.
4 A. Which page are we on? I'm sorry.
5 BY MR. LANEY: (Resuming)
6 Q. I'm looking at 80.
7 A. You're looking at 80?
8 Q. Eighty-two, actually.
9 A. All right. Hand on a minute, as you're killing me.
10 Q. Sorry.
11 A. Okay. The signature page.
12 Q. Yes, sir. That indicates that agreement was entered
13 into in 2008?
14 A. That particular one, probably. Yes.
15 Q. Okay. And then if we look at the Modified
16 Settlement Agreement where it starts on page 88 and
17 has signature pages on page 91, that appears to have
18 the date of December 22, 2010, which that would be
19 my birthday, so great things happen that day,
20 including the Settlement Agreement. So those are
21 the two agreements that you're referring to?
22 A. Those are the, I think, the two agreements that I'm
23 referring to.
24 Q. All right. Okay. I'd ask that you'd just look at
25 this Modified Settlement Agreement and tell me if

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1 Wachovia or Wells Fargo was a party to the 2010
2 Modified Settlement Agreement.
3 A. Doesn't seem to be.
4 Q. Okay. And on page 88, the very first page of the
5 Modified Settlement Agreement, the very first
6 whereas clause, that indicates that Craft
7 Development is the developer of the Edgewater
8 subdivision; correct?
9 A. That's what it states.
10 Q. Okay. Do you disagree with that statement?
11 A. I'm just saying that's what it states.
12 Q. Okay.
13 A. I'm reading it like you are.
14 Q. Okay. And then beginning on page 94, you have the
15 Property Report, the HUD Property Report that was
16 referenced?
17 A. Right.
18 Q. And it goes for quite some time.
19 A. That's correct.
20 Q. Okay. On page five of that, which is page 98 in the
21 bottom right-hand corner, type of general
22 information, it states the developer of the
23 subdivision as Craft Development, LLC. Do you see
24 that?
25 A. I see it.

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1 Q. Okay. Mr. Pappas, are you aware of Wachovia selling
2 any lots in Edgewater subdivision?
3 A. Not specifically. Only from what I've heard, county
4 records, things like that.
5 Q. Okay. In 2006 when you purchased Lot 311, were you
6 aware of Wachovia selling any lots in Edgewater
7 subdivision?
8 A. I'm not sure I understand your question of Wachovia
9 selling the lots.
10 Q. Okay.
11 A. In 2006?
12 Q. Yes, sir.
13 A. I didn't think they owned any lots there.
14 Q. That was my question. Were you aware of them owning
15 any lots that they could sell?
16 A. I'm not aware of it. It doesn't mean that it didn't
17 happen.
18 Q. Okay. I'm asking of your personal knowledge.
19 A. My personal knowledge is not.
20 Q. Okay. And you just referred that you heard that
21 they sold some lots, or --
22 A. I was trying to clarify your date.
23 Q. Okay. And that's sitting as of October 2013, you're
24 aware that Wachovia may have come into possession
25 maybe through foreclosure or other means of lots and

Page 77 1 have sold them that way? 2 A. That's what I'm understanding. 3 Q. Okay. At the rolling time period we're talking 4 about when you purchased Lot 311 and took out the 5 loan with Wachovia and then refinanced it, were you 6 aware at any point in time that they were selling 7 any lots in Edgewater subdivision? 8 A. No personal knowledge of it. 9 Q. Okay. 10 A. It's not that it didn't exist. I just don't have 11 the personal knowledge they did by that time. 12 Q. You can't sit here today and tell me yes, I know 13 Wachovia was selling any lots. 14 A. That's correct. I'd have to do the same research 15 you would. 16 Q. Sure. How about leasing any lots? 17 A. Not a word. 18 Q. Okay. I'm going to show you -- if you could look at 19 page 147, is it a letter dated February 8th, 2011 20 from the law firm of Davis, Frawley, Anderson, 21 McCauley, Ayer, Fisher & Smith from Lexington, South 22 Carolina. 23 A. Yes. 24 Q. And it's dated -- excuse me. It's addressed to you 25 and your wife?	Page 79 1 letter, a proposal on, you know, their -- outlining 2 their services and structure. I didn't do it. I 3 didn't engage with them on it. This was the end of 4 it. And I don't believe that -- maybe there might 5 have been one out of probably 50 that engaged with 6 them. 7 Q. That makes sense about securities, how all that -- I 8 understand now. And that's why when you -- that 9 cleared that up for me. Thank you. 10 The first paragraph of that letter, the second 11 sentence, it states that in the Settlement 12 Administrator Package, you were notified of Craft 13 Development's violation of the Interstate Land Sales 14 Act, ILSA? 15 A. That's what the author wrote. 16 Q. Yes. Have you seen anything in writing in all these 17 packages or subsequent to those packages that 18 indicate that Wachovia violated the Interstate Land 19 Sales Act in any way, shape or form? 20 A. They didn't write it that way. It isn't in it. 21 Q. That wasn't my question, though. Are you aware of 22 anything that indicates that Wachovia violated the 23 Interstate Land Sales Act? 24 A. No. 25 MR. FOSTER: I probably need to make a comment
Page 78 1 A. That's correct. 2 Q. And it's a P.O. Box in Charlotte, North Carolina. 3 Were you living -- you just had a P.O. Box? 4 A. I just had a P.O. Box at the time. 5 Q. All right. What is this letter? 6 A. Let me read this to be sure. 7 Q. Sure. Take your time. I'm not trying to ... 8 A. Okay. I think I can remember what the letter is. 9 Q. Okay. 10 A. What's the question? 11 Q. What is the letter? Please tell us what it is. 12 A. The letter -- there was a group of us owners that 13 had some issues with the HOA at the time down there. 14 And one of the owners had engaged this firm, 15 probably because he lives down there. And we were 16 working at that time with that -- the Davis law 17 firm, trying to understand our remedies on some HOA 18 issues. It was in the middle of these dialogs -- 19 not this letter -- in the middle of the dialogs on 20 the HOA -- that we received the package from the 21 Special Administrator from the HUD -- 22 Q. The Edgewater Settlement Administrator? 23 A. Yes, the Edgewater Settlement Administrator. This 24 firm then -- we gave it to them, let them look at 25 it. They came back to all of us with this same	Page 1 at this point that Mr. Pappas is not an attorney. 2 MR. LANEY: I understand. 3 MR. FOSTER: But with that caveat, sir, to the 4 extent you can answer a legal question. 5 A. Again, you've got to remember that this writing was 6 from an attorney dealing with the -- basically 7 responding to that first letter. 8 BY MR. LANEY: (Resuming). 9 Q. Okay. 10 A. There was no further investigation or any 11 allegations towards any connections between anybody, 12 quite frankly, except what's written in here. 13 Q. And so just so I'm clear, you have not seen anything 14 in writing from anyone indicating that Wachovia or 15 Wells Fargo violated the Interstate Land Sales Act? 16 A. I have not seen anything in writing. 17 Q. Do you have any personal knowledge that Wachovia 18 violated the Interstate Land Sales Act? 19 MR. FOSTER: With the same caveat. 20 A. I haven't seen anything. I don't have any personal 21 knowledge, any records or anything that's been 22 provided to me. 23 BY MR. LANEY: (Resuming). 24 Q. Okay. Do you have any reason to believe that 25 Wachovia could be considered the developer of

Page 81 1 Edgewater subdivision? 2 A. No. 3 Q. Okay. 4 A. But I don't know that, given that I don't know what 5 the agreement was between the developer and the 6 lender. 7 Q. Okay. But as we sit here today, you're not aware of 8 anything? 9 A. I'm not aware of any today. 10 Q. Okay. 11 A. Was there one that existed? 12 Q. The beauty of a deposition is, only I get to ask the 13 questions. 14 MR. FOSTER: Mr. Laney is not being deposed. 15 MR. LANEY: Yes. 16 WITNESS: Sorry. 17 MR. FOSTER: As much as that might be 18 interesting. 19 MR. LANEY: Or not interesting. 20 WITNESS: Well, I thought he was going to come 21 up with another document and show me. 22 MR. LANEY: Not today. 23 BY MR. LANEY: (Resuming) 24 Q. Okay. Can we take just a couple minutes break and 25 let me reorganize where I am? And then I'll come	Page 83 1 Q. Okay. You need to -- 2 A. Yes. Sorry. 3 Q. Thank you. That's okay. It appears that Inventory 4 Priceshet is comprised of one, two, three pages. 5 And the first page starts with Lot 44 and the last 6 page ends with Lot 384. Do you agree with that? 7 A. Yes. 8 Q. Okay. And in the far left-hand column besides some 9 of the lots, several of the lots, it indicates that 10 they were sold. Do you see where that's indicated? 11 A. I see that. 12 Q. Okay. And on page three, actually Lot 311, is 13 indicated as being sold, which is your lot that you 14 purchased. 15 A. Yes. 16 Q. Okay. And it has a list price of two-eight-six-two- 17 fifty, but then an event price of two-twenty-nine, 18 which is, in fact, the sales price that was listed 19 in your Agreement to Buy and Sell Real Estate; 20 correct? 21 A. Yes. 22 Q. Okay. Did you actually execute the Agreement to Buy 23 and Sell at one of the events, or is it because 24 you've attended one of the events you were able to 25 get the event price?
Page 82 1 back and try to shorten this up. 2 (Off the record) 3 BY MR. LANEY: (Resuming) 4 Q. Okay, Mr. Pappas. We're back on the record. And I 5 should have told you this at the beginning. I 6 apologized to your attorney, but I'll apologize to 7 you directly. At any time you need to take a break 8 for any reason whatsoever, please, just let me know. 9 A. Sure. 10 Q. It's not an endurance contest by any means. You've 11 been very good about that, but don't hesitate to ask 12 if you need to take a break for any reason. 13 All right. I did want to go back through a 14 couple of documents that's in Exhibit 13. A couple 15 of things I had questions about. Again, on page 16 16 of that document production, there's a document 17 entitled Edgewater Inventory Priceshet. 18 A. Yes. 19 Q. It looks like it's date April 2nd, 2006 at 10:05 20 a.m. Do you see that document? 21 A. Yes. 22 Q. And April 2nd, 2006 would have been approximately 23 three days after you executed your Agreement to Buy 24 and Sell Real Estate. 25 A. Uh-huh.	Page 84 1 A. I signed the Purchase and Sale Agreement at their 2 off-site offices which were just outside -- it was 3 on Lancaster Highway, -- 4 Q. Okay. 5 A. -- but I had attended, obviously, the events. 6 Q. Was it the same day as one of the events that you 7 executed the agreement? 8 A. I don't recall right now. 9 Q. Okay. With regards to the lots that are listed as 10 being sold, especially on page two starting with Lot 11 269, there appear to be several that have a list 12 price and event price which are greater than Lot 13 311. Would you agree with that? For instance, Lot 14 269 has a list price of three-sixty-two-three, 15 seventy-five and event price of two-eighty-nine- 16 nine. And it says sold beside it. 17 A. I see that. 18 Q. Okay. Do you have any reason to disagree with the 19 indication that there were many lots sold at the 20 time that you had agreed to buy Lot 311 for a 21 greater value than what you were paying for Lot 311? 22 A. Different lots? 23 Q. Yes, sir. Yeah, the lots in reference. 24 A. They're all different lots. 25 Q. A little larger, perhaps, in acreage, and obviously

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1 located in different locations of the subdivision.
2 This is just a summary of what they've had to offer
3 and what they show on their sales records. I don't
4 know, you know, what of these actually closed or
5 anything like that.
6 Q. Okay. But they would indicate the lots which had a
7 sales price greater than two-twenty-nine were sold?
8 A. This is a --
9 Q. It's accurate?
10 A. Yeah. This is an Inventory Priceshet that the
11 sales team was passing out.
12 Q. Right.
13 A. I don't have any knowledge beyond that.
14 Q. Okay. Do you have any knowledge or reason to
15 disagree with what's stated therein?
16 A. I'll smile and say I might today, but you know, at
17 the time, no. It was a marketing tool.
18 Q. Okay. If we go down to Lancaster County's other
19 records and pull the deeds back in 2006 for Lot 269,
20 for instance, you wouldn't be surprised to see that
21 the sales price was what the list price is, --
22 A. Then?
23 Q. -- the event price?
24 A. Then?
25 Q. Yes. In 2006. Same as with your deed.

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1 A. Right.
2 Q. Okay. Okay. You indicated after you received the
3 Edgewater Settlement Agreement that you stopped, you
4 ceased to make any payments on your Wachovia loan,
5 and that you had a series of phone calls with them,
6 but you also wrote them at least two certified
7 letters, you think.
8 A. That's correct.
9 Q. And I apologize. I was unable to get the exact
10 number, but do you have those letters in this
11 production? I think they are.
12 A. They're in the back of the --
13 Q. The very back?
14 A. Uh-huh. I just saw them --
15 Q. Okay.
16 A. -- when we were having the last discussion.
17 Q. Okay.
18 A. So 150-ish.
19 Q. Yeah. You're correct. Good memory. Looks like on
20 page 150 there's a letter dated March 19th, 2011.
21 A. Yes.
22 Q. Is that the letter you were referring to?
23 A. That's one of two.
24 Q. Okay. Who is Gerald McNaught who is copied on that
25 letter?

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1 A. He was one of my attorneys at the time.
2 Q. Where's he located?
3 A. Charlotte.
4 Q. Okay. Now you say there's a second letter. I have
5 not seen any second letter.
6 A. I have in my files, and you should have in yours.
7 There was one sent to Portland and one sent to
8 Montana, actually.
9 Q. Okay. Would you provide that to Mr. Foster?
10 A. I think they're the same letter.
11 Q. Oh, they were --
12 A. Their addresses are on --
13 Q. Oh, okay. So there was one letter sent to two
14 different places.
15 A. Two letters sent to two different places. Same
16 letter sent to two different places, because the
17 mailing that I got from the bank, one was from
18 Portland, Oregon, one was from Billings, Montana.
19 So I want to make sure since I wasn't able to get
20 them to communicate to me, that I responded to the
21 addresses that they provided us to respond to.
22 Q. Okay. The contents of the two letters that were
23 sent are identical to what we have --
24 A. I believe so.
25 Q. -- starting on page 150?

Page

1 A. I believe so.
2 Q. That's what I was trying to get at. Okay. Have you
3 sent anything else in writing, other than what we
4 see on page 150, to Wachovia or Wells Fargo?
5 A. I don't think so. I think by that time we'd engaged
6 with Mr. Foster.
7 Q. Okay. So anything would have been received from Mr.
8 Foster.
9 A. Yes.
10 Q. Okay. All right. One thing I failed to follow up
11 on earlier, you indicated you'd been deposed before.
12 How many times have you been deposed?
13 A. Five.
14 Q. Five? Okay. Were you a party like you are here to
15 those lawsuits, or were you a witness?
16 A. Witness, usually.
17 Q. Okay. Have you been a party to a lawsuit other than
18 this one?
19 A. Not that I remember. I don't think so.
20 Q. Okay. Okay. What did those other lawsuits have to
21 deal with?
22 A. Construction defect issues or something like that,
23 companies that I had represented.
24 Q. Okay.
25 A. Or had worked for.

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1 Q. Okay. And I apologize. This is part of the
2 background information I ask everybody. Do you have
3 a -- been charged with any criminal indictments in
4 the last ten years?
5 A. No.
6 Q. Okay. My apologies, but --
7 A. That's okay.
8 Q. -- I'm required to ask. What was the reason that
9 you left D.R. Horton?
10 A. To take this job here.
11 Q. Okay. Jim Walter?
12 A. That's correct.
13 Q. What was the reason you left Jim Walter?
14 A. We just didn't have an agreement on what we were
15 going to focus on. The leadership had changed,
16 significantly. And I elected not to stay.
17 Q. Okay. All right.
18 MR. LANEY: Can I get another Exhibit sticker?
19 I somehow managed to get two 13s, and that's not
20 going to work. You can make this 15.
21 (Whereupon, Complaint and Amended
22 Answers was marked as Plaintiff's
23 Exhibit #15)
24 Q. This is a -- it's bound together --
25 MR. LANEY: Martin, this is just our Complaint,

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1 your Amended Answer and Counterclaim, and our reply
2 to it. I just put it all together. I'm not going
3 to go through all of it, but I think you have
4 copies.
5 MS. HUNT: Do you have one?
6 MR. LANEY: I've got them somewhere.
7 MS. HUNT: Are they all in that stack?
8 MR. LANEY: There were three, but I thought I
9 had --
10 MS. HUNT: That's okay. Don't worry about it.
11 MR. LANEY: I'm sorry. That's just my one
12 copy. I apologize.
13 BY MR. LANEY: (Resuming)
14 Q. As we talked about, the first document that's
15 stapled here is the Complaint for Foreclosure of
16 Real Estate brought against you and your wife for
17 foreclosing the mortgage on Lot 311. And I failed
18 to mention, but when you refinanced the loan in
19 2009, you got a rate of 5.5 percent, which was
20 actually a percentage or so better than what you had
21 in 2006; correct?
22 A. Seems that way.
23 Q. Okay. So you actually got a little bit better deal.
24 The principal increased from two-oh-six to two-ten-
25 nine-fifty-four-sixty-nine. So that went up by

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1 about \$4,000.00, but --
2 A. That, I didn't like.
3 Q. Yeah. Understood. No one likes to have to pay
4 more. But the interest rate was reduced?
5 A. It was the terms that they put on the table.
6 Q. Okay. But you negotiated and they agreed?
7 A. I agreed to it.
8 Q. Yes. Okay. And going back to 2006, you actually
9 reached out to Wachovia. They didn't approach you
10 with their loan?
11 A. That's wrong.
12 Q. They call called you and said we'd like to make you
13 a loan for --
14 A. They were -- they didn't cold call me.
15 Q. Okay.
16 A. They were at each one of the events --
17 Q. Okay.
18 A. -- offering their programs.
19 Q. Okay.
20 A. That's how I got connected with them.
21 Q. Did they walk up to you and say --
22 A. They did.
23 Q. -- introduced themselves and we'd like to make you a
24 loan?
25 A. They actually did.

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1 Q. Who did that?
2 A. I believe it was Richard at the time.
3 Q. Okay. Did anyone from SunTrust do the same thing?
4 A. Didn't really have any good dialog with them, so we
5 didn't pursue it.
6 Q. Okay. Were they there?
7 A. I believe so.
8 Q. Other lenders were there, as well?
9 A. Other lenders were there.
10 Q. Okay.
11 A. There were, if I remember the number, I think there
12 were three what they called preferred lenders in
13 this program. It was Wachovia, SunTrust and maybe
14 somebody else, but I don't remember.
15 Q. Okay. And you had discussions with all three of
16 them?
17 A. No. I only had discussions with SunTrust and
18 Wachovia.
19 Q. Okay. Okay. Why didn't you go with SunTrust?
20 A. I seemed to like the LO at Wachovia, so it was just
21 an easier --
22 Q. LO being loan officer?
23 A. Yes.
24 Q. Okay. Were the terms that Wachovia offered better?
25 A. I think they were the same. Both parties offered



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1 the same. But I couldn't quote that for sure.
2 Q. Gotcha. If Wachovia hadn't offered you this loan,
3 would you have gone to SunTrust or another bank to
4 get it to purchase Lot 311?
5 A. I don't know that I would have, you know. I wasn't
6 seeking it as far as SunTrust. And you asked --
7 well, you asked other lenders. The lending program
8 was one of the main and significant drivers on me
9 being able to purchase the property and closing on
10 it at that time.
11 Q. Right. But there were at least two other lenders
12 offering loans in this subdivision.
13 A. I remember only the one, SunTrust. I don't remember
14 the third, if there was one.
15 Q. Okay. Well, why wouldn't you have gone with
16 SunTrust if Wachovia, for whatever reason, had said,
17 you know, we just don't want to make you a loan?
18 A. Well, if you could, ask the question a little bit
19 different, if you could rephrase that, or what was
20 your question? I want to make sure that I answered
21 correctly.
22 Q. If Wachovia for any reason had said Mr. Pappas,
23 we're not going to make you a loan to help you
24 purchase Lot 311, why wouldn't you have gone to
25 SunTrust to get a loan?

