THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
OCT 03 2016
SC Court of Appeals

Case No. 2016-000432

Linda A. Gibson, individually and in capacity as Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC, ... Appellants,

v.

ANDREW K. EPTING, JR., LLC; Andrew K. Epting, Jr.; GEORGE J. KEFALOS, P.A.; George J. Kefalos; GEDNEY M. HOWE, III, P.A.; Gedney M. Howe, III; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and John S. West,..... Respondents.

RECORD ON APPEAL

Thomas A. Pendarvis, J.D.
Christopher W. Lempesis, Jr., J.D., L.LM.
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188

James R. Davis, Esq.
J. DAVIS LAW FIRM, P.C.
BB&T Plaza, Mail Stop Box #16
Daniel Island, South Carolina 29492

Counsel for Appellants

M. Dawes Cooke, Jr., J.D
Jeremy E. Bowers, J.D.
BARNWELL, WHALEY PATTERSON & HELMS, LLC
PO Drawer H
Charleston SC 29402-0197

Counsel for Respondents

Volume 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2016-000432

Linda A. Gibson, individually and in capacity as
Trustee of the PAUL WILLIAM GIBSON FAMILY TRUST;
HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC;
and 3205 PALM BOULEVARD, LLC, ... Appellants,

v.

ANDREW K. EPTING, JR., LLC; Andrew K. Epting, Jr.;
GEORGE J. KEFALOS, P.A.; George J. Kefalos;
GEDNEY M. HOWE, III, P.A.; Gedney M. Howe, III;
JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and John S. West,..... Respondents.

RECORD ON APPEAL

Thomas A. Pendarvis, J.D.
Christopher W. Lempesis, Jr., J.D., L.LM.
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188

James R. Davis, Esq.
J. DAVIS LAW FIRM, P.C.
BB&T Plaza, Mail Stop Box #16
Daniel Island, South Carolina 29492

Counsel for Appellants

M. Dawes Cooke, Jr., J.D
Jeremy E. Bowers, J.D.
BARNWELL, WHALEY PATTERSON & HELMS, LLC
PO Drawer H
Charleston SC 29402-0197

Counsel for Respondents

Volume 1

INDEX

Page

ORDERS, JUDGMENTS, DECREES AND DECISIONS

Order granting Defendant's Motion for Summary Judgment, dated January 5, 2016 1
Order denying Plaintiffs Motion for Reconsideration, filed February 5, 2016 2
Order Granting Motion to Amend Complaint, filed January 13, 2014. 3
Order Granting Motion to Amend Complaint, filed October 29, 2015 4

PLEADINGS

Plaintiffs' Summons and Complaint and Exhibits A through M, filed July 30, 2013 5
Exhibit A - Epting letter to Gibson, dated April 7, 2010 47
Exhibit B - McVey letter to Epting, dated October 25, 2010. 49
Exhibit C - Epting letter to Gibson, dated October 25, 2010 54
Exhibit D - Kefalos email to Tecklenburg, dated October 29, 2010 57
Exhibit E - Epting letter to McVey, dated November 3, 2010 60
Exhibit F - McVey letter to Epting, dated November 8, 2010 62
Exhibit G - Attorney-Client Contract, dated November 18, 2010 67
Exhibit H - Settlement Agreement and Release, effective December 1, 2010. 70
Exhibit I - Tecklenburg letter to Gibson, dated December 8, 2010 80
Exhibit J - Gibson mortgages to Howe and West, dated December 6, 2010 83
Exhibit K - Disbursement Statement 96
Exhibit L - Partial Release of Mortgage Lien and Agreement to Mortgage Assignment, Modification and Reduction of Debt. 98
Exhibit M - Disbursement of Funds, dated July 15, 2011 108
Plaintiffs' Second (sic.) Amended Complaint (identical Exhibits A through M omitted from Record on Appeal), filed January 13, 2014 109
Plaintiffs' Second Amended Complaint (identical Exhibits A through M omitted from Record on Appeal), filed October 22, 2015. 145
Answer and Affirmative Defenses of the Defendants to Verified Complaint, filed on October 1, 2013. 181
Answer and Affirmative Defenses of the Defendants to Second Amended Complaint, filed on January 28, 2014 208
Answer and Affirmative Defenses of the Defendants to Second Amended Complaint filed on November 2, 2015 234

TRANSCRIPTS

Hearing Transcript for Hearing on Motion for Summary Judgment, before The Honorable R. Markley Dennis, Jr., dated October 20, 2015 266

OTHER MATERIALS AND DOCUMENTS

Defendants' Motion for Summary Judgment, filed on July 31, 2015 297
Defendants' Memorandum in Support of Motion for Summary Judgment, including
Exhibits #1 through #33 299
Exhibit #1 - November 13, 2009, Papa E-mail 335
Exhibit #2 - November 27, 2009, Kefalos E-mail 336
Exhibit #3 - December 11, 2009, Papa E-mail 337
Exhibit #4 - December 14, 2009, Epting E-mail 338
Exhibit #5 - February 4, 2010, Epting Office E-mail 339
Exhibit #6 - April 7, 2010, Epting Letter 340
Exhibit #7 - Ameris Foreclosure Complaint, dated June 14, 2010 342
Exhibit #8 - July 9, 2010, Epting Letter 355
Exhibit #9 - Gibson Answer and Counter in Foreclosure Action 357
Exhibit #10 - August 12, 2010, McVey Letter to Epting 362
Exhibit #11 - Notice of Motion and Motion for Appointment of Receiver 365
Exhibit #12 - September 17, 2010, McVey E-mail to Epting 369
Exhibit #13 - October 18, 2010, McVey Letter to Epting 371
Exhibit #14 - October 25, 2010, McVey Letter to Epting 373
Exhibit #15 - Time Records of Paul Tecklenburg, Esquire 376
Exhibit #16 - November 4, 2010, McVey Letter to Epting 381
Exhibit #17 - November 8, 2010, McVey Letter to Epting 382
Exhibit #18 - November 18, 2010, Fee Agreement 385
Exhibit #19 - Mortgage 387
Exhibit #20 - Fee Disbursement Statement 399
Exhibit #21 - Mortgage Assignment and Reduction 400
Exhibit #22 - Deposition Excerpts from Harry A. Swagart, III 418
Exhibit #23 - Deposition Excerpts from Robert Papa 434
Exhibit #24 - Deposition Excerpts from Andrew K. Epting, Jr. 455
Exhibit #25 - December 8, 2010, Tecklenburg Letter 481
Exhibit #26 - Time Records of Callison Tighe & Robinson, LLC 483
Exhibit #27 - Ameris Bank E-mails 498
Exhibit #28 - Deposition Excerpts from George J. Kefalos 503
Exhibit #29 - Deposition Excerpts from John S. West 519
Exhibit #30 - Deposition Excerpts from Gedney M. Howe, III 529
Exhibit #31 - Deposition Excerpts from Paul F. Tecklenburg 534
Exhibit #32 - Deposition Excerpts from Marvin Infinger 551
Exhibit #33 - Deposition Excerpts from Michael Danhour 563
Plaintiffs' Opp. & Cross Motion for Summary Judgment and Exhibits # A through S,
dated August 11, 2015 582
Exhibit A - February 4th Email 593
Exhibit B - April 7, 2010 Letter Agreement 594
Exhibit C - November 18, 2010 Attorney Client Contract 595
Exhibit D - October 19-22, 2010 McVey and Epting Email correspondence 597
Exhibit E - November 8, 2010, McVey Letter to Epting 602

Exhibit F - Callison & Tighe and Rosen Hagood Invoices 606
Exhibit G - Deposition Excerpts from Michael Danhour (Galt Valley, LLC) 642
Exhibit H - Deposition Excerpts from Andrew K. Epting, Jr. 649
Exhibit I - Deposition Excerpts from Linda Gibson 661
Exhibit J - Deposition Excerpts from Gedney M. Howe, III 677
Exhibit K - Deposition Excerpts from George J. Kefalos 681
Exhibit L - Deposition Excerpts from John S. West. 684
Exhibit M - Affidavit (Supplemental) of Desa Ballard, dated October 14, 2015. 688
Exhibit N - Affidavit of Harry Swagart, dated October 13, 2015 696
Exhibit O - Affidavit of Michael Danhour, dated August 21, 2015 713
Exhibit P - McVey email to Epting, dated October 19, 2010. 718
Exhibit Q - Papa email to Epting, dated December 2, 2009 722
Exhibit R - Epting email to McVey, dated October 22, 2010 723
Exhibit S - Kefalos email to Tecklenburg, dated October 29, 2010. 725
Plaintiffs' Supplemental Identification of 702 Witness Desa Ballard, dated August 11, 2015 . 726
Plaintiffs' Notice of Motion and Motion for Reconsideration and Alter or Amend Judgment, and Exhibits # A through K, filed January 15, 2016 728
Exhibit A - Fee Documents. 757
Exhibit B - Deposition Excerpts from Andrew K. Epting, Jr. 762
Exhibit C - Deposition Excerpts from Linda Gibson 765
Exhibit D - Deposition Excerpts from Michael Danhour (Galt Valley, LLC) 771
Exhibit E - Kefalos to West and Epting to Watson letters, dated September 23, 2010 . 780
Exhibit F - Affidavit of Linda Gibson, dated January 12, 2015 (2016) 783
Exhibit G - Affidavit of Harry Swagart No. 2, dated January 14, 2016. 787
Exhibit H - Affidavit (Amended Supplemental) of Desa Ballard, dated January 14, 2016 792
Exhibit I - Davis letter to Cooke, dated August 10, 2015. 796
Exhibit J - McVey email to Epting, dated October 19-22, 2010 799
Exhibit K - Hearing Transcript Summary Judgment, dated October 20, 2015 (Copy used as exhibit omitted from Record on Appeal) ..... n/a
Affidavit of Linda A. Gibson, filed July 30, 2013 804
Affidavit of Desa Ballard, filed November 18, 2013 809
Affidavit of Linda A. Gibson, filed October 16, 2015 813

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-4450

Linda A. Gibson, Individually, and in capacity as Trustee of the Paul William Gibson Family Trust, et al

PLAINTIFF(S)

Andrew K. Epting, Jr., LLC, et al

DEFENDANT(S)

FILED
2016 JAN 5 PM 3:04
JULIE J. ARMSTRONG
CLERK OF COURT

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment, filed on 7/31/2015, is GRANTED for the reasons stated in the Defendants' Memorandum in Support--based on the entire record before the court (pleadings, affidavits, memoranda, and papers).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	2060 Judge Code	1/4/16 Date

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Case No. 2013-CP-10-4450
Linda A. Gibson, et al Plaintiffs, **Andrew K. Epting, et al** Defendants.	)	ORDER

FILED
2016 FEB -5 AM 10 09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before me upon Plaintiff's Motion for Reconsideration to Alter or Amend Judgment, dated on 1/14/2016. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is DENIED;

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

February 1, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

NINETH JUDICIAL CIRCUIT
COURT FILE NO. 2013-CP-10-4450

LINDA GIBSON, et al.,

Plaintiff,

vs.

ANDREW K. EPTING, JR., LLC, GEORGE J. KEFALOS, P.A., GEDNEY M. HOWE, III, P.A., JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants.

PROPOSED ORDER

FILED
2014 JAN 13 PM 12:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER

Pursuant to Plaintiff Linda Gibson and Defendants Consent Motion to Amend Complaint, it is hereby **ORDERED** that the Motion is **GRANTED** and plaintiff has leave to file Plaintiffs' Second Amended Complaint.

The Honorable Stephanie P. McDonald
Charleston County

January 9, 2014
Date

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity as* TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC.,

Plaintiffs

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K. EPTING, JR.; GEORGE J. KEFALOS, P.A.,; GEORGE J. KEFALOS; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,

Defendants

ORDER

FILED
2015 OCT 29 PM 12:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER

This matter having come before me on the Plaintiffs' Motion to Amend their Complaint styled SECOND (8-6-2015) COMPLAINT, dated August 6, 2015. Present at the hearing were counsel for the Plaintiffs, Mr. James R. Davis, Esq., and counsel for the Defendants, Mr. M. Dawes Cooke, Esq. The Court hereby **ORDERS** that the Plaintiff's Motion is **GRANTED,** and that the Defendants' Answer, or responsive pleading, shall be filed in accordance with the South Carolina Rules of Civil Procedure.

It is so ORDERED.

The Honorable Markley R. Dennis
Chief Administrative Justice

Dated: 10/26/2015

STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)
)
LINDA GIBSON, et. al.)
Plaintiff,)
)
vs.)
)
ANDREW K. EPTING, JR., LLC,)
GEORGE J. KEFALOS, P.A.,
GEDNEY M. HOWE, III, P.A.,
JOHN H. WEST, ATTORNEY-AT-LAW,
LLC
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

2013-CP-10-4450
FILE NO.

FILED
2013 JUL 30 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Charleston, South Carolina

Dated: July 30, 2013

Plaintiff/Attorney for Plaintiff

Address: J. Davis Law Firm, P.C.
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Charleston, SC 29492

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA

CHARLESTON, SS

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No. 2013-CP-10-4450

FILED
2013 JUL 30 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

LINDA A. GIBSON, *Individually, and in capacity as* TRUSTEE *of* THE PAUL WILLIAM GIBSON FAMILY TRUST, *and,*
HERITAGE SEVEN, LLC, *and,*
SEVEN OAKS APARTMENTS, LLC, *and,*
3205 PALM BOULEVARD, LLC,

Plaintiffs

vs.

ANDREW K. EPTING, JR., LLC, *and,*
GEORGE J. KEFALOS, P.A., *and,*
GEDNEY M. HOWE, III, P.A., *and,*
JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants

COMPLAINT

Jury Trial Demanded

FIRST VERIFIED COMPLAINT

Plaintiffs, Linda A. Gibson, ("Ms. Gibson"), Heritage Seven, LLC, ("Heritage"), Seven Oaks Apartments, LLC, ("Seven Oaks"), 3205 Palm Boulevard, LLC, ("Palm"), and The Paul William Gibson Family Trust, ("Trust"), (*together,* "Ms. Gibson"), by way of complaint ("Complaint") against Andrew K. Epting, Jr., LLC, George J. Kefalos, P.A., Gedney M. Howe, III, P.A., and John H. West, LLC, (*collectively,* "Counsel"), hereby allege as follows:

INTRODUCTION

This action arises out of a $566,666.66 fee disagreement between Ms. Gibson and Counsel for Counsels' preparation of a deed-in-lieu of foreclosure.

Ms. Gibson engaged Counsel to represent Heritage and her interest in a foreclosure and guaranty action, relating to Heritage's Apartment Complex ("Apartments") in North Charleston, South Carolina.

Ms. Gibson avers she and Counsel entered into an enforceable contingent fee contract on April 27, 2010 ("April Agreement") whereby Counsel agreed to provide legal services ("Services") to Ms. Gibson for a percent of recovery of her lender-liability claim(s) ("Lender Claim") against her mortgagee, Ameris Bank ("Ameris").

On August 24, 2010, Ameris assigned Ms. Gibson's mortgage, note and guaranty paper ("Loan Documents") to Galt Valley, LLC, ("Galt"), a buyer of distressed paper.

On November 8, 2010, Galt *unilaterally* offered to waive its deficiency claim ("Deficiency Claim") against Heritage, and Ms. Gibson, as guarantor, in return for the Apartments by deed-in-lieu of foreclosure, ("Galt Offer"), as is routine in the distressed paper market.

On November 15, 2010, Ms. Gibson accepted the Galt Offer and Galt's counsel and Counsel prepared a deed-in-lieu of foreclosure ("Galt Agreement").

Thereafter, on November 18, 2010, Counsel solicited Ms. Gibson enter a "second" fee arrangement Counsel *self*-styled an "Attorney-Client Contract" purporting a *reverse* fee entitlement due Counsel of $566,666.66, or one-third (1/3) of the purported $1.7MM Deficiency Claim (the "November Arrangement").

Thus, as of November 18, 2010, Counsel appears to assert a fee entitlement contemplated by two separate fee arrangements: (1) the April Agreement purporting the *straight* contingent fee *as to the* Lender Claims; and, (2) the November Arrangement purporting a $566,666.66 *reverse* fee *as to the* Deficiency Claim.

Ms. Gibson avers Counsels' *self*-characterized "Attorney-Client Contract" is but a fee change-order submitted to her after Galt waived its deficiency in a scheme to profiteer by Galt's unexpected waiver of its Deficiency Claim.

The April Agreement does not contemplate (i) successive fee agreements, like the November Arrangement; or (ii) *reverse* fee entitlements; or (iii) Galt's *unilateral* waiver of its deficiency; nor, (iv) a $566,666.66 fee award ("Award") computed by an indeterminate $1.7MM "dollar marker" arrived at outside the press and weight of the prosecution of the Lender Claims.

Ms. Gibson avers the $1.7MM "dollar marker" Counsel used to compute Counsels' $566,666.66 *reverse* fee Award is disingenuous because Counsel knew, or should have known, Galt acquired the distressed Loan Documents, not as a holder-in-due course, but subject to Ms. Gibson's recoupment claims and guarantor defenses, if not at law, in equity, arising out of the Lender Claim(s); and, so, the actual "deficiency amount" *for the purposes* of computing the 1/3 fee Award, is indeterminate, and thus cannot form the basis to compute Counsels' $566,666.66 fee.

Even assuming the November Arrangement could be construed a "contract," Ms. Gibson avers the *reverse* fee "contract" is void, voidable, or otherwise unenforceable, for want of consideration, lack of mutuality of assent, misrepresentation and non-disclosure, and is otherwise unconscionable.

Under the April Agreement, Counsel had a pre-existing duty to represent Ms. Gibson's interest in the foreclosure action; and, a fiduciary duty to avoid *self*-dealing in the litigation estate.

And even assuming Counsel could enforce two separate fee arrangements in an action to foreclose a single mortgage, Ms. Gibson avers the $566,666.66 fee is excessive; and, grossly disproportionate to the time, novelty, skill and effort by four attorneys to prepare a routine deed-in-lieu of foreclosure.

For these reasons and below, Ms. Gibson avers common law claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, undue influence, unjust enrichment, conversion, negligent misrepresentation, breach of contract, constructive and common law fraud, and violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-20 (a), *et. seq.*

RELIEF REQUESTED

Ms. Gibson respectfully requests this Court issue a declaratory judgment, pursuant to the Uniform Declaratory Judgments Act, § 15-53-30, *et. seq.*, that the November Arrangement $566,666.66 *reverse* fee Award is unenforceable, or otherwise excessive; and, then issue an Order to (i) set aside, rescind or otherwise reform, the November Arrangement; (ii) restore to Ms. Gibson, *together with* accrued interest thereon, from the date of payment, that amount remaining after a reasonable *quantum meruit* fee allocated Counsel commensurate with like-kind "deed-in-lieu" work product; (iii) release that certain mortgage lien of $297,000.00 ("Mortgage Lien") Counsel recorded against Ms. Gibson's real property; (iv) direct any settlement proceeds received by Counsel in that certain ongoing Berkeley County litigation styled as *Linda A. Gibson, et. al., v. Ameris Bank,* Case No.: 2010-CP-08-2134, ("Ameris Action") be deposited

with this Court pending resolution of this fee dispute; (v) direct Counsel equitably indemnify twenty-percent (20%) of any attorney fees, costs and expenses incurred by Ms. Gibson in appellate litigation in the Ameris Action, if any; and separately, (vi) award Ms. Gibson actual, incidental and consequential damages arising out of her common law claims for Counsels' breach of contract, malfeasance, or neglect, *together with* her reasonable attorney fees and costs attendant to the instant action; and, (viii) award such other and further relief this Court deems fair and just.

THE PARTIES

1. Plaintiff, Linda A. Gibson, ("Ms. Gibson") is a citizen and resident of Dorchester County, South Carolina. At all relevant times, Ms. Gibson is the sole member of Heritage, Seven Oaks and Palm. Ms. Gibson is the Trustee of The Paul William Gibson Family Trust.

2. Plaintiff, Heritage Seven, LLC, ("Heritage") is a duly organized South Carolina limited liability company of Dorchester County, South Carolina.

3. Plaintiff, Seven Oaks Apartments, LLC, ("Seven Oaks") is a duly organized South Carolina limited liability company of Dorchester County, South Carolina.

4. Plaintiff, 3205 Palm Boulevard, LLC, ("Palm") is a duly organized South Carolina limited liability company of Dorchester County, South Carolina.

5. Defendant, Andrew K. Epting, Jr., LLC ("Epting") is a duly organized South Carolina limited liability company having its principal place of business at 3 State Street, County of Charleston, South Carolina 29401.

6. Defendant, George J. Kefalos, P.A., ("Kefalos") is a duly organized South Carolina professional association having its principal place of business at 46-A State Street, County of Charleston, South Carolina 29401.

7. Defendant, Gedney M. Howe, III, P.A., ("Howe") is a duly organized South Carolina professional association having its principal place of business at 8 Chalmers Street, County of Charleston, South Carolina 29402.

8. Defendant, John S. West, Attorney-at-law, LLC, ("West") is a duly organized South Carolina limited liability company having its principal place of business at 207 Carolina Avenue, Moncks Corner, Berkeley County, South Carolina 29461.

JURISDICTION AND VENUE

9. This Court has original subject matter and personal jurisdiction over the claims and the parties pursuant the S.C. Const. art. V, § 11; and, pursuant to Rule 416 (2) SCACR: plaintiffs' claims concern fees, cost and disbursements exceeding $50,000.00. Venue is proper because a substantial amount of the events or omissions giving rise to the claims occurred within the jurisdiction of the County of Charleston, South Carolina, pursuant to S.C. Code § 15-7-30 (E)(1)-(2).

THE RELEVANT FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

10. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

11. In November 2007, Ms. Gibson executed and delivered to Ameris Loan Documents in the principal sum of $2,810,164.50. Ms. Gibson personally guaranteed the Loan Documents.

12. In February 2010, Ms. Gibson engaged Mr. Kefalos and Mr. Epting to negotiate a real estate workout of the Apartments and Loan Documents; *specifically,* to represent her in an approaching mortgage foreclosure action by Ameris against Heritage, and Ms. Gibson, *as guarantor*; and, to assert certain lender-counter-claims ("Lender Claims") against Ameris.

13. In February 2010, Ms. Gibson engaged Mr. Epting to represent her also in the prosecution of certain broker and appraiser claims against Re/Max Professional Realty, Inc., ("Re/Max"), and others, in a civil action styled *Linda A. Gibson, et. al., v. Re/Max Professional Realty, et. al.,* Case No. 08-CO-10-4282 ("Re/Max Action").

14. On or about April 27, 2010, Mr. Epting and Ms. Gibson executed a contingent fee agreement ("April Agreement") purporting Mr. Epting would represent Ms. Gibson "on a contingency" as to the Re/Max Action and as to the Ameris Action. Exhibit A.

15. The April Agreement does not specify a percent value to calculate a fee for Services.

16. On June 15, 2010, Ameris Bank filed the anticipated foreclosure action against Heritage, and Ms. Gibson, *as guarantor*, in an action styled *Ameris Bank v. Linda A. Gibson, et. al.,* in the Court of Common Pleas, Berkeley County, South Carolina, Civil Action File No. 2010-CP-08-2134 ("Ameris Action"), asserting claims for breach of the notes and guaranty, and for attorneys' fees.

17. On July 9, 2010, Mr. Epting and Mr. Kefalos suggested Ms. Gibson associate Mr. Howe and Mr. West in the Ameris Action.

18. On or about August 18, 2010, Heritage and Ms. Gibson Answered and asserted the Lender Claim(s) as against Ameris Bank in the Ameris Action.

19. On or about August 24, 2010, Galt Valley, LLC, ("Galt"), a buyer of distressed paper, purchased the Loan Documents from Ameris, and was substituted for Ameris in the Ameris Action by Consent Order; thereafter, Ameris remained in the Ameris Action only as a counterclaim defendant. Counsel continued to represent Ms. Gibson *as to* the Lender Claim in the Ameris Action pursuant to the April Agreement.

20. On separate and several occasions, Ms. Gibson asked Mr. Epting and Mr. Kefalos if she could pay the litigation costs on an hourly basis, instead of a contingent fee basis, to no avail. Mr. Epting and Mr. Kefalos advised Linda that *"Mr. Howe would*

not consider getting involved unless we took the case on contingency." Gibson Aff. at ¶ 2.

21. On or about October 25, 2010, Galt offered to settle its Deficiency Claim against Heritage and Ms. Gibson, *as guarantor,* for $1.5MM and conveyance of the Apartments by deed-in-lieu of foreclosure ("Galt First Offer"). Exhibit B.

22. On October 25, 2010, Counsel reported to Ms. Gibson (i) Counsel will charge a *reverse* fee computed on the amount Counsel is able to reduce the Deficiency Claim; and, that (ii) Counsel wants a mortgage to secure the *reverse* fee Award. Exhibit C.

23. At all relevant times, Ms. Gibson did not understand the concept of a "reverse" contingent fee arrangement, nor did she acknowledge, or accept, or consent to Counsels' proposed *reverse* fee arrangement. Gibson Aff. at ¶ 3.

24. On October 29, 2010, Mr. Kefalos contacted Mr. Paul Tecklenburg, Esq., ("Mr. Tecklenburg") regarding Counsels' proposed November Arrangement purporting the 1/3 *reverse* fee arrangement. Exhibit D.

25. On October 29, 2010, Mr. Kefalos sent to Mr. Tecklenburg the proposed *reverse* fee "Attorney-Client Contract" and mortgage, securing payment under the November Arrangement, for Mr. Tecklenburg to review with Ms. Gibson. Id.

26. On or about October 29, 2010, Counsel suggested to Ms. Gibson that she meet with Mr. Tecklenburg for a second "opinion" of Counsels' proposed *reverse* fee arrangement. Gibson Aff. at ¶ 3.

27. On or about November 1, 2010, Ms. Gibson, on advice of Counsel, met with Mr. Tecklenburg to review the proposed *reverse* fee arrangement.

28. On November 3, 2010, Ms. Gibson, by and through Counsel, rejected the First Galt Offer. Exhibit E.

29. Five (5) days later, on November 8, 2010, Galt *unilaterally* waived its Deficiency Claim and proposed a settlement by deed-in-lieu of foreclosure of the Apartment complex, and no more ("Galt Offer"). Exhibit F.

30. On November 11, 2010, Counsel received the Galt Offer.

31. On or about November 12, 2010, Ms. Gibson forthwith accepted the Galt Offer to convey the Apartment complex by deed-in-lieu of foreclosure in full and final settlement of the Deficiency Claim.

32. On November 18, 2010, Counsel presented to Ms. Gibson the November Arrangement and solicited she execute the "Attorney-Client Contract" thereby granting Counsel a *reverse* fee based on *"One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount $1,700,000.00"* plus *"costs and expenses reasonably and necessary incurred"* by Counsel. Exhibit G.

33. On December 1, 2010, Ms. Gibson and Galt executed the Galt settlement agreement and release ("Settlement Agreement") to fully compromise and settle the Deficiency Claim by deed-in-lieu of the Apartment complex. Exhibit H.

34. On December 8, 2010, Mr. Tecklenburg presented Ms. Gibson his attorney opinion ("Opinion") stating Ms. Gibson should execute the November Arrangement Counsel and Ms. Gibson had executed twenty (20) days earlier, on November 18, 2010. Mr. Tecklenburg states in his Opinion that *"[h]e also negotiated the total amount of the fee earned in the Ameris deficiency litigation to be limited to $567,000.00."* Exhibit I.

35. On December 8, 2010, Ms. Gibson, under protest and duress, granted Gedney Howe, Esq., *individually,* and John West, Esq., *individually,* ("Mortgagees") a mortgage ("Mortgage") against separate and several of Ms. Gibson's real properties, bearing TMS Nos. 271-00-01-003; 263-00-01-032; 248-00-02-042; 271-00-01-037; 271-00-01-040; 271-00-01-084; 271-00-01-185; and, 271-00-02-030 (the "Property"), of $566,666.66 to secure the payment of the *reverse* fee Award arising out of the November Arrangement. The Mortgage is recorded in the Berkeley County Land Registry at Bk-R VI-8734, Pg. 255. Exhibit J.

36. On or about February 17, 2012, Re/Max settled with Ms. Gibson for $850,000.00 ("Re/Max Settlement Proceeds") in the Re/Max Action.

37. On about February 17, 2012, Counsel pressured Ms. Gibson to pay Counsel the $566,666.66 fee purportedly due under the November Arrangement in the Ameris Action out of the Re/Max Action Settlement Proceeds.

38. Ms. Gibson voiced her concern that she needed the Re/Max Settlement Proceeds to satisfy a certain unrelated mortgage obligation maturing then. Ms. Gibson expressed to Counsel disagreement and dismay at having to pay this $566,666.66 fee Award, to no avail. Ms. Gibson, under protest and duress, paid the $566,666.66 out of the Re/Max Action Settlement Proceeds to satisfy the Ameris Action *reverse* fee. Exhibit K.

39. On or about February 17, 2012, Counsel disbursed the Re/Max Action Settlement Proceeds in the amount $566,666.66 to satisfy Counsels' *reverse* fee claim in the Ameris Action, leaving the Re/Max contingent fee due unfunded in the amount $280,500.00.

40. Ms. Gibson was under duress to oppose the *reverse* fee Award because Counsel was representing Ms. Gibson in then ongoing Lender Claim litigation in the Ameris Action directly connected to the Apartments, Loan Documents and guaranty obligation. Ms. Gibson avers she felt pressured by Counsel to satisfy the November Arrangement *reverse* fee Award out of the Re/Max Action Settlement Proceeds and, in fact, did so under duress, for fear of losing favor with Counsel in the ongoing litigation.

41. On March 24, 2012, Mr. Howe and Mr. West executed and recorded a partial release of the Mortgage lien for an unknown amount in the Berkeley County Land Registry at Bk-R VI-8868, Pg. 20. Exhibit L.

42. On even date herewith, Mr. Epting and Mr. Kefalos hold an existing mortgage lien in the amount $297,000.00 against Ms. Gibson's properties stated above to secure the unfunded Re/Max contingent fee of $280,500.00 purportedly due counsel from the Re/Max Action.

43. Ms. Gibson has never met Mr. Howe, nor talked with him or received any documents from him or any person of his law firm. Ms. Gibson avers she is unaware as to his role in her litigation affairs. Gibson Aff. at ¶ 4.

44. Ms. Gibson has never talked with Mr. West concerning the Ameris Action, Re/Max Action, Re/Max Settlement Proceeds distribution, November Arrangement, or otherwise. Gibson Aff. at ¶ 5.

45. Counsel neglected, or otherwise refused, to provide to Ms. Gibson any financial accounting of the basis on which Counsel computed the $1.7MM "dollar marker" Counsel utilized to calculate its one-third $566,666.66 *reverse* fee Award. Id.

46. At all relevant times, Counsel neither filed nor served any pleadings, discovery, depositions, subpoenas or other papers *as to the* Deficiency Claim.

47. In December 2010, shortly after execution of November Arrangement documents, Mr. Michael Danhour, ("Mr. Danhour"), of Galt, told Ms. Gibson Galt always

intended to waive its Deficiency Claim in return for a deed-in-lieu of foreclosure when she met him to transfer Apartment keys. Mr. Danhour implied Counsel *"cost her a lot of money"* when she could have just *"handed over the deed to the Apartments."* Gibson Aff. at ¶ 7.

48. In September 2011, Ms. Gibson began to suspect the offense of the *reverse* fee Award, and the extent of the excessive fee, at a deposition exam during which opposing counsel ("Deposition Counsel") in the Re/Max Action examined Ms. Gibson's understanding of her *reverse* fee arrangement. Immediately following the deposition, Ms. Gibson expressed her concern and dismay as to $566,666.66 *reverse* fee Award to Mr. Kefalos, to no avail. Mr. Kefalos dismissed Deposition Counsel's exam of the *reverse* fee as mere posturing to discredit her Counsel. Gibson Aff. at ¶ 6.

49. In November 2012, Ms. Gibson met with her certified public accountant, ("CPA"), unrelated to the Ameris Action. During this meeting, the CPA inquired about the $566,666.66 fee she paid, which charged Ms. Gibson's concerns and deepened her resolve to discuss the $566,666.66 fee arrangement again with Counsel. Gibson Aff. at ¶ 11.

50. On these data points - *i.e.*, Mr. Danhour's statements, Deposition Counsel's exam and her CPA's inquiry, Ms. Gibson began in earnest to question the propriety of the $566,666.66 fee Award she paid Counsel in connection with the Deficiency Claim. Gibson Aff. at ¶¶ 10-12.

51. On separate and several occasions, Ms. Gibson communicated with Counsel her disagreement and dismay of having to pay the $566,666.66 fee Award, to no avail. Counsel rejected Ms. Gibson's inquires as to the fee arrangement and re-directed Ms. Gibson's inquires away from the fee arrangement onto other litigation matters. Gibson Aff. at ¶ 13.

52. On or about February 15, 2013, Ms. Gibson met with Mr. Epting and Mr. Kefalos "one last time" for the specific purpose to discuss and resolve the $566,666.66 fee Award. At this meeting, in response to Ms. Gibson's inquiries concerning the November Arrangement and fee, Mr. Epting told Ms. Gibson a fable of legends of *"skillful attorneys"* who *"can get the job done with but a phone call"* and that *"she should be happy she got the result she wanted."* Ms. Gibson, having paid $566,666.66 to Counsel she did not feel appropriate felt further dismay and frustration as to this excessive fee. Gibson Aff. at ¶ 14.

53. On March 8, 2013, Ms. Gibson's undersigned counsel served Counsel a proposal to settle the *reverse* fee claim, to no avail.

54. On April 30, 2013, Ms. Gibson's undersigned counsel served Counsel a demand the Re/Max Action Settlement Proceeds, to the extent of $566,666.66, plus accrued interest thereon, wrongfully converted to satisfy the Ameris Action *reverse* fee arrangement, be deposited in escrow with an independent third party (law firm) pending resolution of this fee disagreement, to no avail. Counsel did not respond to the April 30, 2013 demand.

FOR A CAUSE OF ACTION

COUNT I
Breach of fiduciary duty
(as to all defendants)

55. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

56. At all relevant times, Ms. Gibson occupied an attorney-client relationship with Counsel, *jointly and severally.*

57. A fiduciary relationship exists between attorney and client.

58. Ms. Gibson imposed a relationship of trust and confidence in Counsel which Counsel expressly acknowledged and accepted by the April Agreement and consideration.

59. At all relevant times, Counsel owed Ms. Gibson a duty of care and of loyalty to protect and advance Ms. Gibson's interest without negligence or *self*-dealing.

60. Counsel breached their fiduciary duties by misrepresenting, or otherwise failing to fully disclose, to Ms. Gibson the nature of Counsels' fee arrangement as fastening both a *straight* and *reverse* fee obligation as to the Ameris Action.

61. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, a *reverse* fee Award of 1/3 of $1.7MM is excessive,

unconscionable and not commensurate with a reasonable fee to prepare a routine deed-in-lieu of foreclosure.

62. Counsel breached their fiduciary duties by misrepresenting, or otherwise failing to disclose, to Ms. Gibson, her recoupment claims, equities and defenses in the computation of the *reverse* fee Award.

63. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, the *reverse* fee Award was based on an indeterminate $1.7MM "dollar marker," not adjusted for recoupment claims and defenses.

64. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to fully disclose, the nature of the November Arrangement was, in fact, a "second" fee arrangement (i) not contemplated by the April Agreement; (ii) unsupported by consideration; (iii) for work Counsel had a pre-existing contractual obligation (under the April Agreement); and/or, (iv) to the extent Counsel avers contemplated by the April Agreement, a material fee modification of the April Agreement.

65. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, the meeting with Mr. Tecklenburg to review or "approve" Counsels' *reverse* fee arrangement was for Counsels' benefit, not Ms. Gibson's benefit.

66. Ms. Gibson realized no benefit from the "second" opinion of counsel whereas, *substantively,* a "second" opinion could serve, at most, a reaffirmation of Counsels' conduct, whether or not proper.

67. Ms. Gibson avers Counsels' suggestion she get a "second" opinion served Ms. Gibson no purpose, but a waste of her time for Counsels' sole benefit.

68. Counsel, in fact, by initiating and directing Ms. Gibson to get a "second" opinion, realized the substantial benefit of the appearance of credibility of good faith and fair dealing for their perverse, and illegitimate, effort to induce Ms. Gibson to execute the *reverse* fee Agreement for Counsels' sole benefit.

69. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, at execution of the November Arrangement, the November Arrangement was, in fact, a fee change order, unsupported by consideration without mutuality of obligation.

70. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, at execution of the November Arrangement, Counsels' performance under the November Arrangement required no additional attorney work product not contemplated by the April Agreement.

71. Counsel breached their fiduciary duties of loyalty to Ms. Gibson by *self*-dealing in the assets of the litigation estate; *namely,* Ms. Gibson's entitlement to recover the benefit of Galt's *unilateral* waiver of the Deficiency Claim.

72. Counsel breached their fiduciary duty of loyalty to Ms. Gibson by *self*-dealing in the litigation estate reachable by Counsel only through Counsels' confidential attorney-client relationship.

73. Counsel breached their fiduciary duties of loyalty to Ms. Gibson by failing to disclose at the outset of the Ameris Action that (i) Counsel would require mortgages against Ms. Gibson's properties to secure payment of fees; and, that (ii) future fee arrangements can arise during the course of the litigation.

74. Counsel breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose the November Arrangement contained misleading material facts of which Counsel was aware, and Ms. Gibson was not, at execution of the Attorney-Client "Contract" – *to wit:* (i) *"Client hereby hires "Law Firm" in the defense and pursuit of a counterclaim"* when, in fact, (a) Counsel had already been engaged under the April Agreement; and, (b) the "defense" of the deficiency liability already had been settled, and extinguished; and, (ii) *"leaving a potential deficiency judgment of $1.7MM"* when, in fact, Counsel knew the Deficiency Claim had already been waived, leaving no deficiency; and, (iii) *"[f]or their services, Law Firm shall receive a fee based upon []... "One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount $1,700,000.00"* when, in fact, (a) the "sums saved" *for the purposes* of computing the *reverse* fee Award was already certain and known to Counsel to be $566,666.66; and, (iv) that Counsel *"will advance these costs during the prosecution of the case..."* when, in fact, there was no case to prosecute (or defend) *as to the* Deficiency Claim because

the deficiency contemplated in the November Arrangement had prior been settled by deed-in-lieu of foreclosure.

75. As a direct and proximate result of Counsels' wrongful conduct, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT II

Aiding and Abetting Breach of Fiduciary Duty

(as to defendants Howe and West)

76. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

77. At all relevant times, Ms. Gibson. occupied an attorney-client relationship with Mr. Howe and Mr. West.

78. Defendants Mr. Howe and Mr. West knowingly, with purposeful intent, directly participated in the design, solicitation, negotiation, execution, or otherwise ratified, the $566,666.66 *reverse* fee arrangement set forth in the November Arrangement.

79. Defendants Mr. Howe and Mr. West knew, or should have known, at the execution of the November Agreement, the *reverse* fee arrangement conferred no cognizable benefit to Ms. Gibson, but unduly and unfairly compensated Counsel to Ms. Gibson's substantial loss.

80. As a direct and proximate result of Mr. Howe and Mr. West's wrongful conduct, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT III

Negligent Misrepresentation

(as to all defendants)

81. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

82. At all relevant times, Counsel owed Ms. Gibson a duty to make full disclosure of all material facts relating to or concerning Counsels' fee arrangement, the amount of the fee Award, percent of recovery and basis to compute the fee Award.

83. Counsel did not disclose fully material facts necessary for Ms. Gibson to make an informed decision.

84. Counsels' conduct of omitting certain material facts and circumstances relevant to and bearing on the amount of Counsels' fee award, *namely,* that Ms. Gibson held certain affirmative defenses to mitigate the deficiency liability, and thereby reduce the Deficiency Claim, *for the purposes of computing* the fee Award, constitutes misrepresentation.

85. Counsel had a pecuniary interest in making the false and misleading representations, and omitting material facts.

86. Ms. Gibson reasonably and justifiably relied on Counsels' misleading statements, misrepresentations, and omission of material facts relating to and bearing on the *reverse* fee Award.

87. As a direct and proximate result of Counsel's omission of material facts stated above and others, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT IV

Unjust enrichment

(as to all defendants)

88. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

89. Ms. Gibson unsuspectingly, and inadvertently, conferred $566,666.66 to Counsel without fully informed knowledge, mutual assent, mutual obligation, actual consent or intention under the *reverse* fee November Arrangement with Counsel.

90. Counsels' only consequential means to mitigate the Deficiency Claim was to prosecute the Lender Claims, both claims being in repose to each other claim arising out of the same Loan Documents, concerning a single asset (Apartments) between the same parties; and, therefore, and for other reasons stated herein, a mortgage foreclosure cannot support two separate fee Awards; and, in any event, the *reverse* fee Award is excessive. For these reasons, Counsel is unjustly enriched by the *reverse* fee arrangement.

91. Counsel obtained the *reverse* fee Award without valid consideration.

92. Counsel is unjustly enriched by receipt of Ms. Gibson's property – *to wit:* $566,666.66, and that certain mortgage lien estate interest.

93. It is inequitable for Counsel to retain the benefit of their ill-gotten gains.

94. As a direct and proximate result of Counsel's unjust enrichment, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT V
Conversion
(as to all defendants)

95. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

96. Ms. Gibson is the true and lawful owner of that certain real and personal property the subject of this action.

97. Counsel unlawfully exercised, and continues to exercise, to the exclusion of Ms. Gibson's lawful interest, dominion and control over real and personal property belonging to Ms. Gibson the subject of this action. Specifically, $566,666.66, accrued interest thereon, and certain estate interest encumbered by Counsels' mortgage liens on Ms. Gibson's properties.

98. The specific amount of money belonging to Ms. Gibson and converted by Counsel is $566,666.66, plus accrued interest thereon from the date of payment.

99. The specific real Property estate interest encumbered (converted) belonging to Ms. Gibson are Ms. Gibson's properties bearing TMS Nos. 271-00-01-003; 263-00-01-032; 248-00-02-042; 271-00-01-037; 271-00-01-040; 271-00-01-084; 271-00-01-

185; and, 271-00-02-030, to the extent of $297,000.00, as more fully described in Exhibit J.

100. As a direct and proximate result of Counsels' unlawful conversion of Ms. Gibson's real and personal property, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT VI

Common Law Actual Fraud

(as to all defendants)

101. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

102. Counsels' conduct of making knowing false and misleading statements, and failing to disclose material facts relating to and concerning the *reverse* fee arrangement, constitutes common law fraud.

103. Specifically, Counsel participated in a profiteering scheme to direct $566,666.66 away from Ms. Gibson, by and through engineering, drafting, advising and soliciting the November Arrangement containing misleading material facts and/or omissions, of which Counsel was aware, and Ms. Gibson was not, at execution of the November Arrangement documents –*to wit:* (i) *"Client hereby hires "Law Firm" in the defense and pursuit of a counterclaim"* when, in fact, (a) Counsel, under the April Agreement, was already engaged; and, (b) the "defense" of the deficiency liability already had been settled and extinguished; and, (ii) *"leaving a*

potential deficiency judgment of $1.7MM" when, in fact, Counsel knew Galt waived the Deficiency Claim; and, (iii) *"[f]or their services, Law Firm shall receive a fee based upon []..."One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount $1,700,000.00"* when, in fact, the "sum saved" *for the purposes* of computing the illegitimate *reverse* fee Award was certain and known to Counsel to be $566,666.66; and, (iv) that Counsel *"will advance these costs during the prosecution of the case..."* when, in fact, there was no case to prosecute (or defend) *as to the* Deficiency Claim because the deficiency contemplated in the November Arrangement had been settled prior thereto.

104. Counsel made the foregoing statements, and others, with knowledge of their falsity, or omissions, and/or with conscious disregard for the lack of veracity, or full disclosure of material facts, in the statements.

105. At all relevant times, Counsel owed Ms. Gibson a duty to disclose all material facts as to the *reverse* fee Award and did not.

106. Counsel made the foregoing, and other, statements with the intent to lure Ms. Gibson's action in reliance on the statements, *namely,* to induce Ms. Gibson to execute the November Arrangement.

107. Ms. Gibson was without knowledge of the falsity, and omissions, of the foregoing statements, and did not possess the legal acumen to discern and distinguish a *straight* contingency fee from a *reverse* fee arrangement.

108. Ms. Gibson reasonably and justifiably relied on Counsels' misleading and false statements in the November Arrangement, corroborated by Counsels' conduct at execution of the "Attorney-Client Contract."

109. As a direct and proximate result of Counsels' wrongful conduct, misstatements and omissions, in and attendant to the November Agreement, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT VII

Constructive Fraud

(as to all defendants)

110. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

111. Counsels' conduct of negligently making false and misleading statements, and failing to disclose material facts relating to and concerning the April Agreement, and the *reverse* fee arrangement, constitutes constructive fraud.

112. Counsel made the foregoing statements, and omissions, set forth in this Complaint and incorporated herein, with knowledge of its falsity or ignorance of its truth.

113. At all relevant times, Counsel owed Ms. Gibson a duty to disclose all material facts as to the *reverse* fee Award.

114. Counsel breached its duty owing Ms. Gibson by failing to disclose all material facts as to the *reverse* fee Award.

115. Counsels' conduct did cause Ms. Gibson's action in reliance on the statements, and omissions, *namely,* Counsels' wrongful conduct induced Ms. Gibson to execute the November Arrangement.

116. Ms. Gibson was without knowledge of the falsity, or omissions, of the foregoing statements, and did not possess the legal acumen to discern a *straight* contingent fee from a *reverse* fee arrangement.

117. Ms. Gibson reasonably and justifiably relied on the misleading and false statements in the November Arrangement.

118. As a direct and proximate result of Counsels' misleading and false statements, and omissions, in the November Arrangement, and Counsels' wrongful conduct attendant thereto, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT VIII
Breach Contract
(as to all Defendants)

119. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

120. Ms. Gibson and Counsel entered and executed a valid binding contract (April Agreement) whereby Counsel would provide legal Services to Ms. Gibson "on a contingency" basis for a percent fee of recovery of the Lender Claims.

121. The April Agreement imposed on Counsel an obligation of good faith and fair dealing owing Ms. Gibson.

122. Counsel breached the implied covenants of good faith and fair dealing in the performance and discharge of their contractual obligations under the April Agreement by, inter alia, engaging in conduct of misrepresentation and adhesion *as to the* Deficiency Claim *reverse* fee Award whereas Counsel (a) failed, or otherwise neglected, to disclose material facts; and, (b) concurrently represented Ms. Gibson in then ongoing Lender Claim litigation in the same action, on the same Loan Documents, between the same parties.

123. At execution of the November Arrangement, Ms. Gibson was represented by the same Counsel representing her interests in Lender Claim litigation in the Ameris Action.

124. At execution of the November Agreement, Counsel was privy to material information unknown to Ms. Gibson; *namely,* inter alia, Galt's uncontroverted $1.7MM Deficiency Claim was not an appropriate basis to compute the $566,666.66 fee Award.

125. Ms. Gibson reasonably and justifiably relied on Counsels' appearance of good faith and fair dealing at the time she executed the November Arrangement.

126. The April Agreement's terms obligate Counsel to endeavor to recover a $20,000.00 retainer fee ("Retainer Fee") Ms. Gibson paid her former attorney, The Richter Law Firm ("Mr. Richter"). Counsel neglected, or otherwise failed, to advance Ms.

Gibson's interest to recover the $20,000.00 Richter Retainer Fee, and therefore is in breach the express terms of the April Agreement. Exhibit A.

127. The April Agreement's terms contemplate a contingent fee arrangement to represent Ms. Gibson in connection with Mr. Paul Moore ("Mr. Moore"). Counsel did so, and recovered $24,800.00 ("Moore Settlement"). Counsel allocated and disbursed 100% of the Moore Settlement to Counsel. Ms. Gibson avers no contingent fee arrangement can contemplate 100% of the settlement proceeds be attorney fees; and, so, Counsel is in breach of the express terms of the April Agreement. Ms. Gibson asserts entitlement to a refund of two–thirds (2/3) of the Moore Settlement proceeds, or $16,616.00. Exhibit M.

128. As a direct and proximate result of Counsels' breach of the express and implied covenants of good faith and fair dealing, and the express agreement(s) concerning the Richter Retainer Fee, and Moore Settlement, Ms. Gibson suffered damages in excess of $500,000.00.

COUNT IX
Action for Accounting
(as to all Defendants)

129. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

130. At all relevant times, Counsel and Ms. Gibson occupied a relation of mutual trust and confidence by the nature of their attorney-client relationship.

131. Ms. Gibson entrusted money to Counsel, in trust, for Ms. Gibson's benefit.

132. The trust, confidence and nature of the attorney-client relationship imposes a burden on Counsel to account to Ms. Gibson all financial transactions and accounting relating to the attorney-client relationship.

133. Ms. Gibson is entitled to the full and complete disclosure of the financial accounts and accounting the subject of the Ameris Action, Re/Max Action, Re/Max Settlement Proceeds distribution, and, *generally,* any and all statements of or relating to all income, receipts, receivables, distributions, payments, fee-sharing and attendant agreements concerning their attorney-client relation (*together and collectively,* the "Accounting").

134. On or about November 29, 2012, and then again on May 9, 2013, Ms. Gibson requested an Accounting from Counsel.

135. Counsel failed to provide an Accounting as requested by Ms. Gibson, but for certain time slips consisting of and relating to the following periods: by Mr. Epting (6/14/210 *through* 3/22/2012 (Ameris)); (4/5/2010 *through* 12/2/2010 not-Ameris)); and, by Mr. Kefalos (8/17/2010 *through* 12/15/2010).

136. Counsel provided no Accounting for the following periods: for Mr. Epting (1/1/2010 *through* 6/14/2010 and 3/22/2012 *through* present); and, for Mr. Kefalos, (1/1/2010 *through* 8/17/2010 and 12/15/2010 *through* present); and, for Mr. Howe, (7/1/2010 *through* present); and, for Mr. West, (7/1/2010 *through* present).

137. As a direct and proximate result of the lack of transparency of accounts, and the Accounting, Ms. Gibson sustained, and continues to sustain, damages of unknown, as yet ascertainable, pecuniary and non-pecuniary loss.

COUNT X
Undue Influence
(as to all Defendants)

138. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

139. At all relevant times, Ms. Gibson occupied a relationship of trust and confidence with Counsel.

140. At all relevant times, Ms. Gibson was in a susceptible, impressionable and vulnerable relation to Counsel as to her legal and financial affairs because, and for other reasons, Ms. Gibson is not trained in the law; and, in any event, she decidedly retained Counsel to represent her interest.

141. Ms. Gibson was influenced by Counsels' opinion and advice *as to the* November Arrangement and, Counsels' request that the $566,666.66 fee be paid out of the Re/Max Action Settlement Proceeds to satisfy the Ameris Action *reverse* fee Award.

142. On or about November 18, 2010, by and through the November Arrangement, Counsel engaged in profiteering by its conduct of engineering, drafting, presenting

and advising Ms. Gibson to execute the November Arrangement for Counsels' benefit adverse to Ms. Gibson's interest.

143. Counsel initiated Ms. Gibson seek "independent advice" from Mr. Tecklenburg; and, Counsel initiated direct talks with Mr. Tecklenburg regarding Counsels' fee arrangement.

144. The parties' execution, and performance, of the November Arrangement is an unnatural transaction, without adequate consideration, entered into and executed *nunc pro tunc* on the basis of a *non*-aleatory promise.

145. The disposition to exercise undue influence to accomplish the unnatural transaction (November Arrangement) was motivated by Counsel without Ms. Gibson; and, without her fully informed consent and awareness of the nature of the *reverse* fee arrangement.

146. Counsel achieved its desired result – *e.g.*, Ms. Gibson executed the *reverse* fee November Arrangement documents, and paid Counsel $566,666.66, as a plain result of Counsels' undue influence.

147. As a direct and proximate result, Ms. Gibson sustained, and continues to sustain, damages in excess of $500,000.00.

COUNT XI

Action for Equitable Indemnity

(as to all Defendants)

148. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

149. The April Agreement terms provide Counsel will represent Ms. Gibson "on a contingency."

150. Ms. Gibson will suffer substantial financial loss if she is required to pay additional attorney fees, costs and expenses in the Ameris Action for both trial counsel and appellate counsel, if any, outside the April Agreement.

151. Ms. Gibson will likely incur substantial additional attorney fees, costs and expenses, but for Counsels' conduct, she otherwise would not.

152. Counsel has a fiduciary duty, and contractual obligation, arising out of the April Agreement, to indemnify Ms. Gibson against any additional trial or appellate counsels' attorney fees, costs and expenses to the extent of any amount outside the April Agreement.

153. Separately, Ms. Gibson is entitled to recovery attorney fees and costs attendant to the instant action because Counsel, by its own wrongdoing, involved Ms. Gibson in this fee action, and made it necessary she incur attorney fees and costs, to protect her interest, she otherwise would not, but for Counsels' malfeasance and neglect; and, Counsels' refusal to resolve this fee dispute without litigation.

154. As a direct and proximate result, Ms. Gibson sustained, and continues to sustain, exposure to additional attorney fees, costs and expenses attendant to the Ameris Action, any appeal, and the instant action, not contemplated by the April Agreement.

COUNT XII

Action for Declaratory Judgment
Uniform Declaratory Judgments Act, § 15-53-30, *et. seq.*
(as to all Defendants)

155. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

156. Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable because, inter alia, the November Arrangement lacks mutuality of assent, mutuality of obligation and consideration.

157. Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable because, inter alia, a *straight* contingent fee and *reverse* fee of 1/3 of both the Lender Claim and the Deficiency Claim "recovery" in an action to foreclose a single mortgage is *prima facia* inequitable as to the distressed borrower-mortgagor and guarantor, Ms. Gibson.

158. Ms. Gibson requests this Court declare the November Arrangement *reverse* fee Award amount unenforceable; and, so, set-aside, rescind or otherwise reform the "Attorney-Client Contract."

159. Ms. Gibson requests this Court declare the $566,666.66 fee Award excessive and restore to Ms. Gibson, *together with* accrued interest thereon, from the date of payment, that amount remaining after a reasonable *quantum meruit* fee allocated Counsel commensurate with like-kind "deed-in-lieu" work product.

160. Ms. Gibson request this Court declare the *reverse* fee November Arrangement, if enforceable, be based on a load-star method, commensurate with Rule 1.5(a), RPC, Rule 407, SCACR; or, otherwise, not to exceed like-kind deed-in-lieu of foreclosure work product.

161. Ms. Gibson affirmatively preserves her right to a trial by Jury, and all appeals, if any, without limitation, allowable pursuant to the Uniform Declaratory Judgments Act, § 15-53-90, *et. seq.*, and in equity.

162. Ms. Gibson requests this Court award her reasonable attorney fees, costs and expenses attendant to prosecuting this declaratory action, pursuant to S.C. §15-53-100.

COUNT XIII

Action for Violation of The South Carolina
Unfair Trade Practices Act, §39-5-10, *et. seq.*
(as to all Defendants)

163. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

164. The engineering, drafting, solicitation and execution of the November Arrangement, and the receipt of substantial funds therefrom, constitutes unfair and deceptive conduct.

165. Counsel, *jointly and severally*, willfully and/or knowingly participated in the unfair and deceptive conduct by collaborating together to create the appearance of a complex deed-in-lieu transaction requiring four (4) attorneys' time and expertise; Counsel did so to (i) justify the $566,666.66 fee. However, *as to the* Deficiency Claim, the transaction is but a routine deed-in-lieu of foreclosure.

166. Counsel, fortified with the credibility of four (4) attorneys posing a complex deed-in-lieu conveyance, when it is not, willfully and/or knowingly did induce Ms. Gibson to enter into the $566,666.66 *reverse* fee arrangement.

167. A $566,666.66 fee for a deed-in-lieu of foreclosure is excessive and grossly disproportionate to the novelty, time and complexity required, and therefore unfair.

168. Counsels' unfair and deceptive conduct concerns, or otherwise impacts, the public interest because, inter alia, attorneys (i) collaborating to create the appearance of complex litigation to (ii) collect a paired *straight* and a *reverse* fee, in an action to foreclosure a single mortgage, of 1/3 of the deficiency of the public's mortgage debt without (iii) full disclosure to the client (public) of the basis to compute the fee will result in substantially higher attorney fees and profiteering in foreclosures – *to wit:* if Counsels' conduct is allowable, South Carolina foreclosure attorneys will reap substantial fees on mortgage debt at the public's expense.

169. A *straight* and *reverse* fee in an action to foreclosure a single mortgage directly, and substantially, impacts the public's costs for legal services; particularly, where the paired fee contemplates a third of both the lender and deficiency claim.

170. Counsels' conduct has the potential for repetition because of the substantial fee windfall attorneys would collect when mortgagees waive deficiency claims in foreclosure actions.

171. As a direct and proximate result of Counsels' conduct, the public's interest is upset, Ms. Gibson sustained damages in excess of $500,000.00; and, hereby demands treble damages pursuant to S.C. Code §§ 39-5-140, 39-5-20.

CONCLUSION

On the foregoing facts and Counts, Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable, and the $566,666.66 fee is excessive, - *e.g.,* computed on a bald $1.7MM "dollar maker", rather than an earned percentage of the deficiency saved; without "contingency" risk; and, not commensurate with the time, novelty and risk taken by Counsel, *as to the* Deficiency Claim, particularly given Galt's *unilateral* waiver of its deficiency.

WHEREFORE, Ms. Gibson respectfully requests this Honorable Court enter Judgment, Orders and Relief that:

(i) Set aside, rescind or otherwise reform, the November Arrangement "contract"; and,

(ii) Declare the $566,666.66 fee Award excessive; and,

(iii) Ms. Gibson is entitled to recover $566,666.66 she paid to Counsel, *together with* accrued interest thereon, from the date of payment, after a reasonable fee paid Counsel commensurate with like-kind deed-in-lieu work product; and,

(iv) Ms. Gibson is entitled to recover $20,000.00 she paid to the Richter Law Firm, *together with* accrued interest thereon, from the date of payment; and,

(v) Ms. Gibson is entitled to recover $16,616.00 she paid to Counsel, or two-thirds (2/3) of the recovery of the Moore Settlement, *together with* accrued interest thereon, from the date of payment; and,

(vi) Release the present $297,000.00 Mortgage Lien Counsel recorded against Ms. Gibson's real property; and,

(vii) All settlement proceeds received by Counsel in that certain ongoing Berkeley County Ameris Action styled as *Linda A. Gibson, et. al., v. Ameris Bank,* Case No.: 2010-CP-08-2134, be deposited with this Court pending resolution of this fee dispute; and,

(viii) Counsel equitably indemnify Ms. Gibson twenty-percent (20%) of any attorney fees, costs and expenses incurred attendant to the Ameris Action outside the April Agreement; and

(ix) Award Ms. Gibson attorney fees, costs and expenses attendant to the instant action; treble damages, pursuant to S.C. Code §§ 39-5-140, 39-5-20; and, such other and further relief as this Court deems fair and just.

JURY TRIAL DEMANDED

Plaintiffs demand trial by jury on all issues so triable.

Respectfully Submitted,

LINDA A. GIBSON, *Individually, and in capacity as* TRUSTEE *of* THE PAUL WILLIAM GIBSON FAMILY TRUST, *and,*
HERITAGE SEVEN, LLC, *and,*
SEVEN OAKS APARTMENTS, LLC, *and,*
3205 PALM BOULEVARD, LLC,

By Their Counsel,

James R. Davis, Esq., #100358
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Daniel Island, SC 29492
800.983.0455 (office)
800.983.0153 (fax)
843.364.2218 (direct)
jim@jdavispc.com

Dated: July 26, 2013

STATE OF SOUTH CAROLINA

CHARLESTON, SS

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: _____

LINDA A. GIBSON, *et. al.*

Plaintiffs

vs.

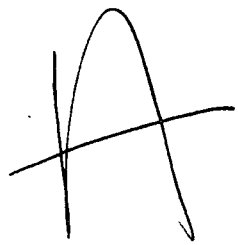
ANDREW K. EPTING, JR., LLC, *et. al.*

Defendants

EXHIBITS

EXHIBITS

Exhibit	Description
A	APRIL AGREEMENT
B	GALT FIRST OFFER
C	EPTING OCTOBER 25, 2010 LETTER
D	KEFALOS EMAIL TO TECKLENBURG
E	EPTING NOVEMBER 3, 2010 LETTER
F	GALT NOVEMBER 8 OFFER "WAIVE DEFICIENCY"
G	NOVEMBER 18, 2010 "Attorney-Client Contract"
H	GALT SETTLEMENT AGREEMENT
I	TECKLENBURG OPINION
J	COUNSEL FIRST RECORDED MORTGAGE
k	RE/MAX ACTION DISBURSEMENT SCHEDULE
L	PARTIAL RELEASE OF MORTGAGE
M	MOORE ACTION DISBURSEMENT SCHEDULE



ANDREW K. EPTING, JR.
ATTORNEY AT LAW

EXHIBIT
A

April 7, 2010

Linda Gibson
133 Horse Trail Road
St. George, SC 29477

Re: Gibson, Linda – Matter #2042-001

Dear Linda,

So, let's supplement our fee agreement with this writing. You have asked that George and I help with the larger work out of your financial problems:

1. Return of the Richter fee;
2. Save your home and farm in St. George;
3. Keep creditors at bay on Daniel Island;
4. Ditto the shopping center;
5. The beach house: try to work you out of this without losing other assets. I am not, at this time, taking on defending this suit.

We agree that George and I will charge you $400.00 per hour. I will use Rhonda McCraw, together with our paralegals, where necessary. We do not bill in increments of less than .2 of an hour, and do not bill cost except those billed to me by a third party or for travel. You agree to send a check every month for $2,500.00, beginning at the time of the execution of this letter agreement, to be applied to these services. George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010.

Linda, as I told you, you have some serious problems here. I guarantee no results, but I will give you my best.

With kindest regards,

ANDREW K. EPTING, JR., LLC

Drew

Andrew K. Epting, Jr.

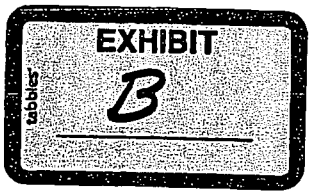
AKE:rb

AGREED: _____ DATE: _____
Linda Gibson

ANDREW K. EPTING, JR., LLC
3 STATE STREET – CHARLESTON, SC – 29401
PHONE: (843) 377-1871 – FAX: (843) 377-1310 – E-MAIL: AKE@EPTING-LAW.COM

B

Ian D. McVey - Attorney
803-404-6900
IanMcVey@callisontighe.com



FOR SETTLEMENT PURPOSES ONLY

October 25, 2010

VIA FACSIMILE (843.377.1310)
Andrew K. Epting, Jr.
Andrew K. Epting, LLC

Re: Galt Valley, LLC v. Linda A Gibson, *et al.*
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

As of October 22, 2010, a total of $3,035,678.10 is owed pursuant to the terms of the Notes, Guaranties, and Mortgage. Breakdowns for each loan follow:

Loan #1:

Principal Balance:	$2,796,466.75
Interest to October 22, 2010: Per Diem, $349.5563437	$146,813.66
Late Fees:	$300.00
Property Taxes Paid:	$22,382.46
Appraisal:	$150.00
Costs of Collection:	$1,169.10
Attorney's Fees:	$9,367.00
Total for Loan #1:	**$2,976,648.97**

Loan #2:

Principal Balance:	$50,071.96
Interest to October 22, 2010: Per Diem, $22.2542044	$8,857.17
Late Fees:	$100.00
Total for Loan #2:	**$59,029.13**

Based upon my client's valuations of the properties in question, the collateral has a total value of $1,338,000.00. This is based upon a value for 2625 Otranto Road of $1,000,000.00 and a value for 615 Klister Lane of $338,000.00. You will recall that Geoff Southerd testified that the value of 2625 Otranto Road was $750,000.00; however, for purposes of this letter, my client is assigning it a value of $1,000,000.00. This leaves $1,697,678.10 deficiency for which your clients are liable, jointly and severally.

With the foregoing as a basis, my client is willing to resolve this matter on the following terms:

a. Your client will execute a non-merger deed-in-reduction for both properties in favor of Galt Valley, LLC or a related entity including an assignment of all leases, contracts, rental agreement, or the like currently in place for both properties. In the event that a title update reveals any further liens, your client will consent to foreclosure with a waiver of all defenses as they apply to Galt Valley, LLC;

b. Your client will execute a new promissory Note in the total amount of $1,500,000.00 in favor of Galt Valley, LLC. Said Note shall have a term of twenty (20) years with interest accruing at five (5%) percent per anum with monthly payments of principal and interest in the amount of $9,899.34;

c. Your client will execute whatever documents are necessary to ensure Galt Valley, LLC has a first priority lien on sufficient unencumbered collateral to secure the Note, including but not limited to Mortgages, UCC Liens, and/or Assignments of Rents and Leases; and

d. Linda Gibson will execute Guaranty Agreements on behalf of herself and the Paul William Gibson Family Trust guaranteeing payment and performance of the Note by the borrower.

Assuming the above terms are acceptable and no other liens have been filed, the parties will further agree to dismiss all claims against one another as they relate to the Notes, Guaranties and Mortgages which are the subject of this action. I would appreciate you presenting this offer to your client and letting me know something by the end of the week.

This correspondence is for settlement purposes only. Nothing herein shall be construed to be an admission by the Plaintiff nor a waiver of any right, remedy, defense or cause of action available to Galt Valley, LLC.

I look forward to hearing from you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

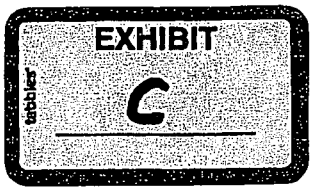
Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile 843.377.1310)
John S. West, Esquire (via facsimile 843.761.5027)
Gedney M. Howe, III, Esquire (via facsimile 843.722.2140)

bcc: Jeremiah A. Henderson, III, President and Operating Manager
Galt Valley, LLC (via email)
Michael Danhour (via email)

ANDREW K. EPTING, JR.
ATTORNEY AT LAW



October 25, 2010

Linda Gibson
133 Horse Trail Road
St. George, SC 29477

RE: Various Matters

Dear Linda,

I want to review your various files in this office.

The case against Rolando, Re/Max and Paul Moore is a contingency case (2042-001). It is our present intention to move this case to the end of the line and pursue it after the suit filed against you and your entities in Berkeley County.

The Berkeley County case is a contingency fee case (2042-003). The fee is based upon what, if anything, we are able to save you off of the debt pursued by Ameris and Galt. As I explained to you John West and Gedney Howe are associated, and they want a mortgage to secure this fee. We can talk about this after George and my discussion with Jay Davis.

There is a third case that I opened (2042-002), having to do with the selection of the issues concerning your financial health (attached letter of 4-7-2010). Most of my efforts in this case are related to talking to Jay Davis about the IOP home, though the case lately is being handled by Rob Papa. This case is handled on an hourly basis.

With this as background, the case involving the apartments (2042-001) originally had an hourly component. Because of the expense, I sent you a bill on 4/29/2010, and asked you to pay me $7,500, and Rhonda's fees. This totaled $11,121.52. Since that time and additional $1672.53 in costs have

ANDREW K. EPTING, JR., LLC
3 STATE STREET -- CHARLESTON, SC -- 29401
PHONE: (843) 377-1871 – FAX: (843) 377-1310 - E-MAIL: AKE@EPTING-LAW.COM

been incurred. As reflected in the attached invoice, I have applied your last $2,500 payment to this bill leaving a current balance of $324.05. Henceforth I will apply your payments to costs in the contingency cases, and to pay the hourly fees associated with file 2041-002, which among other things includes trying to help out with Jay Davis.

Linda, we need to economize as to Rhonda going forward now that the records have been accumulated, and your timeline and notes are finished. You can use her as you need, but remember it costs you money. Her bills after the 4/29/10 bill totaled $1,656.00. Her time will always be billed to the Rolando suit, and I will update you on the monthly payments.

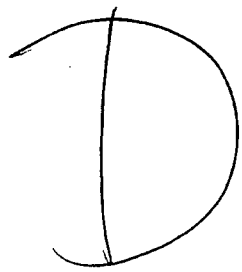
I hope this helps.

With kind regards,

ANDREW K. EPTING, JR., LLC
/s/ Drew

Andrew K. Epting, Jr.

AKE/rb



Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 3/11/2013
Time Printed: 8:16AM
Printed By: GJK

EXHIBIT
D

Date	10/29/2010	Time	9:13AM	9:13AM	Duration	0.00 (hours)	Code		
Subject	Linda Gibson						Staff	George J Kefalos	
Client	Linda Gibson				MatRef	Gibson Berk Co Forcl		MatNo	
From	George J. Kefalos								
To	'amm@tecklaw.net'; 'pft@tecklaw.net'								
CC To	Andrew K. Epting; Oana Johnson; Sheri Towne; Linda Gibson (lglbson827@yahoo.com)								
Bcc To									
Reminders			(days before)	Follow	N	Done N	Notify N	Hide N	Trigger N Private N Status
User1						User3			
User2						User4			

Paul,

I am writing to explain that I need a few minutes of your time to review a fee arrangement I have with Linda Gibson.

Drew Epting and I represent Linda Gibson in three different cases. In one of the cases, we have associated Gedney Howe and John West.

The first case is an action for negligence, fraud and misrepresentation brought by Linda against her former financial advisor and realtor for mishandling her investments. The Defendant is insured and this case is being handled on a standard contingency fee based on the amount of recovery.

The second action involves the defense of a foreclosure action brought against Linda Gibson by First Citizens Bank. This case is pending before Judge Scarborough and there are no defenses to it. This is being handled on an hourly basis and we are simply trying to work out a payment plan for the $450,000 deficiency judgment. The payment plan contemplates postponing full repayment until after the completion of the 1st and 3rd pieces of litigation.

The third case involves the defense of a $3.5 million foreclosure action brought against Linda Gibson by Ameris Bank. This case is pending before Judge Watson in Berkeley County and there are significant defenses to it as we have evidence Ameris was involved in considerable wrongdoing. We have associated Gedney Howe and John West to help on this case. The property is only worth $750,000 and Ameris is claiming a $2.8 million deficiency. We believe we have a good chance of reducing or eliminating any deficiency due Ameris.

We are handling this third case on a contingency fee, based on a percentage of what we can save Linda off the claimed deficiency. Linda lacks the cash resources to pay this fee, but has significant

real estate holdings. We would like to secure the payment of this fee (if we can recover) with a first mortgage in favor of John & Gedney, on a piece of property Linda owns on Daniel Island. There is some urgency to this as we would like to put this mortgage in place before we finalize the settlement with First Citizens. First Citizens is likely to want a mortgage on the same property.

Would you be so kind as to review this fee arrangement with Linda and give her your opinion whether you believe it is fair and reasonable under the circumstances.

I enclose for your review, a copy of the proposed mortgage and fee agreement.

Thank you in advance for your time.

George

George J. Kefalos P.A.

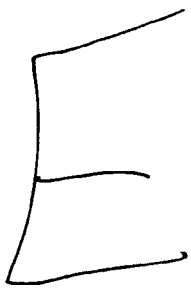
3 State Street

Charleston SC 29401

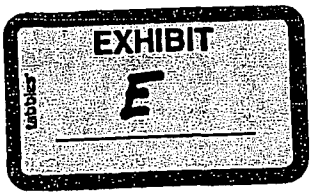
(843) 722-6612 ph

(843) 377-1310 fax

george@kefaloslaw.com



ANDREW K. EPTING, JR.
ATTORNEY AT LAW



November 3, 2010

Ian D. McVey, Esquire
Callison Tighe & Robinson, LLC
PO Box 1390
Columbia, SC 29202-1390

RE: Galt Valley, LLC v. Linda A. Gibson, et al.
Case No.: 2010-CP-08-2134
Your File No.: 5565.002

Ian,

Our client, Linda Gibson, rejects your settlement proposal. It shows no recognition of where she stands or the facts of this case.

Please confirm your client has insurance as of November 1, 2010, as the property otherwise is uninsured. See my previous advice. You have the tax notice in the event you want to protest the valuation, though the time may have passed.

I accept your consent to allow us to amend to state our claim directly against Galt. We will do so by the 15th of November.

Do you want me to send a deed to Galt like the one that went to Ameris? Please advise Ameris so that they are aware of our belief that your client holds the title.

Also enclosed is an order as to the one-acre tract. I am getting the lease for you and will forward the November rent. If the order meets with your approval, as to this property, please sign. Otherwise, we will forward it to the court on the 15th with a change noting the proceeds will be paid into court.

With kind regards,

ANDREW K. EPTING, JR., LLC

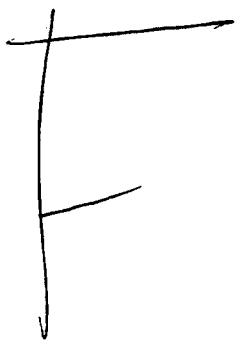
/s/ Drew

Andrew K. Epting, Jr.

AKE/rb
Enclosure
Cc: George Kefalos

ANDREW K. EPTING, JR., LLC
3 STATE STREET -- CHARLESTON, SC – 29401
PHONE: (843) 377-1871 – FAX: (843) 377-1310 - E-MAIL: AKE@EPTING-LAW.COM

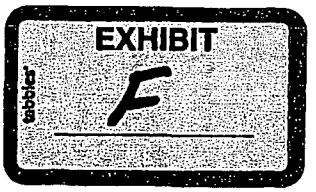
F



Ian D. McVey - Attorney
803-404-6900
IanMcVey@callisontighe.com

CALLISON TIGHE

FOR SETTLEMENT PURPOSES ONLY



November 8, 2010

VIA FACSIMILE AND US MAIL
Andrew K. Epting, Jr.
Andrew K. Epting, LLC
3 State Street
Charleston, South Carolina 29401

Re: **Galt Valley, LLC v. Linda A Gibson, *et al.***
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

I have had a chance to discuss the issue of a deed in reduction with my client further. Please be advised that my client has authorized me to make the following settlement offer:

1. Your clients will execute deeds in favor of Galt Valley, LLC or a related entity for all properties subject to Galt Valley, LLC's liens. In the event that a title update indicates further liens, your clients will consent to foreclosure with no deficiency judgment being rendered against your clients;

2. Your clients will execute such documents as are necessary to assign any and all leases currently in place on the properties to Galt Valley, LLC or a related entity;

3. Your clients will execute a bill of sale for any and all remaining furniture, fixtures, equipment, and the like located on both properties;

4. My client will forgive the remainder of the debt and waive any right to a deficiency judgment against your clients;

5. My client will refrain from issuing a 1099 as to the remainder of the debt to your clients;

6. Our clients will execute a consent order of dismissal with prejudice as to the claims in this action solely as they apply to Galt Valley, LLC, Heritage Seven, LLC, Linda A. Gibson, and the Paul William Gibson Family Trust; and

7. The parties will execute a mutual release as to all claims, known and unknown, past, present and future, that arose or should have arisen out of this litigation, the loan transaction, etc.

Nothing herein is to be interpreted as a bar to any claims you may have against any other party to this litigation.

Please be advised that this is a final settlement offer made by my client, and it will expire at noon on Monday, November 15, 2010.

If this proposal is acceptable to your client, please indicate by signing below and having your client execute below. I will then prepare the necessary paperwork to memorialize the settlement.

This correspondence is for settlement purposes only. Nothing herein shall be interpreted to be a waiver of any claim, defense, cause of action or remedy available to my client.

I look forward to hearing from you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile and US Mail)
John S. West, Esquire (via facsimile and US Mail)
Gedney M. Howe, III, Esquire (via facsimile and US Mail)

I accept and consent to the settlement proposed above on behalf of my clients Heritage Seven, LLC; Linda A. Gibson, Individually and as Trustee of the Paul William Gibson Family Trust.

Andrew K. Epting
Attorney for the Defendants

I accept the settlement proposal above.

Linda A. Gibson
Individually

Linda A. Gibson
As Trustee of the Paul William Gibson Family Trust

Linda A. Gibson
As Managing Member of Heritage Seven, LLC

bcc: Jeremiah A. Henderson, III, President and Operating Manager
Galt Valley, LLC (via email)
Michael Danhour (via email)

99

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ATTORNEY-CLIENT CONTRACT

This attorney-client contract made this 18 day of November 2010, by and between Linda Gibson, hereinafter referred to as "CLIENT", and George J. Kefalos, Esq., Andrew K. Epting, Jr. Esq., Gedney Howe, III, Esq., and John West, Esq., hereinafter referred to as "LAW FIRM".

CLIENT hereby hires LAW FIRM to represent CLIENT in the defense of and pursuit of a counterclaim in a foreclosure action brought by Ameris Bank presently pending in Berkeley County, South Carolina, Case No. 2010-CP-08-2134. In that action, Ameris seeks to foreclose on a loan of approximately $3,000,000.00 and seeks a deficiency judgment against CLIENT. Two parcels of land are subject to a mortgage and are valued at approximately $1,300,000.00, leaving a potential deficiency judgment of $1,700,000.00.

For their services, LAW FIRM shall receive a fee based upon the total recovery according to the following schedules:

a. One-third (1/3) of all sums saved CLIENT from the deficiency amount claimed by Ameris, in the amount of $1,700,000.00.

In addition to the fees above, CLIENT will be responsible for paying the costs and expenses reasonably necessary and incurred by LAW FIRM. LAW FIRM will advance these costs during the prosecution of the case but will deduct them at the conclusion of the case from CLIENT'S portion of the proceeds following the payment of attorney's fees.

This obligation of CLIENT under this Contract shall be secured by a Mortgage to Gedney Howe III and John West on that certain real estate in Berkeley County, identified on Exhibit A attached hereto. LAW FIRM shall be entitled to enforce the obligations under

this Contract by foreclosure of the Mortgage only after the expiration of twelve (12) months from the later of (i) the date of final judgment (including final appeal) entered in a case pending in Charleston County Court of Common Pleas, captioned *Linda A. Gibson, et al v. Rolando V. Villavicencio, et al.*, Case No. 2008-CP-10-4282, or (ii) the date of final judgment (including final appeal) entered in a case pending in Berkeley County Court of Common Pleas, captioned *Galt Valley, LLC v. Linda A. Gibson, et al*, Case No. 2010-CP-08-2134.

Charleston, S. C.

Charleston, S. C.

Charleston, S. C.

Charleston, S. C.

Mondks Corner, S. C.

CLIENT

Linda Gibson

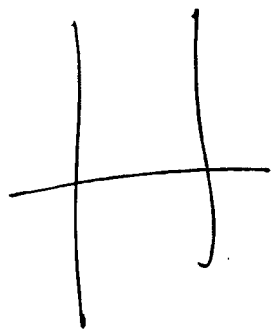
LAW FIRM

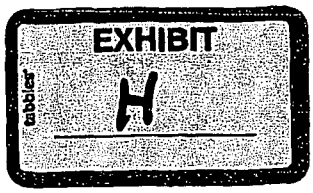
BY: _____
George J. Kefalos

BY: _____
Andrew K. Epting, Jr.

BY: _____
Gedney Howe, III

BY: _____
John West





SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into as of December 1, 2010 (the "Effective Date") by and among Galt Valley, LLC ("Galt"), Heritage Seven, LLC ("Heritage"), Paul William Gibson Family Trust ("Trust"), and Linda A. Gibson f/k/a Linda Ann Avinger ("Gibson"). The signatories to this Agreement, as the context may require, are sometimes referred to individually as a "party" and collectively as the "Parties".

RECITALS

WHEREAS, Heritage is the maker of a promissory note also known as loan number 7970000179-101 dated November 2, 2007 ("Note 101"), made payable to Ameris Bank and its successors and assigns, in the original principal amount of $2,810,164.50.

WHEREAS, Note 101 is secured by a Mortgage dated November 2, 2007 (the "101 Mortgage") covering certain property identified therein (the "Charleston Property"), and recorded at Book L643, Page 739, in the property records of Charleston County RMC on November 6, 2007, South Carolina.

WHEREAS, Note 101 was also secured by an Assignment of Leases and Rents dated November 2, 2007 (the "101 Leases"), and recorded in Book O643, page 226, in the property records of Charleston County RMC, South Carolina on November 6, 2007.

WHEREAS, Heritage is the maker of a promissory note also known as loan number 7970000179-103 dated October 1, 2009 ("Note 103"), made payable to Ameris Bank and its successors and assigns, in the original principal amount of $ 50,071.96.

WHEREAS, Note 103 is secured by a Mortgage, Assignment of Leases and Rents dated November 2, 2007 (the "103 Leases") covering certain property identified therein (the "Berkeley Property"), and recorded at Book 6975, page 204, and Book 6975, page 212, respectively in the property records of Berkeley County, South Carolina.

WHEREAS, the indebtedness evidenced by Note 101 and Note 103 (collectively, the "Notes") were guaranteed by the Trust and Gibson (the "Guaranties"), who at all relevant times, were the sole members and managers of Heritage.

WHEREAS, Heritage failed to make payments due under the Notes and Ameris Bank declared a default thereunder.

WHEREAS, on June 14, 2010, Ameris Bank filed a lawsuit against Heritage et al in an action styled Ameris Bank v. Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul W. Gibson Family Trust, Heritage Seven, LLC, and Access Portable Toilets, Inc., in the Court of Common Pleas, Berkeley County, South Carolina, Civil Action File No. 2010-CP-08-2134 (the "Lawsuit"), asserting claims for breach of the Notes, breach of the Guaranties and for attorneys' fees. Heritage and Gibson, individually and as trustee, answered and asserted counterclaims against Ameris Bank in the Lawsuit.

WHEREAS, on July 14, 2010, Ameris Bank, assigned Note 101, Note 103, 101 Mortgage, 103 Mortgage, 101 Leases, 103 Leases, and Guaranties (collectively, the "Loan Documents"), to Galt.

WHEREAS, by Consent Order, dated August 23, 2010, Galt, as assignee of the Loan Documents, was substituted for Ameris Bank as Plaintiff in the Lawsuit, and Ameris Bank was interposed as a Counterclaim Defendant.

WHEREAS, the Parties, without any admission of liability, desire to fully compromise and settle all litigation, claims and disputes between them, and to avoid the uncertainty, inconvenience and expense of further litigation, upon the terms contained herein.

NOW, THEREFORE, in consideration of the covenants, promises, releases and other provisions contained herein, and the recitals hereto which are an integral part of this Agreement, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Transfer of Interest in the Collateral Properties. Heritage hereby agrees to execute deeds attached hereto as Exhibits A and B and bill of sale attached hereto as Exhibit C as well as any other documents necessary to effect the transfer of all of its right, title and interest in the real property and personal property secured by the 101 Mortgage and 103 Mortgage, and that such transfer is effective as of the Effective Date, with Galt now the owner.

2. Payment by Heritage to Galt. Heritage agrees to pay Galt the sum of all monies received from Leases and Rents as to the property in Berkeley County since October 15, 2010 and December 1, 2010 as to the property in Charleston County related to the properties which are the subject of the recitals.

3. Satisfaction of the Notes. The Parties agree that Note 101 and Note 103 are deemed satisfied as a result of this Agreement and Galt, therefore, shall cancel the Loan Documents of record.

5. Dismissal of Litigation. Within ten (10) days of the execution of this Agreement, the Parties agree to dismiss all pending litigation between or among them as follows:

(a) The Parties agree to file a Consent Order and Stipulation of Dismissal With Prejudice in the Lawsuit, in the form attached hereto as Exhibit D.

6. Releases.

(a) Heritage, the Trust, and Gibson on behalf of themselves and their respective predecessors, successors, assigns, heirs, executors, parent

corporations, subsidiaries, affiliates, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, do hereby fully, finally and forever release and discharge Galt and its respective successors, assigns, parent corporations, subsidiaries, affiliates, partnerships, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, from any and all claims, disputes, demands, actions, causes of action or suits of any kind or nature whatsoever, in law or equity, whether known or unknown, arising out of or related in any way to any acts, events, facts or transactions from the beginning of time through the Effective Date of this Agreement, including without limitation, any and all claims or counterclaims that were or could have been asserted in the Lawsuit but expressly reserves all claims against Ameris and its agents and employees.

(b) Galt, on behalf of itself and its predecessors, successors, assigns, parent corporations, subsidiaries, affiliates, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, does hereby fully, finally and forever release and discharge Heritage, the Trust, and Gibson, and their respective predecessors, successors, assigns, heirs, executors, parent corporations, subsidiaries, affiliates, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, from any and all claims, disputes, demands, actions, causes of action or suits of any kind or nature whatsoever, in law or equity, whether known or unknown, arising out of or related in any way to any acts, events, facts, transactions, or documents which are the subject of the recitals from the beginning of time through the Effective Date of this Agreement, including without limitation, any and all claims or counterclaims that were or could have been asserted in the Lawsuit.

(c) The releases set forth above in paragraphs 6(a) and 6(b) shall not release or otherwise affect any rights and obligations established by or under this Agreement, or the agreements and instruments executed in connection herewith.

7. Covenant Not to Sue. Each Party hereby covenants and agrees that it will not commence, prosecute, authorize, direct, participate or assist in any way in the commencement or prosecution of any action, suit, arbitration, complaint, or other proceeding against the other based on any claims released by it herein.

8. Notices. All notices and communications under this Agreement shall be in writing and shall be given by (a) hand delivery, (b) first class mail (postage prepaid), (c) certified mail, return receipt requested (postage prepaid), or (d) nationally-recognized overnight commercial delivery service (charges prepaid) to the addresses listed in this Agreement. Notice shall be deemed to be effective: (a)

if by hand delivery, upon delivery; (b) if by mail, upon the expiration of five (5) business days from the date first deposited in the United States mail, inclusive of the day deposited; (c) if by certified mail, return receipt requested, upon the expiration of five (5) business days from the date first deposited in the United States mail, inclusive of the day deposited; and (d) if by overnight delivery service, on the date of delivery. A Party may change its address by giving written notice to the other Parties as specified herein. The current notice addresses of the Parties are:

If to Galt:

Galt Valley, LLC
Attn: Jeremiah A. Henderson, III
3540 W. Sahara Avenue #729
Las Vegas, NV 89102

With copy to:

Rosen, Rosen, & Hagood, LLC
Attn: Alice Paylor
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, South Carolina 29402-0893

If to Heritage or Gibson:
Heritage Seven, LLC
Attn: Linda Gibson
133 Horse Trail Rd
St. George, South Carolina 29477

With copy to:
Andrew K. Epting, Jr., LLC
Attn: Andrew K. Epting, Jr.
3 State Street
Charleston, South Carolina 29401

9. No Prior Assignment. Each Party represents and warrants that it has not assigned or transferred or purported to assign or transfer to any person, firm, corporation or other entity any of the claims released by it in this Agreement.