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1 A. Never considered that. That didn't come up so we
2 never had to address that.
3 Q. You could have.
4 A. I don't know. I mean I don't. I mean as far as --
5 Q. You could have gone to anyone --
6 A. -- the marketing --
7 Q. You weren't required to use Wachovia or SunTrust.
8 A. To get this program, we were.
9 Q. Right. But to get a loan, any loan, you weren't
10 required to just go with them.
11 A. I wasn't seeking any loan.
12 Q. Okay.
13 A. I was seeking the program that they offered.
14 Q. Did you attempt to get a loan from any other
15 institution that was along the same terms?
16 A. No.
17 Q. Okay. There's no reason you couldn't have at least
18 attempted to do so if you had wanted to?
19 A. I could make a choice if I wanted to, just like
20 going to one store or another.
21 Q. Sure.
22 A. But if one store doesn't have what I'm looking for,
23 then why go in that store, if that's fair.
24 Q. If you know that store doesn't have what you're
25 looking for?

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1 A. Right.
2 Q. Really, the point I'm making is you weren't
3 prohibited from talking to any other lender if you'd
4 wanted to do so.
5 A. That would be correct.
6 Q. Okay. Okay. Outside of Richard, who I believe may
7 be identified in the Interrogatories we'll get to in
8 a second, as Richard Parks, did you speak with
9 anyone else at Wachovia? I know you had some phone
10 calls and some notes, which I'm going to ask you to
11 give to Mr. Foster. But outside of those, prior to
12 your getting the loan from Wachovia --
13 A. There may have been some other processor that worked
14 in that office.
15 Q. Okay.
16 A. I don't recall the name or contacts with Richard.
17 Q. Okay. At the events, did you speak to anybody else
18 at Wachovia other than Richard?
19 A. There were more than one representative at the
20 table, so I'm not sure if they were assistance or
21 whatever, much like this whole table is
22 (indicating).
23 Q. Sure. Did you have any substantive conversations
24 with anybody outside of Richard?
25 A. No.

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1 Q. Okay. Would it be fair to characterize that your
2 conversations with Wachovia after you stopped
3 paying, you didn't have any substantive
4 conversations with people at Wachovia?
5 A. Yes.
6 Q. I thought I heard your testimony, but I want to make
7 sure I'm right. Okay. So your notes wouldn't
8 reflect a substantive conversation that you had with
9 Wachovia?
10 A. After this --
11 Q. After you stopped paying.
12 A. After all this started happening, yes. That's
13 correct.
14 Q. Okay. They would not. I just kind of got confused,
15 myself. But they would not reflect any substantive
16 conversation.
17 A. That's correct.
18 Q. Okay. Okay. And just to summarize, we're here.
19 Wachovia/Wells Fargo is suing to foreclose on the
20 mortgage loan that you and your wife took out, the
21 \$210,000.00 that you refinanced in 2009. And you
22 have filed an Answer and Counterclaim and Cross
23 Claims to that complaint, which is part of
24 Plaintiff's Exhibit 15, setting forth causes of
25 action of why they should pay you damages in this

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1 case. And principally, I'm concerned about what
2 you're asking about my client, Wachovia. So I
3 wanted to ask you some questions about that just so
4 I understand what you're alleging they did wrong.
5 If you could, before we walk through this, would you
6 just tell me in your own words what are you alleging
7 that Wachovia, now Wells Fargo, did wrong to you?
8 MR. FOSTER: I need to put in my caveat about
9 his ability to state the legal principles. And my
10 objection would be considered as continuing
11 throughout this line of questioning.
12 MR. LANEY: Sure.
13 MR. FOSTER: Go ahead, sir, as far as you can.
14 A. Now that he said that, can you repeat the question
15 again so we can get back on track?
16 BY MR. LANEY: (Resuming)
17 Q. Sure. Tell me in your own words what you believe
18 Wachovia did wrong and why you shouldn't pay them on
19 this loan.
20 A. I think that Wachovia had the responsibility, since
21 they were certainly the underlying lender, as
22 evidenced by the closing statements; that they were
23 the underlying lenders; that they had a
24 responsibility to disclose their position at the
25 time; that they were going to get pay off from this

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1 loan; that at the time that they were making
2 representations that we're going to close,
3 quote/unquote, we're going to close these loans
4 early to allow Craft to complete all the facilities
5 they represent. We're going to do that.
6 Q. Okay.
7 A. That's a simple side.
8 Q. Anything else?
9 A. I'll stop there. I'll just stop right there, I
10 guess.
11 Q. Okay. Who made that statement to you?
12 A. Certainly Richard would have.
13 Q. Okay.
14 A. The sales team there supported that, even though
15 yes, I know that they don't represent Wachovia. But
16 they also represented a union together that they
17 were providing this kind of financing tool as a
18 sales tool for that property. They were in concert
19 with the offering. It wasn't unilateral.
20 Q. Describe that. I don't understand that.
21 A. In concert?
22 Q. Yes, sir.
23 A. If I were a builder and I was offering financing on
24 my property -- but I'm not the lender. I'm the
25 builder -- and I partner with Wells Fargo Bank to be

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1 my preferred lender, that's a partnership.
2 Q. Okay.
3 A. Always has been. I've had those partnerships with
4 Wells Fargo Bank, actually.
5 Q. Okay.
6 A. I know what they look like. I know what they
7 represent. It is a union.
8 Q. Do you have any documents that show that there was a
9 partnership between Wells Fargo and Craft
10 Development?
11 A. I don't have any documents to that.
12 Q. Okay. Outside of what you just stated, do you have
13 any other evidence that would support your assertion
14 that there was a partnership or a union or a concert
15 between Wachovia --
16 A. I think the offering will demonstrate their
17 relationship.
18 Q. Okay. Can you show me where -- This is my one
19 chance to ask you questions.
20 A. Sure.
21 Q. I don't mean to belabor the point, but I would like
22 to see -- do we have what you're referring to and
23 what we've looked at in Plaintiff's Exhibit 13?
24 A. I didn't see it in the 150-some-odd pages, the
25 offering.

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1 Q. You didn't? Okay.
2 A. I remember seeing, you know, the structure of this.
3 I don't remember the exact language of it sitting
4 here talking with you today. But it certainly was a
5 descriptive of the program. The program wasn't
6 without a descriptor.
7 Q. Sure. Do you have possession of that document?
8 A. I might. I think that we've provided it all. I'm
9 not sure that there's one missing in here or not. I
10 don't know.
11 Q. I'm going to represent for purposes of today that
12 that is everything we've been provided by Mr.
13 Foster. That's not to say -- We're all humans,
14 but --
15 A. Yeah, when we've had to comb through 150 pages of
16 events laying in here for what I'm looking for.
17 Q. Okay.
18 A. I remember it might be even with all my collateral
19 material. The collateral material is not part of
20 this.
21 Q. When you say collateral material, you're referring
22 to the Note and Mortgage?
23 A. No. I'm talking about the -- that's an interesting
24 statement. You say collateral material, collateral
25 material would be the marketing material --



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1 Q. Oh, Okay.
2 A. -- that was used.
3 Q. You didn't see that in there, as well?
4 A. No. That's correct.
5 Q. Okay. Okay. I'm going to ask, if you would, please
6 search for that, and if you find it, if you can,
7 provide it to Mr. Foster.
8 MR. LANEY: Then, Martin, if I could, I'd like
9 to just hold the deposition open for the purposes of
10 asking questions about anything that gets produced
11 later.
12 MR. FOSTER: I will state on the record that,
13 Mr. Pappas, if I'm allowed to say this, you have the
14 obligation to supply me with those documents. I
15 have the obligation to supply them to the attorney,
16 barring some objection which I have not seen any
17 possibility of right now.
18 MR. LANEY: Okay. Thank you.
19 WITNESS: A question for me. Does this leaving
20 it open preclude he and I having any conversations
21 like we were talking about earlier?
22 MR. LANEY: To discuss those documents, yes.
23 You cannot have discussions about those documents
24 with him until I've had an opportunity to ask you
25 about them.

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1 WITNESS: But after providing them to him?
2 MR. LANEY: Yes.
3 WITNESS: So you're saying --
4 MR. LANEY: You can say here are the documents
5 that were requested at the deposition. That's fine.
6 MR. FOSTER: I just want to make sure that
7 Counsel would inform me if he intends to reconvene
8 the deposition --
9 MR. LANEY: Absolutely, if I have the
10 documents --
11 MR. FOSTER: -- in a timely fashion.
12 MR. LANEY: Very much so. I'm not going to
13 prohibit and deprive you of your ability to talk to
14 Counsel.
15 WITNESS: We were talking about that earlier.
16 We were kind of joking about it.
17 MR. LANEY: I'm not going to attempt to do that
18 by any stretch.
19 WITNESS: So you're telling me that you don't
20 have any marketing materials in your possession?
21 MR. LANEY: You have what I have.
22 MR. FOSTER: He is not --
23 WITNESS: Sorry.
24 BY MR. LANEY: (Resuming)
25 Q. Okay. Now I think we've established -- and I just

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1 want to make sure I'm right -- outside of Richard,
2 we don't have -- you did not have any substantive
3 conversation with anybody else.
4 A. Since then?
5 Q. No, sir. At the time -- I'm talking about prior to
6 you getting the initial loan in 2006.
7 A. Richard was my go-to person at the time.
8 (Whereupon, Answers To
9 Interrogatories was marked as
10 Plaintiff's Exhibit #7)
11 Q. And I'm going to -- This is Plaintiff's Exhibit 7.
12 These are your Answers to Interrogatories. I think
13 we've been referring to a Richard. How about would
14 it be Robert Park? I'll show you.
15 A. I don't think it's Robert. It's Richard.
16 Q. Oh, okay.
17 A. I happened to come across it when I was flipping
18 pages.
19 Q. Page two of that document identifies him as Robert
20 Park.
21 A. I think that just may be a typo.
22 Q. You think it should be Richard Park?
23 A. I believe it is. As a matter of fact, I saw it,
24 because I flipped through these documents in here.
25 If you just want to take the time for a minute and

Page 1

1 I'll see if I can quickly put my hands back on it.
2 Q. Please.
3 A. And it's actually my notes to myself. Looks to be
4 richardpark@wachovia.com, is what it was. He was a
5 financial specialist at Wachovia at the time.
6 Q. Okay. What's the page number?
7 A. Seventy-six.
8 Q. Seventy-six. Okay. So throughout your deposition
9 when you've been referring to Richard, that is the
10 person that you've been referring to?
11 A. Yes.
12 Q. Okay. And there were no other individuals,
13 employees or agents of Wachovia who you spoke to
14 substantively about your loan outside of Richard; is
15 that correct?
16 A. I can't say that for certain because there may have
17 been one of his associates along the way, but it's
18 certainly under the guidance of the LO.
19 Q. Okay. Okay. And again, LO stands for loan officer?
20 A. Uh-huh.
21 Q. Okay. Okay. Mr. Pappas, before we talk about that
22 -- and thank you for that explanation -- we were
23 looking at Plaintiff's Exhibit #15, on your Amended
24 answer and counterclaim in that matter -- and I
25 think I only have one copy, so I apologize, and I

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1 apologize for standing up and leaning over the
2 table. I don't mean to be rude, or. In your second
3 Defense and Counterclaim, you're alleging a
4 violation to the Unfair Trade Practices Act. And
5 this, of course, is subject to Mr. Foster's
6 previously made objection. Paragraph 19, you
7 indicated that Wachovia has the following unfair
8 deceptive acts or practices. And there's a list of
9 these given. Knowingly misrepresenting the value of
10 the subject real estate in the appraisal furnished
11 to the Defense. In fact, we've established no
12 appraisal was furnished to you until two or three
13 months ago; correct?
14 A. That's correct.
15 Q. Okay. Do you still contend that Wachovia
16 misrepresented the value of the real estate to you?
17 A. I'm sorry. I was reading this, as well. Hang on a
18 second.
19 Q. Not a problem.
20 A. Okay. Go back to your question, please.
21 Q. Okay. Do you still contend that Wachovia knowingly
22 misrepresented the value of the real estate to you?
23 A. If you're including Wachovia and all of their
24 affiliates and partnerships and people that they
25 hired, yes.

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1 Q. Who are their partnerships, affiliates and people
2 they --
3 A. They hired the appraiser. I didn't.
4 Q. Okay. Now I think we talked about the appraisal
5 earlier and you indicated to me, I thought, that you
6 didn't have a problem with his value, you put on
7 there.
8 A. I didn't say that I didn't have a problem with his
9 value. I said I don't think that how he arrived at
10 his value is correct.
11 Q. Okay. You believe that that was a knowing
12 misrepresentation of the value to you?
13 A. I don't know that I could say what he did.
14 Q. Okay. You weren't furnished the appraisal; correct?
15 A. That's correct.
16 Q. Okay. So how did Wachovia knowingly misrepresent
17 the value to you?
18 A. I didn't --
19 Q. No. I understand. And I'm asking for your words.
20 A. I really can't answer your question, and I don't
21 have -- I didn't write this, specifically.
22 Q. I understand. I understand it was drafted by your
23 attorney. But I need to know what did Wachovia say
24 or do that was a misrepresentation to you?
25 A. Well, trying to answer your question and trying to

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1 get to the -- I think I understand what you're
2 asking. I'm not sure I can answer the question the
3 way you've asked it. I think that Wachovia was
4 negligent in the entire process of their appraisals
5 and closings and how they arrived at it and how they
6 established the value at one time, at that time. So
7 if they really felt that that property in its
8 unfinished state in 2006 was worth \$230,000.00, yes.
9 I have a problem with that.
10 Q. Okay. They gave you \$206,000.00 to buy it; correct?
11 A. We're talking about that value; right?
12 Q. Right. But I'm asking, they provided you
13 \$206,000.00 to purchase Lot 311.
14 A. Okay.
15 Q. And we've seen an appraisal indicating the value of
16 the Lot 311 was \$230,000.00.
17 A. At that time?
18 Q. Yes. In May 10th, 2006.
19 A. Okay.
20 Q. Okay.
21 A. I'm not sure I'm understanding where you're going.
22 Q. That both of those things are true statements;
23 correct?
24 A. Yes.
25 Q. Okay. And in 2006, you signed a promissory note

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1 promising to repay Wachovia \$206,100.00 for loaning
2 the money to buy Lot 311; correct?
3 A. That would be correct.
4 Q. Okay. And my question is, in 2006, what did
5 Wachovia state to you in any form, verbally or in
6 writing, that was untrue?
7 A. You're looking at my position today or my position
8 then?
9 Q. I'm asking you what, sitting here today, October
10 30th, 2013, what do you know was untrue that
11 Wachovia represented to you?
12 A. I'm still not sure. I'm, again, trying to give you
13 a direct answer. I don't mean to be evasive on it,
14 but what I'm trying to --
15 Q. They promised to make you a loan for \$206,000.00; --
16 A. Right.
17 Q. -- roughly, one-hundred; charge an interest rate of
18 six and some-odd percentage points; --
19 A. I got that.
20 Q. -- interest only payments for 35 months with balloon
21 payment due sometime in 2009. It would be roughly --
22 - it was May -- so it would be roughly May, 2009.
23 And any of that not happen?
24 A. All of that happened.
25 Q. Okay. So they didn't misrepresent the terms of the



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1 loan to you. 2 A. They didn't misrepresent the terms of the loan. 3 Q. Okay. You've indicated they misrepresented the 4 value. How did they misrepresent the value? You 5 weren't provided the appraisal. 6 A. We're talking about -- you're talking about in 7 '06 -- 8 Q. Yes, sir. 9 A. -- and I'm talking about my claim today. 10 Q. Yes. 11 A. Are those two different things in your mind? 12 Q. Yes, they are. 13 A. I'm asking -- Sorry. 14 Q. No, no, no. That's fine. But to clarify, I need to 15 know what was not true at the time the 16 representation was made in 2006 or in 2009 when it 17 was made? At the time of statement or 18 representation from Wachovia was made to you, which 19 statement or representation was not true? 20 A. I guess -- and forgive me for kind of belaboring 21 this, because -- as you do the same thing -- If I 22 look at now in 2006 what that value was 23 representative of, -- 24 Q. Uh-huh. 25 A. -- It wasn't there.	Page 109 1 A. We both knew -- 2 Q. -- that the developer knew was not finished, -- 3 A. We both knew it was not finished. 4 Q. -- and knew exactly what the pitfalls were for the 5 developer to finish. 6 A. Well, that's not necessarily true. Here's what I'm 7 going to tell you again, is that what they 8 represented what was going to be is what I was 9 buying. 10 Q. Okay. What did they represent to you? 11 A. They represented to have a fully established 12 community. 13 Q. Wachovia did? 14 A. They acknowledged that we are making this loan -- 15 Q. I need to see where they represented that to you, 16 Mr. Pappas. 17 A. I understand what you're asking. 18 Q. Okay. Can you show that to me? 19 A. In these documents, I don't see that you have it in 20 here. I don't know what it is. 21 Q. Okay. 22 A. But look at the terms, even in your own. You've got 23 a document in here in this pile of documents that 24 says Special Financing Offer. 25 Q. Okay.
Page 110 1 Q. Okay. 2 A. That lot was not a finished lot. 3 Q. Okay. 4 A. There were no amenities on the property. 5 Q. And you negotiated the purchase price with the 6 seller -- 7 A. That's correct. 8 Q. -- without Wachovia's input. 9 A. That's not true. 10 Q. They weren't a party to that Purchase and Sell 11 Agreement. 12 A. They weren't a party to that Purchase Agreement, but 13 they were certainly along side of them in offering 14 what they did. I didn't seek out Wachovia. I 15 didn't go to them for a loan. This is not an off- 16 the-shelf -- 17 Q. You didn't fill out a loan application for Wachovia? 18 A. That's not what I said. 19 Q. Okay. 20 A. I said they were there with the offering. They were 21 a part of the offering. They were a part and parcel 22 of my decision-making process to purchase that lot 23 at a value that I would think would be 24 representative of something that was a finished lot. 25 Q. That you knew was not finished, --	Page 1 1 A. Okay. That just doesn't come out of the sky, you 2 know. The lender would be the one to outline those 3 special terms; wouldn't they? 4 Q. I understand, and you just said that we honored all 5 the terms of the financing. 6 A. What I'm telling you now is, they have guidelines. 7 They offered we're going to close this loan under 8 these conditions. 9 Q. Okay. What guidelines are you referring to? 10 A. Their offering. They offered this special financing 11 package. 12 Q. The documents we don't have? 13 A. Well, you can say that all you want, but I'm sure 14 that they're somewhere. 15 Q. I'm not trying to be cute or anything. I'm trying 16 to say is there anything you can point to me that 17 shows they violated a representation they made to 18 you? 19 A. Well, yes. 20 Q. What? 21 A. They represented -- you don't -- They represented 22 special preconstruction financing. That is in these 23 documents that you provided to me. 24 Q. Okay. 25 A. Okay. Find that offering, if that's what we're

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1 looking for, for both of us. I mean I'm sure I have
2 it in the collateral material that outlines it a
3 little bit more.
4 Q. Preconstruction?
5 A. That's what it said.
6 Q. Okay. And there was no construction. It was a
7 vacant lot.
8 A. It wasn't even a vacant lot yet.
9 Q. Well, it was graded.
10 A. Well, that doesn't mean it's a finished lot. I mean
11 let's get into semantics about what's a finished
12 lot. Finished lot is a blue top lot.
13 Q. Okay. It was a vacant lot. There was no structure
14 on it. Might have been some trees. Had water to
15 the side.
16 A. Maybe.
17 Q. Well, it's in the pictures.
18 A. Well, I know it is, in that picture.
19 Q. Wachovia wasn't responsible for finishing the
20 amenities.
21 MR. FOSTER: Once again, I believe you're
22 asking to --
23 MR. LANEY: You can object to the form, Martin,
24 but I don't think it's --
25 MR. FOSTER: Well, my objection is that I think

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1 you're asking him to take a position as to the legal
2 position you're taking.
3 MR. LANEY: But that's objecting to the form.
4 Otherwise, it wouldn't be -- I mean that's the only,
5 you know, that's --
6 MR. FOSTER: Fine.
7 MR. LANEY: Then I could ask --
8 MR. FOSTER: I won't dispute that, but I'm
9 making my -- I'm not telling him not to answer as
10 far as he can, but I feel that I needed to say that.
11 So I said it.
12 MR. LANEY: Thank you.
13 WITNESS: As we're talking here, I'm trying to
14 find some of the articles that were part of the
15 offering. It may take me a bit to find it. They're
16 in your package here. And it refers to the special
17 financing offered.
18 BY MR. LANEY: (Resuming)
19 Q. Sure. And I think we've established that they
20 honored all the financing terms they offered to you.
21 A. They honored the terms of it, if that's what you're
22 saying.
23 Q. Sure.
24 A. What did they close the loan based on?
25 Q. Who was the developer of Edgewater subdivision?

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1 A. Sir, we already answered that question. We know
2 that. You don't have to get cute about it. I
3 understand that.
4 Q. It says Craft Development.
5 A. Right.
6 Q. So was Wachovia responsible for finishing the
7 development?
8 MR. FOSTER: Same objection.
9 A. I don't have that answer.
10 BY MR. LANEY: (Resuming)
11 Q. I need you to answer.
12 A. No. I don't have that answer. I don't know that
13 they weren't a part of the development agreement
14 with the developer. I don't know.
15 Q. How would the bank be responsible? Just help me
16 out. I don't understand how the bank could be
17 responsible for putting the infrastructure into the
18 subdivision. Okay. He would tell you not to
19 answer.
20 A. I'm listening. There may or may not have been an
21 agreement. Wachovia was clearly the underlying
22 lender on the construction operations.
23 Q. Okay.
24 A. So is that in -- even the closing statement?
25 Q. You're referring to the HUD on the closing?

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1 A. Yeah. They had a position in the property.
2 Q. Okay.
3 A. Okay. So I don't know what their relationship was.
4 Q. Okay.
5 A. That's as far as I can be able to say.
6 Q. Okay. That's fine. But sitting here today -- and
7 this is my chance to ask you questions -- sitting
8 here today, you cannot point me to a document or to
9 some other representation that would evidence that
10 Wachovia had a duty to finish the amenities in
11 that --
12 A. The way you ask it, no.
13 Q. Okay. You've also alleged in your complaint that --
14 and you may not know the legal term of this and I'm
15 not going to hold you to knowing legal terms -- but
16 that they had made what is called a Qualified
17 Written Request upon -- you know that from your -- I
18 believe you had some prior banking experience as
19 well.
20 A. I'm not sure what you're referring to, so keep going
21 and I'll try to catch up.
22 Q. Okay. Did you work at Sun West, some bank?
23 A. Sun Bank.
24 Q. What was that?
25 A. It was a development company.

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1 Q. Oh, okay. Have you ever worked for a financial
2 institution?
3 A. I have.
4 Q. Which financial institution?
5 A. It was called Butterfield Savings and Loan.
6 Butterfield. It was in the '80s. They had a
7 development arm and I ran part of that development
8 arm as a construction VP.
9 Q. Okay. Were you ever in charge of offering loans as
10 part of that?
11 A. Not in charge.
12 Q. Okay. Would you ever --
13 A. I was a construction VP.
14 Q. Okay. And where was Butterfield located --
15 California?
16 A. Santa Anna, California.
17 Q. How long were you employed with them?
18 A. About a year. They got seized by the Feds.
19 Q. Gotcha. Makes sense in the '80s. Okay.
20 A. Uh-huh.
21 Q. Okay. But in your third defense counterclaim,
22 you're indicating that -- I think the proper term is
23 qualified written request, was made -- it was not
24 responded to. And my question is, we've looked at a
25 letter dated -- I don't know the date, but the page

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1 number is 150 in the documents produced -- is that
2 the letter you're referring to, the writing that
3 you're referring to?
4 A. If that's what you're referring to as a qualified
5 written request.
6 Q. Well, you're good at that. You have been in several
7 depositions, but I'm asking you are there any other
8 writings outside of that that you're aware of that
9 went to Wachovia?
10 A. Not since this.
11 Q. Okay. Not since that one?
12 A. Yeah.
13 MR. FOSTER: This, again, is referring to 150?
14 MR. LANEY: Yes, sir. Page 150.
15 MR. FOSTER: Just to clarify.
16 MR. LANEY: Yes.
17 A. Answering your question -- Did we finish up?
18 BY MR. LANEY: (Resuming).
19 Q. Yes. In paragraph --
20 A. Is that what we were referring to?
21 Q. Paragraph 28, you indicated that Wells Fargo has
22 never responded to the Qualified Written Request
23 that you made. And I just want to know if that's
24 the Qualified Written Request that you made to them?
25 A. I would say that would refer to this document.

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1 Q. Okay. And you did not receive any response to the
2 letter?
3 A. I did not.
4 Q. Okay. Did you have any conversations with anybody
5 from Wachovia or Wells Fargo after you wrote them
6 that letter?
7 A. Nothing.
8 Q. Okay.
9 A. Absolutely nothing. No response from some months
10 before trying to contact them by telephone, have
11 them tell me we'll get back to you. Never have. I
12 got frustrated at not hearing it. Sent the letter
13 out.
14 Q. Okay. Then again, no response from Wachovia
15 whatsoever, or Wells Fargo?
16 A. Nothing.
17 Q. Okay. And at that point in time, somewhere there
18 about -- I don't want to know any discussion with
19 Dr. Foster -- but you retained the services of an
20 attorney, and we are where we are.
21 A. Yes.
22 Q. Okay. Fair enough. Okay. On page six in your
23 fourth defense, Counterclaim and Cross Claim, you're
24 bringing an Interstate Land and Sales Act claim
25 against Wells Fargo. We've talked about this a fair

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1 bit already, but do you have any documents or other
2 evidence to support your statement in paragraph 35
3 that Wells Fargo is the developer, personally, to
4 the Interstate Land Sales Act?
5 A. Again, when we're leaving it up to the author of
6 this, I don't know how those claims would be
7 necessarily tied in. Obviously, he did the homework
8 on that.
9 Q. Sure.
10 A. But that's about as close as I can answer to it.
11 Q. The only document you've been able to refer me to or
12 we've looked at or seen indicated that Craft
13 Development's the developer of the Edgewater
14 subdivision; correct?
15 A. As far as I can tell right now.
16 Q. Okay. Do you have any documents or other evidence
17 that support a statement that Wachovia is a
18 developer of Edgewater subdivision?
19 A. I don't.
20 Q. Okay. Okay. Going to your fifth defense -- fifth
21 and sixth are kind of one and the same. They're for
22 fraud and misrepresentation, Mr. Pappas. And we've
23 talked a fair bit about, a little bit in the unfair
24 trade practices, but please tell me what actions
25 Wells Fargo or Wachovia made or took that

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1 constituted misrepresentations or concealment of
2 true facts to you, which is what you state in
3 paragraph 47 on page eight.
4 A. Again, not being an attorney, we're looking at
5 47 --
6 Q. Yes, sir.
7 A. -- and we're looking at that the -- If I'm
8 remembering what this is referring to, is a failure
9 to provide the documents that we requested, the
10 appraisal.
11 Q. The appraisal. Okay. Outside of failing to provide
12 the appraisal to you, which I guess is a concealment
13 of facts, Wachovia -- you have in here again that
14 they misrepresented the value of Lot 311 to you.
15 A. Again, as we stated before, we think that they did.
16 Q. Okay. Subparagraph B, you say that the value was
17 negligently appraised. What evidence do you have
18 that the appraisal done by Mr. Pigman was negligent?
19 A. I think it's the assertion of his methodology on
20 properties that are not even completed and using
21 those values as completed properties.
22 Q. Okay. Anything else?
23 A. I think that's what we've stated.
24 Q. Okay. Have you spoken or shown that appraisal to
25 any other real estate appraiser?

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1 A. No.
2 Q. Okay. Has anyone else told you that that appraisal
3 was negligently performed? I'm not talking about
4 any discussions you've had with your attorney.
5 A. No.
6 Q. Okay. And you have received no real estate
7 appraisal training; correct?
8 A. That's correct.
9 Q. Okay. Do you have, outside of what we've discussed
10 already today, do you have anything else that would
11 indicate that the value of Lot 311 on May 10th, 2006
12 when it was appraised was not \$230,000.00?
13 A. Say it again, please.
14 Q. Okay. We've talked a bit, and feel free to go
15 through it, --
16 A. That's okay. I just need you to repeat it.
17 Q. -- but do you have -- I'm asking what evidence you
18 have that would support an allegation that the value
19 of Lot 311 was not \$230,000.00 on May 10th, 2006?
20 A. I would again restate that an appraisal that's based
21 on a value as a completed property certainly
22 wouldn't have been acceptable by any lender in any
23 standard in a normal situation as \$230,000.00 for
24 essentially a paper lot.
25 Q. Okay. And what lending standards are you referring

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1 to?
2 A. In most cases, if I went to Wells Fargo today, they
3 would tell me that we wouldn't be able to loan on it
4 unless it's a fully completed lot, an entitled lot.
5 Q. Okay. Are you saying that financial institutions
6 don't provide loans on vacant lots in 2013?
7 A. Well, describe vacant lots versus vacant land.
8 Q. Doesn't have a structure on it?
9 A. That's not true.
10 Q. Why not?
11 A. Vacant lot -- a vacant piece of land could be
12 subdividable land.
13 Q. Sure. I'm talking about a vacant lot that's already
14 been subdivided --
15 A. This was --
16 Q. -- like Lot 311.
17 A. This was a paper lot at the time. It wasn't a
18 completed lot. There's a difference between your
19 question and a completed lot; streets, utilities,
20 monuments in place, and a legal lot at the time
21 versus a paper lot.
22 Q. And I'm asking you, is it your testimony that I, if
23 I wanted to go get a loan to buy a vacant lot,
24 subdivision was very similar to what Edgewater was
25 in 2006, I couldn't get a loan for that?

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1 A. That isn't what I said.
2 Q. Okay. What were you saying? I misunderstood you.
3 A. What I said is you can buy a vacant lot --
4 Q. Okay.
5 A. -- If it's an entitled legal lot.
6 Q. You mean if somebody had a deed and was able to
7 transfer the property to you?
8 A. That it was a completed lot.
9 Q. That's not what I'm asking.
10 A. A completed lot?
11 Q. I don't want a completed lot. I want a vacant lot.
12 A. I was buying a completed lot.
13 Q. That's not what your contract says.
14 A. Well, it does.
15 Q. Where does it say in your Purchase Agreement that
16 you're buying a completed lot? Let's look at it. I
17 don't think it does. If it does, I'd like to know
18 where it does. I think it's right there.
19 A. We're breaking up semantics here.
20 Q. Okay.
21 A. It talks about it as a lot.
22 Q. Right.
23 A. Okay. We're not talking about an unfinished lot.
24 We're not talking about a raw piece of ground.
25 We're talking about a lot.

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1 Q. Okay.
2 A. So we're talking about the definition of a lot.
3 Q. Okay. Where in there does it say that the market
4 value of Lot 311 has to equal the purchase price?
5 A. Where does it say it has to equal the purchase
6 price?
7 Q. Yes, sir.
8 A. I don't know that any of it does on -- This is the
9 Edgewater community's document.
10 Q. Right -- that you signed.
11 A. It's not Wachovia's document.
12 Q. I agree with that.
13 A. So I'm not sure I understand your question.
14 Q. Well, you agreed to buy Lot 311 from Craft
15 Development Company for \$229,000.00.
16 A. I agreed to buy from the seller a finished lot.
17 Q. Where does it say that?
18 A. Let's make the assumption, if you will, continue
19 that lot to the unfinished lot. I didn't agree to
20 buy a raw piece of dirt with four stakes in it.
21 Q. That's what it was on March 2006 when you signed
22 that contract though; correct?
23 A. That is correct.
24 Q. And you saw it personally several times.
25 A. That is correct.

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1 Q. And you were a real estate developer --
2 A. I agreed to close on a --
3 Q. -- at the time you signed those; correct?
4 A. I agreed to close on this lot early, preconstruction
5 pricing.
6 Q. Okay. Okay.
7 A. Remember?
8 Q. Okay. And who was responsible for finishing the
9 amenities?
10 A. As far as I know right now in our discussions
11 without any other documents, certainly the seller.
12 Q. Okay. Craft Developer. That's the seller.
13 A. That's to my knowledge today.
14 Q. Okay. And we've established at least some of the
15 amenities were finished; the road, the golf course,
16 and a temporary building which serves as a
17 clubhouse.
18 A. Yes. One of maybe ten.
19 Q. And about 50 houses are out there?
20 A. Individual lot sells, they didn't do them,
21 obviously. They did some of them in some of the
22 properties, which they held.
23 Q. Why didn't you build a house out there?
24 A. I'm not ready to yet.
25 Q. Okay. Did you ever apply for a construction loan or

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1 anything to try to build or talk to an architect or
2 builder?
3 A. I wasn't ready to build yet. There was no
4 requirement on the build time and it was a lot for
5 us to hold for our future use.
6 Q. Okay. But you were going to build it to live out
7 there?
8 A. Yes.
9 Q. Okay. It wasn't for investment purposes to sell?
10 A. No.
11 Q. Okay. Okay. Any other ways that Wells Fargo
12 misrepresented the value of the lot to you?
13 A. I think we've stated it.
14 Q. Okay. Nothing in addition to what you've already
15 said?
16 A. Not that I can think of right now from that. We've
17 already had the long dialog about it.
18 Q. We have. And I appreciate your patience, but this
19 is my one opportunity to ask you questions.
20 A. You can say it again.
21 Q. I just want to make sure there's nothing else that
22 you may come up with afterwards. So I need to make
23 sure. Okay. Outside of the -- you've looked at
24 what was listed and you can reference paragraph 58
25 in addition to 47 and 58, I believe, and 57 as well.

Page 1

1 I think they all state pretty much the same thing
2 about misrepresentations and concealment of fact,
3 which constitutes your fraud and negligent
4 misrepresentation claim. Outside of those
5 subparagraphs, was there any other misrepresentation
6 that you're complaining of that was made by
7 Wachovia?
8 A. Not that we haven't already stated.
9 Q. Okay. In your -- going to number seven, this is
10 your answers to interrogatory, paragraph five, you
11 list your damages. Here. Here it is right here.
12 You're stating as of the time being from May that
13 you'd suffered damages of \$105,712.47, which are
14 broken down into the mortgage interest you paid; the
15 property taxes you paid; HOA fees you paid; your
16 down payment for buying the lot \$22,900.00; your
17 closing costs and refinancing costs. Tell me why
18 Wells Fargo, you contend, Wells Fargo should pay you
19 \$105,712.47.
20 MR. FOSTER: I presume my objection is
21 continuing?
22 MR. LANEY: Okay. You can go ahead and answer.
23 A. I know.
24 BY MR. LANEY: (Resuming).
25 Q. Okay.

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1 A. You keep asking the same question in a different
2 way, which is your job. These obviously represent
3 what I paid out on the property, as you know.
4 Q. Yes, sir.
5 A. Your client, Wells Fargo now, stated before,
6 represented to us, obviously Wachovia at the time,
7 that we were going to have the completed property.
8 We were going to have a completed property, being
9 the community, the Edgewater community. What they
10 represented for sale at that time, what they
11 represented and what they were lending on. That
12 didn't happen.
13 Q. Okay.
14 A. They represented and were party to it that they were
15 closing, preconstruction closing, and representing
16 that all of these amenities would be in. And they
17 weren't.
18 Q. Okay. Just for the record, those representations
19 came from Mr. Park?
20 A. Yes.
21 Q. Okay. And we don't have anything in writing to
22 support those representations.
23 A. Outside of the collateral material and the
24 guidelines that Wachovia, at the time, had put in,
25 those are --

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1 Q. What guidelines?
2 A. Well, the conditions of the loan. The conditions on
3 why --
4 Q. The terms.
5 A. -- why they were going to loan this money.
6 Q. Okay. Nothing else outside of this we don't have?
7 A. That's what I have.
8 Q. Okay. Do you believe you should repay Wachovia the
9 money it loaned you?
10 A. No.
11 Q. Not a cent?
12 A. No.
13 Q. Not even \$210,000.00 minus \$105,000.00?
14 A. No.
15 Q. Why not? I mean I don't want you to rehash what you
16 said, but outside of what you told me --
17 MR. FOSTER: That's fairly common, so as
18 Counsel gestured at me, same objection. Go ahead,
19 sir.
20 MR. LANEY: Yeah. Sorry.
21 BY MR. LANEY: (Resuming)
22 Q. I don't want to rehash everything, but outside of
23 what you've told me, are there any other reasons you
24 don't believe you own Wells Fargo the money it
25 loaned you?

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1 A. Those are the reasons I stated.
2 Q. Okay. It did loan you the money.
3 A. That's correct.
4 Q. The money went to Craft Development so you could own
5 Lot 311.
6 A. And them.
7 Q. Well, the deed's in your name.
8 A. They got paid off. Wachovia got paid off.
9 Q. Okay. You keep referring to that. I think it's
10 in --
11 A. It's in the closing statement.
12 Q. Yeah, 13, I think. You're referring to the 2006
13 closing statement?
14 MR. FOSTER: The large set of documents. For
15 the record, I straightened out and handed him the
16 copy of Plaintiff's 13 that you gave him.
17 MR. LANEY: Thank you.
18 BY MR. LANEY: (Resuming)
19 Q. I want to show you. This might make it easier.
20 (Whereupon, Settlement Statement
21 was marked as Plaintiff's
22 Exhibit #4)
23 Q. It's Plaintiff's Exhibit 4. Is this what you're
24 referring to, Mr. Pappas, when you say the closing
25 statement shows they were paid off?