10. Governing Law and Venue. This Agreement shall in all respects be governed, construed, interpreted and enforced in accordance with the laws of the State of South Carolina, without regard to its choice of law principles.

11. No Admission of Liability. In entering into this Agreement, no Party is admitting the sufficiency of any of the claims, counterclaims, assertions,

contentions, evidence, or position of any other Party, nor the sufficiency of any defense to any such claims, counterclaims, assertions, contentions, evidence or position. This Agreement is executed by the Parties for the sole purpose of compromising and settling the claims herein.

12. Entire Agreement. This Agreement and the agreements and instruments executed in connection herewith, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, offers and negotiations, oral or written.

13. Amendments, Modifications. This Agreement may not be amended or modified except by a written instrument signed by the Parties.

14. Severability. In the event that any term or provision of this Agreement is found to be invalid, unenforceable or void, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect, and the term or provision held to be invalid, unenforceable or void shall be deemed not to be a part of this Agreement.

15. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

16. Authority and No Violation. Each Party represents and warrants to each other Party that (a) it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, (b) such execution, delivery and performance have been duly and validly authorized by all necessary corporate or other action, (c) such execution, delivery and performance will not violate or breach its charter or bylaws or any agreement to which it is a party or by which it might be bound, and (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

17. Advice of Counsel. The Parties represent and warrant to each other that they have fully read this Agreement, have consulted with their counsel regarding the Agreement, understand its effects, and without coercion or duress, enter into this Agreement freely and voluntarily.

18. Interpretation of Agreement. In the interpretation of this Agreement, there shall be no presumptions made on account of draftsmanship inasmuch as this Agreement has been negotiated, reviewed and approved by all Parties and their counsel.

19. Settlement Documentation/Counterparts. The Parties agree to execute any further documents necessary to effectuate this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all counterparts so executed shall constitute one agreement binding upon all of the Parties hereto, notwithstanding that all of the Parties are not signatories to the

same counterpart. Signatures transmitted by facsimile or by electronic mail shall be deemed originals.

20. Transition of Ownership of Properties. Gibson, the Trust and Heritage agree to assist Galt in the transition of the ownership of the Properties and to provide to Galt all documents and information in their possession concerning the operation of the Charleston and Berkeley Properties and to assist in any way necessary to make a smooth transition of the ownership of the Properties.

21. No other liens on Properties. Gibson, the Trust and Heritage attest that there are no liens on the Properties other than the mortgage liens previously described and a Mechanic's Lien from Access Portable Toilets, Inc., and they further agree that, as of December 1, 2010, should there be any additional liens on the Properties, Gibson, the Trust and Heritage will be responsible for satisfying those liens within thirty (30) days of receipt of notice from Galt.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year written above.

Galt Valley, LLC

By: _____

Name: _____

Title: _____

Heritage Seven, LLC

By: Linda Gibson

Name: _____

Title: Managing Member

Paul W. Gibson Family Trust

By: Linda Gibson

Name: _____

Title: Managing Member

Linda Gibson

TITLE NOT SEARCHED BY ROSEN, ROSEN & HAGOOD, LLC

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY DEED
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS that the HERITAGE SEVEN, LLC (hereinafter "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other valuable consideration to the Grantor in hand paid at and before the sealing and delivery of these presents by GALT VALLEY, LLC (hereinafter "Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released to the Grantee, its successors and assigns forever, all right, title, and interest of Grantor in and to all of the property described on Exhibit "A" which is attached hereto, made a part hereof, and incorporated herein by reference.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee hereinabove named, and its successors and assigns forever.

And the Grantor does hereby bind the Grantor and its successors and assigns to warrant and forever defend all singular and said premises unto the Grantee hereinabove named, and its successors and assigns and against the Grantor and its successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

WITNESS the Grantor's hand and seal this 3rd day of December, 2010.

IN THE PRESENCE OF:

HERITAGE SEVEN, LLC

By: _____
Linda A. Gibson f/k/a Linda Avinger

Its: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, Vicki Sheri Towne, Notary Public for South Carolina, do hereby certify that HERITAGE SEVEN, LLC, by Linda A. Gibson, its Managing Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3rd day of December, 2010.

VICKI SHERI TOWNE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 06-14-2017

_____
Notary Public for South Carolina
My commission expires: _____

EXHIBIT "A"

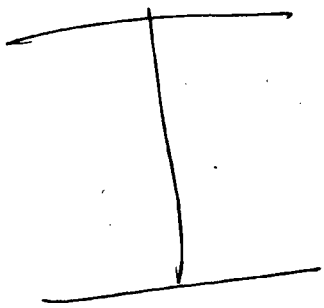
ALL that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Charleston, containing 3.633 acres, more or less, as shown and designated as Tracts A & B on a plat prepared by Sigma Engineers, Inc. dated April 14, 1971, and recorded in the RMC Office for Charleston County on April 28, 1971, in Plat Book AA at Page 37. Reference is hereby made to the most recent survey for a more complete and accurate metes and bounds description thereof.

BEING the same property conveyed to Grantor by deed of ABESPRO, LLC dated November 2, 2007 and recorded November 6, 2007 in the RMC Office for Charleston County in Book L-643 at Page 016.

SUBJECT TO all restrictions, set back lines, road ways, easements and rights of way, if any, appearing of record on the premises, or on the recorded plat(s) which affect the property hereinabove described.

TMS No.: 485-03-00-114

Address for Tax Bill: 3540 West Sahara Avenue, # 729
Las Vegas, NV 89102



TECKLENBURG & JENKINS, LLC
ATTORNEYS AND COUNSELORS AT LAW
www.tecklaw.net

PAUL F. TECKLENBURG
RIVERS T. JENKINS, III

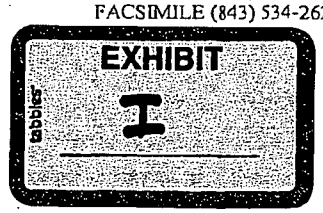
GARY E. ENGLISH +
W. JOE JACUMIN, JR.

R. RANDALL BRIDWELL *
Of Counsel

*also admitted in Texas
+ also admitted in Georgia

1819 MEETING STREET ROAD – SUITE #A
CHARLESTON, SOUTH CAROLINA 29405

POST OFFICE BOX 20667
CHARLESTON, SOUTH CAROLINA 29413
TELEPHONE (843) 534-2628
FACSIMILE (843) 534-2629



December 8, 2010

Ms. Linda Gibson
133 Horse Trail Road
St. George, SC 29477

RE: Representation by George J. Kefalos, Andrew K. Epting, Jr., Gedney Howe, III, and John West
Our File No.: 1104.01

Dear Linda:

This will confirm the many conversations and several meetings we have had over the past few weeks regarding the referenced legal representation.

We have reviewed your various financial records, litigation proceedings, and other information provided by your counsel. As I understand it, you have a mortgage from Ameris of approximately $3 million in foreclosure, with equity of only $1.3 million for an apartment complex and cell tower property. In addition, you had various other liabilities associated with your beach and commercial properties, wherein First Citizens claimed an additional $450,000 in deficiency from you. You do not have sufficient assets to meet any of these obligations, and have turned to litigation to assist in reducing these debts, as well as pursuing the original tortfeasors associated with selling the apartment complex.

We discussed your various options, which included few, if any, short of litigation. Under the circumstances, I recommended that litigation was probably your best course of action, and should be continued with the fine team of attorneys who are representing you. I further advised you that you had entered a simple but likely enforceable agreement with Drew Epting, providing that one-third of any savings in the litigation with Ameris would be considered a fee earned by your counsel of record. The referenced counsel requests that this agreement to pay them be secured by a mortgage on your property, and they requested you retain separate counsel. You selected the undersigned.

As I explained to you, with the deficiency sought by First Citizens, as well as an anticipated confession of judgment which they will hold for potential filing in the future, placing a mortgage on the land to secure the fee payable to your attorneys was appropriate. The mortgage would encourage your attorneys to vigorously pursue the various lawsuits you have pending, and place a more friendly creditor in the first position on the property. We negotiated a twelve month window, so that at the end of all litigation, you would have twelve months to reorganize your affairs. We discussed on several occasions that after collection of any judgment, insurance monies or other funds available from the litigation

process, you may continue to owe counsel money. We also negotiated the total amount of the fee earned in the Ameris deficiency litigation to be limited to $567,000.00.

I advised you that I had an opinion that it was more likely than not that you would owe your counsel money at the end of this long and arduous process. However, the one year window will allow you to reorganize your affairs with the various properties you have available. Hopefully, with a better economy and with a good result, the exposure for payment of these attorneys fees will be minimal. Nevertheless, all litigation carries with it a "no guarantee" result, and the results could be less than desirous.

Also, as mentioned during our many meetings, we stand ready, willing and able to close on the Port Authority property on Daniel Island. We wish you success in collecting the necessary funds for this closing, as we continue to recommend it to you.

Please do not hesitate to contact me if you have any questions as you move forward through your various legal hurdles and challenges.

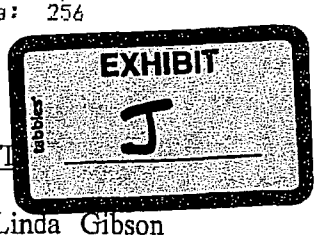
With best regards, I remain

Sincerely,

Paul F. Tecklenburg
pft@tecklaw.net

PFT/eal

J



STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY) MORTGAGE OF REAL ESTAT

THIS MORTGAGE, made this 6th day of December, 2010, by Linda Gibson (Mortgagor), whose address is 133 Horse Trail Road St. George SC, 29477 to Gedney Howe, Esquire and John West, Esquire (Mortgagees), whose addresses are P.O. Box 1034, Charleston SC 29401 and respectively PO Box 1869, Moncks Corner SC, 29461.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagees in the principal sum not to exceed Five Hundred Sixty Six Thousand Six Hundred and Sixty Six Dollars and Sixty Six Cents ($566,666.66), as evidenced by that certain Fee Agreement dated November 18, 2010, executed by Mortgagor and delivered to Mortgagees, the final payment of which is due pursuant to the FEE AGREEMENT (the "Fee Agreement") which by reference is made a part hereof to the same extent as though set out in full herein;

NOW, KNOW ALL MEN BY THESE PRESENTS, that the undersigned, in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said Fee Agreement; which with all its provisions is hereby made a part hereof, by reference; and also in consideration of Ten and No/100 ($10.00) Dollars to the said Mortgagor in hand well and truly paid, by the said Mortgagees, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Mortgagees, its successor and/or assigns, the following described property, to-wit:

SEE PROPERTY DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED BY THIS REFERENCE

TOGETHER with all the rights, privileges, interests, easements, tenements, hereditaments and appurtenances thereto belonging, and the rents, issues and profits thereof, and any and all improvements and fixtures now or subsequently attached to or used in connection with the mortgaged premises.

TO HAVE AND TO HOLD, all and singular, the Premises unto the said Mortgagees, its successors and/or assigns forever.

AND, the Mortgagor hereby bind themselves, their heirs, successors, executors and administrators, to procure or execute any further necessary assurances of title to the said premises, and also warrants and forever defends all and singular the said premises unto the said Mortgagees, their heirs and/or assigns, from and against them and their heirs, successors, executors and administrators and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagees the principal and interest payable under the Fee Agreement together with all other sums secured hereby, at the times and in the manner stipulated therein, and in all other instruments securing the Fee Agreement, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

THERE SHALL BE NO PREPAYMENT PENALTY.

AND IT IS AGREED, by and between the parties hereto, that the said Mortgagor, their heirs or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of the said Mortgagees, for an amount not less than the full insurable value, in such company as shall be approved by the said Mortgagees, and shall deliver the policy to the said Mortgagees, and in default thereof, the said Mortgagees, their heirs and/or assigns, may effect such insurance and reimburse himself under this Mortgage for the expense thereof, with interest thereon, from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said Mortgagees, their heirs and/or assigns, shall be entitled to receive from the aggregate of the insurance moneys to be paid a sum equal to the amount of the debt secured by this Mortgage.

AND IT IS AGREED, by and between the said parties, that if the said Mortgagor, their heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the Mortgagees, their heirs and/or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this Mortgage for the sums so paid, with interest thereon, from the dates of such payments.

THE lien of this Mortgage shall secure the payment of any insurance costs or taxes paid by the Mortgagee on behalf of the Mortgagor to the same extent it secures payment of the Fee Agreement.

AND IT IS AGREED, by and between the said parties, that provided fifteen (15) calendar days advance written notice of default has been given and after said notice there remains any default in the payment of the interest on the said Fee Agreement, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this Mortgage, that then the entire amount of the debt and all other sums secured, or intended to be secured hereby, shall forthwith become due, at the option of the said Mortgagee, their heirs, successors or assigns, although the period for the payment of the said debt may not then have expired.

ANY sums which shall not be paid when due, whether maturing by lapse of time or by reason of acceleration under the provisions of the Fee Agreement and whether principal,

interest or money owing for advancements by the holder pursuant to the terms of this Mortgage, shall bear interest at the rate provided in Fee Agreement until paid.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then and in that event, the said Mortgagee, their heirs or assigns, shall have the right to have a receiver appointed of the rents and profits of the above-described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings, and the execution of the said trust as receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the said parties, that should legal proceedings be instituted for the foreclosure of this Mortgage, or for any purpose involving this Mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expenses incurred by the Mortgagee, their heirs, successors or assigns, including a reasonable counsel fee shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

NO delay by Mortgagees in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

THIS instrument is to be governed by and construed in accordance with the laws of the State of South Carolina and each of the remedies provided for herein shall be cumulative so that the right of the Mortgagee to exercise one or more of such remedies shall not be construed to limit or preclude the right of the Mortgagee to exercise any other remedy or remedies set forth herein.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these Presents, that when the said Mortgagors, their heirs, executors or administrators, shall pay, or cause to be paid, unto the said Mortgagee, its certain attorneys, their heirs or assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by the said Mortgagee, their heirs, successors or assigns, according to the conditions and agreements of the said Fee Agreement, and of this Mortgage and shall perform all the obligations according to the true intent and meaning of the said Fee Agreement and Mortgage, and the conditions thereunder written, then this encumbrance shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties that the said Mortgagors agree to hold and enjoy the said premises until default of payment shall be made.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first above written.

(00549303.)

WITNESSES:

MORTGAGOR:

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Mortgagor, sign, seal and as their act and deed, deliver the within written instrument and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 6th
day of December, 2010.

Notary Public for South Carolina
My Commission Expires:

MICHELLE N. ENDEMANN NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 01-14-2020

{00549303.}

EXHIBIT "A"

All of that piece, parcel or tract of land, situate, lying and being near Cain Hoy, School District Number ONE, State and County aforesaid, MEASURING AND CONTAINING Five (5) acres, more or less, BUTTING AND BOUNDING as follows to wit:

North, by lands of Henry Jenkins;
East, by lands of Joe Smith;
South, by lands of Charlie Smith;
West, by lands of a man named Smith;

SAVING AND EXCEPTING a 0.47 acre parcel and a 1.44 acre parcel (Parcels A and B respectively) as more particularly described in that certain deed of Linda Ann A. Gibson A/K/A Linda Gibson A/K/A Linda Ann Gibson A/K/A Linda Anne Avinger A/KA Linda Ann Avinger, Grantor, to the South Carolina Ports Authority by deed dated January 27, 1998 and found of record in the Office of the Register of Deeds for Berkeley County in Book 1245 at Page 146, leaving a residual of the properties first described of 3.09 acres, more or less, according to the records of the Tax Assessor for Berkeley County.

ALSO KNOWN AS LINDA Gibson

Being the properties conveyed to Linda Ann Avinger by deed of Henry Jenkins, Sr. dated January 25, 1969 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A 198 at Page 5.

TMS# 271-00-01-003

ALSO

All that certain piece, parcel or lot of land, situate, lying and being on Family Cemetery Road (unpaved) in the Cainhoy Section, St. Thomas Parish, County of Berkeley, State of South Carolina, measuring and containing Three and one-half (3.5) acres, more or less, butting and bounding as follows, to wit; To the North by Grave Yard; West by lands now or formerly of Robert Martin, Heirs of Hannah Porcher and Ruben Logan; to the East by Heirs of Washington, and to the South by Heirs of Jack White.

Being the same property conveyed to George H. Avinger by deed of Rosabell Ford, Gussie Willis, Clayton Willis and Eula Logan, as heirs of Jack Bryant, dated February 23, 1967, recorded October 9, 1968, in Deed Book A-189, Page 142 in the RMC Office for Berkeley County; ALSO being the same property devised to Edwardine Avinger by Will of George Avinger dated April 9, 1975, the said George Avinger having died on July 22, 1978, and his Will having been admitted into Common Form in the Probate Court for Berkeley County as will appear by reference to the records in the Probate Court for Berkeley County in File No. 142-63.

Being a portion of the property conveyed to Linda Ann Avinger Gibson by Deed of Distribution of the Estate of Edwardine Avinger Case Number 95-ES-08-301 dated March 19, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book 1036 at Page 019.

TMS# 263-00-01-032

ALSO

All that certain piece, parcel or lot of land, situate, lying and being on Dickerson Road (unpaved) in the Cainhoy Section, St. Thomas Parish, County of Berkeley, State of South Carolina, measuring and containing Seventeen (17) acres, more or less, butting and bounding as follows, to wit: North by lands now or formerly of Pompey Grey, East by lands now or formerly of William Gaeliard, South by lands now or formerly of Phoebe Dickerson, and West by lands now or formerly of Luther Collins.

The above described property is also shown and designated as Tract B on a plat dated June 27, 1973, prepared by R.D. Guerry and entitled "TRACTS A AND B OWNED BY (A) THE HEIRS OF PHOEBE DICKERSON AND (B) CHARLIE O'NEAL, ST. THOMAS & ST. DENNIS TAX DISTRICT, HUGER AREA, BERKELEY COUNTY, SOUTH CAROLINA", said plat being recorded in Plat Book W, at Page 359 in the RMC Office for Berkeley County.

Being the same property conveyed to George H. Avinger, aka George Avinger, by deed of Charlie O'Neal dated January 12, 1978, recorded June 23, 1978, in Book A-356, Page 168 in the RMC Office for Berkeley County; ALSO being the same property devised to Edwardine Avinger by Will of George Avinger dated April 9, 1975, the said George Avinger having died on July 22, 1978, and his Will having been admitted into Common Form in the Probate Court for Berkeley County as will appear by reference to the records in the Probate Court for Berkeley County in File No. 142-63.

~~Being a portion of the property conveyed to Linda Ann Avinger Gibson by Deed of~~ Distribution of the Estate of Edwardine Avinger Case Number 95-ES-08-301 dated March 19, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book 1036 at Page 019.

TMS# 248-00-02-042

ALSO

All that certain lot, piece and parcel of land situated in St. Thomas Parish, State and County aforesaid, containing Six and one-fourth (6 and 1/4) acres, more or less, being a portion of the Shingler Plantation, Farm No. 15, on a plat of Shingler Plantation by T.A. Huguenin, dated January and April, 1872 and recorded in the R.M.C. Office in Charleston County in McCrady Book of Plats No. 6, at Page 14, BUTTING AND BOUNDING as follows to wit; North, by Solomon Bellinger Estate; East, by Mary Anne Baptist Church; South, by P.O. Parsons; and West, by Clouter Creek. SAVING AND EXCEPTING a 0.39 acre parcel and a 0.20 acre parcel, together 0.59 acres, (Parcels "B" and "D") in that conveyance by Linda Ann A. Gibson A/K/A Linda Gibson A/K/A Linda Ann Gibson A/K/A Linda Anne Avinger A/KA Linda Ann Avinger, Grantor to the South Carolina State Ports Authority by deed dated January 27, 1998 and found of record in the Office of the Register of Deeds for Berkeley County in Book 1245 at Page 146 and SAVING AND EXCEPTING FURTHER the parcel designated "LEASE PARCEL FOR COMMUNICATIONS TOWER" (now bearing TMS# 271-00-01-129) on a plat entitled "PLAT SHOWING A 100' RIGHT-OF-WAY DESIGNATED PARCELS "A" & "B", AND A 50' RIGHT-OF-WAY DESIGNATED PARCELS "C" & "D", PARCELS "B" & "D" BEING OWNED BY LINDA ANN GIBSON, PARCELS "A" & "C" BEING OWNED BY HEIRS OF BEN BELLINGER, PARCELS "A" THRU "D" ABOUT TO BE ACQUIRED BY THE SOUTH CAROLINA STATE PORTS AUTHORITY, PARCELS LOCATED IN SAINT THOMAS-SAINT DENNIS PARISH, BERKELEY COUNTY, SOUTH CAROLINA" prepared by Cornerstone Surveying & Engineering, Inc., dated June 6, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Plat Cabinet N at Page 86. Being a portion of the property conveyed by W.R. Dctycns to Linda Ann Avinger by deed dated May 15, 1969 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A 261 at Page 40. Reference also that certain deed from New Mary Ann Baptist Church to Linda Ann Gibson dated May 24, 1985 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A616 at Page 220.

TMS# 271-00-01-037

ALSO

All of that certain piece, parcel, or lot of land, situate, lying and being in St. Thomas Parish, Berkeley County, State of South Carolina located approximately five miles from Cainhoy on Road S-8-33 and designated as Tract "A" on that certain survey by James E. Shuler dated August 13, 1982, and revised December 6, 1984, and entitled Plat of Tracts "A" & "B" Owned by W.R. Detyen and Sub-divided as Shown Linda Ann A. Gibson to be Conveyed as Shown Tract-"A: Linda Ann A. Gibson Tract-"B" W.R. Detyens, all of which will more fully appear by reference to said plat which was recorded December 7, 1984, in Cabinet E page 388, in the R.M.C. Office for Berkeley County, measuring and containing 10.05 acres, more or less, butting and bounding as follows: East on the Road designated as Road S-8-33 for a distance of 211.2 feet; South for 2,036 by land now or formerly of the heirs of Irene Fordham; West by Clouter Creek and North by Tract B, now of the Grantor for a distance of 2,064 feet. This conveyance is made subject to the rights, if any, of others in the dirt road shown on said plat. SAVING AND EXCEPTING all that lot, piece or parcel of land situate, lying and being in Berkeley County, South Carolina and designated as Lot E1, Total Area 2.930 AC. 127623 Sq. Ft. on a Plat entitled PLAT SHOWING THE COMBINATION OF LOT D1 & LOT E TO FORM LOT E1 OWNED BY LIINDA ANN A. GIBSON ABOUT TO BE CONVEYED TO BARTONE ENTERPRISES, INC.- LOCATED ON THOMAS ISLAND, BERKELEY COUNTY, S.C. by Ashley Surveying, Inc., dated January 12, 1996 and recorded January 17, 1996 in CAB L, 303A (actual 303B) in the RMC Office for Berkeley County, SC. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat appear. Subject to the easement for ingress and egress as shown on said plat and on the plat entitled PLAT SHOWING 10.092 AC. OWNED BY BARTONE ENTERPRISES AND LOT D1 AND LOT E OWNED BY LINDA A. GIBSON ABOUT TO BE CONVEYED TO BARTONE ENTERPRISES-LOCATED ON THOMAS ISLAND, BERKELEY COUNTY, S.C., by Ashley Surveying, Inc., dated September 22, 1993 and recorded January 3, 1996 in CAB L, 291A in the RMC Office for Berkeley County, SC; SAVING AND EXCEPTING FURTHER all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on Daniels Island,

County of Berkeley, State of South Carolina, shown and designated as Lot D2, on a plat entitled: "SUBDIVISION PLAT OF LOT D, OWNED BY LINDA A. GIBSON, LOT D2 BEING CONVEYED TO CHRISTOPHER C. NORTON, LOCATED ON THOMAS ISLAND, BERKELEY COUNTY, SOUTH CAROLINA" and prepared by Paul C. Lawson, Jr., RLS, dated March 28, 1994, and recorded at Berkeley County RMC Office in Plat Book CAB K, at Page 248-E. Said lot having such size, shape, buttings, boundings and dimensions as are shown on said plat. Subject to all restrictions, reservations and easements of record; SAVING AND EXCEPTING FURTHER all that certain piece, parcel, or lot of land, situate, lying and being in St. Thomas Parish, Berkeley County, State of South Carolina, being a portion of the property designated as Marina Drive extending from road S-8-33 (Clements Ferry Road) a distance of approximately 999.49 feet and shown on a plat entitled 'Plat showing: The Subdivision of Proposed Variable Width Right-of-Ways Across the Lands of Linda Ann A. Gibson, Designated Parcels "A" Thru "H" and Adjacent Easements" by Cornerstone Surveying and Engineering, Inc. dated July 28, 1997 and recorded January 13, 1998, in Plat Cabinet N at Page 88 in the RMC Office for Berkeley County, South Carolina; SAVING AND EXCEPTING FURTHER all of that certain piece, parcel or lot of land, situate, lying and being in Saint Thomas Parish, Berkeley County, South Carolina, a proposed right-of way (now bearing TMS# 271-00-01-122) on a plat of Cornerstone Surveying & Engineering, Inc., entitled 'PLAT SHOWING VARIABLE WIDTH RIGHT-OF-WAYS DESIGNATED PARCELS 'A" THRU "H" AND ADJACENT EASEMENTS, ALL OWNED BY LINDA ANN A. GIBSON ABOUT TO BE ACQUIRED BY THE SOUTH CAROLINA STATE PORTS AUTHORITY, LOCATED IN SAINT THOMAS - SAINT DENNIS PARISH, BERKELEY COUNTY, SOUTH CAROLINA," dated July 28, 1997, revised October 2, 1997, and recorded in the RMC Office for Berkeley County in Plat Cabinet N at page 88. Reference is craved to said Plat for a more complete description. The residual properties having been subdivided by various plats of record in the Office of the Register of Deeds and bearing TMS#'s 271-00-01-040; 271-00-01-084; 271-00-01-185 and 271-00-01-085, respectively. Being the same property conveyed to Delta Marine, Inc. by deed from W.R. Detyens dated January 23, 1985 and recorded in Book A590, Page 345, RMC Office for Berkeley County, South Carolina. Reference that certain deed

from Delta Marine, Inc. to Linda Ann A. Gibson dated January 23, 1985 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A590 at Page 348.

TMS#'s 271-00-01-040; 271-00-01-084; 271-00-01-185 and 271-00-01-085

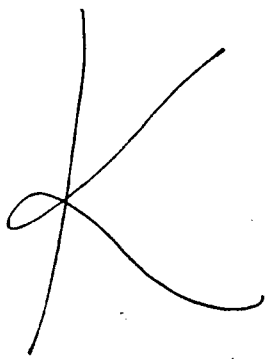
ALSO

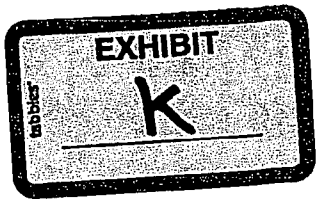
All that certain piece, parcel or lot of land, situate, lying and being on Clements Ferry Road in the Cainhoy Section, St. Thomas Parish, County of Berkeley, State of South Carolina, and shown and designated as Tract B containing 22.5 acres on a plat by James E. Shuler dated October 28, 1982, and revised by William H. Dennis on August 21, 1991, entitled "PLAT OF LAND DIVIDED AS SHOWN OWNED BY EDWARDINE AVINGER", recorded in Cabinet J, Page 302 on December 3, 1992, in the RMC Office for Berkeley County; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear and said plat being made a part and parcel of this conveyance by reference thereto.

Being the same property conveyed to Edwardine W. Avinger, aka Edwardine Avinger, by deed of Adeline R. Murphy dated February 12, 1992, recorded March 30, 1992, in Book 71, Page 194 in the RMC Office for Berkeley County. NOTE: Deed from Adeline R. Murphy to Edwardine W. Avinger, aka Edwardine Avinger, was executed pursuant to an Order of The Honorable William L. Shipley, Master-in-Equity for Berkeley County, dated April 17, 1991, which Order confirmed title in said property and authorized the conveyance of the above mentioned deed to Edwardine W. Avinger in proceedings filed

in Case No. 90-CP-08-897, entitled "Edwardine W. Avinger, Plaintiff, v. Caesar Wright (the elder), et al, Defendants". REFERENCE is also made to probate proceedings of George H. Avinger who died testate in Berkeley County, South Carolina, on July 22, 1977, leaving in full force and effect his Last Will and Testament dated April 9, 1975, which was duly admitted to probate in the Probate Court for Berkeley County in Box 142, package 63. Being a portion of the property conveyed to Linda Ann Avinger Gibson by Deed of Distribution of the Estate of Edwardine Avinger Case Number 95-ES-08-301 dated March 19, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book 1036 at Page 019.

TMS# 271-00-02-030





DISBURSEMENT STATEMENT

$850,000.00 SETTLEMENT PROCEEDS

FROM ROLANDO VILLAVICENCIO, RPV INVESTMENTS, LLC AND DPS OF CHARLESTON, INC d/b/a RE/MAX PROFESSIONAL REALTY

PROCEEDS:

Seven Oaks Apartments Proceeds, Check #100572105	$1,000.00
Heritage Seven LLC Proceeds, Check #100572106	$449,000.00
Linda A. Gibson Proceeds, Check #100572107	$400,000.00
TOTAL PROCEEDS RECEIVED	**$850,000.00**

ATTORNEY FEES & COSTS:

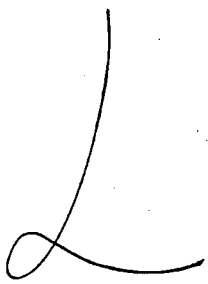
Attorney fees – Galt litigation	$566,666.00
Litigation Costs advanced by George J. Kefalos, PA	$21,245.00 ✓ okt
Litigation Costs advanced by Andrew K. Epting, Jr., LLC	$21,015.00
SUBTOTAL – ATTORNEY FEES & COSTS	**$608,926.00**

LAG

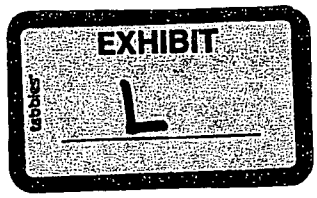
NET PROCEEDS TO LINDA GIBSON*	**$241,074.00***

*Released in consideration of consent to assignment and reduction of mortgage given originally to Gedney Howe and John West, recorded 12-8-2010, Instrument No. 2010-00024871

BK 17



Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120



Instrument Number: 2011- 00005369
As
Release of Mortgage

Recorded On: March 24, 2011
Parties: GIBSON LINDA
To
HOWE GEDNEY
Recorded By: GEORGE T KEFALOS
Comment: 8734/255

Billable Pages: 2
Num Of Pages: 4

**** Examined and Charged as Follows: ****

Release of Mortgage	8.00
Recording Charge:	8.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

~~File Information:~~

Document Number: 2011- 00005369
Receipt Number: 318872
Recorded Date/Time: March 24, 2011 11:13:20A
Book-Vol/Pg: Bk-R Vl-8868 Pg-20
Cashier / Station: H Sexton / Cash Station 2

~~Record and Return To:~~

GEORGE T KEFALOS
3 STATE STREET
CHARLESTON SC 29401

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PARTIAL RELEASE OF MORTGAGE LIEN
(Book 8734, Page 255)

WHEREAS, the undersigned are the owners and holders of certain Fee Agreements and a Mortgage of Real Estate ("Mortgage") from Linda Gibson, which Mortgage, on its face, is in the original principal amount of $566,666.66, and said Mortgage was dated December 6, 2010 and recorded December 8, 2010 in Book 8734 at Page 255 in the Office of the Register of Deeds for Berkeley County, South Carolina; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the undersigned, being the present owners and holders of the Mortgage described hereinabove, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby release, discharge and renounce from the lien of the above described Mortgage the real estate described hereinbelow:

All that certain lot, piece and parcel of land situated in St. Thomas Parish, State and County aforesaid, containing six and one-fourth (6 and ¼) acres, more or less, being a portion of the Shingler Plantation, Farm No. 15, on a plat of Shingler Plantation by T.A. Huguenin, dated January and April, 1872 and recorded in the R.M.C. Office in Charleston County in McCrady Book of Plats No. 6, at Page 14, BUTTING AND BOUNDING as follows to wit: North, by Solomon Bellinger Estate; East, by Mary Anne Baptist Church; South, by P.O. Parsons; and West, by Clouter Creek. SAVING AND EXCEPTING a 0.39 acre parcel and a 0.20 acre parcel, together 0.59 acres, (Parcels "B" and "D") in that conveyance by Linda Ann A. Gibson a/k/a Linda Gibson a/k/a Linda Ann Gibson a/k/a Linda Anne Avinger a/k/a Linda Ann Avinger, Grantor to the South Carolina State Ports Authority by deed dated January 27, 1998 and found of record in the Office of the Register of Deeds for Berkeley County in Book 1245 at Page 146 and SAVING AND EXCEPTING FURTHER the parcel designated "LEASE PARCEL FOR COMMUNICATIONS TOWER" (now bearing TMS # 271-00-01-129) on a plat entitled "PLAT SHOWING A 100' RIGHT-OF-WAY DESIGNATED PARCELS 'A' & 'B', AND A 50' RIGHT-OF-WAY DESIGNATED PARCELS 'C' & 'D', PARCELS 'B' & 'D' BEING OWNED BY LINDA ANN GIBSON, PARCELS 'A' & 'C' BEING OWNED BY HEIRS OF BEN BELLINGER, PARCELS 'A' THRU 'D' ABOUT TO BE ACQUIRED BY THE SOUTH CAROLINA STATE PORTS AUTHORITY, PARCELS LOCATED IN SAINT THOMAS-SAINT DENNIS PARISH, BERKELEY COUNTY, SOUTH CAROLINA" prepared by Cornerstone Surveying & Engineering, Inc., dated June 6, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Plat Cabinet N at Page 86. Being a portion of the property conveyed by W.R. Detyens to Linda Ann Avinger by deed dated May 15, 1969 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A 261 at Page 40. Reference also that certain deed from New Mary Ann Baptist Church to Linda Ann Gibson dated May 24, 1985 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A616 at Page 220.

~~Tax Parcel No.: 271-00-01-037~~

The lien of the above described Mortgage shall remain in full force and effect as to other property not herein described and released.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has executed the within instrument this 17 day of March, 2011.

WITNESSES:

Witness #1 Signature

Witness #2/ Notary Public Signature

Gedney Howe (SEAL)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I hereby certify that before me personally appeared **Gedney Howe**, to me known to be the person described in and who executed the foregoing instrument, and said party acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS, my hand and official seal in the county and state aforesaid this 17 day of MARCH, 2011.

(SEAL)
Notary Public for SOUTH CAROLINA
My commission expires: 8-21-16

Partial Release of Mortgage Lien
(Book 8734, Page 255)

IN WITNESS WHEREOF, the undersigned has executed the within instrument this 15th day of March, 2011.

WITNESSES:

John West (SEAL)

Priscilla C. West
Witness #1 Signature

Witness #2/ Notary Public Signature

STATE OF South Carolina)
COUNTY OF Berkeley)

ACKNOWLEDGMENT

I hereby certify that before me personally appeared **John West**, to me known to be the person described in and who executed the foregoing instrument, and said party acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS, my hand and official seal in the county and state aforesaid this 15th day of March, 2011.

(SEAL)
Notary Public for South Carolina
My commission expires:

JAMES CAMDEN WEST NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 10-20-2018

Partial Release of Mortgage Lien
(Book 8734, Page 255)

AGREEMENT TO MORTGAGE ASSIGNMENT, MODIFICATION AND REDUCTION OF DEBT

COMES NOW the undersigned parties who affirm and agree to enter into the following Agreement to Assign and Modify the Mortgage recorded in Berkeley County, South Carolina on December 8, 2010 in Mortgage Book 8734, Page 255, and FURTHER, to reduce the amount of that Mortgage, as follows:

1. Linda Gibson gave a mortgage in favor of John West and Gedney Howe recorded December 8, 2010 in the RMC Office for Berkeley County, Mortgage Book 8734, Page 255, in the amount of $566,666.66 (for fees earned by them and Andrew K. Epting, Jr., and George J. Kefalos in the reduction of the debt to Gault Valley, LLC).

2. Present Mortgage holders, upon payment of $566,666.00, the receipt of which is acknowledged by their signatures below, assign the Mortgage described above to George J. Kefalos and Andrew K. Epting, Jr. This Assignment will be recorded in Berkeley County, South Carolina.

3. Linda Gibson owes to George J. Kefalos and Andrew K. Epting, Jr. attorneys fees in the amount of $297,500.00 for a fee earned in a case styled *Linda Gibson, Heritage Seven, LLC, and Seven Oaks Apartments, LLC v. Rolando V. Villavicencio, RPV Investments, LLC, and DPS of Charleston, Inc, d/b/a RE?MAX Professional Realty,* CA No 2008-CP-10-4282.

4. George J. Kefalos and Andrew K. Epting, Jr. agree to reduce the Berkeley County mortgage to the sum of $297,500.00, and further agree that payment is not due from Linda Gibson until the conclusion of the case *Linda A. Gibson, f/k/a Linda Ann Avinger, Individually and as Trustee of the Paul William Gibson Family Trust and Heritage Seven, LLC v. AMERIS Bank,* CA No 2010-CP-08-2134.

5. By her signature below, Linda Gibson by her signature below consents the assignment of the mortgage, approves the reduction of the debt, and agrees to the payment of the debt at the time the case styled *Linda A. Gibson, etc, et al v. AMERIS Bank,* CA No 2010-CP-08-2134 is concluded.

[SIGNATURES ON THE FOLLOWING PAGES]

WITNESSES:

Linda A. Gibson, Mortgagor

Gedney Howe, Assignor/Mortgagee

John West, Esquire, Assignor/Mortgagee

Andrew K. Epting, Jr.

George J. Kefalos

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Linda A. Gibson** sign, seal and as her act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3rd day of April, 2012

NIKKI SHERI TOWNE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 06-14-2017

Notary Public for South Carolina
My Commission Expires: 6/14/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Andrew K. Epting, Jr.**, sign, seal and as his act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3rd
day of April 2012

VICKI HERI TOWNE
NOTARY PUBLIC
SOUTH CAROLINA
My Comm. Exp.
06-14-2017

Notary Public for South Carolina
My Commission Expires: 6/14/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

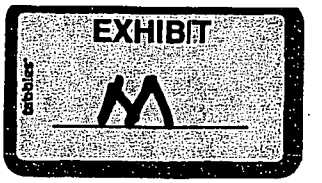
PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **George J. Kefalos** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3rd day of April, 2012

VICKI SHERI TOWNE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 06-14-2017

Notary Public for South Carolina
My Commission Expires: 6/14/17



George J. Kefalos P.A.

ATTORNEY AT LAW

July 14, 2011

DISBURSEMENT OF FUNDS

CLIENT: Linda Gibson
ADVERSE PARTY: Paul Moore

TOTAL SETTLEMENT OR RECOVERY	$24,800.00
(a)Attorney Fees 33%	$8,184.00
(b) Attorneys fees incurred for IOP:	
George J. Kefalos	$7,690.22
Andrew K. Epting	$8,925.78
	$24,800
Subtotal of Estimated Fees, Expenses and Liens:	
NET AMOUNT TO CLIENT:	**$0.00**

I have read this statement, understand the expenses listed and approve the settlement as shown. I understand that all bills that were incurred as a result of my accident and for whatever reason are not being paid today will be my responsibility for payment.

Concluded this 13 day of July, 2011

George J. Kefalos, Attorney

Linda Gibson

3 State Street • Charleston, SC 29401
Tel: (843) 722-6612 • E: george@kefaloslaw.com • Fax: (843) 377-1310

STATE OF SOUTH CAROLINA

CHARLESTON, SS

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2013-CP-10-4450

FILED
2014 JAN 8 AM 8:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY
Clocked in date Cancel

LINDA A. GIBSON, *Individually, and in capacity as* TRUSTEE *of* THE PAUL WILLIAM GIBSON FAMILY TRUST, *and,*
HERITAGE SEVEN, LLC, *and,*
SEVEN OAKS APARTMENTS, LLC, *and,*
3205 PALM BOULEVARD, LLC,

Plaintiffs

vs.

ANDREW K. EPTING, JR., LLC, *and,*
ANDREW K. EPTING, JR., *individually; and,*
GEORGE J. KEFALOS, P.A., *and,*
GEORGE J. KEFALOS, *individually; and,*
GEDNEY M. HOWE, III, P.A., *and,*
GEDNEY M. HOWE, III, *individually; and,*
JOHN H. WEST, ATTORNEY-AT-LAW, LLC, *and*
JOHN H. WEST, *individually,*

Defendants

SECOND AMENDED
COMPLAINT

Jury Trial Demanded

FILED
2014 JAN 13 PM 12:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

SECOND AMENDED COMPLAINT

Plaintiffs, Linda A. Gibson, ("Ms. Gibson"), Heritage Seven, LLC, ("Heritage"), Seven Oaks Apartments, LLC, ("Seven Oaks"), 3205 Palm Boulevard, LLC, ("Palm"), and The Paul William Gibson Family Trust, ("Trust"), (*together,* "Ms. Gibson"), by way of SECOND AMENDED complaint ("Complaint") against Andrew K. Epting, Jr., LLC, Andrew K. Epting,

Jr., *individually; and* George J. Kefalos, P.A., George J. Kefalos *individually;* and Gedney M. Howe, III, P.A., Gedney M. Howe, III, *individually,* and John H. West, LLC, John H. West, *individually, together and collectively,* ("Counsel"), hereby allege as follows:

INTRODUCTION

This action arises out of a $566,666.66 fee disagreement between Ms. Gibson and Counsel for Counsels' preparation of a deed-in-lieu of foreclosure.

In early 2010, Ms. Gibson engaged Counsel to represent Heritage and her interest in a foreclosure and guaranty action, relating to Heritage's Apartment Complex ("Apartments") in North Charleston, South Carolina.

On or about April 27, 2010, Ms. Gibson and Counsel executed a purported fee agreement ("April Agreement") setting forth certain terms contemplating, inter alia, Counsels' fee would be computed as a percentage of recovery of Ms. Gibson's lender claims.

On or about August 24, 2010, Ameris assigned Ms. Gibson's mortgage, note and guaranty paper ("Loan Documents") to Galt Valley, LLC, ("Galt"), a buyer of distressed paper.

On November 8, 2010, Galt *unilaterally* offered to waive its deficiency claim ("Deficiency Claim") against Heritage, and Ms. Gibson, as guarantor, in return for the Apartments by deed-in-lieu of foreclosure, ("Galt Offer"), as is routine in the distressed paper market.

On November 15, 2010, Ms. Gibson accepted the Galt Offer and Galt's counsel and Counsel prepared a deed-in-lieu of foreclosure ("Galt Agreement").

Thereafter, on November 18, 2010, Counsel solicited Ms. Gibson enter a "second" fee arrangement Counsel *self*-styled an "Attorney-Client Contract" purporting a *reverse* fee

entitlement due Counsel of $566,666.66, or one-third (1/3) of the purported $1.7MM Deficiency Claim (the "November Arrangement").

Thus, as of November 18, 2010, Counsel appears to assert a fee entitlement contemplated by two separate fee arrangements: (1) the April Agreement purporting the *straight* contingent fee *as to the* Lender Claims; and, (2) the November Arrangement purporting a $566,666.66 *reverse* fee *as to the* Deficiency Claim.