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1 A. I think so. Let's see. I think so, yes.
2 Q. Okay. Line 504 shows a payoff first mortgage to
3 Wachovia \$30,000.00.
4 A. Yes.
5 Q. Okay.
6 A. That's all I was referring to when you were --
7 Q. I just want to make sure we're talking about the
8 same thing.
9 A. I think so.
10 Q. However, the deed that was issued was issued from
11 Craft Development, LLC to Ronald Pappas; correct?
12 A. Okay.
13 Q. Well, that's what's recorded in the courthouse;
14 correct?
15 A. Right.
16 Q. So you have legal title to Lot 311?
17 A. That's correct.
18 Q. Wachovia does not?
19 A. That's correct.
20 Q. Wachovia has a mortgage lien against Lot 311.
21 A. Yes.
22 Q. In the principle amount of two-hundred-ten-thousand-
23 and some hundred dollars.
24 A. Yes.
25 Q. Okay. They did sign \$206,000.00 to Craft



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Page 133 1 Development pursuant to your agreement to pay them 2 back. 3 A. Okay. Yes. 4 Q. Okay. So they haven't been repaid that money yet. 5 A. I'm sorry? 6 Q. Wachovia has not been repaid that money. They're 7 still owed \$210,000.00 and whatever interest has 8 accrued since the loan was instituted, refinanced in 9 2009. 10 A. I'm just answering your question on the 11 distribution. 12 Q. Right. Well, you indicated that you and Wachovia 13 owned the property together. 14 A. I didn't indicate that. 15 Q. Oh, I misunderstood you then. I thought you were 16 indicating that. 17 A. I don't think so. 18 Q. Okay. You own the property. 19 A. Right. 20 Q. Wachovia loaned the money on the property. 21 A. Right. 22 Q. And Wachovia - 23 A. I was just making a statement that they got the 24 payoff and they were the underlying lender. 25 Q. Okay. And Wachovia hasn't been repaid its money.	Page 135 1 on the property, do you believe that Wachovia should 2 receive those proceeds to pay off its loan, this 3 coming from a third party? 4 A. Sir, you're asking a different question, but - 5 Q. Right. Tried to. 6 A. I appreciate it. 7 Q. You would be okay with that? 8 A. If they wanted to accept that offer from a third 9 party, I don't have any objection to that. 10 Q. Okay. 11 A. And I've never said that, you know, they should walk 12 away and give the property to the county or to the 13 state or anything. 14 Q. Okay. 15 A. Never said that. 16 Q. Okay. Well, that's what I was trying to understand 17 when you said - 18 A. I know. 19 Q. - they shouldn't get their money. 20 A. I know. I just want to make sure that we're clear. 21 You ask questions because of the way you ask 22 questions. I'm trying to answer them, as well. 23 Q. Thank you. I appreciate that. Other than the other 24 two lots that we've talked about, do you own any 25 other real estate in South Carolina outside of your
Page 134 1 A. Yes. 2 Q. Okay. So you do not believe that Wachovia should 3 get its loan proceeds back. 4 MR. FOSTER: Perhaps at this point, I should 5 say asked and answered. 6 MR. LANEY: Okay. Well, that's different than 7 what I've asked. He said he wasn't going to pay it 8 back. 9 BY MR. LANEY: (Resuming) 10 Q. You don't believe Wachovia should get its loan 11 proceeds back? That will be my last question. 12 A. Not from me. 13 Q. Okay. Now as part of the settlement that was 14 offered to me, I believe you indicated you wanted to 15 rescind your contract with Craft; is that correct? 16 A. That was what came from the Settlement 17 Administrator. 18 Q. Okay. And I believe the property was marketed for 19 some time by Craft; is that correct? 20 A. It was marketed by one of their associates, which 21 was Keller Williams affiliate. 22 Q. Okay. But there were no offers, apparently, on the 23 property, to your knowledge. 24 A. That's correct. 25 Q. Okay. If someone made an offer of say \$210,000.00	Page 1. 1 residence? 2 A. Outside of my residence, no. 3 Q. Okay. I think we established this, but in 2006, 4 outside of the pricing sheet we've looked at, did 5 you do anything else to determine what lots were 6 selling for in Edgewater? 7 A. No, not necessarily. 8 Q. I've misunderstood you a couple of times today, and 9 I apologize for that. I don't think you were trying 10 to mislead me or anything. I think it's just my 11 inability to understand what you were saying. But 12 just so I'm clear, do you not believe that you bear 13 any responsibility for the purchase of Lot 311, 14 because that's what it seems like you're telling me, 15 is that even though you signed the Purchase 16 Agreement and signed the Promissory Note, you 17 shouldn't have to bear the responsibility for those 18 decisions. 19 A. I believe I should get what I paid for. 20 Q. Okay. And you believe you paid for what you call a 21 completed lot. 22 A. Yes. 23 Q. And you did not receive that. 24 A. Yes. 25 Q. Okay. And you do not believe it's a completed lot

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1 as of today, October 30th, 2013.
2 A. We're talking about the representation of the
3 community versus now you're stating the completed
4 lot, which are two different things.
5 Q. You lost me.
6 A. Part of anybody's purchase in a master plan
7 community like that would be their proportionate
8 share of the ownership of the amenities; clubhouse,
9 golf course, equestrian center, lake house, water
10 park, anything else.
11 Q. Okay.
12 A. It's certainly represented that way in the HOA
13 documents, that they own a proportionate share of
14 the amenity or the community property.
15 Q. Okay.
16 A. You keep referring to the one lot like it's a stand
17 alone lot, and it's not.
18 Q. I guess what I'm hearing you say is that when you
19 buy -- when any purchaser -- buys a lot in a
20 community such as Edgewater subdivision, and it's in
21 its construction phase and it's not completely
22 finished where you know there's a clubhouse and golf
23 course, and say you're not the last person buying a
24 lot where 840 of the other lots have been sold at
25 the beginning, that if you buy and it's subsequent

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1 to you purchasing what you believed was going to
2 happen, meaning all the golf course, clubhouse and
3 amenities, and the other lots sell and there's
4 construction so that you have a community of 800-
5 some-odd homeowners, that the buyer can walk away
6 from that because they didn't get what they
7 bargained for? Is that pretty much what you're
8 saying?
9 A. That isn't what I said.
10 Q. Okay. What are you saying? Again, I'm
11 misunderstanding you, because that doesn't make
12 sense to me. What I'm taking from what you're
13 telling me is what I just told you.
14 A. From what you've asked, the question is I should get
15 what I paid for.
16 Q. Okay.
17 A. And if the lender, again, was part of that program
18 to finance this property, stating that we're doing
19 this early, then yes. Should today on a finished
20 lot make sure all that stuff goes in, I'm okay with
21 the loan.
22 Q. Okay. And if you found those documents or things we
23 referred to, you'll give them to Mr. Foster --
24 A. And I think that --
25 Q. -- that would support that?

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1 A. And I think that most of them are in this set here
2 (indicating) already.
3 MR. FOSTER: Referring again to Plaintiff's 13.
4 A. Thirteen. I have, as a lot of the owners have, a
5 lot more collateral material that we collected. I
6 think it's all part of this, but I'm not sure.
7 BY MR. LANEY: (Resuming)
8 Q. You're telling me there's documentation in
9 Plaintiff's Exhibit 13 that shows that Wachovia and
10 Craft Development are a partnership?
11 A. No. You asked me a specific question. I'm showing
12 you that I have collateral material. I'm telling
13 you that there is collateral material, collateral
14 being marketing material --
15 Q. Right.
16 A. -- that described the offering.
17 Q. Okay. Does it indicate that Wachovia and Craft
18 Development are in partnership to make sure the
19 development is completed?
20 A. I don't remember what it says, you know, not looking
21 at it, but the few pieces that are in here don't
22 mention any lender at all in this case.
23 Q. I'll represent to you I did not see any lender
24 mentioned -- SunTrust, Wachovia, anybody else in any
25 of that.

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1 A. You mean every? Now I'm asking you the question to
2 clarify mine.
3 Q. Like Mr. Foster said, I'm not being deposed.
4 A. Yeah, I know.
5 Q. But I cannot ask you any other questions after today
6 about what we have here, so I would like before we
7 leave for you to just to take a minute and look
8 through the collateral documents that you referred
9 to. And if you see any that show that Wachovia or
10 Craft are partners or are in unison or partnership
11 together, we can discuss those.
12 A. Right. I don't think that's anything other than
13 describing the program. And I don't have Richard's
14 offering or anything. I might have it in my files,
15 but I don't know that I do or not. There were
16 certainly the guidelines that they had to follow at
17 the time. When you're signing this up at the time,
18 you know, you're following their lead. You're
19 following the LO's lead. I need this. I need this.
20 And this is what our offering is. We're going to
21 close this this way. We all knew that the lots
22 weren't finished at that time. There's no getting
23 around that.
24 Q. Yeah.
25 A. Look at the permits. Look at the inspection

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1 reports. They were not finished the day we closed.
2 Q. Just walking out on the property you could see that,
3 open and obvious to anyone. The guideline,
4 guidelines mean different things to me.
5 A. Okay.
6 Q. You're referring to the lending --
7 A. Wachovia would certainly have to follow -- certainly
8 an LO or loan officer has got to follow guidelines
9 that are set by his company.
10 Q. Okay. You're talking about the terms of the loan
11 financing for Edgewater subdivision?
12 A. I'm talking about the terms of the offering.
13 Certainly they had a program. It isn't a mystery
14 that the program for this wasn't in place.
15 Q. Okay.
16 A. I think we can both agree that there was a program
17 there.
18 Q. I'm not sure we're talking about the same thing.
19 The loan program?
20 A. Yes.
21 Q. Okay. Well, you got the loan they offered. And we
22 all agree that the terms of the loan were at least
23 adhered to; correct?
24 A. And I'm just saying there was a process to go
25 through.

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1 Q. Okay.
2 A. And there was an offering. They weren't going to
3 say -- the loan process didn't say hey, Ron, we'll
4 pay you five-million dollars if you close this loan.
5 Obviously, that wasn't there. And so I'm just,
6 again, restating that there was a process that we
7 followed that Wachovia led.
8 Q. Okay. And again, there's nothing that would show
9 that it was Wachovia's responsibility to finish the
10 amenities.
11 A. We'll grant you that.
12 Q. Okay. Have you attempted to rescind your Note and
13 Mortgage with Wachovia at any time, offered to give
14 them back the loan proceeds and be done with it?
15 A. No.
16 Q. Let's take a short break. I think I'm just
17 literally, I'm at that one question stage. I just
18 want to make sure I didn't miss anything. And then
19 I'll probably be done and turn it over. Thank you
20 for your patience.
21 (Off the record)
22 BY MR. LANEY: (Resuming)
23 Q. Mr. Pappas, you indicated that you had -- we know
24 the two investment lots you have that you had
25 purchased part of 20 properties, at least five of

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1 which were investment properties in the past.
2 A. Okay.
3 Q. Did you sell those other investment properties? Did
4 you make a profit on those?
5 A. Not all of them.
6 Q. Okay. Have you ever defaulted on any other loan?
7 A. No.
8 Q. Okay. This is the only loan you've ever not repaid?
9 A. Yes.
10 Q. Okay.
11 A. I think so. I can't remember. I don't think
12 there's any.
13 Q. Okay. Fair enough. We've talked at length about
14 the allegations in your counterclaim. Are there any
15 other acts or statements or representations that
16 Wells Fargo/Wachovia made to you that you're
17 complaining of that we have not discussed already
18 today?
19 A. I'm sure there's going to be some after I leave this
20 room, but not that I could think of right now.
21 Q. Okay. This is my one opportunity and I just want to
22 make sure we cover all of your grievances as to
23 Wells Fargo and Wachovia. Have we discussed all of
24 them as you sit here right now?
25 A. As far as I can remember, yes.

Page 1.

1 Q. Okay. All right. I appreciate your time and your
2 patience and your courtesy, and I will relinquish.
3 I'll turn it over.
4 MS.: HUNT: May I just clarify? I have
5 Exhibits 3, 5, 6 and 8 that we didn't --
6 MR. FOSTER: Well, I was going to ask.
7 MS. HUNT: Would you like to introduce that?
8 MR. LANEY: I'm not going to make any other
9 than that I've already introduced.
10 MS. HUNT: Okay. I just want to make sure. I
11 was just trying to keep track.
12 (Off the record)
13 CROSS-EXAMINATION
14 BY MS. HUNT:
15 Q. Mr. Pappas, I'm Amy Hunt. We've spent some time in
16 this room together this morning. And I'm here on
17 behalf of Craft. And I just have a few questions
18 for you. Exhibit 2, which has been previously
19 marked, which I believe is the Agreement to Buy and
20 Sell Real Estate from March 29th of 2006, if you're
21 looking at the fax number at the bottom, on page 28
22 of that exhibit where it has the Purchaser line, is
23 that your signature on that line?
24 A. Yes.
25 Q. To the best of your knowledge, is Exhibit 2, does it

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1 appear to be a genuine copy of the contract you
2 signed in March 2006?
3 A. I think so.
4 Q. You're not aware of a different version of this
5 contract floating around out there; are you?
6 A. I don't think so.
7 Q. And I believe the closing for this property took
8 place in May of 2006; is that correct?
9 A. Yes.
10 Q. When were you delivered with title to Lot 311?
11 A. The closing date or the --
12 Q. Did you receive title to the lot on the closing day
13 of May 30, 2006?
14 A. Just after.
15 Q. Just after. But you are the current record owner of
16 Lot 311, Edgewater?
17 A. Yes.
18 Q. You mentioned previously, I believe at the time the
19 original Edgewater Settlement Administration letter
20 came, you had had communication with other owners in
21 Edgewater; is that true?
22 A. That's correct.
23 Q. Have you had communications with other owners in
24 Edgewater or former owners in Edgewater about
25 rescinding their contracts with Craft?

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1 A. As a group in a legal -- in an attorney's office,
2 yes.
3 Q. Was it in the attorney's office who was representing
4 you at the time?
5 A. As we had shared earlier, the Davis Law Firm was a
6 law firm that one of the owners had engaged with,
7 and we had joined that group for some dialog on what
8 was the former matter of the HOA. And that law firm
9 then was made aware of the letter that we got from
10 the Settlement Administrator. And that's hence the
11 -- there was lots of dialog, obviously, before their
12 Fee Agreement letter came to us.
13 Q. Were you a client of the Davis Law Firm at the time
14 you were discussing the rescision option?
15 A. I believe that we were acting as a group. And I'm
16 trying to remember, just for your question, I'm
17 trying to remember if there was a Fee Agreement
18 signed or it never got there.
19 Q. I'm just trying to be careful. I want to ask about
20 your communications with other owners, but if
21 they're privileged, I do not want to get into that
22 territory. So I'm trying to determine if it was in
23 a privileged setting or did you have communication
24 with owners outside of the attorney's office?
25 A. There were both.

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1 Q. Okay. Let's focus on the communications with owners
2 outside of the attorney's office so we don't tread
3 on any privilege. Tell me the nature of those
4 conversations with other owners. What were you
5 talking about?
6 A. The original conversation stemmed around some
7 discussion about the HOA, and I manage. And so
8 there was a lot of dialog on that.
9 Q. Did those discussions ultimately turn into
10 discussions about the rescision option after
11 receiving the Settlement Administration letter?
12 A. They were probably in parallel with some of those
13 discussions. I mean that letter from the Settlement
14 Administrator, as you know, came almost at the same
15 time we were having the dialog with the Davis Law
16 Firm. And we had given them a copy of it and asked
17 them an opinion at the time.
18 Q. Have you had any communications with other owners
19 who have rescinded or attempted to rescind their
20 contracts with Craft?
21 A. Yes.
22 Q. Have you had any communications with owners who have
23 successfully rescinded contracts with Craft?
24 A. No.
25 Q. Of those owners who have attempted to rescind and

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1 who have not been able to rescind, do you have an
2 understanding of the reason their rescision wasn't
3 completed?
4 A. I'm thinking of the conversations.
5 Q. Sure.
6 A. I don't know that I have an opinion as to why they
7 may or may not have engaged in it.
8 Q. As we sit here today, can you deliver clear title to
9 Craft Development?
10 A. No.
11 Q. When you stopped making the payments to Wells Fargo,
12 I believe you said it was early 2011. Correct me if
13 I'm wrong. Did you stop solely because of the
14 Edgewater Settlement Administration letter? Let me
15 rephrase that. Did you have the ability to pay
16 otherwise in early 2011?
17 A. Might have.
18 Q. If you will, look briefly at Exhibit 15, which
19 should be over there in front of you somewhere. In
20 particular, I'm trying to get to your Answer
21 Counterclaim and Cross Claim. It's a big stack but
22 not the biggest one, I believe.
23 MR. FOSTER: I'm handing, Counsel, Mr. Pappas
24 back the --
25 MR. LANEY: I stole 15. That's the one we only



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1 had one copy. So there you go. 2 MS. HUNT: That's okay. I've got one. 3 BY MS. HUNT: (Resuming) 4 Q. Looking at the answer, I am looking at page 12. At 5 the top of that page it says as to the fourth 6 defense we're seeking under file SFDA. 7 A. Yes. 8 Q. And I want to talk specifically about paragraph I 9 under that. I want to talk about all sums paid to 10 Craft Development that you, in this claim, indicate 11 you're entitled to have returned to you. Are there 12 any sums you've paid to Craft Development, other 13 than those listed in I on page 12, which is 14 interest, court costs, reasonable fees, independent 15 appraiser fees, and travel to and from the property? 16 A. I don't believe so. 17 Q. When you say interest, is there -- I understand 18 you're not an attorney -- but is there a particular 19 rate of interest you have in mind when you're 20 seeking interest back? 21 MR. FOSTER: I believe I need to say something 22 because I think that is a legal question as to what 23 interest rate would apply. He, of course, can say 24 what interest he's got in his head. 25 MS. HUNT: That's exactly what I'm looking for. Page 149	1 away was your residence to Edgewater? Page 151 2 A. Forty. 3 Q. Okay. Other than the rescission of the contract and 4 the amounts paid to Craft as set forth in I of page 5 12 of Exhibit -- I think it's 4 -- 6 A. Two. 7 Q. Okay. 8 A. The contract. 9 Q. No. The -- 15. I'm sorry. Page 12 of the answer 10 in Exhibit 15, other than the costs set forth in the 11 I there, are there any other monies you're seeking 12 to recover from Craft? 13 A. I'll have to back up now to what this thing is. 14 Q. I intend to be talking about your initial Cross 15 Claim against Craft. 16 A. I know. There is a lot to read. So just to try to 17 answer your question, you're asking me for 18 clarification, you're asking me what my expectation 19 would be to recover from Craft? 20 Q. That's right. If you're successful, I just want to 21 know everything that you would like to recover from 22 Craft. And based on this, I understand it to be a 23 rescission of the contract plus the return of all 24 terms paid to Craft as set forth in paragraph five 25 of the fourth defense.
1 BY MS. HUNT: (Resuming) 2 Q. I understand there may be a legal interest that 3 applies. But is there something you have in mind, 4 specifically, when you're seeking interest on what's 5 been paid to Craft? 6 A. I think from the standpoint of answering your 7 question correctly, what is fair and equitable. 8 Q. Independent appraisers' fees. Have you hired an 9 independent appraiser with respect to Lot 311? 10 A. Have not. 11 Q. And travel to and from the property. Approximately 12 how many trips have you made to and from the 13 property? 14 A. A hundred. 15 Q. Approximately how many miles from your residence to 16 the property are we talking about? 17 A. Over what period of time? 18 Q. Well, has your primary residence changed? 19 A. Yes. 20 Q. Okay. When did that change? 21 A. 2009. 22 Q. Okay. So from 2006 to 2009, approximately how far 23 away was your residence from Edgewater? 24 A. Forty-five miles. 25 Q. And from 2009 to the present, approximately how far Page 150	1 A. Yes. 2 Q. Anything else? 3 A. Not that I can think of right now that wouldn't -- 4 unless there's anything else allowable. 5 Q. Did you make a demand to Craft to rescind your 6 contract prior to this cross claim? 7 A. Through the Settlement Administrator. 8 Q. Which lead to the marketing of your property with 9 Keller Williams; is that correct? 10 A. Yes. 11 Q. Do you have the approximate date you made that of 12 the Settlement Administrator? 13 A. The Settlement Administrator, we had to respond to 14 them I think in the 30-day period. So it had to be 15 in February, probably of 2011. 16 Q. Okay. I do not have any other questions. I 17 appreciate your time. 18 MR. LANEY: I have one question that she 19 raised. 20 MR. FOSTER: If you want to go now, go ahead. 21 MR. LANEY: Yeah. 22 REDIRECT EXAMINATION 23 BY MR. LANEY: 24 Q. When you answered that you could not deliver clear 25 title to Craft, is that because of the mortgage lien Page 1

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1 which is on the property?