Ms. Gibson avers Counsels' *self*-characterized "Attorney-Client Contract" is but a fee change-order submitted to her after Galt waived its deficiency in a scheme to profiteer by Galt's unexpected waiver of its Deficiency Claim.

The April Agreement does not contemplate (i) successive fee agreements, like the November Arrangement; or (ii) *reverse* fee entitlements; or (iii) Galt's *unilateral* waiver of its deficiency; nor, (iv) a $566,666.66 fee award ("Award") computed by an indeterminate $1.7MM "dollar marker" arrived at outside the press and weight of the prosecution of the Lender Claims.

Ms. Gibson avers the $1.7MM "dollar marker" Counsel used to compute Counsels' $566,666.66 *reverse* fee Award is disingenuous because Counsel knew, or should have known, Galt acquired the distressed Loan Documents, not as a holder-in-due course, but subject to Ms. Gibson's recoupment claims and guarantor defenses, if not at law, in equity, arising out of the Lender Claim(s); and, so, the actual "deficiency amount" *for the purposes* of computing the 1/3 fee Award, is indeterminate, and thus cannot form the basis to compute Counsels' $566,666.66 fee.

Even assuming the November Arrangement could be construed a "contract," Ms. Gibson avers the *reverse* fee "contract" is void, voidable, or otherwise unenforceable, for want of

consideration, lack of mutuality of assent, misrepresentation and non-disclosure, and is otherwise unconscionable.

Under the April Agreement, Counsel had a pre-existing duty to represent Ms. Gibson's interest in the foreclosure action; and, a fiduciary duty to avoid *self*-dealing in the litigation estate.

And even assuming Counsel could enforce two separate fee arrangements in an action to foreclose a single mortgage, Ms. Gibson avers the $566,666.66 fee is excessive; and, grossly disproportionate to the time, novelty, skill and effort by four attorneys to prepare a routine deed-in-lieu of foreclosure.

For these reasons and below, Ms. Gibson avers common law claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, undue influence, unjust enrichment, conversion, negligent misrepresentation, breach of contract, constructive and common law fraud, and violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-20 (a), *et. seq.*

RELIEF REQUESTED

Ms. Gibson respectfully requests this Court Declare, pursuant to the Uniform Declaratory Judgments Act, § 15-53-30, *et. seq.*, that the November Arrangement $566,666.66 *reverse* fee Award is unenforceable, or otherwise excessive; and, then issue an Order to (i) set aside, rescind or otherwise reform, the November Arrangement; (ii) restore to Ms. Gibson, *together with* accrued interest thereon, from the date of payment, that amount remaining after a reasonable *quantum meruit* fee allocated Counsel commensurate with like-kind "deed-in-lieu" work product; (iii) release that certain mortgage lien of $297,000.00 ("Mortgage Lien") Counsel recorded against Ms. Gibson's real property; (iv) direct any settlement proceeds received by

Counsel in that certain ongoing Berkeley County litigation styled as *Linda A. Gibson, et. al., v. Ameris Bank,* Case No.: 2010-CP-08-2134, ("Ameris Action") be deposited with this Court pending resolution of this fee dispute; (v) direct Counsel equitably indemnify twenty-percent (20%) of any attorney fees, costs and expenses incurred by Ms. Gibson in appellate litigation in the Ameris Action, if any; and, separately, (vi) award Ms. Gibson actual, incidental and consequential damages arising out of her common law claims for Counsels' breach of contract, *together with* her reasonable attorney fees and costs attendant to the instant action; and, (viii) award such other and further relief this Court deems fair and just.

THE PARTIES

1. Plaintiff, Linda A. Gibson, ("Ms. Gibson") is a citizen and resident of Dorchester County, South Carolina. At all relevant times, Ms. Gibson is the sole member of Heritage, Seven Oaks and Palm. Ms. Gibson is the Trustee of The Paul William Gibson Family Trust.

2. Plaintiff, Heritage Seven, LLC, ("Heritage") is a duly organized South Carolina limited liability company of Dorchester County, South Carolina.

3. Plaintiff, Seven Oaks Apartments, LLC, ("Seven Oaks") is a duly organized South Carolina limited liability company of Dorchester County, South Carolina.

4. Plaintiff, 3205 Palm Boulevard, LLC, ("Palm") is a duly organized South Carolina limited liability company of Dorchester County, South Carolina.

5. Defendant, Andrew K. Epting, Jr., LLC ("Epting, LLC") is a duly organized South Carolina limited liability company having its principal place of business at 3 State Street, County of Charleston, South Carolina 29401.

6. Defendant, Andrew K. Epting, Jr., ("Epting"), is an individual and on information and belief, a resident of Charleston County, South Carolina.

7. Defendant, George J. Kefalos, P.A., ("Kefalos, P.A.,"), is a duly organized South Carolina professional association having its principal place of business at 46-A State Street, County of Charleston, South Carolina 29401.

8. Defendant, George J. Kefalos, ("Kefalos"), is an individual, and on information and belief, a resident of Charleston County, South Carolina.

9. Defendant, Gedney M. Howe, III, P.A., ("Howe, P.A.,"), is a duly organized South Carolina professional association having its principal place of business at 8 Chalmers Street, County of Charleston, South Carolina 29402.

10. Defendant, Gedney M. Howe, III, ("Howe"), is an individual, and on information and belief, a resident of Charleston County, South Carolina.

11. Defendant, John S. West, Attorney-at-law, LLC, ("West, LLC"), is a duly organized South Carolina limited liability company having its principal place of business at 207 Carolina Avenue, Moncks Corner, Berkeley County, South Carolina 29461.

12. Defendant, John S. West, ("West"), is an individual, and on information and belief, a resident of Berkeley County, South Carolina.

JURISDICTION AND VENUE

13. This Court has original subject matter and personal jurisdiction over the claims and the parties pursuant the S.C. Const. art. V, § 11; and, pursuant to Rule 416 (2) SCACR: plaintiffs' claims concern fees, cost and disbursements exceeding $50,000.00. Venue is proper because a substantial amount of the events or omissions giving rise to the claims occurred within the jurisdiction of the County of Charleston, South Carolina, pursuant to S.C. Code § 15-7-30 (E)(1)-(2).

THE RELEVANT FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

14. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

15. In November 2007, Ms. Gibson executed and delivered to Ameris Loan Documents in the principal sum of $2,810,164.50. Ms. Gibson personally guaranteed the Loan Documents.

16. In February 2010, Ms. Gibson engaged Mr. Kefalos and Mr. Epting to negotiate a real estate workout of the Apartments and Loan Documents; *specifically,* to represent her in an approaching mortgage foreclosure action by Ameris against Heritage, and Ms. Gibson, *as guarantor*; and, to assert certain lender-counter-claims ("Lender Claims") against Ameris.

17. In February 2010, Ms. Gibson engaged Mr. Epting to represent her also in the prosecution of certain broker and appraiser claims against Re/Max Professional

Realty, Inc., ("Re/Max"), and others, in a civil action styled *Linda A. Gibson, et. al., v. Re/Max Professional Realty, et. al.,* Case No. 08-CO-10-4282 ("Re/Max Action").

18. On or about April 27, 2010, Mr. Epting and Ms. Gibson executed a contingent fee agreement ("April Agreement") purporting Mr. Epting would represent Ms. Gibson "on a contingency" as to the Re/Max Action and as to the Ameris Action. Exhibit A.

19. The April Agreement does not specify a percent value to calculate a fee for Services.

20. On June 15, 2010, Ameris Bank filed the anticipated foreclosure action against Heritage, and Ms. Gibson, *as guarantor*, in an action styled *Ameris Bank v. Linda A. Gibson, et. al.,* in the Court of Common Pleas, Berkeley County, South Carolina, Civil Action File No. 2010-CP-08-2134 ("Ameris Action"), asserting claims for breach of the notes and guaranty, and for attorneys' fees.

21. On July 9, 2010, Mr. Epting and Mr. Kefalos suggested Ms. Gibson associate Mr. Howe and Mr. West in the Ameris Action.

22. On or about August 18, 2010, Heritage and Ms. Gibson Answered and asserted the Lender Claim(s) as against Ameris Bank in the Ameris Action.

23. On or about August 24, 2010, Galt Valley, LLC, ("Galt"), a buyer of distressed paper, purchased the Loan Documents from Ameris, and was substituted for Ameris

in the Ameris Action by Consent Order; thereafter, Ameris remained in the Ameris Action only as a counterclaim defendant. Counsel continued to represent Ms. Gibson *as to* the Lender Claim in the Ameris Action pursuant to the April Agreement.

24. On separate and several occasions, Ms. Gibson asked Mr. Epting and Mr. Kefalos if she could pay the litigation costs on an hourly basis, instead of a contingent fee basis, to no avail. Mr. Epting and Mr. Kefalos advised Linda that *"Mr. Howe would not consider getting involved unless we took the case on contingency."* Gibson Aff. at ¶ 2.

25. On or about October 25, 2010, Galt offered to settle its Deficiency Claim against Heritage and Ms. Gibson, *as guarantor,* for $1.5MM and conveyance of the Apartments by deed-in-lieu of foreclosure ("Galt First Offer"). Exhibit B.

26. On October 25, 2010, Counsel reported to Ms. Gibson (i) Counsel will charge a *reverse* fee computed on the amount Counsel is able to reduce the Deficiency Claim; and, that (ii) Counsel wants a mortgage to secure the *reverse* fee Award. Exhibit C.

27. At all relevant times, Ms. Gibson did not understand the concept of a "reverse" contingent fee arrangement, nor did she knowingly acknowledge, or accept, or consent to Counsels' proposed *reverse* fee arrangement. Gibson Aff. at ¶ 3.

28. On October 29, 2010, Mr. Kefalos contacted Mr. Paul Tecklenburg, Esq., ("Mr. Tecklenburg") regarding Counsels' proposed November Arrangement purporting the $566,666.66 one-third (1/3) *reverse* fee arrangement. Exhibit D.

29. On October 29, 2010, Mr. Kefalos sent to Mr. Tecklenburg the proposed *reverse* fee "Attorney-Client Contract" and mortgage, securing payment under the November Arrangement, for Mr. Tecklenburg to review with Ms. Gibson. Id.

30. On or about October 29, 2010, Counsel suggested to Ms. Gibson that she meet with Mr. Tecklenburg for a second "opinion" of Counsels' proposed *reverse* fee arrangement. Gibson Aff. at ¶ 3.

31. On or about November 1, 2010, Ms. Gibson, on advice of Counsel, met with Mr. Tecklenburg to review the proposed *reverse* fee arrangement.

32. On November 3, 2010, Ms. Gibson, by and through Counsel, rejected the First Galt Offer. Exhibit E.

33. Five (5) days later, on November 8, 2010, Galt *unilaterally* waived its Deficiency Claim and proposed a settlement by deed-in-lieu of foreclosure of the Apartment complex, and no more ("Galt Offer"). Exhibit F.

34. On November 11, 2010, Counsel received the Galt Offer.

35. On or about November 12, 2010, Ms. Gibson forthwith accepted the Galt Offer to convey the Apartment complex by deed-in-lieu of foreclosure in full and final settlement of the Deficiency Claim.

36. On November 18, 2010, Counsel presented to Ms. Gibson the November Arrangement and solicited she execute the "Attorney-Client Contract" thereby granting Counsel a *reverse* fee based on *"One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount $1,700,000.00"* plus *"costs and expenses reasonably and necessary incurred"* by Counsel. Exhibit G.

37. On December 1, 2010, Ms. Gibson and Galt executed the Galt settlement agreement and release ("Settlement Agreement") to fully compromise and settle the Deficiency Claim by deed-in-lieu of the Apartment complex. Exhibit H.

38. On December 8, 2010, Mr. Tecklenburg presented Ms. Gibson his attorney opinion ("Opinion") stating Ms. Gibson should execute the November Arrangement Counsel and Ms. Gibson had executed twenty (20) days earlier, on November 18, 2010. Mr. Tecklenburg states in his Opinion that *"[h]e also negotiated the total amount of the fee earned in the Ameris deficiency litigation to be limited to $567,000.00."* Exhibit I.

39. On December 8, 2010, Ms. Gibson, under protest and duress, granted Gedney Howe, Esq., *individually,* and John West, Esq., *individually,* ("Mortgagees") a mortgage ("Mortgage") against separate and several of Ms. Gibson's real properties, bearing TMS Nos. 271-00-01-003; 263-00-01-032; 248-00-02-042; 271-00-01-037; 271-00-01-040; 271-00-01-084; 271-00-01-185; and, 271-00-02-030 (the "Property"), of $566,666.66 to secure the payment of the *reverse* fee Award

arising out of the November Arrangement. The Mortgage is recorded in the Berkeley County Land Registry at Bk-R VI-8734, Pg. 255. Exhibit J.

40. On or about February 17, 2012, Re/Max settled with Ms. Gibson for $850,000.00 ("Re/Max Settlement Proceeds") in the Re/Max Action.

41. On about February 17, 2012, Counsel pressured Ms. Gibson to pay Counsel the $566,666.66 fee purportedly due under the November Arrangement in the Ameris Action out of the Re/Max Action Settlement Proceeds.

42. Ms. Gibson voiced her concern that she needed the Re/Max Settlement Proceeds to satisfy a certain unrelated mortgage obligation maturing then. Ms. Gibson expressed to Counsel her disagreement and dismay at having to pay this $566,666.66 fee Award, to no avail. Ms. Gibson, under protest and duress, paid the $566,666.66 out of the Re/Max Action Settlement Proceeds to satisfy the Ameris Action *reverse* fee. Exhibit K.

43. On or about February 17, 2012, Counsel disbursed the Re/Max Action Settlement Proceeds in the amount $566,666.66 to satisfy Counsels' *reverse* fee claim in the Ameris Action, leaving the Re/Max contingent fee due unfunded in the amount $280,500.00.

44. Ms. Gibson was under duress to oppose the *reverse* fee Award because Counsel was representing Ms. Gibson in then ongoing Lender Claim litigation in the Ameris Action directly connected to the Apartments, Loan Documents and guaranty obligation. Ms. Gibson avers she felt pressured by Counsel to satisfy the November

Arrangement *reverse* fee Award out of the Re/Max Action Settlement Proceeds and, in fact, did so under duress, for fear of losing favor with Counsel in the ongoing litigation.

45. On March 24, 2012, Mr. Howe and Mr. West executed and recorded a partial release of the Mortgage lien for an unknown amount in the Berkeley County Land Registry at Bk-R VI-8868, Pg. 20. Exhibit L.

46. On even date herewith, Mr. Epting and Mr. Kefalos hold an existing mortgage lien in the amount $297,000.00 against Ms. Gibson's properties stated above to secure the unfunded Re/Max contingent fee of $280,500.00 purportedly due counsel from the Re/Max Action.

47. At all relevant times, Ms. Gibson had never met Mr. Howe, nor talked with him or received any documents from him or any person of his law firm. Ms. Gibson avers she is unaware as to his role in her litigation affairs. Gibson Aff. at ¶ 4.

48. At all relevant times, Ms. Gibson had never talked with Mr. West concerning the Ameris Action, Re/Max Action, Re/Max Settlement Proceeds distribution, November Arrangement, or otherwise. Gibson Aff. at ¶ 5.

49. Counsel neglected, or otherwise refused, to provide to Ms. Gibson any financial accounting of the basis on which Counsel computed the $1.7MM "dollar marker" Counsel utilized to calculate its one-third $566,666.66 *reverse* fee Award. Id.

50. At all relevant times, Counsel neither filed nor served any pleadings, discovery, depositions, subpoenas or other papers *as to the* Deficiency Claim.

51. In December 2010, shortly after execution of November Arrangement documents, Mr. Michael Danhour, ("Mr. Danhour"), of Galt, told Ms. Gibson Galt always intended to waive its Deficiency Claim in return for a deed-in-lieu of foreclosure when she met him to transfer Apartment keys. Mr. Danhour implied Counsel *"cost [her] a lot of money"* when she could have just *"handed over the deed to the Apartments."* Gibson Aff. at ¶ 7.

52. In September 2011, Ms. Gibson began to suspect the offense of the *reverse* fee Award, and the extent of the excessive fee, at a deposition exam during which opposing counsel ("Deposition Counsel") in the Re/Max Action examined Ms. Gibson's understanding of her *reverse* fee arrangement. Immediately following the deposition, Ms. Gibson expressed her concern and dismay as to $566,666.66 *reverse* fee Award to Mr. Kefalos, to no avail. Mr. Kefalos dismissed Deposition Counsel's exam of the *reverse* fee as mere posturing to discredit her Counsel. Gibson Aff. at ¶ 6.

53. In November 2012, Ms. Gibson met with her certified public accountant, ("CPA"), unrelated to the Ameris Action. During this meeting, the CPA inquired about the $566,666.66 fee she paid, which charged Ms. Gibson's concerns and deepened her resolve to discuss the $566,666.66 fee arrangement again with Counsel. Gibson Aff. at ¶ 11.

54. On these data points - *i.e.,* Mr. Danhour's statements, Deposition Counsel's exam and her CPA's inquiry, Ms. Gibson began in earnest to question the propriety of the $566,666.66 fee Award she paid Counsel in connection with the Deficiency Claim. Gibson Aff. at ¶¶ 10-12.

55. On separate and several occasions, Ms. Gibson communicated with Counsel her disagreement and dismay of having to pay the $566,666.66 fee Award, to no avail. Counsel rejected Ms. Gibson's inquires as to the fee arrangement and re-directed Ms. Gibson's inquires away from the fee arrangement onto other litigation matters. Gibson Aff. at ¶ 13.

56. On or about February 15, 2013, Ms. Gibson met with Mr. Epting and Mr. Kefalos "one last time" for the specific purpose to discuss and resolve the $566,666.66 fee Award. At this meeting, in response to Ms. Gibson's inquiries concerning the November Arrangement and fee, Mr. Epting told Ms. Gibson a fable of legends of *"skillful attorneys"* who *"can get the job done with but a phone call"* and that *"she should be happy she got the result she wanted."* Ms. Gibson, having paid $566,666.66 to Counsel she did not feel appropriate felt further dismay and frustration as to this excessive fee. Gibson Aff. at ¶ 14.

57. On March 8, 2013, Ms. Gibson's undersigned counsel served Counsel a proposal to settle the *reverse* fee claim, to no avail.

58. On April 30, 2013, Ms. Gibson's undersigned counsel served Counsel a demand the Re/Max Action Settlement Proceeds, to the extent of $566,666.66, plus accrued

interest thereon, wrongfully converted to satisfy the Ameris Action *reverse* fee arrangement, be deposited in escrow with an independent third party (law firm) pending resolution of this fee disagreement, to no avail. Counsel did not respond to the April 30, 2013 demand.

FOR A CAUSE OF ACTION

COUNT I

Breach of fiduciary duty

(as to all defendants)

59. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

60. At all relevant times, Ms. Gibson occupied an attorney-client relationship with Counsel, *jointly and severally.*

61. A fiduciary relationship exists between attorney and client.

62. Ms. Gibson imposed a relationship of trust and confidence in Counsel which Counsel expressly acknowledged and accepted by the April Agreement and consideration.

63. At all relevant times, Counsel owed Ms. Gibson a duty of care and of loyalty to protect and advance Ms. Gibson's interest without negligence or *self*-dealing.

64. Counsel breached their fiduciary duties by misrepresenting, or otherwise failing to fully disclose, to Ms. Gibson the nature of Counsels' fee arrangement as fastening both a *straight* and *reverse* fee obligation as to the Ameris Action.

65. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, a *reverse* fee Award of 1/3 of $1.7MM is excessive, unconscionable and not commensurate with a reasonable fee to prepare a routine deed-in-lieu of foreclosure.

66. Counsel breached their fiduciary duties by misrepresenting, or otherwise failing to disclose, to Ms. Gibson, her recoupment claims, equities and defenses in the computation of the *reverse* fee Award.

67. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, the *reverse* fee Award was based on an indeterminate $1.7MM "dollar marker," not adjusted for recoupment claims and defenses.

68. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to fully disclose, the nature of the November Arrangement was, in fact, a "second" fee arrangement (i) not contemplated by the April Agreement; (ii) unsupported by consideration; (iii) for work Counsel had a pre-existing contractual obligation (under the April Agreement); and/or, (iv) to the extent Counsel avers contemplated by the April Agreement, a material fee modification of the April Agreement.

69. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, the meeting with Mr. Tecklenburg to review or "approve" Counsels' *reverse* fee arrangement was for Counsels' benefit, not Ms. Gibson's benefit.

70. Ms. Gibson realized no benefit from the "second" opinion of counsel whereas, *substantively,* a "second" opinion could serve, at most, a reaffirmation of Counsels' conduct, whether or not proper.

71. Ms. Gibson avers Counsels' suggestion she get a "second" opinion served Ms. Gibson no purpose, but a waste of her time for Counsels' sole benefit.

72. Counsel, in fact, by initiating and directing Ms. Gibson to get a "second" opinion, realized the substantial benefit of the appearance of credibility of good faith and fair dealing for their perverse, and illegitimate, effort to induce Ms. Gibson to execute the *reverse* fee Agreement for Counsels' sole benefit.

73. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, at execution of the November Arrangement, the November Arrangement was, in fact, a fee change order, unsupported by consideration without mutuality of obligation.

74. Counsel breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, at execution of the November Arrangement, Counsels' performance under the November Arrangement required no additional attorney work product not contemplated by the April Agreement.

75. Counsel breached their fiduciary duties of loyalty to Ms. Gibson by *self*-dealing in the assets of the litigation estate; *namely,* Ms. Gibson's entitlement to recover the benefit of Galt's *unilateral* waiver of the Deficiency Claim.

76. Counsel breached their fiduciary duty of loyalty to Ms. Gibson by *self*-dealing in the litigation estate reachable by Counsel only through Counsels' confidential attorney-client relationship.

77. Counsel breached their fiduciary duties of loyalty to Ms. Gibson by failing to disclose at the outset of the Ameris Action that (i) Counsel would require mortgages against Ms. Gibson's properties to secure payment of fees; and, that (ii) future fee arrangements can arise during the course of the litigation.

78. Counsel breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose the November Arrangement contained misleading material facts of which Counsel was aware, and Ms. Gibson was not, at execution of the Attorney-Client "Contract" – *to wit:* (i) *"Client hereby hires "Law Firm" in the defense and pursuit of a counterclaim"* when, in fact, (a) Counsel had already been engaged under the April Agreement; and, (b) the "defense" of the deficiency liability already had been settled, and extinguished; and, (ii) *"leaving a potential deficiency judgment of $1.7MM"* when, in fact, Counsel knew the Deficiency Claim had already been waived, leaving no deficiency; and, (iii) *"[f]or their services, Law Firm shall receive a fee based upon []..."One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount $1,700,000.00"*

when, in fact, (a) the "sums saved" *for the purposes* of computing the *reverse* fee Award was already certain and known to Counsel to be $566,666.66; and, (iv) that Counsel *"will advance these costs during the prosecution of the case..."* when, in fact, there was no case to prosecute (or defend) *as to the* Deficiency Claim because the deficiency contemplated in the November Arrangement had prior been settled by deed-in-lieu of foreclosure.

79. As a direct and proximate result of Counsels' wrongful conduct, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT II

Aiding and Abetting Breach of Fiduciary Duty

(as to defendants Howe and West)

80. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

81. At all relevant times, Ms. Gibson. occupied an attorney-client relationship with Mr. Howe and Mr. West.

82. Defendants Mr. Howe and Mr. West knowingly, with purposeful intent, directly participated in the design, solicitation, negotiation, execution, or otherwise ratified, the $566,666.66 *reverse* fee arrangement set forth in the November Arrangement.

83. Defendants Mr. Howe and Mr. West knew, or should have known, at the execution of the November Agreement, the *reverse* fee arrangement conferred no cognizable

benefit to Ms. Gibson, but unduly and unfairly compensated Counsel to Ms. Gibson's substantial loss.

84. As a direct and proximate result of Mr. Howe and Mr. West's wrongful conduct, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT III

Negligent Misrepresentation

(as to all defendants)

85. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

86. At all relevant times, Counsel owed Ms. Gibson a duty to make full disclosure of all material facts relating to or concerning Counsels' fee arrangement, the amount of the fee Award, percent of recovery and basis to compute the fee Award.

87. Counsels' representation to Ms. Gibson that $1.7MM is an accurate "dollar marker" to compute Counsels' *reverse* fee award is a false and/or misleading representation given, inter alia, (i) Galt's unilateral waiver of its deficiency claim; and, (ii) the appraisal(s) and/or valuation(s) of the deed-in-lieu properties was indeterminate and/or unascertainable at the time of Counsels' representations; and, (iii) $566,666.66 is a grossly excessive fee for a routine deed-in-lieu of foreclosure transaction.

88. Counsels' conduct of omitting certain material facts and circumstances relevant to and bearing on the amount of Counsels' fee award, *namely,* that Ms. Gibson held certain affirmative defenses to mitigate the deficiency liability, and thereby reduce the Deficiency Claim, *for the purposes of computing* the fee Award, constitutes misrepresentation.

89. Counsels' conduct of making the foregoing misrepresentations and omissions of material facts divested Ms. Gibson, and Mr. Tecklenburg, of their ability to make an informed decision as to the reasonableness of the fee, and the fee arrangement as a whole, and therefore constitutes a breach of duty of care to Ms. Gibson.

90. Counsel had a pecuniary interest in making the false and misleading representations, and omitting material facts, at the time the statements, and omissions were made.

91. Ms. Gibson reasonably and justifiably relied on Counsels' misleading statements, misrepresentations, and omission of material facts relating to and bearing on the *reverse* fee Award.

92. But for Counsels' material misrepresentations and omissions, Ms. Gibson would not have entered into the *reverse* fee arrangement transaction; and, Ms. Gibson would not have sustained damages arising out of the *reverse* fee arrangement.

93. As a direct and proximate result of Counsel's omission of material facts stated above and others, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT IV

Unjust enrichment

(as to all defendants)

94. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

95. Ms. Gibson unsuspectingly, and inadvertently, conferred $566,666.66 to Counsel without fully informed knowledge, mutual assent, mutual obligation, actual consent or intention under the *reverse* fee November Arrangement with Counsel.

96. Counsels' only consequential means to mitigate the Deficiency Claim was to prosecute the Lender Claims, both claims being in repose to each other claim arising out of the same Loan Documents, concerning a single asset (Apartments) between the same parties; and, therefore, and for other reasons stated herein, a mortgage foreclosure cannot support two separate fee Awards; and, in any event, the *reverse* fee Award is excessive. For these reasons, Counsel is unjustly enriched by the *reverse* fee arrangement.

97. Counsel obtained the *reverse* fee Award without valid consideration.

98. Counsel is unjustly enriched by receipt of Ms. Gibson's property – *to wit:* $566,666.66, and that certain mortgage lien estate interest.

99. It is inequitable for Counsel to retain the benefit of their ill-gotten gains.

100. As a direct and proximate result of Counsel's unjust enrichment, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT V
Conversion
(as to all defendants)

101. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

102. Ms. Gibson is the true and lawful owner of that certain real and personal property the subject of this action.

103. Counsel unlawfully exercised, and continues to exercise, to the exclusion of Ms. Gibson's lawful interest, dominion and control over real and personal property belonging to Ms. Gibson the subject of this action. Specifically, $566,666.66, accrued interest thereon, and certain estate interest encumbered by Counsels' mortgage liens on Ms. Gibson's properties.

104. The specific amount of money belonging to Ms. Gibson and converted by Counsel is $566,666.66, plus accrued interest thereon from the date of payment.

105. The specific real Property estate interest encumbered (converted) belonging to Ms. Gibson are Ms. Gibson's properties bearing TMS Nos. 271-00-01-003; 263-00-01-032; 248-00-02-042; 271-00-01-037; 271-00-01-040; 271-00-01-084; 271-00-01-185; and, 271-00-02-030, to the extent of $297,000.00, as more fully described in Exhibit J.

106. As a direct and proximate result of Counsels' unlawful conversion of Ms. Gibson's real and personal property, Ms. Gibson sustained damages in excess of $500,000.00.

COUNT VI
Breach Contract
(as to all Defendants)

107. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

108. Ms. Gibson and Counsel entered and executed a valid binding contract (April Agreement) whereby Counsel would provide legal Services to Ms. Gibson "on a contingency" basis for a percent fee of recovery of the Lender Claims.

109. The April Agreement imposed on Counsel an obligation of good faith and fair dealing owing Ms. Gibson.

110. Counsel breached the implied covenants of good faith and fair dealing in the performance and discharge of their contractual obligations under the April Agreement by, inter alia, engaging in conduct of misrepresentation and adhesion *as to the* Deficiency Claim *reverse* fee Award whereas Counsel (a) failed, or otherwise neglected, to disclose material facts; and, (b) concurrently represented Ms. Gibson in then ongoing Lender Claim litigation in the same action, on the same Loan Documents, between the same parties.

111. At execution of the November Arrangement, Ms. Gibson was represented by the same Counsel representing her interests in Lender Claim litigation in the Ameris Action.

112. At execution of the November Agreement, Counsel was privy to material information unknown to Ms. Gibson; *namely,* inter alia, Galt's uncontroverted $1.7MM Deficiency Claim was not an appropriate basis to compute the $566,666.66 fee Award.

113. Ms. Gibson reasonably and justifiably relied on Counsels' appearance of good faith and fair dealing at the time she executed the November Arrangement.

114. The April Agreement's terms obligate Counsel to endeavor to recover a $20,000.00 retainer fee ("Retainer Fee") Ms. Gibson paid her former attorney, The Richter Law Firm ("Mr. Richter"). Counsel neglected, or otherwise failed, to advance Ms. Gibson's interest to recover the $20,000.00 Richter Retainer Fee, and therefore is in breach the express terms of the April Agreement. Exhibit A.

115. The April Agreement's terms contemplate a contingent fee arrangement to represent Ms. Gibson in connection with Mr. Paul Moore ("Mr. Moore"). Counsel did so, and recovered $24,800.00 ("Moore Settlement"). Counsel allocated and disbursed 100% of the Moore Settlement to Counsel. Ms. Gibson avers no contingent fee arrangement can contemplate 100% of the settlement proceeds be attorney fees; and, so, Counsel is in breach of the express terms of the April

Agreement. Ms. Gibson asserts entitlement to a refund of two–thirds (2/3) of the Moore Settlement proceeds, or $16,616.00. Exhibit M.

116. At all relevant times, Ms. Gibson was in a susceptible, impressionable and vulnerable relation to Counsel as to her legal and financial affairs because, and for other reasons, Ms. Gibson is not trained in the law; and, in any event, she decidedly retained Counsel to represent her interest.

117. Ms. Gibson was unduly influenced by Counsels' opinion and advice *as to the* November Arrangement and, Counsels' request that the $566,666.66 fee be paid out of the Re/Max Action Settlement Proceeds to satisfy the Ameris Action *reverse* fee Award.

118. On or about November 18, 2010, by and through the November Arrangement, Counsel engaged in profiteering by its conduct of engineering, drafting, presenting and advising Ms. Gibson to execute the November Arrangement for Counsels' benefit adverse to Ms. Gibson's interest.

119. Counsel initiated Ms. Gibson seek "independent advice" from Mr. Tecklenburg; and, Counsel initiated direct talks with Mr. Tecklenburg regarding Counsels' fee arrangement.

120. The parties' execution, and performance, of the November Arrangement is an unnatural transaction, without adequate consideration, entered into and executed *nunc pro tunc* on the basis of a *non*-aleatory promise.

121. The disposition to exercise undue influence to accomplish the unnatural transaction (November Arrangement) was motivated by Counsel without Ms. Gibson; and, without her fully informed consent and awareness of the nature of the *reverse* fee arrangement.

122. Counsel achieved its desired result – *e.g.*, Ms. Gibson executed the *reverse* fee November Arrangement documents, and paid Counsel $566,666.66, as a plain result of Counsels' undue influence.

123. As a direct and proximate result of Counsels' breach of the express and implied covenants of good faith and fair dealing, and the express agreement(s) concerning the Richter Retainer Fee, and Moore Settlement, and undue influence, Ms. Gibson suffered damages in excess of $500,000.00.

COUNT VII
Action for Accounting
(as to all Defendants)

124. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

125. At all relevant times, Counsel and Ms. Gibson occupied a relation of mutual trust and confidence by the nature of their attorney-client relationship.

126. Ms. Gibson entrusted money to Counsel, in trust, for Ms. Gibson's benefit.

127. The trust, confidence and nature of the attorney-client relationship imposes a burden on Counsel to account to Ms. Gibson all financial transactions and accounting relating to the attorney-client relationship.

128. Ms. Gibson is entitled to the full and complete disclosure of the financial accounts and accounting the subject of the Ameris Action, Re/Max Action, Re/Max Settlement Proceeds distribution, and, *generally,* any and all statements of or relating to all income, receipts, receivables, distributions, payments, fee-sharing and attendant agreements concerning their attorney-client relation (*together and collectively,* the "Accounting").

129. On or about November 29, 2012, and then again on May 9, 2013, Ms. Gibson requested an Accounting from Counsel.

130. Counsel failed to provide an Accounting as requested by Ms. Gibson, but for certain time slips consisting of and relating to the following periods: by Mr. Epting (6/14/210 *through* 3/22/2012 (Ameris)); (4/5/2010 *through* 12/2/2010 not-Ameris)); and, by Mr. Kefalos (8/17/2010 *through* 12/15/2010).

131. Counsel provided no Accounting for the following periods: for Mr. Epting (1/1/2010 *through* 6/14/2010 and 3/22/2012 *through* present); and, for Mr. Kefalos, (1/1/2010 *through* 8/17/2010 and 12/15/2010 *through* present); and, for Mr. Howe, (7/1/2010 *through* present); and, for Mr. West, (7/1/2010 *through* present).

132. As a direct and proximate result of the lack of transparency of accounts, and the Accounting, Ms. Gibson sustained, and continues to sustain, damages of unknown, as yet ascertainable, pecuniary and non-pecuniary loss.

COUNT VIII

Action for Equitable Indemnity

(as to all Defendants)

133. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

134. The April Agreement terms provide Counsel will represent Ms. Gibson "on a contingency."

135. Ms. Gibson will suffer substantial financial loss if she is required to pay additional attorney fees, costs and expenses in the Ameris Action for both trial counsel and appellate counsel, if any, outside the April Agreement.

136. Ms. Gibson will likely incur substantial additional attorney fees, costs and expenses, but for Counsels' conduct, she otherwise would not.

137. Counsel has a fiduciary duty, and contractual obligation, arising out of the April Agreement, to indemnify Ms. Gibson against any additional trial or appellate counsels' attorney fees, costs and expenses to the extent of any amount outside the April Agreement.

138. Separately, Ms. Gibson is entitled to recovery attorney fees and costs attendant to the instant action because Counsel, by its own wrongdoing, involved Ms. Gibson in this fee action, and made it necessary she incur attorney fees and costs, to protect her interest, she otherwise would not, but for Counsels' malfeasance and neglect; and, Counsels' refusal to resolve this fee dispute without litigation.

139. As a direct and proximate result, Ms. Gibson sustained, and continues to sustain, exposure to additional attorney fees, costs and expenses attendant to the Ameris Action, any appeal, and the instant action, not contemplated by the April Agreement.

COUNT IX

Action for Declaratory Judgment
Uniform Declaratory Judgments Act, § 15-53-30, *et. seq.*
(as to all Defendants)

140. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

141. Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable because, inter alia, the November Arrangement lacks mutuality of assent, mutuality of obligation and consideration.

142. Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable because, inter alia, a *straight* contingent fee and *reverse* fee of 1/3 of both the Lender Claim and the Deficiency Claim "recovery" in an action to

foreclose a single mortgage is *prima facia* inequitable as to the distressed borrower-mortgagor and guarantor, Ms. Gibson.

143. Ms. Gibson requests this Court declare the November Arrangement *reverse* fee Award amount unenforceable; and, so, set-aside, rescind or otherwise reform the "Attorney-Client Contract."

144. Ms. Gibson requests this Court declare the $566,666.66 fee Award excessive and restore to Ms. Gibson, *together with* accrued interest thereon, from the date of payment, that amount remaining after a reasonable *quantum meruit* fee allocated Counsel commensurate with like-kind "deed-in-lieu" work product.

145. Ms. Gibson request this Court declare the *reverse* fee November Arrangement, if enforceable, be based on a load-star method, commensurate with Rule 1.5(a), RPC, Rule 407, SCACR; or, otherwise, not to exceed like-kind deed-in-lieu of foreclosure work product.

146. Ms. Gibson affirmatively preserves her right to a trial by Jury, and all appeals, if any, without limitation, allowable pursuant to the Uniform Declaratory Judgments Act, § 15-53-90, *et. seq.*, and in equity.

147. Ms. Gibson requests this Court award her reasonable attorney fees, costs and expenses attendant to prosecuting this declaratory action, pursuant to S.C. §15-53-100.

COUNT X

Action for Violation of The South Carolina
Unfair Trade Practices Act, §39-5-10, *et. seq.*
(as to all Defendants)

148. Plaintiff repeats and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if the same were fully set forth at length herein.

149. The engineering, drafting, solicitation and execution of the November Arrangement, and the receipt of substantial funds therefrom, constitutes unfair and deceptive conduct.

150. Counsel, *jointly and severally*, willfully and/or knowingly participated in the unfair and deceptive conduct by collaborating together to create the appearance of a complex deed-in-lieu transaction requiring four (4) attorneys' time and expertise; Counsel did so to (i) justify the $566,666.66 fee. However, *as to the* Deficiency Claim, the transaction is but a routine deed-in-lieu of foreclosure.

151. Counsel, fortified with the credibility of four (4) attorneys posing a complex deed-in-lieu conveyance, when it is not, willfully and/or knowingly did induce Ms. Gibson to enter into the $566,666.66 *reverse* fee arrangement.

152. A $566,666.66 fee for a deed-in-lieu of foreclosure is excessive and grossly disproportionate to the novelty, time and complexity required, and therefore unfair.

153. Counsels' unfair and deceptive conduct concerns, or otherwise impacts, the public interest because, inter alia, attorneys (i) collaborating to create the appearance of

complex litigation to (ii) collect a paired *straight* and a *reverse* fee, in an action to foreclosure a single mortgage, of 1/3 of the deficiency of the public's mortgage debt without (iii) full disclosure to the client (public) of the basis to compute the fee will result in substantially higher attorney fees and profiteering in foreclosures – *to wit:* if Counsels' conduct is allowable, South Carolina foreclosure attorneys will reap substantial fees on mortgage debt at the public's expense.

154. A *straight* and *reverse* fee in an action to foreclosure a single mortgage directly, and substantially, impacts the public's costs for legal services; particularly, where the paired fee contemplates a third of both the lender and deficiency claim.

155. Counsels' conduct has the potential for repetition because of the substantial fee windfall attorneys would collect when mortgagees waive deficiency claims in foreclosure actions.

156. As a direct and proximate result of Counsels' conduct, the public's interest is upset, Ms. Gibson sustained damages in excess of $500,000.00; and, hereby demands treble damages pursuant to S.C. Code §§ 39-5-140, 39-5-20.

CONCLUSION

On the foregoing facts and Counts, Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable, and the $566,666.66 fee is excessive, - *e.g.,* computed on a bald $1.7MM "dollar maker", rather than an earned percentage of the deficiency saved; without "contingency" risk; and, not commensurate with the time, novelty and risk taken by Counsel, *as to the* Deficiency Claim, particularly given Galt's *unilateral* waiver of its deficiency.

WHEREFORE, Ms. Gibson respectfully requests this Honorable Court enter Judgment, Orders and Relief that:

(i) Set aside, rescind or otherwise reform, the November Arrangement "contract"; and,

(ii) Declare the $566,666.66 fee Award excessive; and,

(iii) Ms. Gibson is entitled to recover $566,666.66 she paid to Counsel, *together with* accrued interest thereon, from the date of payment, after a reasonable fee paid Counsel commensurate with like-kind deed-in-lieu work product; and,

(iv) Ms. Gibson is entitled to recover $20,000.00 she paid to the Richter Law Firm, *together with* accrued interest thereon, from the date of payment; and,

(v) Ms. Gibson is entitled to recover $16,616.00 she paid to Counsel, or two-thirds (2/3) of the recovery of the Moore Settlement, *together with* accrued interest thereon, from the date of payment; and,

(vi) Release the present $297,000.00 Mortgage Lien Counsel recorded against Ms. Gibson's real property; and,

(vii) All settlement proceeds received by Counsel in that certain ongoing Berkeley County Ameris Action styled as *Linda A. Gibson, et. al., v. Ameris Bank,* Case No.: 2010-CP-08-2134, be deposited with this Court pending resolution of this fee dispute; and,

(viii) Counsel equitably indemnify Ms. Gibson twenty-percent (20%) of any attorney fees, costs and expenses incurred attendant to the Ameris Action outside the April Agreement; and

(ix) Award Ms. Gibson attorney fees, costs and expenses attendant to the instant action; treble damages, pursuant to S.C. Code §§ 39-5-140, 39-5-20; and, such other and further relief as this Court deems fair and just.

JURY TRIAL DEMANDED

Plaintiffs demand trial by jury on all issues so triable.

Respectfully Submitted,

LINDA A. GIBSON, *Individually, and in capacity as* TRUSTEE *of* THE PAUL WILLIAM GIBSON FAMILY TRUST, *and,*
HERITAGE SEVEN, LLC, *and,*
SEVEN OAKS APARTMENTS, LLC, *and,*
3205 PALM BOULEVARD, LLC,

By Their Counsel,

James R. Davis

James R. Davis, Esq., #100358
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Daniel Island, SC 29492
800.983.0455 (office)
800.983.0153 (fax)
843.364.2218 (direct)
jim@jdavispc.com

Dated: January 2, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, *individually, and in capacity as* TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC.,

Plaintiffs

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K. EPTING, JR.; GEORGE J. KEFALOS, P.A.; GEORGE J. KEFALOS; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,

Defendants

SECOND (8-6-2015) AMENDED COMPLAINT

Jury Trial Demand

FILED
2015 OCT 22 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT

SECOND (8-6-2015) AMENDED COMPLAINT

Plaintiffs, Linda A. Gibson, *et. al.*, (*collectively* "Ms. Gibson" or "Plaintiffs), by way of second amended complaint hereby allege as follows:

INTRODUCTION

This is an action to determine the enforceability of an attorney fee contract; and, if enforceable, to determine whether the fee is excessive. This action arises out of a $566,666.66 fee disagreement between Ms. Gibson and Defendants relating to a foreclosure and guaranty action that ended in a routine deed-in-lieu of foreclosure transaction.

In early 2010, Ms. Gibson and defendants Mr. Kefalos and Mr. Epting entered into a standard hourly fee arrangement; subsequently, defendants proposed, and the parties agreed, to convert their hourly fee arrangement to a contingent fee agreement, dated April 27, 2010 ("April Agreement"). Exhibit A.

Ms. Gibson avers the April Agreement proscribes one contingent fee computed as thirty-three percent (33%) of recovery, if any, of her lender-liability claim(s); and, *conversely,* defendants aver the April Agreement proscribes two contingent fees computed as (i) thirty-three percent (33%) of recovery, if any, of her lender-liability claim(s); plus, (ii) thirty-three percent (33%) of the recovery (savings), if any, of a purported mortgage deficiency. In short, defendants seek a "dual-fee" constituting both a *straight*-contingent fee (lender claim) and a *reverse*-contingent fee (deficiency claim). Defendants base their "dual-fee" entitlement on a trilogy of fee documents.

RELIEF REQUESTED

Ms. Gibson respectfully requests this Court declare, pursuant to the Uniform Declaratory Judgments Act, § 15-53-30, *et. seq.,* that (i) no dual-fee arrangement exists, contingent or otherwise; and, that (ii) the November 2010 fee document providing for the $566,666.66 *reverse*-contingent fee award is unenforceable, excessive, or otherwise unconscionable. Ms. Gibson seeks also this Court (iii) cancel that certain mortgage lien of $297,500.00 ("Mortgage Lien") defendants recorded against Ms. Gibson's real property; (iv) direct any settlement proceeds received in the Berkeley County litigation styled *Linda A. Gibson, et. al., v. Ameris Bank,* Case No.: 2010-CP-08-2134, ("Ameris Action") be deposited with this Court pending resolution of this fee dispute; (v) direct defendants to equitably indemnify Plaintiffs' their attorney fees, costs and expenses incurred in the Ameris Action appeal; and, separately, (vi) award Plaintiffs their actual and consequential damages, *together with* accrued interest thereon, arising out of their claims in this action, inclusive of reasonable attorney fees and costs incurred herewith; and, (vii) award such other and further relief this Court deems fair and just.

THE PARTIES

1. Plaintiff, Linda A. Gibson, ("Ms. Gibson" or "Plaintiff(s)") is a citizen and resident of Dorchester County, South Carolina. At all relevant times, Ms. Gibson is the sole member of the Plaintiff limited liability companies, and the Trustee of The Paul William Gibson Family Trust.

2. Plaintiffs, Heritage Seven, LLC, ("Heritage"), Seven Oaks Apartments, LLC, 3205 Palm Boulevard, LLC, ("*collectively,* the "Plaintiff(s)") are each a duly organized South Carolina limited liability companies of Dorchester County, South Carolina.

3. Defendants, Andrew K. Epting, Jr., LLC ("Epting, LLC") is a duly organized South Carolina limited liability company having its principal place of business at 3 State Street, County of Charleston, South Carolina 29401; and, defendant, Andrew K. Epting, Jr., ("Mr. Epting" *together with* Epting, LLC, *collectively,* "Defendants") is an individual and a resident of Charleston County, South Carolina.

4. Defendants, George J. Kefalos, P.A., ("Kefalos, P.A.") is a duly organized South Carolina professional association having its principal place of business at 46-A State Street, County of Charleston, South Carolina 29401. Defendant, George J. Kefalos, ("Mr. Kefalos" *together with* Kefalos, P.A., *collectively,* "Defendants") is an individual and a resident of Charleston County, South Carolina.

5. Defendants, Gedney M. Howe, III, P.A., ("Howe, P.A.") is a duly organized South Carolina professional association having its principal place of business at 8 Chalmers Street, County of Charleston, South Carolina 29402. Defendant, Gedney M. Howe, III, ("Mr. Howe" *together with* Howe, P.A, *collectively,* "Defendants"), is an individual and is a resident of Charleston County, South Carolina.

6. Defendants, John S. West, Attorney-at-Law, LLC, ("West, LLC") is a duly organized South Carolina limited liability company having its principal place of business at 207

Carolina Avenue, Moncks Corner, Berkeley County, South Carolina 29461. Defendant, John S. West, ("Mr. West" *together with* West, LLC, *collectively,* "Defendants") is an individual and is a resident of Berkeley County, South Carolina. At all relevant times, West, LLC, and Mr. West, conducts business in Charleston County, South Carolina.

JURISDICTION AND VENUE

7. This Court has original subject matter and personal jurisdiction over the claims and the parties pursuant the S.C. Const. art. V, § 11; and, pursuant to Rule 416 (2) SCACR: the Plaintiffs' claims concern fees, cost and disbursements exceeding $50,000.00. Venue is proper because a substantial amount of the events or omissions giving rise to the claims occurred within the jurisdiction of the County of Charleston, South Carolina, pursuant to S.C. Code § 15-7-30 (E)(1)-(2).

THE RELEVANT FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

8. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

9. In November 2007, Heritage Seven, LLC executed and delivered to Ameris Bank ("Ameris") a note and mortgage ("Loan Documents") in the principal sum of $2,810,164.50. Ms. Gibson personally guaranteed the Loan Documents. By late 2009, Heritage defaulted on its loan payments to Ameris.

10. In early 2010, Ms. Gibson engaged Mr. Kefalos and Mr. Epting to negotiate a real estate workout of the Apartments and Loan Documents; *specifically,* to represent her in an approaching mortgage foreclosure action by Ameris against Heritage, and Ms. Gibson, as guarantor; and, to assert certain lender counterclaims ("Lender Claims") against Ameris.

11. Ms. Gibson engaged Mr. Kefalos and Mr. Epting to represent her also in the

prosecution of certain broker and appraiser claims against Re/Max Professional Realty, Inc., ("Re/Max"), and others, in a civil action styled *Linda A. Gibson, et. al., v. Re/Max Professional Realty, et. al.,* Case No. 08-CO-10-4282 ("Re/Max Action").

12. On or about April 27, 2010, Mr. Epting and Ms. Gibson executed a contingent fee agreement ("April Agreement") purporting Mr. Epting would represent Ms. Gibson *"on a contingency"* in the Re/Max Action and the Ameris Action. Exhibit A.

13. The April Agreement does not specify any percent value to calculate a fee for the defendants' services.

14. On June 15, 2010, Ameris Bank filed the anticipated foreclosure action against Heritage, and Ms. Gibson, as guarantor, asserting claims for default on the Loan Documents.

15. On July 9, 2010, Mr. Epting and Mr. Kefalos suggested to Ms. Gibson that defendants associate Mr. Howe and Mr. West to assist them in representing her in the Ameris Action.

16. On July 15, 2010, Ameris sold Ms. Gibson's Loan as part of a portfolio of non-performing debt, ("Debt Portfolio"), to Galt Valley, LLC, ("Galt"), a prospector in distressed assets.

17. On information and belief, Galt knew at purchase Plaintiffs' Loan Documents were non-performing, in default.

18. At all relevant times, Defendants knew Plaintiffs' Loan Documents were non-performing, in default; and, as such, Defendants knew, or should have known, Galt was a non-Holder-in-due-course.

19. On information and belief, Galt executed deeds-in-lieu of foreclosure, and forgave all mortgage deficiencies, with the debtors in the Debt Portfolio; *including,* on separate and several occasions, attempting to reach Ms. Gibson, by and through the Defendants, to execute a

deed-in-lieu with Heritage.

20. At all relevant times, Galt desired an expedited deed-in-lieu of foreclosure with forgiveness of the deficiencies of all debtors in the Debt Portfolio, including Heritage.

21. Ms. Gibson avers the Defendants neglected, failed, or otherwise refused, to propose to Galt a deed-in-lieu on her behalf; and, worse, knowingly, and willfully, or otherwise negligently, refused to cooperate with Galt's counsel to achieve an expedited deed-in-lieu in a veiled attempt to create the appearance of complex litigation, requiring four attorneys, so to justify their $566,666.00 *reverse*-contingent fee.

22. On or about August 18, 2010, Mr. Kefalos on behalf of Plaintiffs filed an Answer and asserted the Lender Claim(s) as against Ameris Bank in the Ameris Action.

23. On or about October 25, 2010, Galt offered to settle its purported deficiency against Heritage for $1.5MM and conveyance of the Apartments by deed-in-lieu of foreclosure ("Galt First Offer"). Exhibit B.

24. On October 25, 2010, Defendants told Ms. Gibson (i) Defendants will charge a reverse fee computed on the amount Defendants are able to reduce the purported deficiency; and, that (ii) Defendants Mr. Howe and Mr. West want a mortgage to secure the reverse fee. Exhibit C

25. On October 29, 2010, Mr. Kefalos contacted Mr. Paul Tecklenburg, Esq., ("Mr. Tecklenburg") regarding Defendants' proposed November Arrangement purporting the $566,666.66 one-third (1/3) reverse fee arrangement. Exhibit D.

26. On October 29, 2010, Mr. Kefalos sent also to Mr. Tecklenburg a proposed "Attorney-Client Contract" (seeking the reverse fee) and a proposed mortgage agreement for Mr. Tecklenburg to review with Ms. Gibson. Id.

27. On October 29, 2010, Defendants suggested to Ms. Gibson that she meet with Mr. Tecklenburg for a second "opinion" of Defendants' proposed "Attorney-Client Contract". Gibson

Aff. at ¶ 3.

28. At all relevant times, Defendants negligently, or otherwise intentionally, withheld from Plaintiffs, and Mr. Tecklenburg, material information Defendants knew, or should have known, of significant legal consequence to Plaintiffs relating to the (i) true inchoate (unperfected) nature of the Plaintiffs' deficiency obligation; (ii) very low likelihood Ms. Gibson would be liable for a $1.7M deficiency; (iii) very high likelihood Defendants would spend, and did spend, nominal time on this non-complex deed-in-lieu; (iv) reasonableness of the $566,666.00 fee arrangement; and, (v) *generally,* the true nature of Ms. Gibson's prior fee arrangement with the Defendants.

29. Without the foregoing material disclosures, Ms. Gibson and Mr. Tecklenburg met to review the Defendants' proposed (reverse) fee modification.

30. On November 3, 2010, Heritage, by and through Defendants, rejected the First Galt Offer. Exhibit E.

31. On November 8, 2010, Galt demanded in writing that Heritage accept Galt's deed-in-lieu of foreclosure, and debt-forgiveness, as Galt did with all other mortgagors of its Debt Portfolio. ("Galt Offer"). Exhibit F.

32. On November 11, 2010, Defendants received the Galt Offer; and, on or about November 12, 2010, Ms. Gibson forthwith accepted the Galt Offer to convey the Apartment complex by deed-in-lieu of foreclosure in full and final settlement of any claims with Galt.[1]

33. On November 18, 2010, Defendants solicited Ms. Gibson enter a "second" fee arrangement Defendants *self*-styled an "Attorney-Client Contract" purporting the *reverse*-contingent fee entitlement of $566,666.66, or one-third (1/3) of the $1.7MM purported Deficiency Claim (the "November Arrangement"). Exhibit G.

[1] Ameris remained in the Ameris Action as a counterclaim defendant. Defendants continued to represent Ms. Gibson as to the Lender Claim in the Ameris Action.

34. Ms. Gibson avers Defendants' *self*-characterized "Attorney-Client Contract" is but a fee change-order submitted to her after Galt waived its deficiency in a scheme by Defendants to profiteer by Galt's forgives of debt.

35. On separate and several occasions, Ms. Gibson asked Mr. Epting and Mr. Kefalos if she could pay them on an hourly basis, instead of a contingent fee basis, to no avail. Mr. Epting and Mr. Kefalos advised Linda that *"Mr. Howe would not consider getting involved unless we took the case on contingency."* Gibson Aff. at ¶ 2.

36. At all relevant times, Ms. Gibson did not understand the concept of a "reverse" fee arrangement, nor did she knowingly acknowledge, or accept, or consent to Defendants' proposed reverse fee arrangement; or, any "dual-fee" arrangement. Gibson Aff. at ¶ 3.

37. On December 1, 2010, Ms. Gibson and Galt executed the Galt settlement agreement and release ("Settlement Agreement") that fully compromised and settled all claims with Galt. Exhibit H.

38. On December 8, 2010, Mr. Tecklenburg presented Ms. Gibson his attorney opinion ("Opinion") stating Ms. Gibson should execute the November Arrangement that Defendants and Ms. Gibson had executed twenty (20) days earlier, on November 18, 2010. Mr. Tecklenburg states in his Opinion that *"[h]e also negotiated the total amount of the fee earned in the Ameris deficiency litigation to be limited to $567,000.00."* Exhibit I.

39. On December 8, 2010, Ms. Gibson, under protest and duress, granted Gedney Howe, Esq., *individually*, and John West, Esq., *individually*, ("Mortgagees") a mortgage ("Mortgage") against separate and several of Ms. Gibson's real properties, bearing TMS Nos. 271-00-01-003; 263-00-01-032; 248-00-02-042; 271- 00-01-037; 271-00-01-040; 271-00-01-084; 271-00-01-185; and, 271-00-02-030 (the "Property"), in the amount of $566,666.66 to secure the payment of the reverse fee under the November Arrangement. The Mortgage is recorded in the

Berkeley County Land Registry at Bk-R VI-8734, Pg. 255. Exhibit J.

40. On or about February 17, 2012, Re/Max settled with Ms. Gibson for $850,000.00 ("Re/Max Settlement Proceeds") in the Re/Max Action.

41. On about February 17, 2012, Defendants pressured Ms. Gibson to pay Defendants the $566,666.66 fee purportedly due under the November Arrangement, and secured by Mr. Howe's and Mr. West's mortgage, in the Ameris Action out of the Re/Max Action Settlement Proceeds.

42. Ms. Gibson voiced her concern that she needed the Re/Max Settlement Proceeds to satisfy a certain unrelated mortgage obligation maturing then. Ms. Gibson expressed to Defendants her disagreement and dismay at having to pay this $566,666.66 fee Award, to no avail. Ms. Gibson, under protest and duress, paid the $566,666.66 out of the Re/Max Action Settlement Proceeds to satisfy the purported Ameris Action reverse fee.

43. On or about February 17, 2012, Defendants disbursed the Re/Max Action Settlement Proceeds in the amount $566,666.66 to satisfy Defendants' reverse fee claim in the Ameris Action, leaving the Re/Max contingent fee due unfunded in the amount $280,500.00. Exhibit K.

44. Ms. Gibson was under duress to oppose the reverse fee Award because Defendants were representing Ms. Gibson in the ongoing Lender Claim litigation in the Ameris Action connected to the Apartments, Loan Documents and guaranty obligation. Ms. Gibson avers she felt pressured by Defendants to satisfy the November Arrangement reverse fee Award out of the Re/Max Action Settlement Proceeds and, in fact, did so under duress, for fear of losing favor with Defendants in the ongoing litigation.

45. On March 24, 2012, Mr. Howe and Mr. West executed and recorded a partial release of the Mortgage lien for an unknown amount in the Berkeley County Land Registry at Bk-

R VI-8868, Pg. 20. Exhibit L.

46. On even date herewith, Mr. Epting and Mr. Kefalos hold an existing mortgage lien in the amount $297,500.00 against Ms. Gibson's properties (above). Id.

47. Defendants deviated from the prevailing standard of care of South Carolina lawyers, and breached their fiduciary duty to Plaintiffs, by failing to advise Ms. Gibson to get a second opinion of counsel relating to Defendants' (second) mortgage agreement conveying to Mr. Epting and Mr. Kefalos a $297,500.00 mortgage on Ms. Gibson's Daniel Island property.

48. At all relevant times, Ms. Gibson had never met Mr. Howe, nor talked with him or received any documents from him or any person of his law firm. Ms. Gibson avers she is unaware as to his role in her litigation affairs. Gibson Aff. at ¶ 4.

49. At all relevant times, Ms. Gibson had never talked with Mr. West concerning the Ameris Action, Re/Max Action, Re/Max Settlement Proceeds distribution, November Arrangement, or otherwise. Gibson Aff. at ¶ 5.

50. Defendants neglected, or otherwise refused, to provide to Ms. Gibson any financial accounting of the basis on which Defendants computed their $1.7MM "dollar marker" Defendants utilized to calculate their one-third $566,666.66 reverse fee. Id.

51. At all relevant times, Defendants neither filed nor served any pleadings, discovery, depositions, subpoenas or other papers *as to* Galt's purported deficiency claim.

52. In December 2010, shortly after execution of November Arrangement documents, Mr. Michael Danhour, ("Mr. Danhour"), of Galt, told Ms. Gibson Galt always intended to forgive any deficiency in return for a deed-in-lieu of foreclosure, as Galt had done for all its mortgagors, when she met him to transfer Apartment keys. Mr. Danhour implied Defendants *"cost a lot of money"* when she could have just *"handed over the deed to the Apartments"*. Gibson Aff. at ¶ 7.

53. In late 2011, Ms. Gibson began to suspect the offense of the reverse fee Award,

and the extent of the excessive fee, at a deposition exam during which Re/Max's lawyers examined Ms. Gibson's understanding of her reverse fee arrangement. Immediately following the deposition, Ms. Gibson expressed to Mr. Kefalos her concern and dismay as to $566,666.66 reverse fee, to no avail. Ms. Kefalos dismissed Ms. Gibson's inquiry as Re/Max's lawyer posturing to discredit him. Gibson Aff. at ¶ 6.

54. In late 2012, Ms. Gibson met with her certified public accountant, ("CPA"), unrelated to the Ameris Action. During this meeting, the CPA inquired about the $566,666.66 fee she paid, which charged Ms. Gibson's concerns and deepened her resolve to discuss the $566,666.66 fee arrangement again with Defendants. Gibson Aff. at ¶ 11. On these data points - i.e., Mr. Danhour's statements, the Re/Max Deposition and her CPA's inquiry, Ms. Gibson began in earnest to question the propriety of the $566,666.66 fee Award she paid Defendants in connection with the Deficiency Claim. Gibson Aff. at ¶¶ 10-12.

55. On separate and several occasions, Ms. Gibson communicated with Defendants her disagreement and dismay of having to pay the $566,666.66 fee Award, to no avail. Defendants rejected Ms. Gibson's inquires as to the fee arrangement and re-directed Ms. Gibson's inquires away from the fee arrangement onto other litigation matters. Gibson Aff. at ¶ 13.

56. On or about February 15, 2013, Ms. Gibson met with Mr. Epting and Mr. Kefalos "one last time" for the specific purpose to discuss and resolve the $566,666.66 fee Award. At this meeting, in response to Ms. Gibson's inquiries concerning the November Arrangement and fee, Mr. Epting told Ms. Gibson a fable of legends of "skillful attorneys" who "can get the job done with but a phone call" and that "she should be happy she got the result she wanted." Ms. Gibson, having paid $566,666.66 to Defendants she did not feel appropriate felt further dismay and frustration as to this excessive fee. Gibson Aff. at ¶ 14.

57. Defendant Mr. Howe breached his fiduciary duty to Ms. Gibson and deviated from

the prevailing standard of care of South Carolina lawyers by accepting $98,000.00 from Ms. Gibson as an "earned" fee when Mr. Howe knew, or should have known, he expended nominal time to a non-complex legal matter, without risk to Mr. Howe at the time he accepted payment.

58. Defendant Mr. West breached his fiduciary duty to Ms. Gibson and deviated from the prevailing standard of care of South Carolina lawyers by accepting $98,000.00 from Ms. Gibson as an "earned" fee when Mr. West knew, or should have known, he expended nominal time to a non-complex legal matter, without risk to Mr. West at the time he accepted payment.

59. Defendant Mr. Epting breached his fiduciary duty to Ms. Gibson and deviated from the prevailing standard of care of South Carolina lawyers by accepting $186,000.00 from Ms. Gibson as an "earned" fee when Mr. Epting knew, or should have known, he expended nominal time to a non-complex legal matter, without risk to Mr. Epting at the time he accepted payment.

60. Defendant Mr. Kefalos breached his fiduciary duty to Ms. Gibson and deviated from the prevailing standard of care of South Carolina lawyers by accepting $186,000.00 from Ms. Gibson as an "earned" fee when Mr. Kefalos knew, or should have known, he expended nominal time to a non-complex legal matter, without risk to Mr. Kefalos at the time he accepted payment.

61. Defendants deviated from the prevailing standard of care of South Carolina lawyers, and breached their fiduciary duty to Plaintiffs, by refusing to refund, or otherwise credit, Ms. Gibson (i) $12,500.00 she paid Defendants for hourly fees in the Ameris matter; (ii) $23,331.31 (overpayment) she paid Defendants relating to the cell tower lot; and, (iii) additional fees she paid relating to duplicative work of prosecuting *and* defending claims in the Ameris matter.

62. Defendants deviated from the prevailing standard of care of South Carolina lawyers, and breached their fiduciary duty to Plaintiffs, by neglecting, or otherwise failing, to

disclose to Ms. Gibson (i) Galt desired and proposed the deed-in-lieu of foreclosure without any direct negotiation effort by Defendants with Galt's counsel to achieve that result; (ii) the Defendants did not negotiate the deed-in-lieu, or its terms with Galt's counsel; (iii) the Defendants did not inquire of Galt's counsel whether Galt would accept a deed-in-lieu; (iv) the Defendants did not propose a deed-in-lieu to Galt's counsel; and, that (v) the Defendants' work product to defeat the deficiency claim is the same, or substantially the same, work product required to prosecute the lender claim(s), for which the Defendants were already being paid.

63. Defendants deviated from the prevailing standard of care of South Carolina lawyers, and breached their fiduciary duty to Plaintiffs, by neglecting, or otherwise failing, to disclose to Ms. Gibson prior to Ms. Gibson's acceptance of Galt's deed-in-lieu offer that by accepting Galt's offer, by and through the Defendants, she would have to pay her lawyers $566,666.00, "out-of-pocket", regardless of (i) the terms of their prior contingent fee agreement; and, (ii) regardless of any actual cash recovery in the Ameris Action.

64. Defendants deviated from the prevailing standard of care of South Carolina lawyers, and breached their fiduciary duty to Plaintiffs, by neglecting, or otherwise failing, to disclose to Ms. Gibson, and to Mr. Tecklenburg, the cell tower lease annuity ($720,000.00) collateral was worth more than the $325,000.00 Defendants assigned in their computation of the $1.7MM "dollar-marker", resulting in, and contributing to, the excessive fee of approximately $80,000.00.

65. Defendants deviated from the prevailing standard of care of South Carolina lawyers, and breached their fiduciary duty to Plaintiffs, by neglecting, or otherwise failing, to disclose to Ms. Gibson at the Re/Max "disbursement meeting" that Mr. Howe and Mr. West had a pre-existing affirmative duty to represent Plaintiffs on a contingency in the Ameris Action.

66. On March 8, 2013, Ms. Gibson's undersigned counsel served Defendants a

proposal to settle the reverse fee claim, to no avail.

67. On April 30, 2013, Ms. Gibson's undersigned counsel served Defendants a demand the Re/Max Action Settlement Proceeds, to the extent of $566,666.66, plus accrued interest thereon, wrongfully converted to satisfy the Ameris Action reverse fee arrangement, be deposited in escrow with an independent third party (law firm) pending resolution of this fee disagreement, to no avail. Defendants did not respond to the April 30, 2013 demand.

FOR A CAUSE OF ACTION

COUNT I

Breach of Fiduciary Duty / Legal Malpractice
(As to all defendants)

68. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

69. At all relevant times, Ms. Gibson occupied an attorney-client relationship with Defendants, *jointly and severally*. Defendants owed a duty to represent Ms. Gibson's sole best interests and to provide legal services, and exercise due care, commensurate with the prevailing standard of care of lawyers, statewide.

70. A fiduciary relationship exists between Ms. Gibson and Defendants, *jointly and severally,* whereas Ms. Gibson reposed special confidence and trust in Defendants for Defendants' undertaking of Ms. Gibson's legal claims.

71. Ms. Gibson justifiably relied upon the advice of Defendants, including without limitation that her fee arrangement with Defendants would be fair, reasonable and commensurate with fees charged for like-kind legal work product.

72. At all relevant times, Ms. Gibson justifiably relief upon Defendants' advice in forming her decisions regarding the fee arrangement.

73. Ms. Gibson justifiably relief upon Defendants' skill and expertise in contract law

as it pertains to her fee arrangement and written agreement(s) with Defendants.

74. Ms. Gibson justifiably relied upon Defendants' affirmative obligation to conduct themselves commensurate with the prevailing standard of care of South Carolina lawyers and in Ms. Gibson's best interest relating to Defendants' fees for services.

75. At all relevant times, Ms. Gibson was unaware that Defendants intended to, and did, put Defendants' own financial interest ahead of, and adverse to, Ms. Gibson's financial interest.

76. At all relevant times, Defendants owed Ms. Gibson a duty of care and of loyalty to protect and advance Ms. Gibson's interest without negligence or *self*-Dealing.

77. Defendants breached their fiduciary duties by misrepresenting, or otherwise failing to fully disclose, to Ms. Gibson the full nature of Defendants' dual-fee arrangement as fastening both a *straight* and *reverse* fee obligation in the Ameris Action.

78. Defendants breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, a reverse fee award of 33% of $1.7MM is excessive, unconscionable and not commensurate with a reasonable fee to prepare a routine deed-in-lieu of foreclosure, particularly, here, were Galt forgave the purported inchoate deficiency claim.

79. Defendants breached their fiduciary duties by misrepresenting, or otherwise failing to disclose, to Ms. Gibson, that Galt was a non-Holder-in-due-course – *i.e.,* that Plaintiffs had affirmative recoupment and set-off claims, equities and defenses as against the purported inchoate deficiency that substantially reduced, or otherwise eliminated, the deficiency, if any, and therefore negated $1.7M as a proper basis against which to compute Defendants' fee. Had Defendants disclosed to Ms. Gibson this material fact, she would have been aware Galt was a non-Holder-in-due-course; and, then Ms. Gibson would not have agreed to pay Defendants $566,666.00.

80. Defendants breached their fiduciary duties to Ms. Gibson by misrepresenting, or

otherwise failing to disclose, the reverse fee was based on an indeterminate $1.7MM "dollar marker," not adjusted for recoupment claims and defenses.

81. Defendants breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to fully disclose, the nature of the November Arrangement was, in fact, a "second" fee arrangement (i) not contemplated by the April Agreement; (ii) unsupported by consideration; (iii) for work Defendants had a pre-existing contractual obligation (under the April Agreement); and/or, (iv) a material modification of the April Agreement.

82. Defendants breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, the meeting with Mr. Tecklenburg to review or "approve" Defendants' reverse fee arrangement was for Defendants' benefit, not Ms. Gibson's benefit.

83. Defendants, in fact, by directing Ms. Gibson to get a "second" opinion, realized the substantial benefit of the appearance of credibility of good faith and fair dealing for their perverse, and illegitimate, effort to induce Ms. Gibson to execute the reverse fee Agreement for Defendants' sole benefit.

84. Defendants breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, at execution of the November Arrangement, the November Arrangement was, in fact, a fee change order, unsupported by consideration without mutuality of obligation.

85. Defendants breached their fiduciary duties to Ms. Gibson by misrepresenting, or otherwise failing to disclose, at execution of the November Arrangement, Defendants' performance under the November Arrangement required no additional attorney work product not contemplated by the April Agreement.

86. Defendants breached their fiduciary duties of loyalty to Ms. Gibson by *self*-Dealing in the assets of the litigation estate; namely, Ms. Gibson's entitlement to recover the benefit of

Galt's forgiveness of debt.

87. Defendants breached their fiduciary duty of loyalty to Ms. Gibson by *self*-Dealing in Ms. Gibson's litigation estate knowable and reachable solely by and through Defendants' confidential attorney-client relationship.

88. Defendants breached their fiduciary duties of loyalty to Ms. Gibson by failing to disclose at the outset of the Ameris Action that (i) Defendants would require mortgages against Ms. Gibson's properties to secure payment of fees; and, that (ii) future fee arrangements can arise during the course of the litigation.

89. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose the November Arrangement contained misleading material representations made by Defendants of which Defendants was aware, and Ms. Gibson was not, at execution of the Attorney- Client "Contract" – *to wit*: (i) *"Client hereby hires "Law Firm" in the defense and pursuit of a counterclaim"* when, in fact, (a) Defendants had already been engaged under the April Agreement; and, (b) the *"defense"* of the deficiency liability already had been settled, and extinguished; and, (ii) *"leaving a potential deficiency judgment of $1.7MM"* when, in fact, Defendants knew the Deficiency Claim had already been waived, leaving no deficiency; and, (iii) *"[f]or their services, Law Firm shall receive a fee based upon []... "One-third (1/3) of all sums saved client from the deficiency amount claimed by Ameris, in the amount $1,700,000.00"* when, in fact, (a) the *"sums saved"* for the purposes of computing the undisclosed *reverse*-contingent fee was already certain and known to Defendants to be $566,666.66; and, (iv) that Defendants *"will advance these costs during the prosecution of the case..."* when, in fact, there was no case to prosecute (or defend) as to the Deficiency Claim because the deficiency contemplated in the November Arrangement had prior been settled by deed-in-lieu of foreclosure.

90. Defendants intentionally, willfully, and with wanton disregard of Ms. Gibson's

best interest, and legal rights, did devise, draft, solicit, encourage, induce and demand Ms. Gibson sign a an excessive fee contract Defendants knew excessive at execution, in breach of their fiduciary duty owing Ms. Gibson.

91. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose their global "dual-fee" intention at engagement, and/or at execution of the April Agreement, and November "agreement".

92. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose at execution of the fee documents that Ms. Gibson, by signing the fee documents, would be obligated to pay the Defendants $566,666.00 "out-of-pocket", regardless of any recovery in the Ameris Action.

93. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose that whereas Galt was a non-Holder-in-due-course, Defendants undertook nominal risk, or no risk, of non-payment of the $566,666.00 fee.

94. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose the November fee arrangement modified the prior fee arrangements.

95. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose the Defendants' work product *as to the* deficiency claim required nominal time and non-complex legal work.

96. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to disclose their $566,666.00 fee was clearly excessive under the facts and circumstances of Plaintiffs' case.

97. Defendants breached their fiduciary duties of care and of loyalty to Ms. Gibson by failing to credit, or otherwise adjust, Plaintiffs' fee obligation for hourly fees paid, and additional losses the result of the cell tower land repurchase.

98. Defendants' fiduciary duties to the Plaintiffs are non-delegable and include, without limitation, refraining from charging excessive fees.

99. Defendants are skilled and experienced lawyers learned in contract law.

100. Defendants knowingly, and willfully, engaged Ms. Gibson in costly (fee) litigation despite knowing their wrongful conduct of charging a clearly excessive fee is a breach of their fiduciary duty to Plaintiffs.

101. Defendants knowing and willful conduct of asserting meritless legal defenses, mischaracterizing Galt's statements, threatening to withdraw, and withdrawing from representation, and threat of sanctions, all designed to pressure Ms. Gibson to stand down and accept their excessive fee, constitutes a breach of fiduciary duty.

102. Defendants deviated from the prevailing standard of care of South Carolina lawyers by (i) mischaracterizing an inchoate (unperfected) deficiency claim as a full-blown (perfected) deficiency debt; (ii) falsely advising Ms. Gibson a routine deed-in-lieu transaction as complex; (iii) knowingly, with purposeful intent, obscuring their global (Ameris) "dual-fee" from Ms. Gibson; (iv) knowingly withholding material information of their "dual-fee" arrangement from Mr. Tecklenburg; (v) knowingly withholding material information regarding the true nature and merits of Galt's deficiency claim; (vi) misappropriating client funds ($566,666.00) as "earned" fees when knowing (a) the fee was unearned, and (b) clearly excessive; and, (vii) knowingly refusing to credit Ms. Gibson any fee refund when they knew, or should have known, their fee was unearned and clearly excessive, resulting in costly fee litigation, severe emotional stress, and substantial financial losses to Ms. Gibson.

103. Defendants deviated from the prevailing standard of care of South Carolina lawyers by (viii) failing to promptly, and diligently, pursue the refund of $20,000.00 Ms. Gibson paid the Richter Law Firm, within the applicable statute of limitations; (ix) failing to even attempt

to negotiate with Galt's counsel the preservation of the cell tower land parcel ("Cell Lot") from conveyance at settlement, resulting in Ms. Gibson having to spend an additional $70,000.00 to repurchase the Cell Lot; and, (x) neglecting to (a) disclose the nature of the Cell Lot conveyance at settlement (to include leased property), and (b) refusing to credit $23,331.31 in fees.[2]

104. As a direct and proximate result of the foregoing acts, omissions and deviations from the standard of care by Defendants, Ms. Gibson sustained damages in excess of $750,000.00.

Wherefore, Ms. Gibson demands judgment against Defendants, *jointly and severally*, for actual and consequential damages, disgorgement of $566,666.00 in fees paid, plus attorney fees and costs of this action, plus punitive damages in an amount to be determined at trial, and such other and further relief as this Court deems fair and just.

COUNT II
Negligent Misrepresentation
(As to all defendants)

105. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

106. At all relevant times, Defendants owed Ms. Gibson a duty to make full disclosure of all material facts relating to or concerning Defendants' fee arrangement, the amount of the fee Award, percent of recovery and basis to compute the fee Award.

107. Defendants' representation to Ms. Gibson that $1.7MM is an accurate "dollar marker" to compute Defendants' reverse fee award is a false and/or misleading representation given, inter alia, (i) Galt forgave Heritage's debt; and, (ii) the appraisal(s) and/or valuation(s) of the deed-in-lieu properties was indeterminate and/or unascertainable at the time of Defendants' representations; and, (iii) $566,666.66 is a grossly excessive fee for a routine deed-in-lieu transaction.

[2] Ms. Gibson was required to repurchase the Cell Lot from Galt after the December 1, 2010 Galt Settlement because her paying tenants occupied the Cell Lot.

108. Defendants' conduct of omitting certain material facts bearing on the amount of Defendants' reverse fee, *namely,* that Ms. Gibson held certain affirmative defenses to mitigate the deficiency, and thereby reduce the deficiency, for the purposes of computing the reverse fee, constitutes misrepresentation.

109. Defendants' conduct of making the foregoing misrepresentations and omissions of material facts divested Ms. Gibson, and Mr. Tecklenburg, of their ability to make an informed decision as to the reasonableness of the fee, and the fee arrangement as a whole, and therefore constitutes a breach of duty of care to Ms. Gibson.

110. Defendants had a pecuniary interest in making the false and misleading representations, and omitting material facts, at the time the statements, and omissions were made, *namely,* a half-million dollar fee.

111. Ms. Gibson reasonably and justifiably relied on Defendants' misleading statements, misrepresentations, and omission of material facts relating to and bearing on the reverse fee Award.

112. But for Defendants' material misrepresentations and omissions, Ms. Gibson would not have entered into the reverse fee arrangement transaction; and, Ms. Gibson would not have sustained damages arising out of the reverse fee arrangement.

113. As a direct and proximate result of the foregoing acts, omissions and deviations from the standard of care by Defendants, Ms. Gibson sustained damages in excess of $750,000.00.

Wherefore, Ms. Gibson demands judgment against Defendants, *jointly and severally,* for actual and consequential damages, plus attorney fees and costs of this action in an amount to be determined at trial, and such other and further relief as this Court deems fair and just.

COUNT III
Unjust enrichment
(As to all defendants)

114. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

115. Ms. Gibson, unsuspectingly, and inadvertently, conferred $566,666.66 to Defendants without fully informed knowledge, mutual assent, mutual obligation, actual consent or intention under the reverse fee November Arrangement with Defendants.

116. Defendants' only consequential means to mitigate the Deficiency Claim was to prosecute the Lender Claims, both claims being in repose to each other claim arising out of the same Loan Documents, concerning a single asset (Apartments) between the same parties; and, therefore, and for other reasons stated herein, a mortgage foreclosure cannot support two separate fee Awards; and, in any event, the reverse fee Award is excessive. For these reasons, Defendants are unjustly enriched by the receipt of $566,666.00.

117. Defendants obtained the reverse fee without valid consideration.

118. Defendants are unjustly enriched by receipt of Ms. Gibson's property – *to wit:* $566,666.66, and that certain mortgage lien estate interest.

119. It is inequitable for Defendants to retain the benefit of their ill-gotten gains.

120. It is inequitable for Plaintiffs to be deprived of $566,666.00; and, equity requires this Court restore the $566,666.00 to Plaintiffs.

121. As a direct and proximate result of the foregoing acts, omissions and deviations from the standard of care by Defendants, Ms. Gibson sustained damages in excess of $750,000.00.

Wherefore, Ms. Gibson demands judgment against Defendants, *jointly and severally*, for disgorgement of $566,666.00 in fees paid, plus attorney fees and costs of this action in an amount to be determined at trial, and such other and further relief as this Court deems fair and just.

COUNT IV

Action for Money Had and Received
(As to all defendants)

122. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

123. Defendants hold money belonging to the Plaintiff to the extent of $566,666.00, plus interest accrued thereon from April 3, 2012.

124. Plaintiff paid $566,666.00 to Defendants without Plaintiff's full knowledge of all material facts and/or circumstances relating to Plaintiff's payment of $566,666.00 to Defendants.

125. Plaintiff paid the $566,666.00 to Defendants involuntarily, under duress and with protest, the result of the Defendants' coercion.

126. Plaintiff made demand on Defendants to (i) rescind the contact; and, (ii) for the return of the $566,666.00.

127. At the time Ms. Gibson agreed to pay, and did pay, the $566,666.00 to Defendants, Ms. Gibson and Defendants occupied a mistaken belief about the obligations of the Plaintiff to Defendants under the fee contract, and/or a *quasi*-contract (the subject of this action); and mistakenly believing Ms. Gibson owned the $566,666.00, she mistakenly paid Defendants the $566,666.00.

128. The $566,666.00 Defendants received from Ms. Gibson and now hold belongs in equity and in good conscious to Ms. Gibson; and, in equity and good conscious, should not be retained by Defendants. Plaintiff has made written offer to Counsel to pay Counsels' *quantum meruit* fees, costs and expenses attendant to Plaintiff's and Counsels' mutual mistake.

129. Plaintiff has no other adequate remedy at law to recover her losses the result of Plaintiff and Counsels' mutual mistake.

130. In the alternative, Plaintiff pleads that to the extent the Court determines Defendants are entitled to some, or a part, of the $566,666.00, under *quantum meruit,* or other equitable, or at law, then the Plaintiff is entitled the that sum remaining in the hands of the Defendants after an adjudication of the parties' rights and an accounting on the merits.

131. As a direct and proximate result of Defendants' wrongful conduct, Ms. Gibson sustained damages in excess of $750,000.00.

132. **Wherefore,** Ms. Gibson seeks disgorgement and/or restitution of the $566,666.00 reverse fee paid to Defendants, *together with* accrued interest thereon, plus reimbursement of all losses for attorney fees, costs and expenses attendant to the prosecution of this action, and such other and further relief as this Court deeds fair and just.

COUNT V
Constructive Fraud
(As to all defendants)

133. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

134. Defendants' made false and misleading statements, and failed to disclose material facts relating to and concerning, the nature of Galt's unperfected deficiency claim, the April Agreement, the subsequent *dual*-fee arrangement, and failed to offer and to negotiate a deed-in-lieu, and misrepresented their work brought about Galt's waiver of deficiency, when it did not, and failed to disclose the excessiveness the fee as set out in this Complaint (above), all constituting constructive fraud.

135. Defendants made the foregoing statements, and omissions, set forth in this Complaint with knowledge of, or in reckless disregard for, the falsity of the statements and omissions.

136. At all relevant times, Defendants should have known of the falsity of their statements and misrepresentations to Ms. Gibson.

137. Defendants' statements and misrepresentations to Ms. Gibson were material as to the outcome of the litigation – particularly as to the loss of the cell tower – and as to the excessiveness of the fee.

138. Defendants intended their misrepresentations be acted upon by Ms. Gibson by inducing her to enter into an unfavorable settlement agreement (loss of cell tower annuity) and enter into and pay an excessive fee for same, so that Defendants' could collected $566,666.00 fee.

139. Defendants' conduct did cause Ms. Gibson's action in reliance on the statements, and omissions, *namely,* Defendants' wrongful conduct induced Ms. Gibson to execute the November Arrangement and to pay the $566,666.00 reverse fee.

140. Ms. Gibson was without knowledge of the falsity, or omissions, of the foregoing statements, was not aware that she could have negotiated retaining the cell tower, and was unaware of Defendants' global fee intention to collect both a *straight* contingent fee and a *reverse*-contingent fee.

141. Ms. Gibson relied on the truth of the Defendants' material misstatements and omissions in agreeing to release the cell tower, cell tower annuity, and agreeing to pay the excessive $566,666.00 fee, all of which she would not have agreed to if Defendants had told her they didn't negotiate with Galt, didn't bring about Galt's forgiveness of debt, and weren't charging a fair fee.

142. Ms. Gibson had a right to and did justifiably rely on Defendants' misleading and false statements, and material omissions, in the course of representation, and in the November document; and Ms. Gibson would not have paid the $566,666.00 but for Defendants material false statements and knowing omissions.

143. As a consequent and proximate result of Defendants' forgoing wrongful conduct, misstatements and omissions, in and attendant to the representation and fee arrangement(s), Ms. Gibson sustained damages in excess of $750,000.00.

Wherefore, Ms. Gibson seeks this Court disgorge Defendants the $566,666.00, and award Plaintiffs actual and consequential damages sustained, in an amount to be determined at trial, plus punitive damages, and attorney fees and costs attend to the prosecution of this action, and such other and further relief as this Court deems fair and just.

COUNT VI
Action for Cancellation of Mortgage
(As to all defendants)

144. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

145. Ms. Gibson owns in fee certain real Property bearing TMS Nos. 271-00-01-003; 263-00-01- 032; 248-00-02-042; 271-00-01-037; 271-00-01-040; 271-00-01-084; 271-00-01- 185; and, 271-00-02-030 ("Property").

146. Defendants Mr. Epting and Mr. Kefalos hold an illegal recorded mortgage lien to the extent of $297,500.00 against the Property.

147. Defendants' $297,500.00 mortgage arises out of the November 18, 2010 fee arrangement that created a mortgage lien in favor of the Defendants in the amount of $566,666.00.

148. On or about April 4, 2012, Ms. Gibson paid the Defendants $566,666.00.

149. On Defendants' receipt of the $566,666.00, the subject mortgage is deemed satisfied and cancelled by operation of law, or otherwise in equity.

Wherefore, Ms. Gibson seeks this Court forthwith enter an Order of Cancellation of Mortgage in a form for recording with the appropriate Registry, and/or for filing with the Berkeley County Court for enforcement of this Court's Order and recordation; together with damages in an

amount to be determined at trial, and attorney fees and costs attend to the prosecution of this action, and such other and further relief as this Court deems fair and just.

COUNT VII
Breach of Contract Accompanied by a Fraudulent Act
(As to all Defendants)

150. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

151. To the extent this Court determines an enforceable fee contract exists, Ms. Gibson pleads in the alternative that the April Agreement is a valid and enforceable contract.

152. Under the terms of the April Agreement, the Defendants owed Plaintiffs a duty to perform Defendants' obligations by the express and implied terms of the April Agreement, *namely,* (i) seek recovery of $20,000.00 from the Richter Law Firm; (ii) represent Plaintiffs on a contingency as to Ameris; and, (iii) at all times act in good faith and fair dealing with Plaintiffs.

153. On information and belief, and discovery will show, Defendants breached the express and implied terms of the April Agreement by (a) failing to take any affirmative effort to recover $20,000.00 from the Richter Law Firm; and, (b) Defendants, knowingly and willfully, devised, conspired, drafted, induced Ms. Gibson to execute, and did execute, a second fee arrangement (November) in the same action, between the same parties, relating to the same facts and circumstances (Loan Documents and mortgage debt) for Defendants' own personal financial gain, adverse to Ms. Gibson.

154. Defendants conduct constitutes a breach of the express terms of the April Agreement and the implied covenants of good faith and fair dealing in the performance and discharge of their contractual obligations under the April Agreement.

155. Specifically, Defendants conduct of knowing, or reckless, misrepresentation and omissions as to the reverse fee arrangement while under pre-existing obligations under the April

Agreement constitutes breach of contract.

156. At execution of the November Arrangement, Ms. Gibson was represented by the same Defendants representing her interests in the Ameris Action; and, therefore, Defendants owed Plaintiffs a pre-existing duty to represent Plaintiffs in the Ameris matter without additional fee agreements.