2 A. Yes.

3 Q. No other reason that you couldn't deliver clear

4 title, other than the mortgage lien, to Wells Fargo?

5 A. That's correct.

6 Q. I was just wondering. Just wanted to make sure.

7 That's all I have.

8 A. Okay.

9 Q. Thank you.

10 CROSS-EXAMINATION

11 BY MR. FOSTER:

12 Q. Okay, sir. I'll try to be brief. Sir, I'm showing

13 you Plaintiff's 4, which I believe is your HUD

14 statement from the closing in 2006 to purchase the

15 property?

16 A. Yes.

17 Q. Could you turn to the second page. Sir, I'm

18 pointing at the -- I believe I'm pointing -- at the

19 fee charged for an appraisal of the property. Do

20 you see that?

21 A. Yes. I do.

22 Q. To whom is that fee paid?

23 A. Wachovia.

24 Q. Sir, who chose the appraisers of this property

25 pursuant to that loan?

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1 A. Wachovia.

2 Q. And that is the document that we have been

3 discussing as the appraisal. Has that been placed

4 into evidence in this matter?

5 MR. LANEY: The appraisal?

6 MR. FOSTER: Yeah.

7 MR. LANEY: I believe it is.

8 MS. HUNT: I believe it is 14.

9 MR. LANEY: Fourteen.

10 MR. FOSTER: Then someone's paying attention.

11 BY MR. FOSTER: (Resuming)

12 Q. The monies were paid out of your funds to that HUD,

13 sir, I believe.

14 A. Yes.

15 Q. I believe we've established that Mr. Park, the

16 representative or agent or employee of Wachovia was

17 Richard, to the best of your recollection.

18 A. Best of my recollection and my notes.

19 Q. Okay. Sir, you were describing to Counsel what has

20 actually been done in the subdivision. You

21 indicated, I believe, the road's been put in, --

22 A. Yes.

23 Q. -- to your knowledge.

24 A. Yes.

25 Q. Has there been water put in, water piping?

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1 A. To the lots that were in the offering, I believe

2 that is true.

3 Q. Is that true to your lot, sir, to your knowledge?

4 A. To my knowledge, it's there.

5 Q. How about electricity?

6 A. Electricity is stubbed up to the lot.

7 Q. How about gas?

8 A. Gas is also there.

9 Q. Anything else that you're aware of that's been put

10 in that might normally be referred to as utilities?

11 A. The cable system, fiber optics.

12 Q. Okay. Anything else, sir?

13 A. No.

14 Q. Sir, is there anything to your knowledge, either in

15 the contract with Craft to, which I believe is

16 Plaintiff's Exhibit 2, or otherwise in which the

17 term utilities is defined? If you need to look at

18 it to answer that question, please do so.

19 A. Restate your question.

20 Q. I'm asking whether that contract, which is, I

21 believe, Plaintiff's Exhibit 2, or any other

22 documents that you are aware of, to your knowledge,

23 defines the term utilities?

24 A. Not that I see here.

25 Q. You're referring to Plaintiff's 2?

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1 A. To Plaintiff's 2. I guess I'm not clear on what

2 you're referring to as utilities. I don't see the

3 word utilities in it.

4 Q. Well, that's what I'm asking. Let me show you.

5 A. I haven't read it in awhile.

6 Q. In the contract under 11, Condition of a Property, I

7 am reading this, but I believe Counsel would agree,

8 (reading) it is agreed the purchaser purchases and

9 seller sells the property in a "as is" position --

10 condition. Pardon me. And neither the seller nor

11 its agents has made any commitments or accepted any

12 obligations for further work on the property or in

13 the neighborhood of the property other than

14 completion of the roadways and utilities within the

15 Project, capital P, except as may be expressed and

16 set forth in this, capital C, Contract. Would you

17 look at that and see if that is what it says, sir,

18 there up at the top? And I will add to repeat my

19 question, have you been supplied, either in that

20 document or otherwise, with anything that defines

21 the term utilities?

22 A. No.

23 Q. Have you, sir, been supplied with anything in this

24 contract or otherwise that defines the term the

25 project, if you know?

Page 157 1 A. Let me read the fine print now. 2 Q. Please take your time, sir. 3 A. The only reference that I see in here is in the 4 description, being a portion of the development on 5 this Edgewater communities. 6 Q. Is the term project used? 7 A. It is. 8 Q. And where does it say it, sir? 9 A. At the end of -- at the end of the property 10 description. 11 Q. Okay, sir. Other than that, are you aware of any 12 description, of any definition of the term? 13 A. No. 14 Q. My apologies. I'm attempting to find something in 15 these 153 pages. Let me go ahead in the extent that 16 I can. Sir, you refinanced this property, as you 17 testified, in 2009; is that correct? 18 A. Yes. 19 Q. Sir, at that time, there was, I believe, if you can 20 answer this by memory, another appraisal? 21 A. I was charged for one. 22 Q. Have you been supplied with that other appraisal? 23 A. Have not. 24 Q. Have you requested a copy of that other appraisal? 25 A. I did.	Page 159 1 Q. Were you given any indication, sir, in either 2006 2 or 2009 that the lot did not have the worth of the 3 amount that you were borrowing thereon from Wachovia 4 or from anybody else? If that's not English, I'll 5 repeat it. 6 A. Go again. I have to follow that. 7 Q. Let me say it again. In 2006 or 2009, did the bank 8 or anyone on its behalf, tell you that the lot was 9 not worth what you were borrowing? 10 A. No. 11 Q. And to reiterate the question I believe Counsel has 12 asked several times, in both occasions, the bank 13 make the loan? 14 A. That's correct. 15 Q. In your complaint, you're asking for the remedy of 16 rescission; is that correct? 17 A. Yes. 18 Q. You asked, I believe earlier, for rescission against 19 Craft; is that correct? 20 A. They offered. 21 Q. Was that accepted? 22 A. The start of it was, yes. 23 Q. And what was the start of it? 24 A. As we discussed, there's a process that had 25 been outlined without our involvement, and some
Page 158 1 Q. When did you request it, sir, to your memory, or 2 based upon any documents that you may have? 3 A. Memory serves me as at the time of the -- at the 4 time of the refinance we requested it. And also, I 5 think I referred to it in my letter in 2011. 6 Q. Do you recall the amount of the refinance, sir? 7 Again, I apologize. I am still flipping to try to 8 find the document in question. 9 A. The amount of the refinance, I was reminded of it in 10 this document. It was about two-hundred-and-ten- 11 thousand, and that's with fees attached to it. 12 Q. In fact, I am showing you page 78 of the documents, 13 which that is a charge to you, I believe, for \$75.00 14 for appraisal. 15 A. That's correct. 16 Q. Payable to -- 17 A. Wachovia bank. 18 Q. Again, sir, in 2009, did you obtain this appraisal? 19 A. I did not. 20 Q. Were you asked for any input as to who the appraisal 21 would be done by? 22 A. None. 23 Q. Do you have any knowledge of who it, in fact, was 24 done by? 25 A. I do not.	Page 1 1 negotiations between the seller, Craft, and HUD. 2 Q. Did you make any attempt to obtain documentation as 3 to your feelings of negotiations between HUD and 4 Craft? 5 A. As a group, one of the group members made a direct 6 contact, had emails and telephone conversations with 7 the then officer at HUD. 8 Q. Did you have any such contact? 9 A. I did not have any direct contact with HUD. 10 Q. Did those contacts, sir, or that contact -- it's 11 singular -- result in documentation as to those 12 negotiations or dealings being supplied to you or to 13 your group? 14 A. They refused to give them to us. 15 Q. Who is they? 16 A. HUD. 17 Q. Okay. 18 A. They refused to give us the documents we were 19 requesting. 20 Q. And what was the basis, if I may ask, of that 21 refusal, if you know? 22 A. The only statement -- and I'll say it as it was told 23 to me -- has been -- 24 Q. So this is repeated to you from someone else? 25 A. That's correct.

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1 Q. Go ahead, sir.
2 A. That we asked for financials and we wanted to
3 understand the capability of Craft to be able to
4 perform on this offering that they have. The person
5 at HUD told us that we could not have those
6 documents. And if we tried to get them through the
7 Freedom of Information Act, that they would block
8 it.
9 Q. Have you been supplied any of those documents, sir,
10 in response to our Discovery Request to Craft?
11 A. No.
12 Q. Sir, I'm going to ask you some questions about these
13 documents which represent the emailed response last
14 received by me from Mr. Shelton, which I will give
15 you both copies of.
16 MR. FOSTER: What will this be -- Defendant's
17 1? I need to make copies of this for ya'll.
18 MR. LANEY: Okay.
19 (Whereupon, Edgewater Settlement
20 Administrator Letter date 6/15/2012
21 was marked as Defendant's Exhibit #1)
22 (Off the record)
23 BY MR. FOSTER: (Resuming)
24 Q. Sir, you have a copy of this. Let me ask you some
25 questions about this. First of all, there is a

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1 letter dated on this page, June 15th, 2012. Do you
2 observe that?
3 A. Yes.
4 Q. Sir, I will pose to you what I believe is
5 undisputed, that on Amended Answer Counterclaims and
6 Cross Claims in this case was stamped by the clerk
7 of court in Lancaster September 29th, 2011.
8 Therefore, I presume by the operation of the
9 calendar, that this matter was already in litigation
10 when this letter was purportedly dated and sent. To
11 your knowledge, sir, was a copy of this letter sent
12 to your Counsel?
13 A. Not that I know of.
14 Q. Did you receive a copy of this letter, sir?
15 A. I did.
16 Q. Is this your signature on the green card, or the
17 copy of the green card?
18 A. It is.
19 Q. The offer of this letter, sir, if I could summarize
20 it correctly, is that you were asked to pay the
21 mortgage, to the sign the land in question over to
22 Craft, and that they would try to sell it. Am I
23 stating that correctly?
24 A. That's essentially it.
25 Q. Did you respond, sir?

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1 A. I did not.
2 Q. Later, sir, in this document, there is a one-page
3 document. I am unsure as to what it's attached, but
4 this is the way you received it. It has what
5 purports to be your signature dated May 15, 2011 and
6 a green card thereon.
7 A. Yes.
8 Q. Is this your signature, sir?
9 A. It is.
10 Q. It purports to give authority to Amy Overcash,
11 Realtor of Allen Tate Realty to this lot at
12 \$229,000.00. Is that what you signed, sir?
13 A. That transaction never happened.
14 Q. Okay. Why is that, sir?
15 A. Allen Tate dropped out of the -- off the list of
16 Realtors, and that's where R.W. Price came in.
17 Q. What is the list of Realtors?
18 A. The sellers, through the Settlement Administrator,
19 said that originally it was going to be Amy Overcash
20 at Allen Tate. And then she declined to take the
21 listing.
22 Q. Was the property in fact listed?
23 A. Not with Amy.
24 Q. But it was listed?
25 A. Yes. It was.

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1 Q. Pursuant to this signed document, I presume.
2 A. Well, pursuant to an agreement with another realtor.
3 Q. Okay. So this document, I presume, came to you from
4 the Settlement Administrator?
5 A. I believe so.
6 Q. It states in the second paragraph that you have the
7 right to opt out of the Edgewater Homeowners
8 Association.
9 A. Yes.
10 Q. It has what purports to be an initial next to it.
11 Is that your initial, sir?
12 A. Yes.
13 Q. Have you since that time -- did you send this in,
14 sir?
15 A. This was sent in. I believe it was.
16 Q. Have you since that time been contacted by the
17 Homeowners Association?
18 A. Recently, yes.
19 Q. For what purpose?
20 A. For payment of Homeowners Association dues.
21 Q. So they are not recognizing that you have opted out
22 of any Homeowners Association?
23 A. Probably not.
24 Q. Have you received, sir, any explanation of why you
25 were told you had the option to opt out of that HOA



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Page 165 1 when apparently, there is a dispute over your 2 ability to do so? 3 A. I have not. 4 Q. You mentioned, sir, that Mr. Murdoch and his people 5 at Constitution Law Partners, whose name I believe 6 is in fact shown on the contract -- 7 A. It is. 8 Q. -- as the escrow agent. In your opinion, produced - 9 - I'm using your term -- a fiasco of a closing. Am 10 I stating that correctly, sir? 11 A. You are. 12 Q. Beyond their inability, sir, to put the proper names 13 on the deeds, do you recall any other aspects of the 14 closing that gave rise to that description? 15 A. It was, as we would affectionately refer to it 16 today, as almost like a robo-signing. There were 17 several clients in there at the time, just signing 18 documents, people running back and forth, statements 19 made that well, just sign these now. We'll make 20 sure we get the corrected copies to you. That was a 21 problem, even, as fact, on the Settlement Statement, 22 and we noted this awhile back, not only is my name 23 the only name on title, and having obviously my wife 24 there signing all these documents with us, but my 25 old address. And I called them to just straighten	Page 167 1 a 1031 exchange on it. I did see that today in that 2 bunch of documents, a little bit of dialog. 3 Q. Was this, in fact, a 1031 exchange? 4 A. It ended up not being a 1031. 5 Q. Okay. Did you, in fact, inform to your knowledge -- 6 Well, let's take it one thing at a time. Did you 7 have any discussions with anyone at Wachovia 8 indicating that you intended this to be a 9 residential closing, if you recall, sir? 10 A. I don't remember. 11 Q. Were you, sir, given any notice of your right to 12 pick an attorney on this closing? 13 A. There's always a form to do that, but the form was 14 prepared by and given to us by Craft. 15 Q. When was that? 16 A. Before closing. 17 Q. How long before closing? 18 A. Maybe a few weeks. 19 Q. Okay. 20 A. I did not know Mr. Murdoch at all, didn't know his 21 firm. In fact an all check on records to that most 22 all the closing were with his firm, or a good 23 portion of them. 24 Q. Are you aware from the appraisal done in 2009 25 according to HUD, which I believe you established is
Page 166 1 this out, too. The old address in Washington was 2 used on the Settlement Statement. It was a 3 continuum that kind of inefficiency and 4 ineffectiveness. The attorneys, when we asked them 5 to correct it after the closing, go back and correct 6 the documents, they said the one attorney, the 7 closing attorney at the time, had already left the 8 firm. And that they were going to charge us to 9 correct the documents. 10 Q. Do you recall the name of the attorney, other than 11 who is indicated on the HUD, which I believe is -- 12 Well, no name is indicated on the HUD. 13 A. No name on it. 14 Q. There's just a law associates. 15 A. I don't recall his name right now. 16 Q. It wouldn't be Mr. Murdoch? 17 A. It wasn't him, directly. 18 Q. You indicated, I believe, in your deposition that 19 this property was intended to be your residence? 20 A. Yes. 21 Q. Was that fact communicated to Craft? 22 A. The selling agents had asked me what I wanted to 23 use the property for. We had long dialog and 24 discussion about myself coming out of a property that I 25 had up in Idaho. And they asked me if I wanted to do	Page 1 1 page 78 of Plaintiff's 13, was that also the same 2 appraiser, the Pigmans, if you know? 3 A. I don't know anything about the second appraisal 4 except that I paid for it. 5 Q. Okay. 6 MR. FOSTER: And I assume that Counsel can 7 supply that to us? 8 MR. LANEY: An appraisal? The 2009? 9 MR. FOSTER: Yes. 10 MR. LANEY: I'll inquire, and if we have it 11 we'll certainly -- 12 MR. FOSTER: Okay. I have nothing further. 13 FURTHER DIRECT EXAMINATION 14 BY MR. LANEY: 15 Q. I just have a quick -- one quick follow-up. You 16 indicated about Nydnor Fill Marat in the attorney of 17 preference -- 18 MR. LANEY: Do you have any objection if I -- 19 MR. FOSTER: No. Let him see it. 20 WITNESS: What attorney is this? 21 MR. LANEY: That's the attorney of preference 22 for 2006. 23 MR. FOSTER: Well, he did say he'd executed it. 24 MR. LANEY: Yes. I was going to refer to it -- 25 (Whereupon, Attorney/Insurance

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1 Preference Checklist was entered
2 as Plaintiff's Exhibit #3)
3 BY MR. LANEY: (Resuming)
4 Q. It appears the date of April 6, 2006 -- is that your
5 signature on that, Mr. Pappas?
6 A. That's the one.
7 Q. Okay. Didn't you close, I think at the end of May?
8 A. I think May 30th.
9 Q. Okay. The second closing, the 2009 refinance, you
10 chose the attorney who handled that.
11 A. I did on that one.
12 Q. Do you have any complaints about that closing, the
13 refinance in 2009?
14 A. Just signing documents.
15 Q. Okay. Did you raise any objection to Wachovia in
16 2006 about the closing or about the documents or
17 anything?
18 A. We did have some dialog. Nothing noted.
19 Q. Was anybody at Wachovia present at that closing?
20 A. I don't think so.
21 Q. Okay. The dialog that you had, do you remember who
22 that was with?
23 A. It was the closing attorney, because we were calling
24 out some of the mistakes. We wanted to make sure
25 that my wife's name was added onto it.

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1 Q. Sure.
2 A. He said yeah, okay. We got it.
3 Q. Outside of the closing attorney, did you have any
4 dialog with anyone else?
5 A. The sales agent --
6 Q. Okay.
7 A. -- after I was telling her of my displeasure.
8 Q. Jennifer?
9 A. Jennifer.
10 Q. And she was with Edgewater Sales?
11 A. Yes, I think so.
12 Q. Anybody with Wachovia?
13 A. Not that I can recall.
14 Q. Okay. That's all the questions I have. Thank you.
15 MS. HUNT: Nothing further.
16 MR. FOSTER: For the record, --
17 MR. LANEY: Yes?
18 MR. FOSTER: -- I am assuming I am warned to be
19 careful about the other documents that he is
20 supposed to produce, --
21 MR. LANEY: Yes.
22 MR. FOSTER: -- which, sir, you are again asked
23 to produce. I am assuming that is not to prevent me
24 from having conversation with him as to other
25 related matters.

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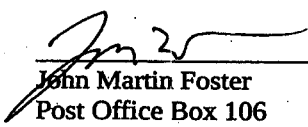
1 MR. LANEY: No. The other related matters,
2 absolutely not. I would like to keep the deposition
3 open as far as any documents he's able to produce,
4 just so we'll make a decision timely whether we need
5 to reconvene or not.
6 MR. FOSTER: And, ma'am, I'm sure we want a
7 copy to read and sign.
8 WITNESS: All of the things that I'm referring
9 to in the marketing collateral stuff, obviously,
10 we've made copies of and given, certainly to our
11 attorney to make sure, you know, whatever's included
12 should be included, whatever.
13 MR. LANEY: Sure. You provide to him and
14 he'll --
15 WITNESS: We've got a stack of the documents.
16 I'm sure they're all copies.
17 MR. FOSTER: Anything we haven't gotten, we'll
18 certainly turn over, --
19 MR. LANEY: I appreciate that.
20 MR. FOSTER: -- barring some things that are
21 privileged, which I doubt.
22 MR. LANEY: Thank you.
23 (Whereupon, the deposition concluded at 2:30 p.m.)
24
25

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1 STATE OF SOUTH CAROLINA
2 CERTIFICATE
3
4 Be it known that I, Cynthia L. Weathers, a
5 Professional Court Reporter and Notary Public, did have
6 Ronald P. Pappas appear before me on October 30, 2013 at
7 the office of J. Martin Foster, Esq., 223 East Main,
8 Suite 520, Rock Hill, South Carolina;
9 That the witness was duly sworn under
10 pains and penalties of perjury to testify the truth, the
11 whole truth, and nothing but the truth;
12
13 That the foregoing pages constitute a true
14 and accurate transcription of the testimony given at that
15 time and place aforesaid to the best of my skill and
16 ability;
17
18 I further certify that I am not counsel or
19 kin to any of the parties to this cause of action, nor am
20 I interested in any matter of its outcome.
21
22 In Witness whereof, I have hereunto set my
23 hand and seal this 9th Day of November, 2013.
24
25 Cynthia L. Weathers
Notary Public For South Carolina
My Commission Expires January 13, 2021

CRTIFICATE OF COUNSEL

The undersigned hereby certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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April 21, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Cross-Defendant.

PROOF OF SERVICE

I certify that I have served one (1) copy of the Supplemental Record on Appeal, on the following party of record:

S. Sterling Laney, III
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Attorneys for Respondent

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the

respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.



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April 22, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

Wells Fargo Bank, N.A.,
Successor, by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

The Plaintiff WELLS FARGO BANK moved successfully for summary judgment on the Defendants PAPPAS' Counterclaims for unfair and deceptive trade practices, fraud and negligent misrepresentation. In response to the Plaintiff's summary judgment Motion, the Defendants submitted their Affidavit setting out their attempts to complete discovery as to specific items. The Defendants maintain that their attempts to obtain those items were diligent and bore no indication of delay or an attempt at a generalized "fishing expedition." They maintain that the existence or non-existence of those items were vital to their defense of the summary judgment Motion, and to their prosecution of the case. They argue that, in the absence of such discovery, summary judgment was improperly considered and granted.

STATEMENT OF THE CASE

In May, 2006, the Appellants RONALD P. PAPPAS and CAMINE PAPPAS purchased, as an investment, a residential lot in what was to be Edgewater, a new subdivision in Lancaster County, developed by Craft Development, LLC. The price was \$229,000.00. This subdivision did not perform as expected.

This lot was financed by the predecessor in interest to the Respondent WELLS FARGO BANK, N.A. with a note having a balloon payment in June, 2009. At closing, they were charged with the cost for an appraisal of the lot. They requested a copy of that appraisal. It was not supplied until this action was filed. No reason for that failure has been stated.

By January, 2008, complaints had been made to HUD alleging failures to comply with the Interstate Land Sales Full Disclosure Act by Craft Development.

In July, 2009, at the urging of the bank and upon expiration of the original Note, the Appellants refinanced with the Bank at a figure of \$210,954.69. At the second closing, they were again charged with the cost for an appraisal of the lot. They again requested a copy of that appraisal. This request was repeated during the Deposition of the Appellant RONALD P. PAPPAS. To date, they have not been supplied with that appraisal. This foreclosure action is premised upon the documents of the second closing.

In December, 2013, the Respondent Bank filed its Motion for Summary Judgment. In response, the Appellants filed their Affidavit in Response to that Motion.

By their Affidavit and argument at hearing, counsel for Appellants set out their theory that the undisclosed appraisal must either show a true and lesser figure, which did not support the

2009 refinance, or the former, original figure, which misled the Appellants and caused them to forego their right to timely plead causes of action under the Interstate Land Sales Full Disclosure Act and otherwise.

The Respondent's Motion for Summary Judgment was granted by Order entered April 11, 2014, written notice of which was received on May 16, 2014. The Appellants' Motion under Rule 59(a) and (e), S.C.R.C.P. was denied by Order filed June 12, 2014, written notice of which was received on June 13, 2014. This appeal followed.

ARGUMENTS

I. HAVE THE APPELLANTS ADEQUATELY DEMONSTRATED THEIR NEED FOR FURTHER, SPECIFIC DISCOVERY UNDER RULE 56(e), S.C.R.C.P.?

In their responsive pleading, the Appellants PAPPAS specifically addressed the appraisals required by the Plaintiff Bank and its predecessor, and the failure to supply the same after their request:

19. In the course of the transaction Plaintiff has committed or engaged in the following unfair and/or deceptive acts or practices in violation of Title 39, Chapter 5:

- a) knowingly misrepresenting the value of the subject real estate in the appraisal furnished to the Defendants;
- b) negligently appraising the value of the subject real property when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c) using methods of appraisal that included, but did not disclose the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value;
- d) failing to supply the Defendants with a copy of the Real Estate Appraisal; and
- e) failing to supply the Defendants with a copy of the Real Estate Appraisal after their request therefor.

[Id., Para. 19 of Amended Answer, Counterclaims and Crossclaim, RECORD ON APPEAL, p.34-35.]

In their Affidavit in Response to the Plaintiff's Motion for Summary Judgment [RECORD ON APPEAL, p.266-269], reference was made to the explicit request for the second appraisal, of 2009, in the Deposition of RONALD E. PAPPAS taken in October, 2013. Mr. PAPPAS reiterates the failure to turn over the second Appraisal at [SUPPLEMENTAL RECORD ON APPEAL, p.157, 1.16 - p. 158, 1.5, and at p.167, 1.24 - p.168, 1.4., RECORD p.40 and 42.] The request for the second Appraisal was restated by Mr. PAPPAS and by his counsel:

24 [Q. Mr. LANEY] Are you aware from the appraisal done in 2009

25 according to HUD, which I believe you established is

1 page 78 of Plaintiffs 13, was that also the same

2 appraiser, the Pigmans, if you know?

3 A.[Mr. PAPPAS] I don't know anything about the second appraisal

4 except that I paid for it.

5 Q. Okay.

6 MR. FOSTER: And I assume that Counsel can

7 supply that to us?

8 MR. LANEY: An appraisal? The 2009?

9 MR. FOSTER: Yes.

10 MR. LANEY: I'll inquire, and if we have it

11 we'll certainly --

12 MR. FOSTER: Okay. I have nothing further.

[SUPPLEMENTAL RECORD ON APPEAL, Deposition of RONALD E. PAPPAS, p.167, 1.24 - p.168,1.12, RECORD, p.42.]

The Appellants reiterate that no reason for the failure to produce this document has ever been stated, in any pleading or at the hearing resulting in the Order appealed from. [SUPPLEMENTAL RECORD ON APPEAL, Deposition of RONALD E. PAPPAS, p.167, 1.24 - p.168,1.12, RECORD p.42 and generally.]

Rule 56, S.C.R.C.P, governing summary judgment and the motions to that end, is derived

from the former Federal Rule 56. Rule 56(f), S.C.R.C.P. provides:

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

To quote MOORE'S FEDERAL PRACTICE:

Rule 56 does not require that any discovery take place before a motion for summary judgment can be granted. However, if a party cannot adequately defend a summary judgment motion, Rule 56 (f) provides a means to obtain time for further discovery. If the court finds that a party opposing a summary judgment motion cannot present facts essential to justify the party's opposition, the court may: (1) deny the motion for summary judgment; (2) order a continuance to permit affidavits to be obtained or discovery to be had; or (3) make any other order that is just.

[J. Moore *et al.*, MOORE'S FEDERAL PRACTICE, 56.10[8](a) (3d ed. 1999); footnotes omitted.]

By the Affidavit of Counsel, served on counsel for Respondent by e-mail five days before hearing, the Appellants address the non-disclosure of the second, 2009 appraisal. [RECORD ON APPEAL, p.266-269.] By the same Affidavit, and in argument on the Respondent's summary judgment Motion, the Appellants plead their need for the document, and for its examination by their expert.[RECORD ON APPEAL, p.266-269.]

It has usually been held that Rule 56(f) should be liberally construed. *Gonzalez v. K-Mart Corp.*, 940 F.Supp. 429, 431 (D.P.R. 1996); *Elliott Assoc., L.P. v. Republic of Peru*, 961 F.Supp. 83, 86 (S.D.N.Y. 1997). In that regard, it is certainly true that a party seeking a Rule 56(f) continuance is generally required to demonstrate due diligence in discovery. *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 734 S.E.2d 161 (2012); *Baughman v. American Tel. and Tel. Co.*; *Ayala-Gerena v. Bristol Myers-Squibb Co.*, 95 F.3d 86, 92 (1st Cir. 1996); *Cannizzaro v. Neiman Marcus, Inc.*, 979 F. Supp. 465, 471-472 (N.D. Tex. 1997); *Theotokatos v. Sara Lee Personal Prods.*, 971 F. Supp. 332, 343 (N.D.Ill. 1997); *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912,921 (9th Cir. 1997) *cert. denied*, -- U.S. --, 139 L. Ed. 2D 287 (1997).

In this matter, the specific document requested was made prior to this action, was plead, had its absence stated by the Appellant RONALD PAPPAS in deposition, was specifically addressed in that deposition by his counsel, and its discovery was undertaken by Plaintiff's counsel. [SUPPLEMENTAL RECORD ON APPEAL, Deposition of RONALD E. PAPPAS, p.167, l.24 – p.168, l.12, RECORD p.42.] It was referenced in their Affidavit in Response to the Plaintiff's Summary Judgment Motion, and at the hearing thereon. [RECORD ON APPEAL, p.266, Para. 7.0 and Transcript of Hearing, p.575, l.23 – p.576, l.22.] The Appellants submit there can be no reasonable question as to diligent attempts to obtain this document.

To again quote MOORE'S FEDERAL PRACTICE:

A court may reject a request for time to conduct further discovery, even if properly and timely made, if it deems the request to be based on speculation as to what potentially could be discovered.

[J. Moore *et al.*, MOORE'S FEDERAL PRACTICE, 56.10[8](a) (3d ed. 1999); footnotes omitted.]

In other words, the defending party cannot expect the Court to allow a mere "fishing expedition", but must seek specific, discoverable matter by its Affidavit. *Ortiz Cameron v. D.E.A.*, 959 F.Supp. 92,93-94 (D.P.R. 1997); *Mason Tenders Dist. Council Pension Fund v. Messera*, 958 F.Supp. 869, 894 (S.D.N.Y. 1997); *City of Rome v. Glanton*, 958 F.Supp. 1026, 1039 (E.D.Pa.), *aff'd without op.*, 133 F.3d 909 (3d Cir. 1997); *Theotokatos v. Sara Lee Personal Prods.*, *supra*; *Wesley v. Don Stein Buick, Inc.*, 996 F.Supp. 1299, 1309 (D.Kan. 1998).

The requested discovery here is specific, as shown by all references thereto: the Amended Answer, Counterclaim and Crossclaim; the request made at the Appellant RONALD PAPPAS' deposition; the Affidavit in Response to the Respondent's Summary Judgment Motion; the colloquy at the hearing on the Motion. The Appellants have fulfilled all requirements of Rule 56(e) and (f), including that of specificity.

II. THE APPELLANTS HAVE ADEQUATELY ALLEGED COUNTERCLAIMS, AND THE MISSING DISCOVERY IS MATERIAL TO THEIR PROOF.

In the case at hand, the Respondents PAPPAS have specifically alleged Unfair Trade Practices under the South Carolina Act in their Counterclaim:

19. In the course of the transaction Plaintiff has committed or engaged in the following unfair and/or deceptive acts or practices in violation of Title 39, Chapter 5:

- f) knowingly misrepresenting the value of the subject real estate in the appraisal furnished to the Defendants;
- g) negligently appraising the value of the subject real property when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- h) using methods of appraisal that included, but did not disclose the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value;
- i) failing to supply the Defendants with a copy of the Real Estate Appraisal; and
- j) failing to supply the Defendants with a copy of the Real Estate Appraisal after their request therefor.

[*Id.*, RECORD ON APPEAL, Para. 19 of Amended Answer, Counterclaims and Crossclaim, p.4-5.]

By its Order, the Circuit Court finds a failure to plead a violation of the UDAP Act which impacts the public interest, as defined under South Carolina precedent. [Order of April 11, 2014, RECORD ON APPEAL, p.5-6.] In *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996), our Supreme Court discussed the question of proof for the impact on the public of an alleged UDAP violation:

Plaintiffs in prior cases generally have shown potential for repetition in two ways: by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence (*e.g., Jones Chevrolet*), or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts (*e.g., Haley Nursery, Dowd*). Sometimes, the potential for repetition or other adverse impact on the public interest will be apparent. Conversely, it will sometimes be apparent that an action has no real potential for repetition. For example, unfair or deceptive acts in

the sale of a business itself, or in sales outside the ordinary course of business, are not readily susceptible to repetition and, therefore, have no impact on the public interest.

...

Generally, plaintiffs will prove potential for repetition by the two means described above. We decline to hold, however, that those are the only means for showing potential for repetition/public impact. Rather, each case must be evaluated on its own merits. We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA test.

[Id., 322 S.C. at 498-97, 473 S.E.2d at 51.]

The Appellants maintain that the actions and inaction of the Respondent with regard to the appraisals and its failure to produce the same are "apparent" in their public impact, in the sense used in *Daisy Outdoor Advertising, supra*. If, however, that position is rejected, it is clear from the above-cited language that this is an issue which the Respondents both can, and are required to, argue and prove within the scope of further discovery and trial. The requirement of public interest will not serve to allow a conclusion that their Counterclaim is without merit. The proof of that Counterclaim relies directly upon the requested, and refused, discovery.

The Respondent's position at argument below was that no cause of action could result from disclosure of the second, 2009 Appraisal. The Appellants cite in response the language of 51 AM.JUR.2D *Limitation of Actions* § 387 (2002):

It has been held that, to avoid a statute of limitations defense on the grounds of estoppel, the defendant's representation or act must have been calculated to mislead or deceive and to induce inaction by the injured party, or done with the intention that the conduct be acted upon by the plaintiff. However, it has also been held that a defendant is estopped from asserting the statute of limitations if the plaintiff's failure to act within the statutory period results from a reasonable reliance on the defendant's conduct or representations, even if there was no intent to mislead, deceive, or delay the plaintiff. [Ftn.3: *Dever v. Simmons*, 292 Ill.App.3d 70, 226 Ill.Dec. 1, 684 N.E.2d 997 (1st Dist. 1997).]

Under either view, the defendant must have had actual or constructive knowledge of the true facts, and the defendant's conduct or deception must include positive efforts or active steps, above and beyond the wrongdoing upon which the plaintiff's claim is

founded, to prevent the claimant from suing in time.

Actual fraud in the technical sense, bad faith, or an intent to mislead or deceive is not essential to create such an estoppel. [Ftn.8: *Wilson v. Butt*, 168 Va. 259, 190 S.E. 260, 109 A.L.R. 1434 (1937).]

[*Id.*; footnotes omitted, other than those cited.]

Our Courts are in agreement with the stated principle. In *Kleckley v. Northwestern Nat. Cas. Co.*, 338 S.C. 131, 526 S.E.2d 218 (2000), the Supreme Court stated:

Kleckley could have also argued that Northwestern should be estopped from asserting the statute of limitations defense. "Under South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 488 S.E.2d 327 (1997) (citations omitted); see also *Holy Loch Distribs., Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787 (Ct.App.1998). [*Id.*, 338 S.C. at 136, 526 S.E.2d at 220.]

In the case at hand, the Respondent Bank had a duty to disclose the 2009 Appraisal required by it and requested by the Appellant. Had the same been disclosed the Appellants would have been on notice of their rights to pursue a claim based on either an improper Appraisal or one based upon the Respondent Bank's failure to disclose a lessened value for the collateral land. There is a third possibility: that no such Appraisal exists, and the Appellants were charged for a document that does not exist.

Based upon the information available at the hearing, the Appellants did not contest the Respondent Bank's Summary Judgment as to their cause of action based upon the Real Estate Settlement and Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.* or the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.* [RECORD ON APPEAL, Transcript of Hearing, p.26,1.7-10.] The Appellants acknowledge that under the existing precedent, the doctrine of equitable estoppel will not affect the statutory limitation on RESPA claims. *Moll v U.S. Life Title Ins. Co. of New York*, 654 F.Supp. 1012 (S.D.N.Y., 1987).

The unavailability of a RESPA claim does not, however, defeat the viability of the Appellants' claims under UDAP [RECORD ON APPEAL, Second Defense and Counterclaim, p.33-35.], fraud [RECORD ON APPEAL, Fifth Defense and Counterclaim, p.38-39.] or that for negligent misrepresentation [RECORD ON APPEAL, Sixth Defense and Counterclaim, p.39-41.]. Those

causes were, the Appellants maintain, adequately plead and shall be adequately evidenced by the discovery they seek. The existence, or non-existence, of the 2009 Appraisal is sufficient bases (under any of the factual alternatives discussed herein) to support each of the three Counterclaims and, thus, to avoid summary judgment.

CONCLUSION

The Appellants PAPPAS have demonstrated their need for further discovery in order to respond adequately to the Plaintiff's Motion for Summary Judgment. Their pursuit of this information has been diligent and has been directed to specific items referenced in their pleadings. Their need for those items has been clearly set out in the manner specified by Rule 56(e) and (f), S.C.R.C.P.

Given the pleadings herein, the existence or non-existence of the items sought by discovery is a fact adequate to show the factual existence of their Counterclaims for unfair and deceptive practices, for fraud and for negligent misrepresentation.

Respectfully submitted,

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May 6, 2015

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Cross-Defendant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this final Brief of Appellants complies with Rule 210(b),
S.C.A.C.R.

May 6, 2015


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Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

PROOF OF SERVICE

I certify that I have served the Brief of Appellants, dated May 6, 2015, on the following
counsel of record:

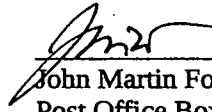
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by depositing the same with the United States mail, with sufficient first class postage
attached, properly addressed to the clerk of the Court, and with a copy also directed to the

respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

May 7th, 2015



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THE STATE OF SOUTH CAROLINA
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Plaintiffs,

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Wells Fargo Bank, N.A., and Craft Development, LLC, A North
Carolina Limited Liability Company, ... Cross-
Defendants.

BRIEF OF RESPONDENT

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April 27, 2015

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STATEMENT OF ISSUES

1. Summary Judgment on Defective Claims: In opposing a foreclosure action, the Pappases filed counterclaims against Wells Fargo for a violation of the South Carolina Unfair Trade Practices Act, for fraud, and for negligent misrepresentation. The Pappases' counterclaims all arise from two appraisals of an undeveloped lot: one from 2006, when the Pappases purchased the lot, and the second from 2009, when they refinanced their loan. After the Pappases failed to produce any evidence suggesting that the bank's alleged conduct could adversely impact the public, and after they conceded that they never relied on or even saw any appraisals of their property until after the foreclosure action was instituted, the circuit court granted summary judgment in Wells Fargo's favor on these claims. Did the circuit court err in holding that the case's undisputed facts caused the Pappases' counterclaims to fail as a matter of law?