157. At execution of the November "agreement", Defendants were privy to material information knowable only to Defendants by way of their representation of Plaintiffs, and unknown to Ms. Gibson; *namely,* inter alia, (a) Galt waived the Debt; (b) Galt was a non-Holder-in-due-course; (c) there was a low likelihood Ms. Gibson would be personally liable for $1.7MM; (d) there was a high likelihood Defendants would expend nominal time defending the deficiency claim not already required to prosecute the lender claim; and, (e) $1.7MM is not an appropriate basis to compute a reverse fee.

158. Ms. Gibson reasonably and justifiably relied on Defendants' promises, and appearances of good faith and fair dealing, at the time she executed the April Agreement, and November "arrangement".

159. The April Agreement's terms also contemplate a contingent fee arrangement to represent Ms. Gibson in connection with Mr. Paul Moore ("Mr. Moore"). Defendants did so, and recovered $24,800.00 ("Moore Settlement"). Defendants allocated and disbursed 100% of the Moore Settlement to Defendants. Ms. Gibson avers no contingent fee arrangement can contemplate 100% of the settlement proceeds be attorney fees; and, so, Defendants are in breach of the express terms of the April Agreement as to the Paul Moore matter. Ms. Gibson asserts entitlement to a refund of two–thirds (2/3) of the Moore Settlement proceeds, or $16,616.00. Exhibit M.

160. At all relevant times, Ms. Gibson was in a susceptible, impressionable and

vulnerable relation to Defendants as to her legal and financial affairs because, and for other reasons, Ms. Gibson is not trained in the law; and, in any event, she decidedly retained Defendants to represent her interest.

161. Defendants, by and through the November Arrangement, engaged in profiteering by their conduct of engineering, drafting, presenting and advising Ms. Gibson to execute the November Arrangement for Defendants' benefit adverse to Ms. Gibson's interest.

162. Ms. Gibson was unduly influenced by Defendants' opinion and advice as to the November fee arrangement and, Defendants' request that the $566,666.66 fee be paid out of the Re/Max Action Settlement Proceeds to satisfy the Ameris Action reverse fee Award.

163. Defendants directed Ms. Gibson seek "independent advice" from Mr. Tecklenburg; and, Defendants initiated direct talks with Mr. Tecklenburg regarding Defendants' fee arrangement, not for Ms. Gibson's benefit, but for Defendants' financial gain, adverse to Ms. Gibson.

164. The Defendants' execution, and performance, of the November "agreement" is an unnatural transaction, based on reckless, representations and omissions, and without adequate consideration, entered into and executed *nunc pro tunc* on the basis of a *non*-aleatory promise.

165. Defendants' disposition to exercise undue influence to accomplish the unnatural transaction (November arrangement) was motivated by Defendants' greed, without valid consideration and without Ms. Gibson's fully informed consent or awareness of the perverse nature of the reverse fee arrangement.

166. Defendants achieved their desired result – *e.g.,* Ms. Gibson executed the reverse fee November arrangement documents, and paid Defendants $566,666.66, as a plain result of Defendants' wrongful acts, omissions, and undue influence.

167. As a direct and proximate result of Defendants' breach of the express terms of the

April Agreement, and the implied covenants of good faith and fair dealing, Ms. Gibson suffered damages in excess of $750,000.00.

Wherefore, Ms. Gibson demands judgment against Defendants, *jointly and severally*, for actual and consequential damages, plus punitive damages, together with attorney fees and costs of this action in an amount to be determined at trial, and such other and further relief as this Court deems fair and just.

COUNT VIII
Action for Implied Equitable Indemnity
(As to all Defendants)

168. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

169. The April Agreement terms provide Counsel will represent Ms. Gibson *"on a contingency."*

170. Ms. Gibson has suffered substantial financial loss whereas she is now required to pay attorney fees, costs and expenses under both the April Agreement and for appellate counsel in an appeal to the extent of over $50,000.00 that she otherwise would not have had to pay but for Defendants' wrongful conduct.

171. Counsel has a fiduciary duty, and contractual obligation, in equity, and/or at law, arising out of the April Agreement to indemnify Ms. Gibson against appellate counsels' attorney fees, costs and expenses in an appeal to the extent of her losses.

172. As a direct and proximate result, Ms. Gibson sustained, and continues to sustain, damages in excess of reasonable attorney fees, costs and expenses attendant to the Ameris Action (on appeal).

Wherefore, Ms. Gibson seeks damages in an amount to be determined at trial, plus attorney fees and costs attend to the prosecution of this action, and such other and further relief as this Court deems fair and just.

COUNT IX
Action for Declaratory Judgment
Uniform Declaratory Judgments Act, § 15-53-30, et. seq.
(As to all Defendants)

173. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

174. Ms. Gibson seeks this Court declare there is no enforceable fee agreement; and, that the November Arrangement is void, voidable, or otherwise unenforceable because, inter alia, the November Arrangement lacks mutuality of assent, mutuality of obligation and consideration.

175. The November Arrangement is void, voidable, or otherwise unenforceable because, inter alia, a straight contingent fee and reverse fee of 1/3 of both the Lender Claim and the Deficiency Claim "recovery" in an action to foreclose a single mortgage is *prima facia* inequitable as to the distressed borrower- mortgagor and guarantor, Ms. Gibson.

176. Ms. Gibson requests this Court declare the November Arrangement reverse fee Award amount unenforceable; and, so, set-aside, rescind or otherwise reform the "Attorney-Client Contract."

177. Ms. Gibson requests this Court declare the $566,666.66 fee Award excessive and restore to Ms. Gibson, together with accrued interest thereon, from the date of payment, that amount remaining after a reasonable quantum meruit fee allocated Defendants commensurate with like-kind "deed-in-lieu" work product.

178. Ms. Gibson requests this Court declare the reverse fee, if at all enforceable, be computed commensurate with Rule 1.5(a), RPC, Rule 407, SCACR; or, otherwise, not to exceed like kind deed-in-lieu work product.

179. Ms. Gibson affirmatively preserves her right to a trial by Jury, and all appeals, if any, without limitation, allowable pursuant to the Uniform Declaratory Judgments Act, § 15-53-90, et. seq., and in equity.

180. Ms. Gibson requests this Court award her reasonable attorney fees, costs and expenses attendant to prosecuting this declaratory action, pursuant to S.C. §15-53- 100.

COUNT X
Action for Rescission
(As to all Defendants)

181. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

182. To the extent the Court determines that the Plaintiff and Counsel entered into a valid and enforceable Contract ("Contract"), Plaintiff pleads the Court rescind the Contract.

183. At all relevant times, Plaintiff and Counsel occupied a fiduciary attorney-client relationship.

184. At all relevant times, Plaintiff and Counsel held a mistaken belief as to the terms and legal consequences of the Contract(s); each, the Plaintiff and Counsel mistakenly believing an opposite interpretation of the Contract constituting a mutual mistake.

185. The parties' mutual mistake related to two different elements of the Contract: (i) whether the Plaintiff owes Counsel two fees, -*i.e.,* both a *straight* and a *reverse* fee in the Ameris matter – as Counsel suggest; or, whether Ms. Gibson owes one fee in the Ameris matter; and, (ii) whether a Holder's debt forgiveness constitutes legal consideration (benefit of bargain), or is a supervening event resulting in impossibility of performance.

186. Plaintiff, and/or Counsel, individually or together, relied on the mistaken belief the cause of the Plaintiff's injury and losses.

187. The mistake was not caused by the Plaintiff.

188. The mistake was caused by Counsels' own conduct, writings and representations.

189. Plaintiffs rescinded the Contract by, inter alia, notice and demand on Counsel for return of payments made to Counsel.

190. The Contract provisions calling for (apparently) two fees -*i.e.*, both a *straight* and a *reverse* contingent fee in the Ameris matter on the same loan documents arising out of the same transaction is unconscionable because (i) the fee document(s) do not disclose a dual-fee obligation; (ii) the dual-fee oblation results in a clearly excessive fee; and, (iii) the dual-fee results in the Plaintiff unknowingly being obligated to pay both a contingent fee (April document) and a flat fee (November document); and, therefore the Contract should be rescinded, and Counsels' fees adjusted.

191. Plaintiff has made written offer to Counsel to pay Counsels' *quantum meruit* fees, costs and expenses attendant to Plaintiff's and Counsels' mutual mistake.

192. Plaintiff has no other adequate remedy at law to recover her losses the result of Plaintiff and Counsels' mutual mistake.

193. Wherefore, Plaintiff demands rescission of the Contract and seeks the full recovery of all monies paid to Counsel, together with accrued interest thereon, plus the recovery of all attorney fees, costs and expenses, and all other losses and damages, arising out of the Contract, and this civil action.

COUNT XI
Action for Violation of
The South Carolina Unfair Trade Practices Act, §39-5-20(a), *et. seq.*
(As to all Defendants)

194. Plaintiffs repeat and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

195. The Defendants engaged in the sale or distribution of services of the type defined by The South Carolina Unfair Trade Practices Act.

196. The engineering, drafting, solicitation and execution of the November arrangement, and the receipt of substantial funds therefrom, constitute unfair and deceptive conduct.

197. Defendants, jointly and severally, willfully and/or knowingly participated in the unfair and deceptive conduct by collaborating together to create the appearance of a complex deed-in-lieu transaction requiring four (4) attorneys' time and expertise; Defendants did so to (i) justify the $566,666.66 fee. However, as to the Deficiency Claim, the transaction is but a routine deed-in-lieu of foreclosure.

198. Defendants, fortified with the credibility of four (4) attorneys posing a complex deed-in-lieu conveyance, when it is not, willfully and/or knowingly did induce Ms. Gibson to enter into the $566,666.66 reverse fee arrangement.

199. A $566,666.66 fee for a deed-in-lieu of foreclosure is excessive and grossly disproportionate to the novelty, time and complexity required, and therefore unfair.

200. Defendants' unfair and deceptive conduct concerns, or otherwise impacts, the public interest because, inter alia, attorneys (i) collaborating to create the appearance of complex litigation to (ii) collect a paired straight and a reverse fee, in an action to foreclosure a single mortgage, of 1/3 of the deficiency of the public's mortgage debt without (iii) full disclosure to the client (public) of the basis to compute the fee will result in substantially higher attorney fees and profiteering in foreclosures – to wit: if Defendants' conduct is allowable, South Carolina foreclosure attorneys will reap substantial fees on mortgage debt at the public's expense.

201. A straight and reverse fee in an action to foreclosure a single mortgage directly, and substantially, impacts the public's costs for legal services; particularly, where the paired fee contemplates a third of both the lender and deficiency claim.

202. Defendants' conduct has the potential for repetition because of the substantial fee windfall attorneys would collect when mortgagees waive deficiency claims in foreclosure actions.

203. As a direct and proximate result of Defendants' conduct, the public's interest is upset, Ms. Gibson sustained damages in excess of $750,000.00; and, hereby demands treble damages pursuant to S.C. Code §§ 39-5-140, 39-5-20.

CONCLUSION

On the foregoing facts and Counts, Ms. Gibson avers the November Arrangement is void, voidable, or otherwise unenforceable, and unconscionable; and, that the $566,666.66 fee is clearly excessive, - *e.g.,* computed on a bald $1.7MM "dollar maker", rather than an earned percentage of the deficiency "saved"; without "contingency" risk; and, not commensurate with the time, novelty and risk undertaken by Defendants, nor commensurate with the standard of care of South Carolina lawyers *as to* the purported deficiency given Galt forgave the debt.

WHEREFORE, Ms. Gibson respectfully requests this Honorable Court enter Judgment, Orders and Relief that:

(i) set aside, rescind or otherwise reform, the fee "contract" arrangement; and,

(ii) declare the $566,666.66 fee Award excessive, and disgorge and restore to Ms. Gibson, *together with* accrued interest thereon, from the date of payment, that amount remaining after a reasonable *quantum meruit* fee allocated to Counsel commensurate with like-kind "deed-in-lieu" work product; and,

(iii) Ms. Gibson is entitled to recovery from Defendants $20,000.00 (Richter fee) under the April Agreement; and, $16,616.00, or two-thirds (2/3) of the recovery of the Moore Settlement; $80,000.00 as to the cell tower lot loss; and,

(iv) Defendants' release the mortgage liens of $297,500.00 ("Mortgage Lien") recorded against Ms. Gibson's real property; and,

(v) Any settlement proceeds received in that certain on-going Berkeley County Action styled as *Linda A. Gibson, et. al., v. Ameris Bank,* Case No.: 2010-CP-08-2134, be deposited with this Court pending resolution of this fee dispute; and,

(vi) Counsel indemnify in equity Ms. Gibson her total loss of any attorney fees, costs and expenses attendant to the appellate litigation in the Berkeley Action; and,

(vii) Counsel be ordered to pay Ms. Gibson her reasonable attorney fees and costs in connection herewith; and,

(viii) award such other and further relief as this Court deems fair and just.

JURY TRIAL DEMANDED

Plaintiffs demand trial by jury on all issues so triable.

Respectfully Submitted,

LINDA A. GIBSON, Individually, and in capacity as TRUSTEE of THE PAUL WILLIAM GIBSON FAMILY TRUST, and, HERITAGE SEVEN, LLC, and, SEVEN OAKS APARTMENTS, LLC, and, 3205 PALM BOULEVARD, LLC,

By Their Counsel,

James R. Davis, Esq., #100358
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite 211B
Daniel Island, SC 29492
800.983.0455 (office)
800.983.0153 (fax)
843.364.2218 (direct)
jim@jdavispc.com

Dated: August 6, 2015

CERTIFICATE OF SERVICE
I, James R. Davis, Esq., attorney for the (plaintiff) defendant), hereby certify that I have delivered by (hand / first class mail / certified mail) a true and accurate copy of this document to Daniel Cooke, Esq., attorney for the (plaintiff / defendant), at the address of record this 18th day of October in the year 2015

James R. Davis, Esq.

FED EX # 774764465580

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CIVIL ACTION NO.: 2013-CP-10-4450
LINDA A. GIBSON, Individually, and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC, Plaintiffs, vs. ANDREW K. EPTING, JR., LLC; GEORGE J. KEFALOS, P.A.; GEDNEY M. HOWE, III, P.A.; and JOHN S. WEST, ATTORNEY-AT-LAW, LLC, Defendants.	**ANSWER and AFFIRMATIVE DEFENSES OF THE DEFENDANTS TO VERIFIED COMPLAINT**

FILED
2013 OCT -1 PM 4:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JAMES R. DAVIS ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

AND NOW COME the Defendants, ANDREW K. EPTING, JR., LLC ("Attorney Epting"), GEORGE J. KEFALOS, P.A. ("Attorney Kefalos"), GEDNEY M. HOWE, III, P.A. ("Attorney Howe"), and JOHN S. WEST, ATTORNEY-AT-LAW, LLC ("Attorney West") (hereinafter collectively referred to as the "Defendants"), by and through their undersigned counsel, and file this Answer and Affirmative Defenses to the Plaintiffs' Verified Complaint:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation of the Plaintiffs' Verified Complaint not specifically admitted herein is denied, and the Defendants demand strict proof thereof.

INTRODUCTION

2. The Defendants admit the allegations of the Introduction Paragraph of the Plaintiffs' Verified Complaint only to the extent that the Defendants represented the Plaintiffs,

Linda A. Gibson and Heritage Seven, LLC, in a foreclosure and guaranty action, that the Defendants and Plaintiffs had a fee agreement for the representation, and that the Defendants performed legal services pursuant to the fee agreement. The Defendants deny the remaining allegations of the Introduction Paragraph of the Plaintiffs' Verified Complaint and demand strict proof thereof.

RELIEF REQUESTED

3. The Defendants deny the allegations of the "Relief Requested" Paragraph of the Plaintiffs' Verified Complaint and deny that the Plaintiffs are entitled to any of the relief sought in the Plaintiffs' Verified Complaint.

THE PARTIES

4. The Defendants admit the allegations of Paragraph 1 of the Plaintiffs' Verified Complaint.

5. The Defendants admit the allegations of Paragraph 2 of the Plaintiffs' Verified Complaint.

6. The Defendants admit the allegations of Paragraph 3 of the Plaintiffs' Verified Complaint.

7. The Defendants admit the allegations of Paragraph 4 of the Plaintiffs' Verified Complaint.

8. The Defendants admit the allegations of Paragraph 5 of the Plaintiffs' Verified Complaint.

9. The Defendants admit the allegations of Paragraph 6 of the Plaintiffs' Verified Complaint.

10. The Defendants admit the allegations of Paragraph 7 of the Plaintiffs' Verified Complaint.

11. The Defendants admit the allegations of Paragraph 8 of the Plaintiffs' Verified Complaint.

JURISDICTION AND VENUE

12. The allegations of Paragraph 9 of the Plaintiffs' Verified Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 9 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

THE RELEVANT FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

13. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 12 of this Answer and Affirmative Defenses, inclusive.

14. In responding to the allegations of Paragraph 11 of the Plaintiffs' Verified Complaint, the Defendants crave reference to loan documents referred to Paragraph 11, a set of written documents, which speak for themselves and are the best and only evidence of their content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. Upon information and belief, the Defendants admit the allegations of Paragraph 11 of the Plaintiffs' Verified Complaint.

15. The Defendants admit the allegations of Paragraph 12 of the Plaintiffs' Verified Complaint.

16. The Defendants admit the allegations of Paragraph 13 of the Plaintiffs' Verified Complaint.

17. In responding to the allegations of Paragraph 14 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the April 27, 2010, letter attached to the Plaintiffs' Verified Complaint as Exhibit A, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants deny the remaining allegations of Paragraph 14 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

18. In responding to the allegations of Paragraph 15 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the April 27, 2010, letter attached to the Plaintiffs' Verified Complaint as Exhibit A, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants deny the remaining allegations of Paragraph 15 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

19. The Defendants admit the allegations of Paragraph 16 of the Plaintiffs' Verified Complaint.

20. The Defendants, upon information and belief, admit the allegations of Paragraph 17 of the Plaintiffs' Verified Complaint.

21. The Defendants admit the allegations of Paragraph 18 of the Plaintiffs' Verified Complaint.

22. The Defendants admit the allegations of Paragraph 19 of the Plaintiffs' Verified Complaint only to the extent that Galt purchased the loan from Ameris, that Galt was substituted as Plaintiff for Ameris, that Ameris remained in the lawsuit as a counterclaim defendant, and that the Defendants continued to represent and serve as counsel of record for the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, as defendants and counterclaim plaintiffs in the lawsuit.

23. The Defendants admit the allegations of Paragraph 20 of the Plaintiffs' Verified Complaint only to the extent that throughout the course of the Defendants' representation the Plaintiff, Linda A. Gibson, and the Defendants discussed the terms of the fee agreement between the Parties. The Defendants deny the remaining allegations of Paragraph 20 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

24. In responding to the allegations of Paragraph 21 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the October 25, 2010, letter attached to the Plaintiffs' Verified Complaint as Exhibit B, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. Upon information and belief, the Defendants admit the allegations of Paragraph 21 of the Plaintiffs' Verified Complaint.

25. In responding to the allegations of Paragraph 22 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the October 25, 2010, letter attached to the Plaintiffs' Verified Complaint as Exhibit C, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 22 of the Plaintiffs' Verified Complaint only to the extent that the letter attached to the Plaintiffs' Verified Complaint as Exhibit C refers to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 22 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

26. The Defendants deny the allegations of Paragraph 23 of the Plaintiffs' Verified Complaint.

27. In responding to the allegations of Paragraph 24 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the October 29, 2010, e-mail attached to the Plaintiffs' Verified Complaint as Exhibit D, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 24 of the Plaintiffs' Verified Complaint only to the extent that the e-mail attached to the Plaintiffs' Verified Complaint as Exhibit D is an e-mail to Paul Tecklenburg, Esquire, related to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 24 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

28. The Defendants admit the allegations of Paragraph 25 of the Plaintiffs' Verified Complaint only to the extent that the Defendants sent Mr. Tecklenburg documents to review with the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 25 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

29. The Defendants admit the allegations of Paragraph 26 of the Plaintiffs' Verified Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement. The Defendants deny the remaining allegations of Paragraph 26 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

30. The Defendants admit the allegations of Paragraph 27 of the Plaintiffs' Verified Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement and that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in fact sought advice from independent

counsel. The Defendants deny the remaining allegations of Paragraph 27 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

31. The Defendants admit the allegations of Paragraph 28 of the Plaintiffs' Verified Complaint.

32. The Defendants deny the allegations of Paragraph 29 of the Plaintiffs' Verified Complaint.

33. Upon information and belief, the Defendants admit the allegations of Paragraph 30 of the Plaintiffs' Verified Complaint.

34. The Defendants admit the allegations of Paragraph 31 of the Plaintiffs' Verified Complaint.

35. The Defendants admit the allegations of Paragraph 32 of the Plaintiffs' Verified Complaint only to the extent that after acceptance of the settlement offer from Galt the Defendants sought fees and expenses in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 32 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

36. In responding to the allegations of Paragraph 33 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the settlement agreement and release attached to the Plaintiffs' Verified Complaint as Exhibit H, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 33 of the Plaintiffs' Verified Complaint only to the extent that the settlement agreement and release resolve the claims between Galt and the Plaintiffs, Linda A. Gibson and

Heritage Seven, LLC. The Defendants deny the remaining allegations of Paragraph 33 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

37. In responding to the allegations of Paragraph 34 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the settlement agreement and release attached to the Plaintiffs' Verified Complaint as Exhibit H, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. To the extent a response is required, the Defendants deny the allegations of Paragraph 34 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

38. The Defendants admit the allegations of Paragraph 35 of the Plaintiffs' Verified Complaint only to the extent that he Plaintiff, Linda A. Gibson, granted Attorney Howe and Attorney West a mortgage against several real properties to secure payment of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 35 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

39. The Defendants admit the allegations of Paragraph 36 of the Plaintiffs' Verified Complaint.

40. The Defendants deny the allegations of Paragraph 37 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

41. The Defendants deny the allegations of Paragraph 38 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

42. The Defendants admit the allegations of Paragraph 39 of the Plaintiffs' Verified Complaint only to the extent that they disbursed settlement proceeds in accordance with the fee

agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 39 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

43. The Defendants deny the allegations of Paragraph 40 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

44. In responding to the allegations of Paragraph 41 of the Plaintiffs' Verified Complaint, the Defendants crave reference to the Partial Release of Mortgage Lien attached to the Plaintiffs' Verified Complaint as Exhibit L, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. To the extent a response is required, the Defendants deny the allegations of Paragraph 41 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

45. The Defendants admit the allegations of Paragraph 42 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiffs, Linda A. Gibson, granted Attorney Epting and Attorney Kefalos a mortgage lien for the unpaid contingency from the Re/Max litigation in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 42 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

46. The Defendants deny the allegations of Paragraph 43 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

47. The Defendants deny the allegations of Paragraph 44 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

48. The Defendants deny the allegations of Paragraph 45 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

49. The Defendants deny the allegations of Paragraph 46 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

50. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 47 of the Plaintiffs' Verified Complaint. Therefore, the Defendants deny the allegations of Paragraph 47 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

51. The Defendants admit the allegations of Paragraph 48 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants discussed the examination by opposing counsel at the deposition. The Defendants deny the remaining allegations of Paragraph 48 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

52. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 49 of the Plaintiffs' Verified Complaint. Therefore, the Defendants deny the allegations of Paragraph 49 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

53. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 50 of the Plaintiffs' Verified Complaint. Therefore, the Defendants deny the allegations of Paragraph 50 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

54. The Defendants admit the allegations of Paragraph 51 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants discussed

the terms of the fee agreement between the Parties. The Defendants deny the remaining allegations of Paragraph 51 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

55. The Defendants deny the allegations of Paragraph 52 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

56. The Defendants admit the allegations of Paragraph 53 of the Plaintiffs' Verified Complaint only to the extent that the Defendants received a proposal related to settlement of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 53 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

57. The Defendants admit the allegations of Paragraph 54 of the Plaintiffs' Verified Complaint only to the extent that the Defendants received a proposal related to settlement of fees eared by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 54 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

58. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 57 of this Answer and Affirmative Defenses, inclusive.

59. The Defendants admit the allegations of Paragraph 56 of the Plaintiffs' Verified Complaint only to the extent that an attorney-client relationship existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the

remaining allegations of Paragraph 56 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

60. The allegations of Paragraph 57 of the Plaintiffs' Verified Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 57 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

61. The Defendants admit the allegations of Paragraph 58 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants had a relationship of trust and confidence. The Defendants deny the remaining allegations of Paragraph 58 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

62. The Defendants admit the allegations of Paragraph 59 of the Plaintiffs' Verified Complaint only to the extent that the Defendants owed a duty of care to the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 59 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

63. The Defendants deny the allegations of Paragraph 60 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

64. The Defendants deny the allegations of Paragraph 61 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

65. The Defendants deny the allegations of Paragraph 62 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

66. The Defendants deny the allegations of Paragraph 63 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

67. The Defendants deny the allegations of Paragraph 64 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

68. The Defendants deny the allegations of Paragraph 65 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

69. The Defendants deny the allegations of Paragraph 66 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

70. The Defendants deny the allegations of Paragraph 67 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

71. The Defendants deny the allegations of Paragraph 68 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

72. The Defendants deny the allegations of Paragraph 69 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

73. The Defendants deny the allegations of Paragraph 70 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

74. The Defendants deny the allegations of Paragraph 71 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

75. The Defendants deny the allegations of Paragraph 72 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

76. The Defendants deny the allegations of Paragraph 73 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

77. The Defendants deny the allegations of Paragraph 74 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

78. The Defendants deny the allegations of Paragraph 75 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A SECOND CAUSE OF ACTION
(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY)

79. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 78 of this Answer and Affirmative Defenses, inclusive.

80. The Defendants admit the allegations of Paragraph 77 of the Plaintiffs' Verified Complaint.

81. The Defendants deny the allegations of Paragraph 78 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

82. The Defendants deny the allegations of Paragraph 79 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

83. The Defendants deny the allegations of Paragraph 80 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A THIRD CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

84. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 83 of this Answer and Affirmative Defenses, inclusive.

85. The Defendants admit the allegations of Paragraph 82 of the Plaintiffs' Verified Complaint only to the extent that the Defendants owed a duty of care to the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 82 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

86. The Defendants deny the allegations of Paragraph 83 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

87. The Defendants deny the allegations of Paragraph 84 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

88. The Defendants deny the allegations of Paragraph 85 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

89. The Defendants deny the allegations of Paragraph 86 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

90. The Defendants deny the allegations of Paragraph 87 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

91. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 90 of this Answer and Affirmative Defenses, inclusive.

92. The Defendants deny the allegations of Paragraph 89 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

93. The Defendants deny the allegations of Paragraph 90 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

94. The Defendants deny the allegations of Paragraph 91 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

95. The Defendants deny the allegations of Paragraph 92 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

96. The Defendants deny the allegations of Paragraph 93 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

97. The Defendants deny the allegations of Paragraph 94 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A FIFTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

98. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 97 of this Answer and Affirmative Defenses, inclusive.

99. The Defendants admit the allegations of Paragraph 96 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiff, Linda A. Gibson, owns certain real and personal property identified in the allegations of the Plaintiffs' Verified Complaint. The Defendants deny the remaining allegations of Paragraph 96 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

100. The Defendants deny the allegations of Paragraph 97 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

101. The Defendants deny the allegations of Paragraph 98 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

102. The Defendants admit the allegations of Paragraph 99 of the Plaintiffs' Verified Complaint only to the extent that there is a proper encumbrance on certain real property owned by the Plaintiff, Linda A. Gibson, in accordance with the fee agreement between the Plaintiffs and the Defendants. The Defendants deny the remaining allegations of Paragraph 99 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

103. The Defendants deny the allegations of Paragraph 100 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A SIXTH CAUSE OF ACTION
(COMMON LAW ACTUAL FRAUD)

104. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 103 of this Answer and Affirmative Defenses, inclusive.

105. The Defendants deny the allegations of Paragraph 102 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

106. The Defendants deny the allegations of Paragraph 103 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

107. The Defendants deny the allegations of Paragraph 104 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

108. The Defendants deny the allegations of Paragraph 105 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

109. The Defendants deny the allegations of Paragraph 106 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

110. The Defendants deny the allegations of Paragraph 107 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

111. The Defendants deny the allegations of Paragraph 108 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

112. The Defendants deny the allegations of Paragraph 109 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A SEVENTH CAUSE OF ACTION
(CONSTRUCTIVE FRAUD)

113. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 112 of this Answer and Affirmative Defenses, inclusive.

114. The Defendants deny the allegations of Paragraph 111 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

115. The Defendants deny the allegations of Paragraph 112 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

116. The Defendants deny the allegations of Paragraph 113 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

117. The Defendants deny the allegations of Paragraph 114 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

118. The Defendants deny the allegations of Paragraph 115 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

119. The Defendants deny the allegations of Paragraph 116 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

120. The Defendants deny the allegations of Paragraph 117 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

121. The Defendants deny the allegations of Paragraph 118 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR AN EIGHTH CAUSE OF ACTION
(BREACH OF CONTRACT)

122. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 121 of this Answer and Affirmative Defenses, inclusive.

123. The Defendants admit the allegations of Paragraph 120 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiffs and Defendants entered into and executed a valid, mutually binding contract whereby the Defendants agreed to represent the Plaintiffs in the

lawsuit in exchange for a specified fee and that this fee agreement between the Plaintiffs and the Defendants was approved by both parties. The Defendants deny the remaining allegations of Paragraph 120 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

124. The allegations of Paragraph 121 of the Plaintiffs' Verified Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 121 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

125. The Defendants deny the allegations of Paragraph 122 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

126. The Defendants deny the allegations of Paragraph 123 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

127. The Defendants deny the allegations of Paragraph 124 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

128. The Defendants deny the allegations of Paragraph 125 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

129. The Defendants deny the allegations of Paragraph 126 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

130. The Defendants deny the allegations of Paragraph 127 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

131. The Defendants deny the allegations of Paragraph 128 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A NINTH CAUSE OF ACTION
(ACTION FOR ACCOUNTING)

132. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 131 of this Answer and Affirmative Defenses, inclusive.

133. The Defendants admit the allegations of Paragraph 130 of the Plaintiffs' Verified Complaint only to the extent that an attorney-client relationship existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 130 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

134. The Defendants admit the allegations of Paragraph 131 of the Plaintiffs' Verified Complaint only to the extent that funds were received by the Defendants after settlements of various lawsuits. The Defendants deny the remaining allegations of Paragraph 131 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

135. The Defendants admit the allegations of Paragraph 132 of the Plaintiffs' Verified Complaint.

136. The Defendants admit the allegations of Paragraph 133 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, are entitled to an accounting for all receipts and disbursements related to any settlement of the Plaintiffs' action and that these accountings have previously been provided to the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 133 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

137. The Defendants deny the allegations of Paragraph 134 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

138. The Defendants deny the allegations of Paragraph 135 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

139. The Defendants deny the allegations of Paragraph 136 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

140. The Defendants deny the allegations of Paragraph 137 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A TENTH CAUSE OF ACTION
(UNDUE INFLUENCE)

141. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 140 of this Answer and Affirmative Defenses, inclusive.

142. The Defendants admit the allegations of Paragraph 139 of the Plaintiffs' Verified Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants had a relationship of trust and confidence. The Defendants deny the remaining allegations of Paragraph 139 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

143. The Defendants deny the allegations of Paragraph 140 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

144. The Defendants deny the allegations of Paragraph 141 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

145. The Defendants deny the allegations of Paragraph 142 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

146. The Defendants admit the allegations of Paragraph 143 of the Plaintiffs' Verified Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement. The

Defendants deny the remaining allegations of Paragraph 143 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

147. The Defendants deny the allegations of Paragraph 144 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

148. The Defendants deny the allegations of Paragraph 145 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

149. The Defendants deny the allegations of Paragraph 146 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

150. The Defendants deny the allegations of Paragraph 147 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR AN ELEVENTH CAUSE OF ACTION
(ACTION FOR EQUITABLE INDEMNITY)

151. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 150 of this Answer and Affirmative Defenses, inclusive.

152. The Defendants deny the allegations of Paragraph 149 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

153. The Defendants deny the allegations of Paragraph 150 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

154. The Defendants deny the allegations of Paragraph 151 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

155. The Defendants deny the allegations of Paragraph 152 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

156. The Defendants deny the allegations of Paragraph 153 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

157. The Defendants deny the allegations of Paragraph 154 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A TWELFTH CAUSE OF ACTION
(ACTION FOR DECLARATORY JUDGMENT)

158. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 157 of this Answer and Affirmative Defenses, inclusive.

159. The Defendants deny the allegations of Paragraph 156 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

160. The Defendants deny the allegations of Paragraph 157 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

161. The Defendants deny the allegations of Paragraph 158 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

162. The Defendants deny the allegations of Paragraph 159 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

163. The Defendants deny the allegations of Paragraph 160 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

164. The Defendants deny the allegations of Paragraph 161 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

165. The Defendants deny the allegations of Paragraph 162 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A THIRTEENTH CAUSE OF ACTION
(ACTION FOR VIOLATION OF UTPA)

166. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 165 of this Answer and Affirmative Defenses, inclusive.

167. The Defendants deny the allegations of Paragraph 164 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

168. The Defendants deny the allegations of Paragraph 165 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

169. The Defendants deny the allegations of Paragraph 166 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

170. The Defendants deny the allegations of Paragraph 167 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

171. The Defendants deny the allegations of Paragraph 168 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

172. The Defendants deny the allegations of Paragraph 169 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

173. The Defendants deny the allegations of Paragraph 170 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

174. The Defendants deny the allegations of Paragraph 171 of the Plaintiffs' Verified Complaint and demand strict proof thereof.

CONCLUSION AND WHEREFORE CLAUSE

175. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 174 of this Answer and Affirmative Defenses, inclusive.

176. The Defendants deny the allegations of Conclusion Paragraph of the Plaintiffs' Verified Complaint and demand strict proof thereof.

177. The Defendants deny that the Plaintiff is entitled to any of the relief requested in the Wherefore Clause, including all subparagraphs, of the Plaintiffs' Verified Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE
(Laches)

178. The Plaintiffs' claims are barred by the doctrine of laches.

FOR A THIRD DEFENSE
(Unclean Hands)

179. The Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Waiver/Estoppel)

180. The Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

181. The Plaintiffs have failed to state sufficient facts to state a cause of action for any of their causes of action, and as a result, pursuant to Rule 12(b)(6), SCRCP, the Plaintiffs' claims should be dismissed as a matter of law.

FOR A SIXTH DEFENSE
(Mitigation of Damages)

182. The Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate any injuries and damages allegedly sustained and by the doctrine of avoidable consequences.

FOR A SEVENTH DEFENSE
(Course of Dealing and Past Performance)

183. The Plaintiffs' claims are barred by the course of dealing between the parties and the Plaintiffs' prior acceptance and performance under the terms of the agreement.

FOR AN EIGHTH DEFENSE
(Good Faith)

184. The Plaintiffs' claims are barred because the Defendants acted in good faith at times material herein, based on all relevant facts and circumstances known by the Defendants at the time they so acted.

FOR A NINTH DEFENSE
(Ratification)

185. The Plaintiffs' claims are barred by their ratification of the agreement and subsequent acts in furtherance thereof.

FOR A TENTH DEFENSE
(Accord and Satisfaction)

186. The Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

FOR AN ELEVENTH DEFENSE
(Reservation of Additional Defenses)

187. The Defendants reserve the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

PRAYER

WHEREFORE, having fully answered the Plaintiffs' Verified Complaint in this matter, the Defendants respectfully pray:

a. That the Plaintiffs' claims be dismissed;

b. That the Plaintiffs take nothing by reason of their suit;

c. That the Defendants recover their costs;

d. For trial by jury; and

e. For any such further relief to which the Defendants may be entitled.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANTS

October 1, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CIVIL ACTION NO.: 2013-CP-10-4450

LINDA A. GIBSON, Individually, and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs.

ANDREW K. EPTING, JR., LLC; ANDREW K. EPTING, JR., Individually; GEORGE J. KEFALOS, P.A.; GEORGE J. KEFALOS, Individually; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III, Individually; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, Individually,

Defendants.

ANSWER and AFFIRMATIVE DEFENSES OF THE DEFENDANTS TO SECOND AMENDED COMPLAINT

FILED
JAN 28 2014
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.
2014 JAN 28 AM 11:
BY
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

TO: JAMES R. DAVIS ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

AND NOW COME the Defendants, ANDREW K. EPTING, JR., LLC, and ANDREW K. EPTING, JR., Individually (hereinafter collectively referred to as "Attorney Epting"), GEORGE J. KEFALOS, P.A., and GEORGE J. KEFALOS, Individually (hereinafter collectively referred to as "Attorney Kefalos"), GEDNEY M. HOWE, III, P.A., and GEDNEY M. HOWE, III, Individually (hereinafter collectively referred to as "Attorney Howe"), and JOHN S. WEST, ATTORNEY-AT-LAW, LLC, and JOHN S. WEST, Individually (hereinafter collectively referred to as "Attorney West") (hereinafter all Individual and Corporate Defendants are referred to as the "Defendants"), by and through their undersigned counsel, and file this Answer and Affirmative Defenses to the Plaintiffs' Second Amended Complaint:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is denied, and the Defendants demand strict proof thereof.

INTRODUCTION

2. The Defendants admit the allegations of the Introduction Paragraph of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants represented the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in a foreclosure and guaranty action, that the Defendants and Plaintiffs had a fee agreement for the representation, and that the Defendants performed legal services pursuant to the fee agreement. The Defendants deny the remaining allegations of the Introduction Paragraph of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

RELIEF REQUESTED

3. The Defendants deny the allegations of the "Relief Requested" Paragraph of the Plaintiffs' Second Amended Complaint and deny that the Plaintiffs are entitled to any of the relief sought in the Plaintiffs' Second Amended Complaint.

THE PARTIES

4. The Defendants admit the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint.

5. The Defendants admit the allegations of Paragraph 2 of the Plaintiffs' Second Amended Complaint.

6. The Defendants admit the allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint.

7. The Defendants admit the allegations of Paragraph 4 of the Plaintiffs' Second Amended Complaint.

8. The Defendants admit the allegations of Paragraph 5 of the Plaintiffs' Second Amended Complaint.

9. The Defendants admit the allegations of Paragraph 6 of the Plaintiffs' Second Amended Complaint.

10. The Defendants admit the allegations of Paragraph 7 of the Plaintiffs' Second Amended Complaint.

11. The Defendants admit the allegations of Paragraph 8 of the Plaintiffs' Second Amended Complaint.

12. The Defendants admit the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint.

13. The Defendants admit the allegations of Paragraph 10 of the Plaintiffs' Second Amended Complaint.

14. The Defendants admit the allegations of Paragraph 11 of the Plaintiffs' Second Amended Complaint.

15. The Defendants admit the allegations of Paragraph 12 of the Plaintiffs' Second Amended Complaint.

JURISDICTION AND VENUE

16. The allegations of Paragraph 13 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 13 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

THE RELEVANT FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

17. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 16 of this Answer and Affirmative Defenses, inclusive.

18. In responding to the allegations of Paragraph 15 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the loan documents referred to Paragraph 15, a set of written documents, which speak for themselves and are the best and only evidence of their content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. Upon information and belief, the Defendants admit the allegations of Paragraph 15 of the Plaintiffs' Second Amended Complaint.

19. The Defendants admit the allegations of Paragraph 16 of the Plaintiffs' Second Amended Complaint.

20. The Defendants admit the allegations of Paragraph 17 of the Plaintiffs' Second Amended Complaint.

21. In responding to the allegations of Paragraph 18 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the April 27, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit A, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants deny the remaining allegations of Paragraph 18 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

22. In responding to the allegations of Paragraph 19 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the April 27, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit A, a written document, which speaks for itself

and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants deny the remaining allegations of Paragraph 19 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

23. The Defendants admit the allegations of Paragraph 20 of the Plaintiffs' Second Amended Complaint.

24. The Defendants, upon information and belief, admit the allegations of Paragraph 21 of the Plaintiffs' Second Amended Complaint.

25. The Defendants admit the allegations of Paragraph 22 of the Plaintiffs' Second Amended Complaint.

26. The Defendants admit the allegations of Paragraph 23 of the Plaintiffs' Second Amended Complaint only to the extent that Galt purchased the loan from Ameris, that Galt was substituted as Plaintiff for Ameris, that Ameris remained in the lawsuit as a counterclaim defendant, and that the Defendants continued to represent and serve as counsel of record for the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, as defendants and counterclaim plaintiffs in the lawsuit. The Defendants deny the remaining allegations of Paragraph 23 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

27. The Defendants admit the allegations of Paragraph 24 of the Plaintiffs' Second Amended Complaint only to the extent that throughout the course of the Defendants' representation the Plaintiff, Linda A. Gibson, and the Defendants discussed the terms of the fee agreement between the Parties. The Defendants deny the remaining allegations of Paragraph 24 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

28. In responding to the allegations of Paragraph 25 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the October 25, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit B, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. Upon information and belief, the Defendants admit the allegations of Paragraph 25 of the Plaintiffs' Second Amended Complaint.

29. In responding to the allegations of Paragraph 26 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the October 25, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit C, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 26 of the Plaintiffs' Second Amended Complaint only to the extent that the letter attached to the Plaintiffs' Second Amended Complaint as Exhibit C refers to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 26 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

30. The Defendants deny the allegations of Paragraph 27 of the Plaintiffs' Second Amended Complaint.

31. In responding to the allegations of Paragraph 28 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the October 29, 2010, e-mail attached to the Plaintiffs' Second Amended Complaint as Exhibit D, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the

allegations of Paragraph 28 of the Plaintiffs' Second Amended Complaint only to the extent that the e-mail attached to the Plaintiffs' Second Amended Complaint as Exhibit D is an e-mail to Paul Tecklenburg, Esquire, an attorney chosen by the Plaintiffs to review the mortgage transaction with the Defendants, related to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 28 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

32. The Defendants admit the allegations of Paragraph 29 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants sent Mr. Tecklenburg documents to review with the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 29 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

33. The Defendants admit the allegations of Paragraph 30 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement and that the Plaintiffs selected the independent counsel. The Defendants deny the remaining allegations of Paragraph 30 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

34. The Defendants admit the allegations of Paragraph 31 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement and that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in fact sought advice from independent counsel, Paul Tecklenburg, Esquire, an attorney selected by the Plaintiffs. The

Defendants deny the remaining allegations of Paragraph 31 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

35. The Defendants admit the allegations of Paragraph 32 of the Plaintiffs' Second Amended Complaint.

36. The Defendants deny the allegations of Paragraph 33 of the Plaintiffs' Second Amended Complaint.

37. Upon information and belief, the Defendants admit the allegations of Paragraph 34 of the Plaintiffs' Second Amended Complaint.