2. Additional Discovery: The Pappases' lone defense to summary judgment was a Rule 56(f) affidavit suggesting that they needed to conduct additional discovery on the appraisal associated with their refinancing in 2009. The circuit court rejected this defense, as the undisputed facts already discovered rendered the Pappases' claims legally defective. Should the parties be required to undertake this additional discovery, even if it will not affect the viability of the Pappases' claims?

STATEMENT OF THE CASE

This appeal asks whether the circuit court rightly put an end to a sophisticated realtor's efforts to avoid paying back a loan used to purchase an investment property in a still-developing subdivision in Lancaster County. As explained below, the circuit court's ruling is correct as a matter of law, and Appellants should not be permitted to resuscitate their defective claims by generically asking this Court for more discovery.

I. Mr. Pappas purchased an undeveloped lot from Craft Development and financed that purchase with a loan through Wachovia Bank, but neither of these agreements made any representations about appraisals of the property.

Ronald Pappas is in the "real estate development business." (Dep. Pappas 14:2; Supp. R. p. 4.) As Mr. Pappas explained during his deposition, he has spent "most of [his] life" building and developing residential properties: he previously worked for two national homebuilding companies, including serving as the Atlantic Region President of one; he currently operates his own residential development business; and he currently serves as a member of the Lancaster County Planning Commission. (*Id.* 13:13–14:21, 16:23–17:23; Supp. R. pp. 4–5.)

On March 29, 2006, he entered into a contract with Craft Development, LLC, to purchase an undeveloped lot in a fledgling subdivision in Lancaster County. The sales price was \$229,000, of which Mr. Pappas planned to finance \$206,100. (Agreement to Buy and Sell Real Estate; R. p. 175.) The sales agreement was not contingent upon the lot appraising for any certain value. (*Id. passim*; R. pp. 175–81.) Mr. Pappas and Craft Development are the only two parties to this purchase agreement; Wachovia Bank is not a party to the sales contract, nor did it assist in locating the property or negotiating its purchase price. (Dep. Pappas 23:5–10, 27:23–28:6; Supp. R. pp. 6–7.)

After Mr. Pappas and Craft Development agreed upon the price and entered into their sales agreement, Mr. Pappas sought financing for his investment property. (*Id.* 25:1–:7; Supp. R. p. 7.) On May 30, 2006—two months after entering into the sales contract with Craft Development—Mr. Pappas and his wife entered into a three-year loan agreement with Wachovia Bank for \$206,100 that was secured by a mortgage on Mr. Pappas’s new property. (Settlement Statement (May 30, 2006); R. p. 302.) Nothing in the loan agreement contained any representations about any appraisals done on the property.

II. The Pappases refinanced their loan, again without any representations concerning any appraisals.

Rather than paying off their 2006 note when it came due, the Pappases approached Wachovia Bank about refinancing it. (Dep. Pappas 57:8–:10; Supp. R. p. 15.) Wachovia Bank agreed, and the parties entered a new three-year note on July 22, 2009, in the principal sum of \$210,954.69. (Note (July 22, 2009); R. p. 183.) The Pappases agreed to and understood the terms of this loan. (Dep. Pappas 63:7–:18; Supp. R. p. 16.)

Just as before, this loan agreement was secured by a mortgage on Mr. Pappas’s undeveloped lot. (Mortgage (July 22, 2009); R. p. 190.) And just as before, these loan documents did not make any representations regarding any appraisal of the property, nor was the refinance contingent upon any appraised value of the subject lot.

III. Wells Fargo filed this foreclosure action once the Pappases stopped making payments on their loan, a point about which there is no dispute.

In January 2011, the Pappases stopped making payments on their 2009 loan agreement. (Dep. Pappas 60:16–61:7; Supp. R. pp. 15–16.) On June 20, 2011, Wells Fargo Bank, which is Wachovia Bank’s successor by merger, commenced suit to foreclose on this loan. (Compl.; R. p. 13.) The Pappases answered the Complaint with a

series of counterclaims against Wells Fargo and with a third-party complaint against Craft Development. (Am. Ans., Countercls. and Cross-Claim; R. p. 31.) The counterclaims included alleged violations of the South Carolina Unfair Trade Practices Act, the Real Estate Settlement Procedures Act, and the Interstate Land Sales Full Disclosure Act, as well as fraud and negligent misrepresentation. (*Id.* ¶¶ 9–65; R. pp. 33–41.)

The Pappases asserted these counterclaims on September 26, 2011. (*Id.*; R. p. 43.) On December 16, 2013—over two years after the pleadings were joined, and after undertaking a full battery of discovery—Wells Fargo moved for summary judgment on its foreclosure claim and on the Pappases’ counterclaims. (Mot. for Summ. J.; R. p. 148.)

In opposing summary judgment, the Pappases did not present any substantive arguments, but instead submitted a Rule 56(f) affidavit requesting that even more discovery take place with respect to an appraisal done in connection with the 2009 refinancing agreement. (Aff. in Resp. to Mot. for Summ. J.; R. p. 266.) Nowhere in that affidavit, though, did the Pappases ever explain what relevance that appraisal could possibly have to any of the claims in this case.

On February 18, 2014, the Honorable R. Knox McMahon heard arguments regarding Wells Fargo’s motion for summary judgment. During that hearing, the Pappases withdrew their counterclaims arising under the federal statutes. (*See* Hr’g Tr. 26:8–:10 (“We are not going to dispute any of the arguments that are advanced on behalf of RESPA or on behalf of the Interstate Land Sales Act.”); R. p. 575.) At the close of the hearing, Judge McMahon orally granted judgment in Wells Fargo’s favor on the remaining claims. (*Id.* 37:12–38:18; R. pp. 586–87.)

Judge McMahon memorialized his ruling by order filed on April 11, 2014. (Order; R. p. 1.) The Pappases sought reconsideration of that ruling on May 25, 2014. (Mot. to Alter or Amend J.; R. p. 271.) Judge McMahon denied that motion by order filed on June 12, 2014. (Order Denying Defs.' Mot. to Alter or Amend J.; R. p. 11.) This appeal followed.

STANDARD OF REVIEW

This Court reviews grants of summary judgment under the same standard that is applied at the trial level. *Foster v. Foster*, 384 S.C. 380, 383, 682 S.E.2d 312, 313 (Ct. App. 2009). Summary judgment should be issued when the evidence collectively shows that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Courts agree that "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

ARGUMENTS AND AUTHORITIES

At the outset, it is important to note that the Pappases have not challenged several aspects of the circuit court's ruling in their opening brief. First, they do not dispute that the circuit court rightly entered judgment in Wells Fargo's favor on its foreclosure claim. Likewise, they do not dispute that the circuit court rightly entered judgment in Wells Fargo's favor on their two federal claims. Accordingly, they have abandoned any objection to these rulings. See *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal.").

Nor have they presented any legitimate arguments for reversing the circuit court's rulings that they have challenged. Instead, the Pappases seek to resuscitate legally invalid claims by arguing that Wells Fargo should be forced to participate in even more discovery that, at bottom, is irrelevant to their remaining claims. For the reasons discussed below, the circuit court's ruling should be affirmed.

I. The Pappases' remaining claims are defective as a matter of law.

According to the Pappases' opening brief, the entirety of their appeal depends on the contents of an appraisal of their property from 2009—three years after they purchased the undeveloped lot, and three years after their first loan on the property—that has not been produced in discovery. (*See, e.g.*, Br. of Appellants at 8–9 (arguing that the contents of an appraisal from 2009 might constitute “sufficient bases” to support their claims).)

Nowhere, though, do they ever explain what relevance that appraisal could have to their claims under the Unfair Trade Practices Act, for fraud, and for negligent misrepresentation. Their silence on this point is not surprising, as the contents of an appraisal that the Pappases concede they have never seen cannot salvage their claims, which are defective as a matter of law.

A. A private dispute between two contracting parties is insufficient to support a claim under the South Carolina Unfair Trade Practices Act.

To maintain a claim under the Unfair Trade Practices Act, a party must show that another has engaged in “unfair or deceptive acts or practices” in connection with a commercial transaction. S.C. Code Ann. § 39-5-20(a). A claimant must also show that the unfair business practice adversely affects the public interest, and that it suffered damages as a result of the unfair conduct. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013).

South Carolina's courts are clear that this statute is designed to redress harms that impact the public generally, and challenged conduct that affects only the parties to a private transaction is insufficient to support a claim. *See, e.g., Woodson v. DLI Props., LLC*, 406 S.C. 517, 530, 753 S.E.2d 428, 435 (2014) ("[T]he SCUTPA is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA."); *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) ("[C]onduct which only affects the parties to the transaction provides no basis for a UTPA claim.").

In order to satisfy the public-impact element, a claimant may attempt to show that the challenged conduct has the potential for repetition, which can be proven two ways: by demonstrating that the same behavior has occurred in the past, or by proving that the "company's procedures create a potential for repetition of the unfair and deceptive acts." *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998).

Because of the gravity of such a claim, a party must come forward with "specific facts" in support of the public-impact element. *See, e.g., O'Callaghan Cable Servs. v. Coastal Constr., Inc.*, Case No. 2:11-cv-375-DCN, 2012 U.S. Dist. LEXIS 146124, at *5 (D.S.C. Oct. 11, 2012) ("A plaintiff must prove 'specific facts' of an adverse impact or likely adverse impact on the public."); *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574, 584 (D.S.C. 2003) ("To sustain a cause of action under the SCUTPA, the plaintiffs must establish, by specific facts, that members of the public were adversely affected by the defendants' retaliation against Mr. Bessinger's speech."), *aff'd*, 115 F. App'x 636 (4th Cir. 2004); *Jefferies*, 316 S.C. at 527, 451 S.E.2d at 23 ("This adverse effect on the public must be proved by specific facts.").

Here, the circuit court held that summary judgment was proper in Wells Fargo's favor on the Pappases' Unfair Trade Practices Act claim because it amounts to "nothing more than a dispute between the two parties to a private contract—the Refinance Note and Mortgage—regarding appraisals of the Property." (Order at 6; R. p. 6.) This ruling is unassailable, as the Pappases never presented any evidence to suggest that their claim was based on anything other than a perceived private dispute.

On appeal, the Pappases argue that they need a copy of an appraisal done in 2009 to support the public-impact element of their claim. But they never explain how that appraisal could possibly change the circuit court's analysis. While they superficially state that the appraisal's relevance is "apparent," this is not so. (Br. of Appellant at 7.)

As discussed above, that appraisal was done as part of a refinancing, not as part of Mr. Pappas's actual purchase of the lot. There is no evidence to suggest that this appraisal influenced any action by the Pappases. Indeed, they already owned the property and owed the debt, so they cannot legitimately claim that this appraisal induced them to make any commitments to which they were not already obligated.

There is also no evidence to suggest that the Pappases ever provided a written request for the appraisal or that they were even entitled to review it. To the contrary, they did not have any legal entitlement to receive it. *See* 12 C.F.R. § 202.14(a) (obligating creditors to provide a copy of an appraisal only "upon an applicant's written request" and if the loan is secured by a "lien on a dwelling," which is limited to properties that actually contain a "residential structure," not undeveloped lots like the one at issue in this case).¹

¹ In their opening brief, the Pappases state, without citing any authority, that Wells Fargo "had a duty to disclose the 2009 Appraisal." (Br. of Appellant at 8.) As the federal regulation cited above in the text makes clear, though, this position is legally incorrect.

Nor is there even a logical connection between the appraisal and the Pappases' claim. In *Robertson v. First Union National Bank*, 350 S.C. 339, 350–51, 565 S.E.2d 309, 315 (Ct. App. 2002), this Court explained that appraisals are done for the benefit of the lender, not the borrower, to ensure that a loan is sufficiently secured by the collateral. The Court also noted that the lender, not the borrower, would be harmed by loaning money based on insufficient collateral. *Id.* at 351 n.2, 565 S.E.2d at 315 n.2. As then-Chief Judge Hearn concluded for a unanimous panel:

[W]e can think of no logical reason why Bank would make it a practice to intentionally make loans for an amount in excess of the collateral's value and risk substantial losses in the event of default. Therefore, summary judgment on this issue [i.e. whether a borrower could base an Unfair Trade Practices Act claim on the contents of an appraisal performed in connection with a mortgage loan] was proper.

Id. at 351, 565 S.E.2d at 315.

At bottom, the Pappases have not set forth any evidence that Wells Fargo has done anything “unfair” or “deceptive.” They have never explained how an appraisal done during the refinancing process could in any way support the public-impact element of a claim under the Unfair Trade Practices Act, nor have they provided evidence of any other “specific facts” in support of this element. And they have never identified any damages that are attributable to Wachovia Bank’s agreement to refinance their loan in 2009.²

² The circuit court based its ruling on the absence of any evidence supporting the public-impact element; but the record is also void of any evidence regarding the “unfair conduct” element or the damages element. Simply put, there is nothing in the record to support either of these elements; the Pappases never identified any such evidence during the proceedings below, nor have they identified any in their appellate brief. Accordingly, the judgment can be affirmed on these additional sustaining grounds. *See* Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”); *Fields v. Yarborough Ford, Inc.*, 307 S.C. 207, 210–12, 414 S.E.2d 164, 166–67 (1992) (holding that judgment should

Accordingly, the Court should affirm the circuit court's grant of summary judgment on the Pappases' Unfair Trade Practices Act claim.

B. The Pappases' claims for fraud and negligent misrepresentation fail as a matter of law because they did not rely on any appraisals at the time they contracted with Wells Fargo, and because they could have conducted their own appraisals of the property but chose not to.

The Pappases' claims for fraud and negligent misrepresentation are likewise defective as a matter of law, as the circuit court correctly held. Each of these causes of action requires a claimant to have justifiably relied on the representation of another. *See, e.g., Schnellmann v. Roettger*, 368 S.C. 17, 21–23, 627 S.E.2d 742, 744–45 (Ct. App. 2006) (affirming summary judgment on claims for both fraud and negligent misrepresentation because the buyers' reliance on the seller's representations was "unreasonable as a matter of law"), *aff'd in relevant part*, 373 S.C. 379, 645 S.E.2d 239 (2007). Similarly, a party is not liable under these causes of action if the alleged misrepresentations concern "matters which plaintiff could ascertain on his own in the exercise of due diligence." *Id.* at 21, 627 S.E.2d at 745 (quoting *Robertson*, 350 S.C. at 348, 565 S.E.2d at 314). These twin principles support the circuit court's ruling here.

The undisputed facts are that Mr. Pappas entered into an agreement with Craft Development to purchase the property before he approached Wachovia Bank about financing. (Dep. Pappas 25:1–7; Supp. R. p. 7.) The Pappases also entered into a note and mortgage with Wachovia Bank in 2006 before seeing any appraisal on the property. (*Id.* 34:4–9; Supp. R. p. 9.) In fact, they did not see the appraisal supporting the 2006

have been entered in the defendant's favor because the plaintiffs "failed to prove that they suffered any actual damages as a result of the violation of the Unfair Trade Practices Act"); *Bessinger v. BI-LO, Inc.*, 366 S.C. 426, 432, 622 S.E.2d 564, 567–68 (Ct. App. 2005) (affirming dismissal because "the allegations in the complaint do not suggest Defendants committed acts that would be unfair under the SCUTPA").

loan agreement until 2013, seven years after they took out their initial loan with Wachovia Bank. (*Id.*) Nor have they seen any appraisal associated with their refinancing in 2009. (*Id.* 157:22–:23; Supp. R. p. 40.)

Just as with the Pappases' Unfair Trade Practices claim, *Robertson* is indistinguishable from these facts and dispositive of these claims. There, borrowers sued their lender for fraud and negligent misrepresentation on the belief that a lender used fraudulent tactics in appraising property that secured the parties' loan. That loan closed in 1993, but, "[s]ignificantly, Appellants did not receive a copy of the 1993 appraisal until 1998." 350 S.C. at 348, 565 S.E.2d at 314. The *Robertson* Court readily affirmed judgment in the lender's favor on the fraud claim because "Appellants could not have relied upon the appraisal in purchasing the property." *Id.* It was similarly decisive with respect to the borrowers' claim for negligent misrepresentation: "Appellants' negligent misrepresentation claim fails because they have failed to prove reliance on the 1993 appraisal. It is undisputed that the parties agreed to a contract price without seeing an appraisal." *Id.* at 350, 565 S.E.2d at 315.

The same facts in this case should render an identical result. There is no evidence to suggest that Wachovia Bank made any representations about the value of the property before, during, or even after Mr. Pappas decided to purchase it. Nor is there any evidence to suggest that Wachovia Bank made any representations about the value of the property when the Pappases decided to refinance their loan, or that the bank ever performed any appraisals. Indeed, there is no evidence to suggest that the dealings between the Pappases and Wachovia Bank were anything other than two routine loan transactions: the Pappases needed money to purchase and then retain property, and Wachovia Bank twice agreed to

lend them that money after verifying for itself that the property would be sufficient collateral to secure the loans.

Over the course of those transactions, the Pappases concede that Wachovia Bank did not prevent them from procuring their own appraisal of the property. (Ans. to Pl.'s Requests for Admissions at Admission 13; R. p. 263.) They also concede they were aware of the actual physical condition of the property and the development it lay within when they executed the sales agreement, and when they later executed loan documents with Wachovia Bank. (Dep. Pappas 51:11--21, 52:13--53:21; Supp. R. pp. 13--14.) They simply chose not to order an appraisal despite the fact that Mr. Pappas is in "the real estate development business." (*Id.* 14:2; Supp. R. p. 4.)

When buyers have neglected to undertake simple measures to educate themselves about property they are looking to purchase, South Carolina's courts have uniformly held that others are not liable for any alleged misinformation. *See, e.g., Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 241, 692 S.E.2d 499, 509 (2010) (granting judgment against a purchaser on a claim for negligent misrepresentation arising out of a zoning discrepancy because "Quail Hill could have reviewed the Official Zoning Map to ascertain the correct zoning classification"); *Alpha Contracting Servs., Inc. v. Household Fin. Corp. II*, Op. No. 2011-UP-289, 2011 S.C. App. Unpub. LEXIS 348, at *8 (Ct. App. June 13, 2011) ("Like the purchasers in *Schnellmann*, Alpha failed to take its own measurements of the home's square footage. Therefore, Alpha's reliance on the square footage indicated in the MLS listing was unreasonable as a matter of law. Alpha cannot obtain compensation from Respondents if it has not exercised its own due diligence."); *Schnellmann*, 368 S.C. at 21, 627 S.E.2d at 745 ("The Schnellmanns viewed the house,

and proceeded with the purchase without finally determining the exact square footage. In light of the evidence presented, we agree with the trial court's conclusion that if the Schnellmanns relied on the approximation of the square footage contained in the listing, such reliance was unreasonable as a matter of law."); *Robertson*, 350 S.C. at 348, 565 S.E.2d at 314 (affirming summary judgment against buyers' fraud claim because "the price for the property was not negotiated and Appellants made no effort to independently ascertain its value before purchase"). The Pappases have not identified a single reason for the Court to stray from this unbroken line of authority.