38. The Defendants admit the allegations of Paragraph 35 of the Plaintiffs' Second Amended Complaint.

39. The Defendants admit the allegations of Paragraph 36 of the Plaintiffs' Second Amended Complaint only to the extent that after acceptance of the settlement offer from Galt the Defendants sought fees and expenses in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 36 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

40. In responding to the allegations of Paragraph 37 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the settlement agreement and release attached to the Plaintiffs' Second Amended Complaint as Exhibit H, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 37 of the Plaintiffs' Second Amended Complaint only to the extent that the settlement agreement and release resolve the claims between Galt and the Plaintiffs,

Linda A. Gibson and Heritage Seven, LLC. The Defendants deny the remaining allegations of Paragraph 37 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

41. In responding to the allegations of Paragraph 38 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the opinion letter from Paul Tecklenburg, Esquire, attached to the Plaintiffs' Second Amended Complaint as Exhibit I, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. To the extent a response is required, the Defendants deny the allegations of Paragraph 38 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

42. The Defendants admit the allegations of Paragraph 39 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, granted Attorney Howe and Attorney West a mortgage against several real properties to secure payment of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 39 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

43. The Defendants admit the allegations of Paragraph 40 of the Plaintiffs' Second Amended Complaint.

44. The Defendants deny the allegations of Paragraph 41 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

45. The Defendants deny the allegations of Paragraph 42 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

46. The Defendants admit the allegations of Paragraph 43 of the Plaintiffs' Second Amended Complaint only to the extent that they disbursed settlement proceeds in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants and in accordance with the directions from the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 43 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

47. The Defendants deny the allegations of Paragraph 44 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

48. In responding to the allegations of Paragraph 45 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the Partial Release of Mortgage Lien attached to the Plaintiffs' Second Amended Complaint as Exhibit L, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. To the extent a response is required, the Defendants admit the allegations of Paragraph 45 of the Plaintiffs' Second Amended Complaint only to the extent that Attorneys Howe and West released a portion of the mortgage. The Defendants deny the remaining allegations of Paragraph 45 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

49. The Defendants admit the allegations of Paragraph 46 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs, Linda A. Gibson, granted Attorney Epting and Attorney Kefalos a mortgage lien for the unpaid contingency from the Re/Max litigation in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining

allegations of Paragraph 46 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

50. The Defendants deny the allegations of Paragraph 47 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

51. The Defendants deny the allegations of Paragraph 48 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

52. The Defendants deny the allegations of Paragraph 49 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

53. The Defendants deny the allegations of Paragraph 50 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

54. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 51 of the Plaintiffs' Second Amended Complaint. Therefore, the Defendants deny the allegations of Paragraph 51 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

55. The Defendants admit the allegations of Paragraph 52 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants discussed the examination by opposing counsel at the deposition. The Defendants deny the remaining allegations of Paragraph 52 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

56. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 53 of the Plaintiffs' Second Amended Complaint. Therefore, the Defendants deny the allegations of Paragraph 53 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

57. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 54 of the Plaintiffs' Second Amended Complaint. Therefore, the Defendants deny the allegations of Paragraph 54 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

58. The Defendants admit the allegations of Paragraph 55 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants discussed the terms of the fee agreement between the Parties. The Defendants deny the remaining allegations of Paragraph 55 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

59. The Defendants deny the allegations of Paragraph 56 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

60. The Defendants admit the allegations of Paragraph 57 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants received a proposal related to settlement of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 57 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

61. The Defendants admit the allegations of Paragraph 58 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants received a proposal related to settlement of fees eared by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 58 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

62. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 61 of this Answer and Affirmative Defenses, inclusive.

63. The Defendants admit the allegations of Paragraph 60 of the Plaintiffs' Second Amended Complaint only to the extent that an attorney-client relationship existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 60 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

64. The allegations of Paragraph 61 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 61 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

65. The Defendants admit the allegations of Paragraph 62 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants had a relationship of trust and confidence. The Defendants deny the remaining allegations of Paragraph 62 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

66. The Defendants admit the allegations of Paragraph 63 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants owed a duty of care to the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 63 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

67. The Defendants deny the allegations of Paragraph 64 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

68. The Defendants deny the allegations of Paragraph 65 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

69. The Defendants deny the allegations of Paragraph 66 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

70. The Defendants deny the allegations of Paragraph 67 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

71. The Defendants deny the allegations of Paragraph 68 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

72. The Defendants deny the allegations of Paragraph 69 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

73. The Defendants deny the allegations of Paragraph 70 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

74. The Defendants deny the allegations of Paragraph 71 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

75. The Defendants deny the allegations of Paragraph 72 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

76. The Defendants deny the allegations of Paragraph 73 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

77. The Defendants deny the allegations of Paragraph 74 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

78. The Defendants deny the allegations of Paragraph 75 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

79. The Defendants deny the allegations of Paragraph 76 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

80. The Defendants deny the allegations of Paragraph 77 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

81. The Defendants deny the allegations of Paragraph 78 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

82. The Defendants deny the allegations of Paragraph 79 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A SECOND CAUSE OF ACTION
(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY)

83. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 82 of this Answer and Affirmative Defenses, inclusive.

84. The Defendants admit the allegations of Paragraph 81 of the Plaintiffs' Second Amended Complaint.

85. The Defendants deny the allegations of Paragraph 82 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

86. The Defendants deny the allegations of Paragraph 83 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

87. The Defendants deny the allegations of Paragraph 84 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A THIRD CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

88. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 87 of this Answer and Affirmative Defenses, inclusive.

89. The Defendants admit the allegations of Paragraph 86 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants owed a duty of care to the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 86 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

90. The Defendants deny the allegations of Paragraph 87 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

91. The Defendants deny the allegations of Paragraph 88 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

92. The Defendants deny the allegations of Paragraph 89 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

93. The Defendants deny the allegations of Paragraph 90 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

94. The Defendants deny the allegations of Paragraph 91 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

95. The Defendants deny the allegations of Paragraph 92 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

96. The Defendants deny the allegations of Paragraph 93 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

97. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 96 of this Answer and Affirmative Defenses, inclusive.

98. The Defendants deny the allegations of Paragraph 95 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

99. The Defendants deny the allegations of Paragraph 96 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

100. The Defendants deny the allegations of Paragraph 97 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

101. The Defendants deny the allegations of Paragraph 98 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

102. The Defendants deny the allegations of Paragraph 99 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

103. The Defendants deny the allegations of Paragraph 100 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A FIFTH CAUSE OF ACTION
(CONVERSION)

104. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 103 of this Answer and Affirmative Defenses, inclusive.

105. The Defendants admit the allegations of Paragraph 102 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, owns certain real and personal property identified in the allegations of the Plaintiffs' Second Amended Complaint. The Defendants deny the remaining allegations of Paragraph 102 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

106. The Defendants deny the allegations of Paragraph 103 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

107. The Defendants deny the allegations of Paragraph 104 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

108. The Defendants admit the allegations of Paragraph 105 of the Plaintiffs' Second Amended Complaint only to the extent that there is a proper encumbrance on certain real property owned by the Plaintiff, Linda A. Gibson, in accordance with the fee agreement between the Plaintiffs and the Defendants. The Defendants deny the remaining allegations of Paragraph 105 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

109. The Defendants deny the allegations of Paragraph 106 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A SIXTH CAUSE OF ACTION
(BREACH OF CONTRACT)

110. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 109 of this Answer and Affirmative Defenses, inclusive.

111. The Defendants admit the allegations of Paragraph 108 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs and Defendants entered into and executed a valid, mutually binding contract whereby the Defendants agreed to represent the Plaintiffs in the lawsuit in exchange for a specified fee and that this fee agreement between the Plaintiffs and the Defendants was approved by both parties. The Defendants deny the remaining allegations of Paragraph 108 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

112. The allegations of Paragraph 109 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a

response is deemed necessary, the Defendants deny the allegations of Paragraph 109 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

113. The Defendants deny the allegations of Paragraph 110 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

114. The Defendants deny the allegations of Paragraph 111 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

115. The Defendants deny the allegations of Paragraph 112 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

116. The Defendants deny the allegations of Paragraph 113 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

117. The Defendants deny the allegations of Paragraph 114 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

118. The Defendants deny the allegations of Paragraph 115 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

119. The Defendants deny the allegations of Paragraph 116 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

120. The Defendants deny the allegations of Paragraph 117 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

121. The Defendants deny the allegations of Paragraph 118 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

122. The Defendants admit the allegations of Paragraph 119 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement

and that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in fact sought advice from independent counsel, Paul Tecklenburg, Esquire, an attorney selected by the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 119 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

123. The Defendants deny the allegations of Paragraph 120 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

124. The Defendants deny the allegations of Paragraph 121 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

125. The Defendants deny the allegations of Paragraph 122 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

126. The Defendants deny the allegations of Paragraph 123 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A SEVENTH CAUSE OF ACTION
(ACTION FOR ACCOUNTING)

127. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 126 of this Answer and Affirmative Defenses, inclusive.

128. The Defendants admit the allegations of Paragraph 125 of the Plaintiffs' Second Amended Complaint only to the extent that an attorney-client relationship existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 125 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

129. The Defendants admit the allegations of Paragraph 126 of the Plaintiffs' Second Amended Complaint only to the extent that funds were received by the Defendants after

settlements of various lawsuits. The Defendants deny the remaining allegations of Paragraph 126 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

130. The Defendants admit the allegations of Paragraph 127 of the Plaintiffs' Second Amended Complaint.

131. The Defendants admit the allegations of Paragraph 128 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, are entitled to an accounting for all receipts and disbursements related to any settlement of the Plaintiffs' action and that these accountings have previously been provided to the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 128 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

132. The Defendants deny the allegations of Paragraph 129 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

133. The Defendants deny the allegations of Paragraph 130 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

134. The Defendants deny the allegations of Paragraph 131 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

135. The Defendants deny the allegations of Paragraph 132 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR AN EIGHTH CAUSE OF ACTION
(ACTION FOR EQUITABLE INDEMNITY)

136. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 135 of this Answer and Affirmative Defenses, inclusive.

137. The Defendants deny the allegations of Paragraph 134 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

138. The Defendants deny the allegations of Paragraph 135 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

139. The Defendants deny the allegations of Paragraph 136 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

140. The Defendants deny the allegations of Paragraph 137 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

141. The Defendants deny the allegations of Paragraph 138 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

142. The Defendants deny the allegations of Paragraph 139 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A NINTH CAUSE OF ACTION
(ACTION FOR DECLARATORY JUDGMENT)

143. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 142 of this Answer and Affirmative Defenses, inclusive.

144. The Defendants deny the allegations of Paragraph 141 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

145. The Defendants deny the allegations of Paragraph 142 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

146. The Defendants deny the allegations of Paragraph 143 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

147. The Defendants deny the allegations of Paragraph 144 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

148. The Defendants deny the allegations of Paragraph 145 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

149. The Defendants deny the allegations of Paragraph 146 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

150. The Defendants deny the allegations of Paragraph 147 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A TENTH CAUSE OF ACTION
(ACTION FOR VIOLATION OF UTPA)

151. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 150 of this Answer and Affirmative Defenses, inclusive.

152. The Defendants deny the allegations of Paragraph 149 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

153. The Defendants deny the allegations of Paragraph 150 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

154. The Defendants deny the allegations of Paragraph 151 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

155. The Defendants deny the allegations of Paragraph 152 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

156. The Defendants deny the allegations of Paragraph 153 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

157. The Defendants deny the allegations of Paragraph 154 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

158. The Defendants deny the allegations of Paragraph 155 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

159. The Defendants deny the allegations of Paragraph 156 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

CONCLUSION AND WHEREFORE CLAUSE

160. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 159 of this Answer and Affirmative Defenses, inclusive.

161. The Defendants deny the allegations of Conclusion Paragraph of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

162. The Defendants deny that the Plaintiff is entitled to any of the relief requested in the Wherefore Clause, including all subparagraphs, of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE
(Laches)

163. The Plaintiffs' claims are barred by the doctrine of laches.

FOR A THIRD DEFENSE
(Unclean Hands)

164. The Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Waiver/Estoppel)

165. The Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

166. The Plaintiffs have failed to state sufficient facts to state a cause of action for any of their causes of action, and as a result, pursuant to Rule 12(b)(6), SCRCP, the Plaintiffs' claims should be dismissed as a matter of law.

FOR A SIXTH DEFENSE
(Mitigation of Damages)

167. The Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate any injuries and damages allegedly sustained and by the doctrine of avoidable consequences.

FOR A SEVENTH DEFENSE
(Course of Dealing and Past Performance)

168. The Plaintiffs' claims are barred by the course of dealing between the parties and the Plaintiffs' prior acceptance and performance under the terms of the agreement.

FOR AN EIGHTH DEFENSE
(Good Faith)

169. The Plaintiffs' claims are barred because the Defendants acted in good faith at times material herein, based on all relevant facts and circumstances known by the Defendants at the time they so acted.

FOR A NINTH DEFENSE
(Ratification)

170. The Plaintiffs' claims are barred by their ratification of the agreement and subsequent acts in furtherance thereof.

FOR A TENTH DEFENSE
(Accord and Satisfaction)

171. The Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

FOR AN ELEVENTH DEFENSE
(Statute of Limitations)

172. The Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A TWELFTH DEFENSE
(Reservation of Additional Defenses)

173. The Defendants reserve the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

PRAYER

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint in this matter, the Defendants respectfully pray:

a. That the Plaintiffs' claims be dismissed;

b. That the Plaintiffs take nothing by reason of their suit;

c. That the Defendants recover their costs;

d. For trial by jury; and

e. For any such further relief to which the Defendants may be entitled.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____ Jeffrey A. Bogdan
for

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANTS

January 28, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CIVIL ACTION NO.: 2013-CP-10-4450
LINDA A. GIBSON, Individually, and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC, Plaintiffs, vs. ANDREW K. EPTING, JR., LLC; ANDREW K. EPTING, JR., Individually; GEORGE J. KEFALOS, P.A.; GEORGE J. KEFALOS, Individually; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III, Individually; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and JOHN S. WEST, Individually, Defendants.	) **ANSWER and AFFIRMATIVE DEFENSES OF THE DEFENDANTS TO SECOND AMENDED COMPLAINT** (NON-JURY TRIAL DEMANDED)

FILED
2015 NOV -2 PM 12:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JAMES R. DAVIS ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

AND NOW COME the Defendants, ANDREW K. EPTING, JR., LLC, and ANDREW K. EPTING, JR., Individually (hereinafter collectively referred to as "Attorney Epting"), GEORGE J. KEFALOS, P.A., and GEORGE J. KEFALOS, Individually (hereinafter collectively referred to as "Attorney Kefalos"), GEDNEY M. HOWE, III, P.A., and GEDNEY M. HOWE, III, Individually (hereinafter collectively referred to as "Attorney Howe"), and JOHN S. WEST, ATTORNEY-AT-LAW, LLC, and JOHN S. WEST, Individually (hereinafter collectively referred to as "Attorney West") (hereinafter all Individual and Corporate Defendants are referred to as the "Defendants"), by and through their undersigned counsel, and file this

Answer and Affirmative Defenses to the Plaintiffs' Second Amended Complaint filed on October 22, 2015:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is denied, and the Defendants demand strict proof thereof.

INTRODUCTION

2. The Defendants admit the allegations of the Introduction Paragraph of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants represented the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in a foreclosure and guaranty action, that the Defendants and Plaintiffs had a fee agreement for the representation, and that the Defendants performed legal services pursuant to the fee agreement. The Defendants deny the remaining allegations of the Introduction Paragraph of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

RELIEF REQUESTED

3. The Defendants deny the allegations of the "Relief Requested" Paragraph of the Plaintiffs' Second Amended Complaint and deny that the Plaintiffs are entitled to any of the relief sought in the Plaintiffs' Second Amended Complaint.

THE PARTIES

4. The Defendants admit the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint.

5. The Defendants admit the allegations of Paragraph 2 of the Plaintiffs' Second Amended Complaint.

6. The Defendants admit the allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint.

7. The Defendants admit the allegations of Paragraph 4 of the Plaintiffs' Second Amended Complaint.

8. The Defendants admit the allegations of Paragraph 5 of the Plaintiffs' Second Amended Complaint.

9. The Defendants admit the allegations of Paragraph 6 of the Plaintiffs' Second Amended Complaint.

JURISDICTION AND VENUE

10. The allegations of Paragraph 7 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 7 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

THE RELEVANT FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

11. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 10 of this Answer and Affirmative Defenses, inclusive.

12. In responding to the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the loan documents referred to Paragraph 9, a set of written documents, which speak for themselves and are the best and only evidence of their content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. Upon information and belief, the Defendants admit the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint.

13. The Defendants admit the allegations of Paragraph 10 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs retained Attorney Kefalos and Attorney Epting to represent the Plaintiffs in defense of an approaching mortgage foreclosure action and to assert counterclaims against the lender. The Defendants deny the remaining allegations of the Paragraph 10 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

14. The Defendants admit the allegations of Paragraph 11 of the Plaintiffs' Second Amended Complaint.

15. In responding to the allegations of Paragraph 12 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the April 27, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit A, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants deny the remaining allegations of Paragraph 12 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

16. In responding to the allegations of Paragraph 13 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the April 27, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit A, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants deny the remaining allegations of Paragraph 13 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

17. The Defendants admit the allegations of Paragraph 14 of the Plaintiffs' Second Amended Complaint.

18. The Defendants, upon information and belief, admit the allegations of Paragraph 15 of the Plaintiffs' Second Amended Complaint.

19. The Defendants admit the allegations of Paragraph 16 of the Plaintiffs' Second Amended Complaint only to the extent that the Ameris sold the loan to Galt Valley, LLC. The Defendants deny the remaining allegations of the Paragraph 16 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

20. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 17 of the Plaintiffs' Second Amended Complaint. Therefore, the Defendants deny the allegations of Paragraph 17 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

21. The Defendants admit the allegations of Paragraph 18 of the Plaintiffs' Second Amended Complaint only to the extent that they knew the Plaintiffs were in default under the terms of the loan documents. The Defendants deny the remaining allegations of Paragraph 18 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

22. The Defendants deny the allegations of Paragraph 19 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

23. The Defendants deny the allegations of Paragraph 20 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

24. The Defendants deny the allegations of Paragraph 21 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

25. The Defendants admit the allegations of Paragraph 22 of the Plaintiffs' Second Amended Complaint.

26. In responding to the allegations of Paragraph 23 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the October 25, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit B, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. Upon information and belief, the Defendants admit the allegations of Paragraph 23 of the Plaintiffs' Second Amended Complaint only to the extent that Galt Valley offered to settle its deficiency claim against Heritage Seven, LLC, and Linda A. Gibson, as guarantor, for the amount of $1.5MM and conveyance of the two pieces of collateral, namely the apartments and real property at 615 Klister Lane. The Defendants deny the remaining allegations of Paragraph 23 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

27. In responding to the allegations of Paragraph 24 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the October 25, 2010, letter attached to the Plaintiffs' Second Amended Complaint as Exhibit C, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 24 of the Plaintiffs' Second Amended Complaint only to the extent that the letter attached to the Plaintiffs' Second Amended Complaint as Exhibit C refers to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 24 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

28. In responding to the allegations of Paragraph 25 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the October 29, 2010, e-mail attached to

the Plaintiffs' Second Amended Complaint as Exhibit D, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 25 of the Plaintiffs' Second Amended Complaint only to the extent that the e-mail attached to the Plaintiffs' Second Amended Complaint as Exhibit D is an e-mail to Paul Tecklenburg, Esquire, an attorney chosen by the Plaintiffs to review the mortgage transaction with the Defendants, related to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 25 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

29. The Defendants admit the allegations of Paragraph 26 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants sent Mr. Tecklenburg documents to review with the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 26 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

30. The Defendants admit the allegations of Paragraph 27 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the calculation of the fee owed by the Plaintiffs pursuant to the existing fee agreement and the grant of a mortgage to the Defendants and that the Plaintiffs selected the independent counsel. The Defendants deny the remaining allegations of Paragraph 27 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

31. The Defendants deny the allegations of Paragraph 28 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

32. The Defendants admit the allegations of Paragraph 29 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement and that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in fact sought advice from independent counsel, Paul Tecklenburg, Esquire, an attorney selected by the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 29 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

33. The Defendants admit the allegations of Paragraph 30 of the Plaintiffs' Second Amended Complaint.

34. In responding to the allegations of Paragraph 31 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the November 8, 2010, letter from Ian McVey, Esquire, attached to the Plaintiffs' Second Amended Complaint as Exhibit F, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 31 of the Plaintiffs' Second Amended Complaint only to the extent that Galt Valley made a settlement offer to the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in the November 8, 2010, letter. The Defendants deny the remaining allegations of Paragraph 31 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

35. The Defendants admit the allegations of Paragraph 32 of the Plaintiffs' Second Amended Complaint.

36. The Defendants deny the allegations of Paragraph 33 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

37. The Defendants deny the allegations of Paragraph 34 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

38. The Defendants admit the allegations of Paragraph 35 of the Plaintiffs' Second Amended Complaint only to the extent that throughout the course of the Defendants' representation the Plaintiff, Linda A. Gibson, and the Defendants discussed the terms of the fee agreement between the Parties. The Defendants deny the remaining allegations of Paragraph 35 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

39. The Defendants deny the allegations of Paragraph 36 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

40. In responding to the allegations of Paragraph 37 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the settlement agreement and release attached to the Plaintiffs' Second Amended Complaint as Exhibit H, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. The Defendants admit the allegations of Paragraph 37 of the Plaintiffs' Second Amended Complaint only to the extent that the settlement agreement and release resolve the claims between Galt and the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC. The Defendants deny the remaining allegations of Paragraph 37 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

41. In responding to the allegations of Paragraph 38 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the opinion letter from Paul Tecklenburg, Esquire, attached to the Plaintiffs' Second Amended Complaint as Exhibit I, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document.

To the extent a response is required, the Defendants deny the allegations of Paragraph 38 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

42. The Defendants admit the allegations of Paragraph 39 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, granted Attorney Howe and Attorney West a mortgage against several real properties to secure payment of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 39 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

43. The Defendants admit the allegations of Paragraph 40 of the Plaintiffs' Second Amended Complaint.

44. The Defendants deny the allegations of Paragraph 41 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

45. The Defendants deny the allegations of Paragraph 42 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

46. The Defendants admit the allegations of Paragraph 43 of the Plaintiffs' Second Amended Complaint only to the extent that they disbursed settlement proceeds in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants and in accordance with the directions from the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 43 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

47. The Defendants deny the allegations of Paragraph 44 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

48. In responding to the allegations of Paragraph 45 of the Plaintiffs' Second Amended Complaint, the Defendants crave reference to the Partial Release of Mortgage Lien attached to the Plaintiffs' Second Amended Complaint as Exhibit L, a written document, which speaks for itself and is the best and only evidence of its content. The Defendants specifically reject and deny any attempt to characterize the contents of the document. To the extent a response is required, the Defendants admit the allegations of Paragraph 45 of the Plaintiffs' Second Amended Complaint only to the extent that Attorneys Howe and West released a portion of the mortgage. The Defendants deny the remaining allegations of Paragraph 45 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

49. The Defendants admit the allegations of Paragraph 46 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs, Linda A. Gibson, granted Attorney Epting and Attorney Kefalos a mortgage lien for the unpaid contingency from the Re/Max litigation in accordance with the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 46 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

50. The Defendants deny the allegations of Paragraph 47 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

51. The Defendants deny the allegations of Paragraph 48 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

52. The Defendants deny the allegations of Paragraph 49 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

53. The Defendants deny the allegations of Paragraph 50 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

54. The Defendants deny the allegations of Paragraph 51 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

55. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 52 of the Plaintiffs' Second Amended Complaint. Therefore, the Defendants deny the allegations of Paragraph 52 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

56. The Defendants admit the allegations of Paragraph 53 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants discussed the examination by opposing counsel at the deposition who at the time was attempting to limit the Plaintiffs' damages claim for attorneys' fees in the Re/Max litigation. The Defendants deny the remaining allegations of Paragraph 53 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

57. The Defendants are without sufficient knowledge or information to admit or deny the allegations of Paragraph 54 of the Plaintiffs' Second Amended Complaint. Therefore, the Defendants deny the allegations of Paragraph 54 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

58. The Defendants admit the allegations of Paragraph 55 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants discussed the terms of the fee agreement between the Parties. The Defendants deny the remaining allegations of Paragraph 55 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

59. The Defendants deny the allegations of Paragraph 56 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

60. The Defendants deny the allegations of Paragraph 57 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

61. The Defendants deny the allegations of Paragraph 58 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

62. The Defendants deny the allegations of Paragraph 59 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

63. The Defendants deny the allegations of Paragraph 60 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

64. The Defendants deny the allegations of Paragraph 61 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

65. The Defendants deny the allegations of Paragraph 62 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

66. The Defendants deny the allegations of Paragraph 63 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

67. The Defendants deny the allegations of Paragraph 64 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

68. The Defendants deny the allegations of Paragraph 65 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

69. The Defendants admit the allegations of Paragraph 66 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants received a proposal related to settlement of fees earned by the Defendants pursuant to the fee agreement that always existed

between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 66 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

70. The Defendants admit the allegations of Paragraph 67 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants received a proposal related to settlement of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 67 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY / LEGAL MALPRACTICE)

71. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 70 of this Answer and Affirmative Defenses, inclusive.

72. The Defendants admit the allegations of Paragraph 69 of the Plaintiffs' Second Amended Complaint only to the extent that an attorney-client relationship existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants and that there existed certain duties owed to the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 69 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

73. The Defendants admit the allegations of Paragraph 70 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiff, Linda A. Gibson, and the Defendants had a relationship of trust and confidence. The Defendants deny the remaining allegations of Paragraph 70 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

74. The allegations of Paragraph 71 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 71 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

75. The allegations of Paragraph 72 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 72 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

76. The allegations of Paragraph 73 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 73 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

77. The allegations of Paragraph 74 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, the Defendants deny the allegations of Paragraph 74 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

78. The Defendants deny the allegations of Paragraph 75 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

79. The Defendants admit the allegations of Paragraph 76 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants owed a duty of care to the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 76 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

80. The Defendants deny the allegations of Paragraph 77 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

81. The Defendants deny the allegations of Paragraph 78 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

82. The Defendants deny the allegations of Paragraph 79 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

83. The Defendants deny the allegations of Paragraph 80 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

84. The Defendants deny the allegations of Paragraph 81 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

85. The Defendants deny the allegations of Paragraph 82 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

86. The Defendants deny the allegations of Paragraph 83 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

87. The Defendants deny the allegations of Paragraph 84 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

88. The Defendants deny the allegations of Paragraph 85 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

89. The Defendants deny the allegations of Paragraph 86 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

90. The Defendants deny the allegations of Paragraph 87 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

91. The Defendants deny the allegations of Paragraph 88 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

92. The Defendants deny the allegations of Paragraph 89 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

93. The Defendants deny the allegations of Paragraph 90 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

94. The Defendants deny the allegations of Paragraph 91 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

95. The Defendants deny the allegations of Paragraph 92 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

96. The Defendants deny the allegations of Paragraph 93 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

97. The Defendants deny the allegations of Paragraph 94 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

98. The Defendants deny the allegations of Paragraph 95 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

99. The Defendants deny the allegations of Paragraph 96 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

100. The Defendants deny the allegations of Paragraph 97 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

101. The allegations of Paragraph 98 of the Plaintiffs' Second Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a

response is deemed necessary, the Defendants deny the allegations of Paragraph 98 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

102. The Defendants admit the allegations of Paragraph 99 of the Plaintiffs' Second Amended Complaint.

103. The Defendants deny the allegations of Paragraph 100 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

104. The Defendants deny the allegations of Paragraph 101 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

105. The Defendants deny the allegations of Paragraph 102 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

106. The Defendants deny the allegations of Paragraph 103 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

107. The Defendants deny the allegations of Paragraph 104 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 104, and demand strict proof thereof.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

108. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 107 of this Answer and Affirmative Defenses, inclusive.

109. The Defendants admit the allegations of Paragraph 106 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants owed a duty of care to the Plaintiff, Linda A. Gibson. The Defendants deny the remaining allegations of Paragraph 106 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

110. The Defendants deny the allegations of Paragraph 107 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

111. The Defendants deny the allegations of Paragraph 108 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

112. The Defendants deny the allegations of Paragraph 109 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

113. The Defendants deny the allegations of Paragraph 110 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

114. The Defendants deny the allegations of Paragraph 111 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

115. The Defendants deny the allegations of Paragraph 112 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

116. The Defendants deny the allegations of Paragraph 113 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 113, and demand strict proof thereof.

FOR A THIRD CAUSE OF ACTION
(UNJUST ENRICHMENT)

117. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 116 of this Answer and Affirmative Defenses, inclusive.

118. The Defendants deny the allegations of Paragraph 115 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

119. The Defendants deny the allegations of Paragraph 116 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

120. The Defendants deny the allegations of Paragraph 117 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

121. The Defendants deny the allegations of Paragraph 118 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

122. The Defendants deny the allegations of Paragraph 119 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

123. The Defendants deny the allegations of Paragraph 120 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

124. The Defendants deny the allegations of Paragraph 121 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 121, and demand strict proof thereof.

FOR A FOURTH CAUSE OF ACTION
(ACTION FOR MONEY HAD & RECEIVED)

125. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 124 of this Answer and Affirmative Defenses, inclusive.

126. The Defendants deny the allegations of Paragraph 123 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

127. The Defendants deny the allegations of Paragraph 124 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

128. The Defendants deny the allegations of Paragraph 125 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

129. The Defendants admit the allegations of Paragraph 126 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants received a proposal related to

settlement of fees earned by the Defendants pursuant to the fee agreement that always existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 126 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

130. The Defendants deny the allegations of Paragraph 127 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

131. The Defendants deny the allegations of Paragraph 128 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

132. The Defendants deny the allegations of Paragraph 129 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

133. The Defendants deny the allegations of Paragraph 130 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

134. The Defendants deny the allegations of Paragraph 131 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

135. The Defendants deny the allegations of Paragraph 132 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A FIFTH CAUSE OF ACTION
(CONSTRUCTIVE FRAUD)

136. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 135 of this Answer and Affirmative Defenses, inclusive.

137. The Defendants deny the allegations of Paragraph 134 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

138. The Defendants deny the allegations of Paragraph 135 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

139. The Defendants deny the allegations of Paragraph 136 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

140. The Defendants deny the allegations of Paragraph 137 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

141. The Defendants deny the allegations of Paragraph 138 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

142. The Defendants deny the allegations of Paragraph 139 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

143. The Defendants deny the allegations of Paragraph 140 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

144. The Defendants deny the allegations of Paragraph 141 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

145. The Defendants deny the allegations of Paragraph 142 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

146. The Defendants deny the allegations of Paragraph 143 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 143, and demand strict proof thereof.

FOR A SIXTH CAUSE OF ACTION
(ACTION FOR CANCELLATION OF MORTGAGE)

147. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 146 of this Answer and Affirmative Defenses, inclusive.

148. The Defendants admit the allegations of Paragraph 145 of the Plaintiffs' Second Amended Complaint only to the extent that Linda A. Gibson owns certain real property. The Defendants deny the remaining allegations of Paragraph 145 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

149. The Defendants deny the allegations of Paragraph 146 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

150. The Defendants deny the allegations of Paragraph 147 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

151. The Defendants deny the allegations of Paragraph 148 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

152. The Defendants deny the allegations of Paragraph 149 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 149, and demand strict proof thereof.

FOR A SEVENTH CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

153. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 152 of this Answer and Affirmative Defenses, inclusive.

154. The Defendants admit the allegations of Paragraph 151 of the Plaintiffs' Second Amended Complaint only to the extent that there existed an enforceable fee agreement between the Plaintiffs and Defendants. The Defendants deny the remaining allegations of Paragraph 151 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

155. The Defendants admit the allegations of Paragraph 152 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs and Defendants entered into and

executed a valid, mutually binding contract whereby the Defendants agreed to represent the Plaintiffs in the lawsuit in exchange for a specified fee and that this fee agreement between the Plaintiffs and the Defendants was approved by both parties. The Defendants deny the remaining allegations of Paragraph 152 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

156. The Defendants deny the allegations of Paragraph 153 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

157. The Defendants deny the allegations of Paragraph 154 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

158. The Defendants deny the allegations of Paragraph 155 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

159. The Defendants deny the allegations of Paragraph 156 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

160. The Defendants deny the allegations of Paragraph 157 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

161. The Defendants deny the allegations of Paragraph 158 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

162. The Defendants deny the allegations of Paragraph 159 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

163. The Defendants deny the allegations of Paragraph 160 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

164. The Defendants deny the allegations of Paragraph 161 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

165. The Defendants deny the allegations of Paragraph 162 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

166. The Defendants admit the allegations of Paragraph 163 of the Plaintiffs' Second Amended Complaint only to the extent that the Defendants informed the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, to seek advice from independent counsel on the fee agreement and that the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, in fact sought advice from independent counsel, Paul Tecklenburg, Esquire, an attorney selected by the Plaintiffs. The Defendants deny the remaining allegations of Paragraph 163 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

167. The Defendants deny the allegations of Paragraph 164 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

168. The Defendants deny the allegations of Paragraph 165 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

169. The Defendants deny the allegations of Paragraph 166 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

170. The Defendants deny the allegations of Paragraph 167 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 167, and demand strict proof thereof.

FOR AN EIGHTH CAUSE OF ACTION
(ACTION FOR IMPLIED EQUITABLE INDEMNITY)

171. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 170 of this Answer and Affirmative Defenses, inclusive.

172. The Defendants admit the allegations of Paragraph 169 of the Plaintiffs' Second Amended Complaint only to the extent that the Plaintiffs and Defendants entered into a contingency fee agreement for certain representations. The Defendants deny the remaining allegations of Paragraph 169 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

173. The Defendants deny the allegations of Paragraph 170 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

174. The Defendants deny the allegations of Paragraph 171 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

175. The Defendants deny the allegations of Paragraph 172 of the Plaintiffs' Second Amended Complaint, including the "Wherefore Clause" following Paragraph 172, and demand strict proof thereof.

FOR A NINTH CAUSE OF ACTION
(ACTION FOR DECLARATORY JUDGMENT)

176. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 175 of this Answer and Affirmative Defenses, inclusive.

177. The Defendants deny the allegations of Paragraph 174 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

178. The Defendants deny the allegations of Paragraph 175 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

179. The Defendants deny the allegations of Paragraph 176 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

180. The Defendants deny the allegations of Paragraph 177 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

181. The Defendants deny the allegations of Paragraph 178 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

182. The Defendants deny the allegations of Paragraph 179 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

183. The Defendants deny the allegations of Paragraph 180 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A TENTH CAUSE OF ACTION
(ACTION FOR RESCISSION)

184. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 183 of this Answer and Affirmative Defenses, inclusive.

185. The Defendants deny the allegations of Paragraph 182 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

186. The Defendants admit the allegations of Paragraph 183 of the Plaintiffs' Second Amended Complaint only to the extent that an attorney-client relationship existed between the Plaintiffs, Linda A. Gibson and Heritage Seven, LLC, and the Defendants. The Defendants deny the remaining allegations of Paragraph 183 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

187. The Defendants deny the allegations of Paragraph 184 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

188. The Defendants deny the allegations of Paragraph 185 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

189. The Defendants deny the allegations of Paragraph 186 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

190. The Defendants deny the allegations of Paragraph 187 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

191. The Defendants deny the allegations of Paragraph 188 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

192. The Defendants deny the allegations of Paragraph 189 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

193. The Defendants deny the allegations of Paragraph 190 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

194. The Defendants deny the allegations of Paragraph 191 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

195. The Defendants deny the allegations of Paragraph 192 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

196. The Defendants deny the allegations of Paragraph 193 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR AN ELEVENTH CAUSE OF ACTION
(ACTION FOR VIOLATION OF SCUTPA)

197. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 196 of this Answer and Affirmative Defenses, inclusive.

198. The Defendants deny the allegations of Paragraph 195 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

199. The Defendants deny the allegations of Paragraph 196 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

200. The Defendants deny the allegations of Paragraph 197 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

201. The Defendants deny the allegations of Paragraph 198 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

202. The Defendants deny the allegations of Paragraph 199 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

203. The Defendants deny the allegations of Paragraph 200 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

204. The Defendants deny the allegations of Paragraph 201 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

205. The Defendants deny the allegations of Paragraph 202 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

206. The Defendants deny the allegations of Paragraph 203 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

CONCLUSION AND WHEREFORE CLAUSE

207. The Defendants incorporate by reference, as if set forth at length, the allegations of Paragraphs 1 through 206 of this Answer and Affirmative Defenses, inclusive.

208. The Defendants deny the allegations of Conclusion Paragraph of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

209. The Defendants deny that the Plaintiff is entitled to any of the relief requested in the Wherefore Clause, including all subparagraphs, of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE
(Laches)

210. The Plaintiffs' claims are barred by the doctrine of laches.

FOR A THIRD DEFENSE
(Unclean Hands)

211. The Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Waiver/Estoppel)

212. The Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

213. The Plaintiffs have failed to state sufficient facts to state a cause of action for any of their causes of action, and as a result, pursuant to Rule 12(b)(6), SCRCP, the Plaintiffs' claims should be dismissed as a matter of law.

FOR A SIXTH DEFENSE
(Mitigation of Damages)

214. The Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to mitigate any injuries and damages allegedly sustained and by the doctrine of avoidable consequences.

FOR A SEVENTH DEFENSE
(Course of Dealing and Past Performance)

215. The Plaintiffs' claims are barred by the course of dealing between the parties and the Plaintiffs' prior acceptance and performance under the terms of the agreement.

FOR AN EIGHTH DEFENSE
(Good Faith)

216. The Plaintiffs' claims are barred because the Defendants acted in good faith at times material herein, based on all relevant facts and circumstances known by the Defendants at the time they so acted.

FOR A NINTH DEFENSE
(Ratification)

217. The Plaintiffs' claims are barred by their ratification of the agreement and subsequent acts in furtherance thereof.

FOR A TENTH DEFENSE
(Accord and Satisfaction)

218. The Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

FOR AN ELEVENTH DEFENSE
(Statute of Limitations)

219. The Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A TWELFTH DEFENSE
(Reservation of Additional Defenses)

220. The Defendants reserve the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

PRAYER

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint in this matter, the Defendants respectfully pray:

a. That the Plaintiffs' claims be dismissed;

b. That the Plaintiffs take nothing by reason of their suit;

c. That the Defendants recover their costs;

d. For a non-jury trial; and

e. For any such further relief to which the Defendants may be entitled.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY:

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANTS

November 2, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2013-CP-10-04450

LINDA A. GIBSON, individually, and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC.,

PLAINTIFFS,

VS.

ANDREW K. EPTING, JR., LLC; ANDREW K EPTING, JR., Individually; GEORGE J. KEFALOS, P.A.; GEORGE J. KEFALOS, Individually; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III, Individually; JOHN S. WEST, ATTORNEY AT LAW, LLC; and JOHN S. WEST, Individually,

DEFENDANTS.

MOTIONS HEARING

held before the Honorable R. Markley Dennis

Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

in the Charleston County Courthouse

Charleston, South Carolina

on Tuesday, October 20, 2015, Commencing at 9:22 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF:

James R. Davis, Esquire
234 Seven Farms Dr, Suite 211B
Mail Stop Box #16
Daniel Island, South Carolina 29492

FOR THE DEFENDANT:

M. Dawes Cooke, Jr., Esquire
Barnwell, Whaley Patterson & Helms
Post Office Drawer H
Charleston, South Carolina 29402-0197

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
CERTIFICATE OF COURT REPORTER	31

- - - - -

EXHIBITS

[None]

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

PROCEEDINGS

THE COURT: We have status conference/motions. I guess we'll hear the motions before we get into the status conference aspect of it, if that suits everybody.

There are cross-motions for summary judgment?

MR. COOKE: Yes, Your Honor. And we're prepared to go forward with those.

THE COURT: All right. Be happy to hear from you.

MR. COOKE: Or as time --

THE COURT: By the way, thank you for the memorandums. All memorandums are incorporated fully for purposes of review, and each side may rely fully on the memorandum as submitted and the positions stated and taken therein.

MR. COOKE: Thank you.

THE COURT: Okay?

MR. COOKE: And, Your Honor, I would state, too, that the plaintiffs -- I'm informed that this morning they filed a motion to amend again. The summary judgment is designed to apply to all causes of action, including those that they had proposed to add, so the arguments I'm going to make I think should apply to everything that you might have before you.

THE COURT: That will be fine.

MR. COOKE: So this is essentially an action to

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

void, rescind, have declared invalid, a fee agreement between the plaintiff and her lawyers.

And stop me if I'm giving you too much detail because --

THE COURT: No.

MR. COOKE: -- we gave you a lot of stuff, and I don't know whether you've had time to read it or not.

THE COURT: I've read a good portion of it. I haven't read all of it, but I've read through the critical aspect of it.

MR. COOKE: So Ms. Gibson owned a good bit of property. She bought an apartment complex that she was going to renovate and it turned out that she had bitten off way more than she could chew between getting a bad economy, bad advice, and so forth and so on, and so back in 2009 she was in default on her loans.

She had a lawyer named Rob Papa, who was working with her to try to negotiate these things, and he decided and recommended that they -- that she retain George Kefalos. Larry Richter had been representing her in an action against the real estate company, and it began to look like the bank may be involved and --

THE COURT: He had some conflict with --

MR. COOKE: He had a conflict.

And so George Kefalos is good at complex

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pangad.com

litigation of this type. Rob Papa had recommended that he be involved.

Now, I'm going to refer -- I think the best way to tell this story is through the exhibits. And we brought an extra copy with us --

THE COURT: I have them.

MR. COOKE: -- that we can hand up.

THE COURT: I have it. The exhibits are various parts of the depositions and other aspects.

MR. COOKE: Right. Could I just hand up --

THE COURT: Sure.

MR. COOKE: -- an extra copy that's tabbed?

THE COURT: That's fine.

MR. COOKE: It might be easier --

THE COURT: Thank you very much, Mr. Cooke.

MR. COOKE: -- for you to work with.

THE COURT: You must know that I'm getting older.

MR. COOKE: Well, I know that if I am, then you must be, as well.

[Whereupon, Mr. Cook proffers documents to the Court]

MR. COOKE: So the story I think is best told by just leafing through not all of these exhibits, but a fair number of them.

And you'll see Exhibit Number 1 is an e-mail from

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

Rob Papa to George Kefalos where he says, I have -- George, I hope all is well; I have a 2.8 million-dollar-issue case to ask you about. And he goes on to introduce the problem being that she essentially owed that much money, or more, to Ameris Bank. The next exhibit, Exhibit 2, is the response from George Kefalos dated November 27, 2009. And he says a couple of important things there. He says, first of all, that he would propose if he got involved in the case, he would take it based on a contingency based on the savings. And you see that's in the last paragraph.

THE COURT: Correct.

MR. COOKE: It says: a third, since the most significant benefit to be had from the case might be limited to a forgiveness of the 2-million-dollar-plus loan, there would be no purpose from which to calculate a fee. Under these circumstances, we would have to work out a contingency-fee arrangement with the client that would provide for a fee and a percentage of the savings and be secured by a mortgage on property. Give me a call when you get back to town.

Now, it's important to pause here. Essentially, Ms. Gibson takes three positions in this case. One is that she didn't understand the fee agreement. Number two, she doesn't remember agreeing to it and she doesn't

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

remember conversations with her lawyer, Rob Papa, where that was agreed to, even though she signed the agreement. We'll get to that. And she doesn't think that these lawyers really achieved the result that occurred.

And I'm going to skip ahead and come back to it but, essentially, they were able to get the bank to waive all the whole deficiency, 1.7-million dollars worth of deficiency. They just walk away from it, even though she was far from judgment proof. She had enough assets. And that was her biggest problem. When you're negotiating with a bank, if you didn't have money, they were more than happy to work with you. If you had money, they want it.

THE COURT: Sure.

MR. COOKE: But she thinks that the bank was going to waive that anyway and that the lawyers were just lucky to have gotten involved in this case and be there at the right time when the bank caved in. So that's essentially it.