Because the Pappases concede that they agreed to purchase the property from Craft Development and entered into loan transactions with Wachovia Bank without reviewing appraisals of the property or procuring their own appraisals, their claims for fraud and negligent misrepresentation fail as a matter of law. Clearly, they could not justifiably rely on an appraisal that they have never seen. Accordingly, the circuit court properly granted summary judgment in Wells Fargo's favor on these claims, and that ruling should be affirmed.

II. The Pappases' request for additional discovery cannot cure the legal deficiencies in their claims.

As discussed above, the thrust of the Pappases' appeal is a request for additional discovery with respect to the appraisal supporting Wachovia Bank's agreement to refinance the Pappases' loan in 2009. (*See, e.g.*, Br. of Appellants at 9 ("The Appellants Pappas have demonstrated their need for further discovery in order to respond adequately to the Plaintiff's Motion for Summary Judgment.")) They devote almost half of their appellate argument to Rule 56(f)'s standards regarding when more discovery may be appropriate. (*Id.* at 2-5.) But, also as discussed above, they never explain how this

additional discovery can save their claims beyond an empty statement that the relevance of their requested additional discovery is “apparent.” (*Id.* at 7.)

The omission of how the 2009 appraisal can somehow resuscitate their claims voids the Pappases’ requested relief on appeal. Rule 56(f), SCRCP, is designed to prevent summary judgment from being entered prematurely and before the parties have an opportunity to fully conduct discovery. It is not, however, a cure-all when a nonmovant’s claims are defective as a matter of law.

Accordingly, summary judgment can be forestalled only when the additional requested discovery bears on dispositive issues. *See, e.g., Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (“[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a “fishing expedition.”’” (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991))) (emphasis added); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009) (affirming summary judgment despite the appellant’s claim for more discovery because “on appeal, Guinan fails to demonstrate further discovery would uncover additional relevant evidence or create a genuine issue of material fact”) (emphasis added); *see also Wieters v. Roper Hosp., Inc.*, 58 F. App’x 40, 44 (4th Cir. 2003) (affirming summary judgment despite the submission of a Rule 56(f) affidavit because the nonmovant had failed to explain how the additional requested discovery “will be useful in resisting summary judgment”).

In this regard, “[a] complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Gauld v.*

O'Shaughnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (quoting *Baughman*, 306 S.C. at 116, 410 S.E.2d at 546).

This legal reality is the fundamental defect in the Pappases' requested relief on appeal. Any appraisal done in conjunction with their 2009 refinancing loan is irrelevant to this case because the Pappases concede they never relied on that appraisal, and they already entered into their sales contract to purchase the property before even interacting with Wachovia Bank. They concede that they agreed to their refinancing and understood the terms of the loan documents without ever seeing the 2009 appraisal. Under these undisputed facts, the Pappases' claims fail as a matter of law, and the Court should reject their attempt to unnecessarily prolong this matter with additional discovery that cannot alter this unavoidable conclusion.

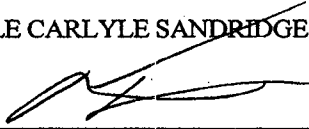
CONCLUSION

The circuit court properly granted judgment in Wells Fargo's favor, as the Pappases' claims against the bank are defective as a matter of law, and nothing in their request for additional discovery can overcome those defects.

This Court has reiterated time and again the "overarching rule of civil procedure" that "whatever doesn't make any difference, doesn't matter." *Powell v. Bank of Am.*, 379 S.C. 437, 447, 665 S.E.2d 237, 242 (Ct. App. 2008) (quoting *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)). Affirming the circuit court's ruling would be faithful to this "overarching rule" and would prevent the parties from wastefully expending resources to engage in irrelevant discovery, only to resubmit the same summary judgment arguments to the trial court after the additional discovery period closed. Accordingly, the Court should affirm judgment in Wells Fargo's favor.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The below-signed counsel certifies that this brief complies with Rule 211(b),
SCACR.

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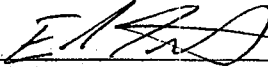
April 27, 2015
Columbia, South Carolina

PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

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April 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

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ARGUMENTS

ROBERTSON IS NOT APPLICABLE PRECEDENT

The Respondent WELLS FARGO BANK has cited, in its argument, the case of *Robertson v. First Union Natl. Bank*, 350 S.C. 339, 565 S.E.2D 309 (Ct.App. 2002). In that case, Robertson had plead various causes of action against his bank similar to those advanced by the Appellants here. He sought additional discovery relating to an appraisal. This Court confirmed the grant of summary judgment below. *Robertson, supra*. This Court in *Robertson* characterized the state of discovery in *Robertson* as follows:

We agree with the trial court that any further depositions would not have assisted Appellants. Generally, it is not premature for the trial court to grant summary judgment after all relevant parties have been deposed because the litigants have had a full and fair opportunity to develop the record in the case. [Citations omitted.]

[*Id.*, 350 S.C. at 346-47, 565 S.E.2d at 350-351.]

The state of discovery in *Robertson* cannot apply in the case at hand. In *Robertson*, the Defendants hoped to find unknown evidence. Here, the Appellants clearly plead a refusal to turn over the existing evidence in question. [RECORD ON APPEAL, Amended Answer and Counterclaim, Para. 26., p.35.] The Appellants clearly requested the appraisal at the deposition of RONALD P. PAPPAS, and was assured by Respondent's Counsel it would be turned over "if we have it". [SUPPLEMENTAL RECORD ON APPEAL, Deposition of Pappas, p.167, l.24 – p.168, l.12, p.42.]

In *Robertson*, the Appellants wished to develop evidence. Here we have evidence (the 2009 appraisal), whose existence is not denied, which has not been turned over. No reason for that failure was asserted to the Court below and no reason for that failure is cited in the Respondent's Initial Brief.

EFFECT OF MISSING EVIDENCE

The Respondent's argument is essentially that the appraisal, even if turned over, cannot affect the facts before the Court below and cannot give rise to defensive matter.¹

¹ The Respondent Bank argues the 2009 appraisal has no probative value. That fact cannot be

Disclosure of the missing appraisal can only result in a few alternatives: each alternative mandates further discovery by the Appellants, and precludes summary judgment. Those alternatives are:

- 1) The appraisal does not exist.

In that event, the Appellants were charged for an appraisal that was not made. As set out in the Affidavit of Appellants' counsel below, the value of the mortgaged property in 2009 was less than that at the time of the original mortgage. [RECORD ON APPEAL, Affidavit of counsel, p.266-269.] By being deprived of an accurate 2009 appraisal, the Appellants were not placed on notice of the lowered value, were thereby prevented from pursuing any legal remedies they possessed at that time, and continue to be prevented by the Bank's non-disclosure.

- 2) The Appraisal exists and shows the earlier, 2006 value for the real property.

In that event, despite a 2009 appraisal backing the Bank's refinance at the original price, the Appellants' expert is prepared to testify that the 2009 appraisal is incorrect. The Appellants should be allowed to inquire as to whether any pressure was brought to bear on the appraiser by the Bank or its agents. The Appellants would also have the right to inquire into the methods of the 2009 appraiser, and the motives of the Bank in denying it access to appraisal so that these matters can be explored.

- 3) The Appraisal exists and shows a later, lesser value for the real property.

In that event, the Bank was placed on notice of a lowered value in 2009 which information it has continued to refuse to the Appellants. This alternative provides the clearest basis for the existing claims of fraud, negligent misrepresentation and violation of the South Carolina Unfair and Deceptive Practices Act.

The Respondent Bank may wish to argue with the above alternatives and the analyses above. The fact remains that neither the Respondent Bank, nor this Court, can state what facts determined in absence of the actual appraisal. The Appellants would also point out that, depending on the substance of that document, the fact of its suppression, of itself, furnishes a basis for the Appellants' causes of action.

may develop until the document is produced and discovery is completed.

IMPROPER ATTRIBUTION OF WAIVER BY THE APPELLANTS

The Respondent Bank argues that the Appellants clearly did not rely on the 2009 appraisal. That assertion is true only insofar as RONALD PAPPAS acknowledged the appraisal was never received. [SUPPLEMENTAL RECORD ON APPEAL, Deposition of Pappas, p.157, l.16 – p.158, l.5 and p.167, l.24 – p.168, l.14, RECORD p.40 and 42.] Again, however, Mr. PAPPAS (or any Bank customer) certainly had the right to assume the 2009 appraisal he paid for was accurate and competently completed. This is precisely the point in contest, and the same cannot be settled in the absence of the document in question.

The Respondent cannot claim waiver based upon a document that was requested and whose disclosure has been refused. As stated in *State EX REL. Birchmorrh v. State Bd. Of Canvassers*, 78 S.C. 461, 59 S.E. 145 (1907):

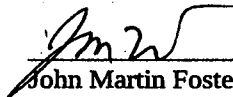
By waiver is meant the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such a right. Therefore, in order to constitute waiver, the person against whom the waiver is claimed must have full knowledge of his rights and of facts which will enable him to take effectual action for the enforcement of such right.

[*Id.*, 78 S.C. 461, 59 S.E. at 148.]

CONCLUSION

For all those grounds stated herein, and in the Brief of the Appellants, the Order of the Trial Court granting summary judgment should be reversed.

Respectfully submitted,



John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellants

May 6, 2015

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellants, dated May 6, 2015, on the following counsel of record:

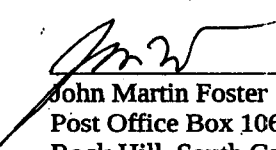
S. Sterling Laney, III
Matthew Todd Carroll
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, SC 29601

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the

respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

May 7, 2015



John Martin Foster
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Attorney for Appellants

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Wells Fargo Bank, N.A., Successor by merger to
Wachovia Bank, N.A., Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, Cross-Plaintiffs,

v.

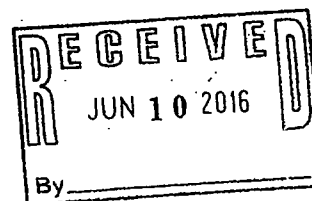
Wells Fargo Bank, N.A., and Craft Development, LLC,
A North Carolina Limited Liability Company, Cross-
Defendants.

Appellate Case No. 2014-001505

Appeal From Lancaster County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2016-UP-263
Submitted February 1, 2016 – Filed June 8, 2016

AFFIRMED



John Martin Foster, of Rock Hill, for Appellants.

Shelton Sterling Laney, III, of Womble Carlyle Sandridge & Rice, LLP, of Greenville, and Matthew Todd Carroll, of Womble Carlyle Sandridge & Rice, LLP, of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (noting that to avoid summary judgment, "the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a "fishing expedition"'" (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991))); *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) ("To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) *the hearer's reliance on its truth*; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." (emphasis added)); *id.* ("The failure to prove any element of fraud . . . is fatal to the claim."); *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) ("[T]he plaintiff must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) *the plaintiff justifiably relied on the representation*; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." (emphasis added)); *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) ("To be actionable under the [South Carolina Unfair Trade Practices Act], an unfair or deceptive practice or act must adversely affect the public interest."); *King v. Oxford*, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984) ("The court will not protect the person who, with full opportunity to do so, will not protect himself."); *McCall v.*

Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter.").

AFFIRMED.¹

HUFF, A.C.J., and KONDUROS and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

RECEIVED
JUN 23 2016
SC Court of Appeals

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

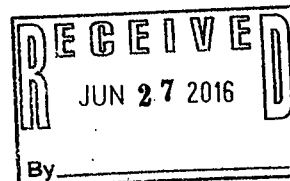
Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

PETITION FOR REHEARING

This Petition is based upon those certain points, factual and legal, which the Appellant believe the Courts to have overlooked or misapprehended, as set out in the accompanying Memorandum, a copy of which is attached hereto and incorporated herein.

June 22, 2016


John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
(803) 324-8100
Attorney for Petitioners



Other Counsel of Record:

**S. Sterling Laney, III
Matthew Todd Carroll
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, SC 29601**

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

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Successor by merger to Wachovia Bank, N.A., ... Respondent,

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And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
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v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

CERTIFICATE OF SERVICE

I certify that on June 22, 2016, I served the Petition for Rehearing, its accompanying Memorandum and this Certificate of Service on the following counsel of record, parties or persons:

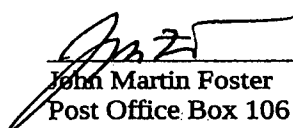
S. Sterling Laney, III
Matthew Todd Carroll
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, SC 29601

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving

it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

June 22, 2016



John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
(803) 324-8100
Attorney for Petitioners

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

RECEIVED

JUN 23 2016

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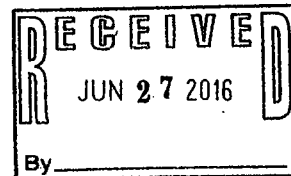
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Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

MEMORANDUM ON PETITION FOR REHEARING

The Petitioner petitions for a rehearing of the matter above under Rule 221(a),
S.C.A.C.R.

This Petition is based upon those certain points, factual and legal, which the Petitioner
believes the Court to have overlooked or misapprehended, as set out herein.



THE DECISION ON APPEAL

This decision of this Court was filed June 8th, 2016. To the extent allowed, the Petitioners restate and by this reference reargue all matter set out in their Brief and referenced in the Record on Appeal.

BACKGROUND

In May, 2006, the Appellants RONALD P. PAPPAS and CAMINE PAPPAS purchased, as an investment, a residential lot in what was to be Edgewater, a new subdivision in Lancaster County, developed by Craft Development, LLC. The price was \$229,000.00. This subdivision did not perform as expected.

This lot was financed by the predecessor in interest to the Respondent WELLS FARGO BANK, N.A. with a note having a balloon payment in June, 2009. At closing, they were charged with the cost for an appraisal of the lot. They requested a copy of that appraisal. It was not supplied until this action was filed. No reason for that failure has been stated.

By January, 2008, complaints had been made to HUD alleging failures to comply with the Interstate Land Sales Full Disclosure Act by Craft Development.

In July, 2009, at the urging of the bank and upon expiration of the original Note, the Appellants refinanced with the Bank at a figure of \$210,954.69. At the second closing, they were again charged with the cost for an appraisal of the lot. They again requested a copy of that appraisal. Discovery covering that document was served. This request was repeated, and acknowledged, during the Deposition of the Appellant RONALD P. PAPPAS. To date, they have not been supplied with that appraisal. This foreclosure action is premised upon the documents of the second closing.

In December, 2013, the Respondent Bank filed its Motion for Summary Judgment. By their Affidavit and argument at the motion hearing, counsel for Appellants set out their theory that the undisclosed appraisal must either show a true and lesser figure, which did not support the 2009 refinance, or the former, original figure, which misled the Appellants and caused them to forego their right to timely plead causes of action under the Interstate Land Sales Full Disclosure Act and otherwise.

The Respondent's Motion for Summary Judgment was granted by Order entered April 11, 2014, written notice of which was received on May 16, 2014. The Appellants' Motion under Rule 59(a) and (e), S.C.R.C.P. was denied by Order filed June 12, 2014, written notice of which was received on June 13, 2014. This appeal followed.

GROUND OF APPELLATE DECISION

The Petitioners' appeal for production of the missing appraisal underlies their claims for fraud and unfair trade practices. The Court recites the requirement that "further discovery will uncover additional relevant evidence . . .", quoting from *Baughman v. Am. Tel & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991).

To reiterate: the Petitioners have plead their payment for the second appraisal, their reliance on its (presumed) backing for the value of the property so refinanced, and that such value was either false or withheld due to its accuracy. [*Id.*, Para. 19 and 52 of the Amended Answer, Counterclaims and Crossclaim, RECORD ON APPEAL, p.34-35, 39, and the Second, Fifth, and Sixth Counterclaims generally.]

The burden of the decision of the Court is that these facts will not require the production of the document, or affect the lower Court's grant of summary judgment, because, in fraud the plaintiff must prove a justifiable reliance on the representation [here, such representation would be the substance of the appraisal]. The decision is apparently based upon the legal conclusion that the Petitioners could not have justifiably relied upon that appraisal. To state this more specifically, they had no right to assume the appraisal was correct or, in the event it accurately showed a lesser value, they had no right to information that would have provoked legal remedies at that time.

To state the conclusion as the decision ends its discussion, "whatever doesn't make any difference, doesn't matter.", quoting *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26, 28 (Ct.App. 1987).

The commentators of AMERICAN JURISPRUDENCE 2D state:

There is considerable authority to the effect that a mistake of one party known to the other affects the validity of their agreement. This is held to be true where the mistake is obvious on the face of the contract. Accordingly, where there is a mistake that on its face is so palpable as to put a person of reasonable intelligence on his guard, there is not a meeting of the minds, and consequently there can be no contract. If, however, a mistake in an agreement is not in its expression, but in some fact materially inducing it, the mere knowledge in the one party of a mistake in the other apparently does not, *in the absence of a duty to disclose* or other special circumstance, constitute a sufficient ground in equity for avoiding the agreement. Of course, a mistake of one party caused by the fraud of the other warrants relief; and the same is held to be true where the mistake is induced by an innocent misrepresentation of the other party.

[17A AM.JUR.2D *Contracts* § 220 (2002); footnotes omitted and emphasis added.]

The Petitioners contend the second Appraisal was either false or deliberately hidden from them. The Respondent Bank either engaged in improper behavior or failed to act when it had a

duty to do so. The Petitioners had a right to rely on the Bank's actions and duty, and the fact of their reliance is a matter of fact not to be decided by a summary judgment.

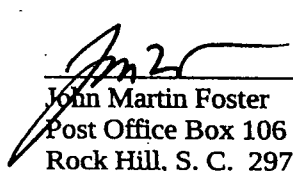
The same commentators cite the language of the RESTATEMENT OF CONTRACTS 2D, § 153(b) and 154 to the effect that where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in the Restatement, and the other party had reason to know of the mistake or his fault caused the mistake.

As to the Petitioners' Counterclaim for unfair and deceptive trade practices, the decision disposes of this by a citation of the rule on the adverse effect upon public interest. [Citation omitted.] The Petitioners have cited *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996) to the effect that such impact may be evidenced by showing the Defendant's procedures create a potential for repetition of the unfair and deceptive acts. They argue that such potential has been shown. They have also invoked the language of that decision by which such proof is not limited to the two methods cited therein. The use of misleading information to effect a refinance, or the failure to disclose information that would affect the same, has a prima facie effect upon the public interest.

CONCLUSION

For all the reasons set out and referenced above, the Petitioners request that this matter be reheard by the Court of Appeals, and for any other relief to which they may be entitled in law or equity.

Respectfully submitted,



John Martin Foster
Post Office Box 106
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(803) 324-8100
Attorney for Petitioners

June 22, 2016

Rock Hill, South Carolina

The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Successor, by merger to
Wachovia Bank, N.A., Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
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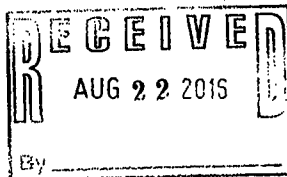
v.

Wells Fargo Bank, N.A. and Craft Development, LLC, A
North Carolina Limited Liability Company, Cross-
Defendants.

Appellate Case No. 2014-001505

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



FILED

August 18, 2016

Thomas E. Huff J.
U. K. E. J.
John D. Bente J.

Columbia, South Carolina

cc:

John Martin Foster, Esquire
Shelton Sterling Laney, III, Esquire
Matthew Todd Carroll, Esquire
The Honorable R. Knox McMahon