So I'm going to walk through these documents to show what really happened.

THE COURT: I really -- they are a part of the record, are they not?

MR. COOKE: Yes, they are.

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

THE COURT: I really -- I think I understand what you're -- the essence of what you're claiming to have accomplished.

MR. COOKE: Right.

THE COURT: I mean, I've had the benefit of fortunately practicing law for twenty-one years. I happen to have had the privilege and pleasure and honor of serving on the board of directors for the Farmers and Merchants Bank when I practiced law, so I have some understanding of banking practices, as well. So I have an understanding of where we are.

MR. COOKE: Well, and I feel Mr. Ling staring at my back so I --

THE COURT: That's all right.

MR. COOKE: -- I'm not going to take --

THE COURT: You have -- you and Mr. Davis have the absolute -- you have my attention, undivided, at this point.

MR. COOKE: All right.

THE COURT: So don't think you have to speed up.

MR. COOKE: Okay.

THE COURT: You bet.

MR. COOKE: The fee agreement is embodied in two documents, Exhibits 5 and 6. 5 is the e-mail between Mr. Epting and Mr. Papa where they lay out exactly what

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

the fee agreement is going to be.

THE COURT: Right.

MR. COOKE: And then Exhibit 6 is where Ms. Gibson actually signed a letter agreement that incorporates by reference the e-mail of February 4 and says exactly what the fee is going to be. And, actually, they could have charged a forty-percent fee because the case had gotten to the trial docket and that's what it says. They only charged a third of the fee.

Her confusion seems to be that, well, how are you charging me a third of money I didn't get. Well, it's money she saved. She would have owed another 1.7-million dollars but for their efforts. The bank sued her for foreclosure, sued her for the deficiency, moved for appointment of receiver, sent demand letters where they demanded that not only do you turn over the property to us but you tell us how you're going to pay this extra 1.7-million dollars. They wanted mortgages on other property and so forth.

And then they finally -- when Drew I think was retained by George Kefalos and then they retained Gedney Howe and John West when the case was brought in Berkeley County, they went to the motion for appointment of receiver. They beat the bank on that.

The amazing thing that they accomplished was when

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

they settled with Goff, who had taken the assignment of the note, they got Goff not only to walk away from the deficiency but to not require a release of the merits. And so she was allowed to sue Ameris. They got it non-jury in front of the master in equity and they got a 2.9-million-dollar verdict in her favor. So she goes from owing 1.7 million, and this is in addition to the 850,000 she got from Remax, and now she has a judgment, which is on appeal. Desa Ballard is -- she's turned it in over to our -- our clients and Desa Ballard is representing her on appeal.

So that's the argument. And maybe the better thing would be for me to sit down and --

THE COURT: Yes. Well, why don't we do this. Let me hear from Mr. Davis and then I'll allow you to reply fully --

MR. COOKE: Thank you.

THE COURT: -- to his position.

Mr. Davis, good morning. And I will again restate thank you for your memorandum. And I've had an opportunity to review that one fully, so thank you. It's incorporated.

MR. DAVIS: Thank you. Thank you, Your Honor. Good morning.

THE COURT: Good morning.

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

MR. DAVIS: I have not had the pleasure of appearing before you before. This is my first time with you, sir.

THE COURT: I'm delighted to have the opportunity to work with you.

MR. DAVIS: My pleasure. And I represent Linda Gibson --

THE COURT: Yes, sir.

MR. DAVIS: -- in this matter.

And just as an initial matter, we respectfully object to the defendants' characterization of the events and circumstances that have led to this unfortunate fee disagreement between the parties, and particularly with respect to whether or not Linda Gibson was terminated or not -- whether she terminated counsel or didn't terminate counsel.

THE COURT: Those really are peripheral issues, as far as I'm concerned. So thank you.

MR. DAVIS: Your Honor, the issues before the Court are whether or not -- this morning, that is, whether or not any factual exists --

THE COURT: Correct.

MR. DAVIS: -- evidence exists for trial.

And there's three issues: did the defendants breach their duty of care and candor and full disclosure

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

in representing Ms. Gibson with respect to this fee agreement. And we submit that we have submitted to the Court sufficient facts to show that there is --

THE COURT: You would agree with me, will you not, that construing a contract is a matter of law?

MR. DAVIS: I would agree with that, Your Honor. That's correct.

And, of course, that would entitle Ms. Gibson to a jury trial on the meeting -- on the parties' intent --

THE COURT: Maybe, maybe not.

MR. DAVIS: Agreed.

I would also submit that a breach of fiduciary duty is also a matter of law in South Carolina.

And so, at any rate, to rewind back to -- the factual issues here are whether or not the attorneys failed to fully disclose all the facts and circumstances surrounding the nature of the deficiency and whether or not an enforceable fee agreement exists between the parties as a result of those non-disclosures and then if a fee agreement exists, is the fee excessive based on the facts and circumstances of this case.

And Linda asserts that had she known all the facts and circumstances surrounding the deficiency claim, which was, in fact, an un-perfected in-court [phonetic] deficiency plan, pre-foreclosure sale, based on the

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

dollar marker of 1.7-million dollars, that really is just a delta -- the difference between the face value of the note and the value of the collateral.

And we submit that counsel had no involvement whatsoever in negotiating, either up or down, face value of the note and they certainly had no -- or the facts show that they had no negotiation or involvement in increasing or reducing the value of the collateral.

Now, they did have some valuations that they involved Mr. Tecklenburg in, to determine the maximum possible amount, 1.7 million, that the fee would be based off of that. That's a very important number because as we all know, that's the basis of coming up with the $566,000. So whereas counsel had no involvement in negotiating the face value of the note, and no involvement in increasing or reducing the value of the collateral, we consider the 1.7-million-dollar marker against which they based their fee. It would be somewhat of a fictitious number, an unreasonable number.

THE COURT: Well, let me ask you a question there, because I -- and I understand your argument. But in this particular situation we have, unlike many that I've seen over the years in this job -- you have a person, a layperson, certainly not -- obviously has experience in the business world, obviously, because of what she

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

accomplished. And I commend her for that, as well.

But you have her with her attorney, a person she sought to get advice on how to proceed. This attorney, my estimation -- I know Mr. Papa. I had the pleasure, when I was practicing law, of handling cases against him and so I -- he's certainly a respected member of the bar. I have nothing but certainly good things to say about him and his legal abilities.

But she's there and he says, well, I'm not really comfortable dealing with this but I know someone and I'll -- we'll -- I'll be involved in that. And was involved in that, intricately involved in that, to the extent that Mr. Papa is there. And I guess my big concern is we have her signing an agreement which says, this is how we're going to decide it. And it's not as though she's sitting in a pressure situation. She's sitting with her lawyer who she can say, well, what does this mean. And then she signs it. That's the problem I have.

I understand your argument. Well, maybe there's some argument about can you really take 1.7, is that just taking pie in the sky just a shot -- shot in the dark. May be, it may not be.

The question I have is that's what the agreement says, and that's what she understood, and she understood

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

how that was going to be calculated if they were successful.

And I appreciate your position. And it reminds me for the world, and I'm not being critical, it just -- being a lawyer, that's what you learn. Years ago -- John McDougal still practices law. It was a domestic relations case. But he talked about the relationship of client with attorney. And as it goes up -- it's a Bell curve. Right before the hearing, I've got the best lawyer in the world, the hearing, and he was successful; boy, that just shows you I had the best lawyer. Two months out, well, you know, I gave him everything to work with; he really didn't do anything. And then a lot of times it dealt with the fee. And I happened to serve on the bar fee dispute when I was a lawyer, so I'm familiar with those situations, as well. Then it said, well, he really didn't do anything at all and he was -- and then the last is, he was worthless. It's all after -- it's after the fact. It's Monday-morning quarterback, so to speak. And I understand that.

But my concern here is, really and truly -- and I would like you to focus why the signed agreement, which sets forth specifically what the arrangement is -- I mean, nobody has changed that, as I understand it. It is that's what they're seeking to enforce, and that's

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pongad.com

what you're telling me you can't enforce that. Why doesn't that bind her? Because she had the opportunity to say, huh-uh, I'm not going to do that.

He sent it to her for her approval. I mean, basically, as I read this, Mr. Papa was sort of -- understood it, and he was sort of in agreement with it, and then got her -- and then they followed up with her signing it, a business lady. So why doesn't that bind her?

MR. DAVIS: Well, we've slipped into the dialog of agency. And I would submit first that the existence of agency is a question --

THE COURT: I would agree with you on the agency, except for her signature. I don't have an agency there. That's her.

MR. DAVIS: And that's my point, Your Honor, exactly, is that to the extent that the defense counsels are asserting the existencey of an agency relationship with Papa, that all gets set aside when she is dealing directly with Mr. Epting.

In the express language of the April 7th agreement, which I'm assuming is the agreement to which the Court is referring --

THE COURT: Yeah.

MR. DAVIS: -- the April 7th agreement says we'll

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

represent you on a contingency, which strings together four matters, all of which she is going to pay, if at all, a recovery out of -- or a fee out of any actual recovery, not that she's going to reach into her pockets and come up with over a half-million dollars. So the burden in South Carolina is on the attorney to make sure the client understands the fee. Not Mr. Papa, but Mr. Epting needed to make sure that this client understood the fee.

And I would like to say one last thing on this point, is that --

THE COURT: Sure.

MR. DAVIS: -- it's not just now. Back in April of 2010, it was indeed that they were just seeking a contingency. Now they're seeing a dual fee. They're seeking forty percent of any recovery in the lender claim, plus five hundred and sixty-six that's already been paid, plus 280,000 in another matter, on the Remax matter, which is not in contest. But the point is, that's over a million dollars --

THE COURT: Well, let's don't talk about -- the Remax matter is a separate entity --

MR. DAVIS: Okay. And --

THE COURT: -- is it not? I mean, that's a separate arrangement.

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

MR. DAVIS: I'll concede. We'll concede. We'll concede.

The plain language of the April 7th agreement is that she -- is that the attorneys were representing her on a contingency of any recovery from the Remax Relando [phonetic] and Wynsfield [phonetic] matters and, indeed, the Ameris matter. That would have been on April 27th when she sat down with Mr. Epting to sign that April 27th agreement -- dated April 7th agreement but signed on April 26th.

When she signed that agreement, that would have been an opportune time for Mr. Epting to say, by the way, Linda, we're going to charge you a third of what we saved you on the mortgage and we're going to charge you a third of whatever we recover for you. That would have been a great opportunity to have that dialog with their client. And if they had that dialog with the client, and if she had then signed it, then I would concede, Your Honor, that, in fact, she might be bound on this contract. But that's not the facts of the case. That's not what happened here.

Now they fast forward to November 18th. Now they know that Goff's going to waive the deficiency, which is another whole other set of fact questions as to what they did bring about -- bring in the deficiency and

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

whether it supports a half-a-million-dollar fee. But now that they know Goff is going to waive the deficiency, they sit Linda down and have her sign another agreement.

I'm not saying they did this intentionally or with mal-intent. I'm just saying that these are the facts. The facts are that the client presented on November 18th in front of the attorneys and the attorneys said, we're going to charge you for both the defense and prosecution of the lender claim -- excuse me -- for both the defense and prosecution of the Ameris claim; we're going to charge you a flat fee of $566,000. That's the plain language of the agreement. I don't think any trier of fact could come forward and say that that November 18th agreement constitutes two fees.

Now, when Ms. Gibson learned this through her deposition that Mr. Max Mahaffee was taking, and he questioned her on this fee at great length in 2011, and he said to her, Linda, did you understand this fee arrangement, did you understand what was going on here, and Linda's response, after a line of questioning was, are you insinuating my attorneys -- and Mr. Mahaffee stopped her and says, I ask the questions here, not you. And that was the first red flag when Ms. Gibson said, wait a minute; why is this attorney asking me about

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

these fees. So it started -- some idea started to germinate as to whether this fee might be excessive.

So the point of this hearing is that when they sat down and signed the November 18th agreement, that also would have been an opportune time to say, by the way, Linda, we're not only charging you $566,000 for the first fee, we're also going to charge you forty percent of whatever we recover on the one point. Had they said that then, Linda might have said, whoa, time out; you're talking about a million dollars in lawyers' fees over Goff's -- the facts will show, we believe, Goff's waiver of the deficiency.

What she thought she was signing in November was that there would be a flat fee of $566,000 to be paid out of any recovery, eventually, in the lender-claim prosecution. In no document, whether the February 4th e-mail or the April 7th document or the November 18th document, taken individually or taken together, contemplates or construes a dual fee arrangement for Linda to pay.

She found out about the dual fee arrangement after a deposition in the car-ride with Mr. Epting when he said to her -- and this was in late 2011 he said to her, Linda, you know you're going to owe us another third of whatever we recover in the lender claim. And that was

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

the first time that it really locked in her mind the amount of these fees.

And the contract the attorneys I believe -- counsel submits a contract is a contract, what's the problem. Well, in an arms-length business transaction, that's absolutely correct. But a contract between attorney and client is -- by a fiduciary duty and it's a duty of disclosure and candor of all material facts of a case so that the client can fully understand, without any confusion, as to what the nature of the claims are against her, the amount of the work that the lawyers are doing to earn those fees, who's involved, how much each attorney is getting. That's not information that belongs to Mr. Epting and counsel, that's information that belongs to the client.

So I submit, Your Honor, that the fee agreement on their face are ridiculous. And it's a facts question for the jury to determine the parties' intent and expectations of execution of the agreements, it's a fact question as to whether the fee was excessive at the time it was paid, not at the time that it may or may or not have been agreed to but under South Carolina law, at the time that she paid the $566,000, was it effect -- was it an excessive fee.

And then I submit to Your Honor that whether or

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

not there's any contingency fee contract here at all. And I note for the record that the November 18th agreement never even uses the word contingency. They've omitted that word. Now, these are smart, prominent attorneys. To omit the word contingency is not a scribner's error. But that's a different issue for trial.

What I'm saying is that the existence of a fee agreement, a contingent-fee agreement on the documents before the Court is a question of fact for the jury so that -- or for the trier of fact so that the trier of fact can examine the parties' intent, expectations, whether or not there was a meeting of the minds, and whether or not there's been a breach of fiduciary duty, and whether or not the breach of fiduciary duty resulted in an excessive fee of over a half a million dollars.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Davis.

Now, what's your reply?

MR. COOKE: Just briefly in reply.

I saw you sort of glance when he was talking about a dual fee. It's not a dual fee. It's one fee. It's in Exhibit 5. It says: as to Ameris, the same percentage will apply for any recovery or any savings defined as settlement, less the amount -- the merits.

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

THE COURT: As to the merits.

MR. COOKE: Right. As to the merits. And then -- and Goff's, as well.

She goes from owing 1.7 million to having a verdict for 2.9 million. If she collects that, she will have improved her position by 4.6-million dollars.

THE COURT: Well, let me ask you a question. You have the exhibit which you've showed me, the exhibit -- the tab 6, and that's the letter from Drew -- or Mr. Epting that Ms. Gibson signed. In the first sentence it says: so let's supplement the fee agreement.

Is there another agreement signed, other than this one?

MR. COOKE: Well, it's that -- I think right behind it.

THE COURT: Well, I understand. But that's not something she signed.

MR. COOKE: Nothing else signed. There's an e-mail between her lawyer and --

THE COURT: That's correct.

So we really -- at this point, the supplementation of a fee agreement, that's not -- the fee agreement, in that context, has never been signed by her?

MR. COOKE: This is the only ones that she signed until November of the next year where she -- when they

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

go -- they've settled now the claim with Goff. And as counsel says, there's a question about, well, how much did she really save, because the bank is taking over the property, you have to valuate the property. So they said, you need to go get another lawyer to help you negotiate this fee. And the reason it's not a contingent fee is because it's now fixed. They resolved it.

THE COURT: Let me ask you a question with respect to the fees. Because certainly the excessiveness of fees is something that -- as I stated, I've had I won't say pleasure -- I had the responsibility of investigating that for about four years but it was never in the context of a lawsuit, it was in the context of the Office of Disciplinary Counsel. Is that a matter that is a matter for the jury to determine?

MR. COOKE: We believe that the reasonability of an attorney's fee, because it's governed by the code of professional responsibility, is a matter of law for the Court. And there's not a case in South Carolina directly on point, but there are a number of cases from other jurisdictions that would say that.

And, essentially, this was a one-third contingent fee --

THE COURT: So basically, from the standpoint a

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

matter for the Court, but that would be a matter that would have to be just that in itself. Would it not have to -- how could the Court make a determination without hearing the case?

MR. COOKE: Well, because the -- because it's a standard one-third agreement. If somebody walks into your firm --

THE COURT: Maybe.

MR. COOKE: -- and hires you to handle an auto accident and you write a couple of letters and you collect the money, that's a third.

The ABA issued an opinion a number of years ago where they specifically approved these reverse contingent-fee agreements.

There are a couple of exhibits that I would direct the Court's attention to: Exhibit 14 is the pre-settlement demand from Ameris where they are saying that, your client will execute a new promissary note in the amount of $1,600,000 and then principal and interest in the amount of nine thousand eight hundred ninety-nine. And then on Exhibit 17, they then agree in section 4: my client will forgive the remainder of the debt.

So they did negotiate the forgiveness of that debt.

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

THE COURT: I'm really not -- from the standpoint -- let me just tell you this. I'm not so concerned about whether or not work was done, whether or not they did what they offered to do. I'm really focusing more on what was the agreement, and, if so, is there a part in there -- are there parts of the agreement, that are not clear, that will require what was the meeting of the minds for a contract suit? The part about earning the fee, that's not a -- that's not a concern.

MR. COOKE: Right.

Your Honor, I would submit, too, that this issue of fee that they're entitled to for the Ameris work, that's not even before the Court --

THE COURT: No, I agree with you.

MR. COOKE: -- that hasn't even been affirmed yet. They haven't claimed a fee yet.

THE COURT: I agree with you.

MR. COOKE: And so we're just talking about the fees that they already earned.

THE COURT: Obviously, from the standpoint -- you have cross-motions for summary judgment. To me, if I deny the defendants', there's no question it's a matter of I would deny the plaintiffs'. And I'm not going to grant the plaintiffs' motion for summary judgment because I think there are too many issues from that

LASER BOND FORM A PENGAD • 1-800-631-6989 • www.pongad.com

standpoint.

But whether or not the agreement -- my discussion with you whether or not that agreement, I can construe what's been -- what's been presented as a matter of law to say the agreement was finalized and that is the agreement, clearly. Otherwise, I'm going to deny the summary judgment.

But I want to review all the documents in detail and the memorandums. But thank you very much.

If after doing this I think there's a -- I need to hear arguments on certain issues, I'll call you and we can work out a convenient time for everybody to come forward and do that.

And let me apologize, Ms. Gibson, for that inconvenience if you have to return.

But that's the way I'll do it. Okay?

MR. COOKE: Thank you.

THE COURT: Thank you. Thank you very much.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Okay. The motion to amend: for the sake of -- just so that you don't have to come back on that: you say the motion to amend is incorporated. Is there any opposition, other than -- any opposition to the amendment?

MR. COOKE: Your Honor, I've explained to counsel

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

we can't consent to it --

THE COURT: I'll grant your motion to amend. So that's resolved.

MR. DAVIS: Thank you, Your Honor.

And then there was also a motion for a status conference?

MR. COOKE: Yeah, there's a motion -- just for -- just to clear your roster off, there's a motion for a status conference. So this isn't the status conference --

THE COURT: We'll do that.

And once we rule on this, if you need -- we'll get in touch -- we can do that by telephone. We don't need to have a record on the status conference. We can set up a conference call to discuss -- I assume --

Is the case postured -- if I deny the summary judgment, is it ready to go?

MR. COOKE: Well, there is an issue.

They've just named a new expert, and so we may need some additional time for that.

THE COURT: Why don't you do this: just be working on this as a plan B, so to speak. If I deny summary judgment, then if you could have a scheduling order of how much longer you need, then I can do that. If not, then I can meet and we can try to resolve any

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

difference you have.

[Off the record momentarily]

MR. DAVIS: Your Honor, we would consent to waive all time notices, and so forth, for counsel to take Ms. Desa Ballard's deposition.

THE COURT: Okay. That's fine. Good. Thank you very much.

MR. COOKE: Thank you.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Appreciate it. Y'all have a great day.

MR. DAVIS: Thank you.

THE COURT: Thank you.

[HEARING CONCLUDES AT 9:53 A.M.]

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the motions hearing held before the Honorable R. Markley Dennis, on Tuesday, October 20, 2015.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 28th day of December, 2015.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

LASER BOND FORM A © PENGAD • 1-800-631-6989 • www.pengad.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2013-CP-27-04450
		10
LINDA A. GIBSON, Individually, and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMAMRY JUDGMENT**
Plaintiffs,	)	
vs.	)	
ANDREW K. EPTING, JR., LLC; ANDREW K. EPTING, JR.; GEORGE J. KEFALOS, P.A.; GEORGE J. KEFALOS; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,	)	
Defendants.	)	

FILED
2015 JUL 31 PM 2:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

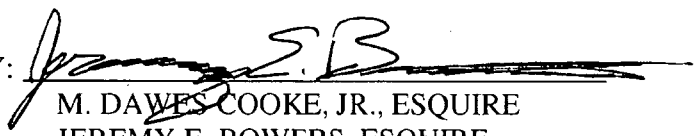
TO: JAMES R. DAVIS ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE THAT the Defendants, ANDREW K. EPTING, JR., LLC, ANDREW K EPTING, JR., GEORGE J. KEFALOS, P.A., GEORGE J. KEFALOS, GEDNEY M. HOWE, III, P.A., GEDNEY M. HOWE, III, JOHN S. WEST, ATTORNEY-AT-LAW, LLC, and JOHN S. WEST (hereinafter collectively referred to as the "Attorneys"), by and through their undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10^{th}) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment in favor of the Attorneys. This Honorable Court should grant summary judgment in favor of the Attorney as to all of the Plaintiffs' causes of action pursuant to Rule 56, SCRCP, because there exist no genuine issues of material fact and the Attorneys are entitled to summary

judgment on all causes of action filed as part of the Plaintiffs' Second Amended Complaint. The Attorneys move for summary judgment for the following reasons: (1) no evidence exists that the Attorneys breached any fiduciary duty owed to the Plaintiffs; (2) no evidence exists of any breach of any fee agreements by the Attorneys; (3) no evidence exists of any misrepresentations by the Attorneys to the Plaintiffs related to the fee agreement; (4) no evidence exists to support the Plaintiffs' claims for unjust enrichment, equitable indemnity, conversion, or unfair trade practices against the Attorneys; (5) no evidence exists to support a demand for an accounting; and (6) no evidence exists to support the Plaintiffs' action to declare the Attorneys' fee agreement with the Plaintiffs void or unenforceable.

The Attorneys base this Motion for Summary Judgment upon the pleadings, deposition testimony, affidavits, documents in the court file, the applicable law, and any memorandum of law to be submitted to the Court. The Attorneys reserve the right to supplement this Motion with additional memoranda, affidavits, and other documents in support of the arguments contained herein.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANTS

July 23, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2013-CP-27-04450
		10
LINDA A. GIBSON, Individually, and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC; and 3205 PALM BOULEVARD, LLC,	)	**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMAMRY JUDGMENT**
Plaintiffs,	)	
vs.	)	
ANDREW K. EPTING, JR., LLC; ANDREW K. EPTING, JR.; GEORGE J. KEFALOS, P.A.; GEORGE J. KEFALOS; GEDNEY M. HOWE, III, P.A.; GEDNEY M. HOWE, III; JOHN S. WEST, ATTORNEY-AT-LAW, LLC; and JOHN S. WEST,	)	
Defendants.	)	

FILED
2015 OCT 19 PM 3:40
JULIE J. ARMSTRONG
CLERK OF COURT

TO: JAMES R. DAVIS ESQUIRE, ATTORNEY FOR THE PLAINTIFFS

The Defendants, ANDREW K. EPTING, JR., LLC, ANDREW K. EPTING, JR., GEORGE J. KEFALOS, P.A., GEORGE J. KEFALOS, GEDNEY M. HOWE, III, P.A., GEDNEY M. HOWE, III, JOHN S. WEST, ATTORNEY-AT-LAW, LLC, and JOHN S. WEST (hereinafter collectively referred to as the "Attorneys"), by and through their undersigned counsel, hereby submit this memorandum of law in support of their Motion for Summary Judgment.

FACTUAL BACKGROUND

This suit involves the Attorneys' fee agreement and representation of Linda Gibson and several corporate entities in a commercial foreclosure action. On November 13, 2009, Robert L. Papa, a local attorney, sent an e-mail to Attorney Kefalos looking to refer Ms. Gibson to

Attorney Kefalos in regards to a "$2.8 million dollar issue/case." (Exhibit #1: November 13, 2009, Papa E-mail). Mr. Papa stated in the e-mail that the case involved pending litigation filed by Ms. Gibson against Re/Max and a realtor for alleged false representations by the agent regarding the value of rental property purchased by Ms. Gibson. (Exhibit #1: November 13, 2009, Papa E-mail). Ms. Gibson had been previously represented by Larry Richter, but Mr. Richter developed a conflict with a potential additional defendant (Ameris Bank) and could no longer represent her. Ameris Bank wrote the loan for the purchase of the real property by Ms. Gibson. Attorney Kefalos expressed interest in representing Ms. Gibson but requested that Attorney Epting assist in the case to handle the "banking aspect of the case." (Exhibit #2: November 27, 2009, Kefalos E-mail). Attorney Kefalos also informed Mr. Papa that "since the most significant benefit to be had from the case might be limited to a forgiveness of the $2 mil + loan, there would be no corpus from which to calculate a fee. Under these circumstances we would have to work out a contingency fee arrangement with the client, that would provide for a fee in a percentage of the savings and be secured by a mortgage on property." (Exhibit #2: November 27, 2009, Kefalos E-mail). From the very outset of possible representation, Attorney Kefalos informed Ms. Gibson's attorney, Mr. Papa, that the fee arrangement may require a reverse contingency fee secured by a mortgage on real property.

After several meetings with Attorneys Kefalos and Epting, on December 11, 2009, Ms. Gibson, through Mr. Papa, retained Attorney Kefalos to represent her in the pending action against Re/Max and retained Attorney Epting on an hourly basis to represent her in negotiations with Ameris Bank related to forgiveness of the loan. (Exhibit #3: December 11, 2009, Papa E-mail). The fee arrangement with Attorney Epting was limited to negotiations with Ameris Bank and did not include litigation services. (Exhibit #3: December 11, 2009, Papa E-mail). If

Ameris Bank filed a foreclosure action or it became "more provident than not to bring the bank into either the existing litigation or a separate lawsuit," Mr. Papa stated Ms. Gibson would enter into a separate fee agreement with Attorney Epting "based on the contingency discussion we had yesterday." (Exhibit #3: December 11, 2009, Papa E-mail). Attorneys Kefalos and Epting agreed to this representation, but Attorney Epting warned that if negotiations do not gain any traction, Ms. Gibson would be "in a protracted battle with no result certain and she may benefit by a contingency." (Exhibit #4: December 14, 2009, Epting E-mail).

On February 4, 2010, in an e-mail from Attorney Epting to Mr. Papa, Attorney Epting memorialized the fee agreement. (Exhibit #5: February 4, 2010, Epting Office E-mail). The e-mail stated that all litigation except for the Ameris case would be handled on a contingency of 33%, 40% if placed on the active trial roster, and 50% if the case has an appeal filed. (Exhibit #5: February 4, 2010, Epting Office E-mail). With regard to the Ameris litigation, "the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris)." (Exhibit #5: February 4, 2010, Epting Office E-mail). However, Attorney Epting agreed that he would work for the next sixty (60) days on an hourly basis to see if an early resolution with Ameris was possible. (Exhibit #5: February 4, 2010, Epting Office E-mail).

After sixty days passed, on April 7, 2010, Attorney Epting drafted a subsequent fee agreement. (Exhibit #6: April 7, 2010, Epting Letter). The letter stated that "George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010." (Exhibit #6: April 7, 2010, Epting Letter). Ms. Gibson signed the fee agreement on April 26, 2010. (Exhibit #6: April 7, 2010, Epting Letter). During this time, Attorney Epting continued negotiations with Ameris Bank, stating he had one

fruitful meeting with Ameris representatives. Then, suddenly, Ameris closed the lines of communication. During this time, Attorneys Kefalos and Epting also conversed with Attorneys Howe and West regarding strategy (i.e., whether to join Ameris in the pending suit against Re/Max, where to file suit against Ameris, jury vs. non-jury, when to file suit, etc.).

Thereafter, on June 14, 2010, Ameris Bank beat Ms. Gibson to the courthouse and filed suit in Berkeley County seeking foreclosure of the rental property and a deficiency judgment for the balance owed on the note after sale of the property. (Exhibit #7: Ameris Foreclosure Complaint). On July 9, 2010, Attorney Epting sent an e-mail to Ms. Gibson regarding the filing of the foreclosure action (also sent via U.S. Mail). (Exhibit #8: July 9, 2010, Epting Letter). Attorney Epting requested that he be able to associate Attorneys Howe and West stating that it would not cost Ms. Gibson any additional fee but that the Attorneys would split the fee agreed to among themselves. (Exhibit #8: July 9, 2010, Epting Letter). Attorney Epting then explained the existing fee agreement, providing Ms. Gibson with an example. (Exhibit #8: July 9, 2010, Epting Letter). In the example set forth, Attorney Epting stated the balance of the loan was $3 million and alleged that the rental property was worth $1.5 million. Based upon this example, Attorney Epting then stated that the "contingency [would be] on the $1.5MM savings." (Exhibit #8: July 9, 2010, Epting Letter). He explained to Ms. Gibson that she did not have any funds coming to her to pay that fee but reminded her that she may have funds coming to her at the conclusion of the Re/Max lawsuit and that the Attorneys would not seek to collect a fee in the Ameris foreclosure action until the Re/Max action was concluded. (Exhibit #8: July 9, 2010, Epting Letter).

Attorney Epting then filed an Answer and Counterclaim against Ameris in the foreclosure action. (Exhibit #9: Gibson Answer and Counterclaim). Subsequently, Ameris sold the note on

the rental property to Galt Valley, and Galt Valley was substituted as the Plaintiff in the foreclosure action. Ameris remained a defendant in the counterclaim filed by Ms. Gibson, and the action received a split caption for the two different actions under the same case number (Galt Valley vs. Gibson, et al.; Gibson, et al., vs. Ameris Bank, Civil Action No. 2010-CP-08-2134). Following the purchase of the note, Galt Valley's counsel, Ian McVey, wrote a letter to Attorney Epting that stated there were "some problems" with Ms. Gibson tendering a deed to the rental property to Galt Valley, namely that Galt Valley "has not accepted said deed and, at this point, I would not recommend it do so until we work out a resolution." (Exhibit #10: August 12, 2010, McVey Letter). Mr. McVey then demanded that his client be afforded access to the rental property for inspection purposes and that all rent payments be forwarded to Galt Valley pursuant to the underlying Mortgage and Assignment of Rents and Leases. (Exhibit #10: August 12, 2010, McVey Letter).

Two weeks later, Galt Valley moved for the appointment of a receiver. (Exhibit #11: Notice of Motion and Motion for Appointment of Receiver). Even though Attorney Epting was on vacation abroad at the time, Mr. McVey rescheduled the hearing for the Motion for Appointment of Receiver for September 29, 2010, "due to the rapidly deteriorating condition of the Charleston property." (Exhibit #12: September 17, 2010, McVey E-mail). After some back and forth, Mr. McVey and Attorney Epting agreed to reschedule the hearing for October 13, 2010, after Attorney Epting's return. At the hearing, the Attorneys presented a law review article to the court discussing the appropriateness of a deed in lieu/reduction rather than appointing a receiver and stated that Ms. Gibson was prepared to deed the property to Galt Valley immediately. The Attorneys also presented e-mail communications among Ameris

representatives conceding some "culpability" in the loan to Ms. Gibson on the real property. The Court then asked the parties to submit proposed orders.

On October 18, 2010, at 9:03AM, Ian McVey, attorney for Galt Valley, faxed a letter to Attorney Epting stating that he had been discussing with his client the "proposal to deed over the property." (Exhibit #13: October 18, 2010, McVey Letter). However, Mr. McVey stated that he kept getting hung up on what to do with the remainder of the debt owed by Ms. Gibson. (Exhibit #13: October 18, 2010, McVey Letter). He then stated that he is going to put it on Attorney Epting and Ms. Gibson to try to resolve the matter and that he would recommend to his client accepting the deeds for the real property but "cannot recommend that until such time as you provide me a proposal as to what to do with the remainder of the debt after the collateral is liquidated." (Exhibit #13: October 18, 2010, McVey Letter).

On October 25, 2010, Mr. McVey sent a settlement demand to Attorney Epting. (Exhibit #14: October 25, 2010, McVey Letter). In the letter, he broke down the total outstanding debt alleging that Ms. Gibson owed over $3 million on the loans and assigned value to the real properties of $1,338,000, even though there was a dispute over the accuracy of the appraisals performed on the properties. (Exhibit #14: October 25, 2010, McVey Letter). He stated that this left a deficiency of $1,697,678.10. (Exhibit #14: October 25, 2010, McVey Letter). He stated that his clients would accept a promissory note from Ms. Gibson for $1.5 million with monthly payments of $9,899.34 for twenty (20) years to resolve the case. (Exhibit #14: October 25, 2010, McVey Letter).

At this time, there was another foreclosure matter involving Ms. Gibson for which the bank (First Citizens) was also seeking a deficiency judgment. As Ms. Gibson was negotiating with First Citizens and considering giving First Citizens a mortgage on certain property to

prevent a judgment, the Attorneys discussed with Ms. Gibson the need to secure their fee in the Galt Valley foreclosure litigation with a mortgage on property. They discussed the ability to beat First Citizens to the RMC office to file their mortgage first, thereby putting a friendly lender in priority position. The Attorneys informed Ms. Gibson that she needed to seek the advice of independent counsel with regard to the entry of a mortgage and the calculation of the potential fee owed in the Ameris foreclosure litigation in the event that a resolution was reached. Ms. Gibson contacted Paul Tecklenburg, an attorney that represented her and her husband previously, and sought independent counsel from him regarding the fee arrangement. (Exhibit #15: Time Records of Paul Tecklenburg, Esquire).

Mr. Tecklenburg conversed with Attorneys Epting and Kefalos regarding the potential mortgage to the benefit of the Attorneys and calculating the potential fee owed in the event the Ameris foreclosure litigation settle. During this time, Mr. Tecklenburg reviewed a draft mortgage, reviewed documents related to the underlying foreclosure action, and attempted to negotiate a reduction in the percentage of the contingency fee with the Attorneys. (Exhibit #15: Time Records of Paul Tecklenburg, Esquire).

On November 3, 2010, Attorney Epting wrote to Mr. McVey and rejected the October 25, 2010, settlement demand from Galt Valley on behalf of Ms. Gibson. The next day, Mr. McVey wrote "I must say that I am disappointed that your client does not want to attempt to negotiate a resolution in this matter." (Exhibit #16: November 4, 2010, McVey Letter). He continued on to say, "I will discuss the issue of a deed with my client; however, if your client does not want to negotiate, I am not sure why my client would accept a deed to the property." (Exhibit #16: November 4, 2010, McVey Letter).

On November 8, 2010, Mr. McVey sent a follow-up demand letter to Attorney Epting wherein Galt Valley agreed to accept the deeds to the properties and forgive the entire debt owed by Ms. Gibson. (Exhibit #17: November 8, 2010, McVey Letter). Ms. Gibson accepted this settlement demand. As a part of the settlement, Galt Valley agreed that Ms. Gibson would not need to release Ameris for her counterclaims alleged against the bank. She would retain those actions, and the settlement would strictly be between Galt Valley and Ms. Gibson. In other words, Ms. Gibson settled the foreclosure action by giving up the two properties mortgaged under the terms of the note to Galt Valley without having to pay any deficiency and retained her counterclaims against Ameris Bank.

The Attorneys then discussed with Mr. Tecklenburg the appropriate calculation of the fee based upon the April 7, 2010, fee agreement. These discussions culminated in the execution of the November 18, 2010, fee agreement and then a mortgage to Attorneys West and Howe. (Exhibit #18: November 18, 2010, Fee Agreement). The November 18, 2010, fee agreement specified the total savings to be $1.7 million, approximately the deficiency amount claimed by Mr. McVey in his October 25th letter. (Exhibit #18: November 18, 2010, Fee Agreement). This amount reflected the deficiency claimed by Ameris, and later by Galt Valley when it purchased the note. Ms. Gibson then executed a mortgage to the benefit of the Attorneys in the amount of $566,666.66. (Exhibit #19: Mortgage).

After the Re/Max matter settled for a total of Eight Hundred Fifty Thousand Dollars ($850,000.00), Ms. Gibson and the Attorneys agreed to pay to the Attorneys the outstanding costs and expenses owed in the Re/Max matter as well as the $566,666.66 fee owed in the Galt Valley foreclosure matter. (Exhibit #20: Fee Disbursement Statement). Attorneys Kefalos and Epting each received one-third of the fee, and Attorneys Howe and West evenly split the

remaining third. Ms. Gibson then received the remaining funds from the Re/Max litigation with the fee still being owed in the Re/Max litigation ($297,500.00).[1] Ms. Gibson also still had the Ameris counterclaim pending. At that time, the Attorneys assigned the mortgage from Attorneys West and Howe to Attorneys Epting and Kefalos and reduced the mortgage amount to Two Hundred Ninety-Seven Thousand Five Hundred Dollars ($297,500.00). (Exhibit #21: Mortgage Assignment and Reduction).

The Attorneys tried the Ameris counterclaim and received a judgment for Ms. Gibson in excess of $2.9 million in August 2013. Ameris has since appealed this judgment. Ms. Gibson terminated the Attorneys representation and retained new counsel, Desa Ballard, to represent her in the appeal. Final briefs have been filed in the appeal, but arguments have not been scheduled.

PROCEDURAL HISTORY

The Plaintiffs filed the instant action on July 30, 2013, alleging causes of action against the Attorneys for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligent misrepresentation, unjust enrichment, conversion, fraud, constructive fraud, breach of contract, action for accounting, undue influence, equitable indemnity, declaratory judgment, and violation of the SCUTPA. On January 13, 2014, the Plaintiffs filed an Amended Complaint (incorrectly titled "Second Amended Complaint") that removed the fraud causes of action but kept the remaining causes of action intact.

On July 31, 2015, the Attorneys filed their Motion for Summary Judgment based upon the allegations of the Amended Complaint (incorrectly titled "Second Amended Complaint"). Subsequently, on August 11, 2015, the Plaintiffs identified a new expert witness, Desa Ballard,

[1] Recall that the April 7, 2010, fee agreement allowed for a 40% contingency fee on the Re/Max matter once it was placed on the active roster. The Re/Max matter settled at mediation after being placed on the active trial roster, and therefore, Attorneys Kefalos and Epting were entitled to a 40% contingency fee on that recovery. However, Attorneys Kefalos and Epting charged Ms. Gibson a 35% contingency fee, thereby saving Ms. Gibson Forty-Two Thousand Five Hundred Dollars ($42,500.00).

Esquire, that they intended to call at trial. On August 11, 2015, the Plaintiffs also filed a Motion for Summary Judgment, and on August 14, 2015, the Plaintiffs filed a Motion to Amend Complaint along with a proposed Second Amended Complaint. In the proposed Second Amended Complaint (correctly titled), the Plaintiffs now style their breach of fiduciary duty cause of action as one also for legal malpractice, and the Plaintiffs added causes of action for money had and received, cancellation of the mortgage, rescission of the fee agreement, and implied equitable indemnity to the already existing causes of action. Similar to the Amended Complaint, the Plaintiffs seek rescission of the fee agreement as their primary basis for relief in the proposed Second Amended Complaint. To date, the Plaintiffs' Motion to Amend Complaint has not been heard or granted, and as a result, the additional causes of action have not yet been asserted against the Attorneys. However, to the extent possible, the Attorneys address the causes of action raised in the proposed Second Amended Complaint in this Memorandum.

STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56(c), SCRCP; Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Under Rule

56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. Id.

"Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; Germann v. New York Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

ARGUMENT

The Attorneys have moved for summary judgment for the following reasons: (1) no evidence exists that the Attorneys breached any fiduciary duty owed to the Plaintiffs; (2) no evidence exists of any breach of any fee agreements by the Attorneys; (3) no evidence exists of any misrepresentations by the Attorneys to the Plaintiffs related to the fee agreement; (4) no evidence exists to support the Plaintiffs' claims for unjust enrichment, equitable indemnity,

conversion, or unfair trade practices against the Attorneys; (5) no evidence exists to support a demand for an accounting; and (6) no evidence exists to support the Plaintiffs' action to declare the Attorneys' fee agreement with the Plaintiffs void or unenforceable. To the extent the Plaintiffs raise additional causes of action For these reasons, the Attorneys respectfully ask this Honorable Court to grant the Motion for Summary Judgment and dismiss the Plaintiffs' Amended Complaint.

I. Breach of Fiduciary Duty / Legal Malpractice

Regardless of whether the Plaintiffs style their first cause of action as one for breach of fiduciary duty or legal malpractice, there is no evidence to support the Plaintiffs' claim, and as a result, this Honorable Court should grant summary judgment on this cause of action. To prove a breach of fiduciary duty, a plaintiff must prove three elements: (1) the existence of a fiduciary relationship; (2) a breach of the fiduciary duties owed; and (3) damages proximately resulting from the wrongful conduct. RFT Management Co., LLC v. Tinsley & Adams, L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631(1992). A relationship must be more than casual to equal a fiduciary relationship. Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). "Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." RFT, 399 S.C. at 336, 732 S.E.2d at 173, quoting Spence v. Wingate, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). However, the plaintiff must still prove a breach of the fiduciary duty by the attorney that resulted in proximately caused damages. See id.

In a legal malpractice action, a plaintiff must prove four elements: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate causation of the client's damages by the breach. Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "Typically, a plaintiff in a legal malpractice case must establish the standard of care through expert testimony, unless the subject matter is of common knowledge to laypersons." Southeastern Housing Foundation v. Smith, 380 S.C. 621, 648, 670 S.E.2d 680, 694 (Ct. App. 2008). When a fiduciary duty arises out of the same one created by the attorney-client relationship and is based on the same material facts, a plaintiff's claim for breach of fiduciary duty should be dismissed as duplicative of the legal malpractice claim. See id. at 647, 670 S.E.2d at 694 n. 18; see also RFT, 399 S.C. at 336-37, 732 S.E.2d at 173-174. In other words, to extent the breach of fiduciary duty and the legal malpractice fall within the same capacities as attorneys, the breach of fiduciary duty claim is duplicative. Id.

Because the Plaintiffs have asserted their first cause of action as one for breach of fiduciary duty and legal malpractice in the proposed Second Amended Complaint and rely upon the same set of facts to support both causes of action, the court should evaluate the Attorneys' Motion for Summary Judgment under the elements of a legal malpractice claim. First, the Plaintiffs have not put forth any expert testimony to establish the standard of care in the present case. The Plaintiffs identified Harry S. Swagart, III, Esquire, as an expert on or about December 18, 2014. During his deposition, Mr. Swagart testified that his testimony was limited to enforceability of the fee agreements between the Plaintiffs and the Attorneys and the reasonableness of the fee earned by the Attorneys. (Exhibit #22: Deposition of Harry S. Swagart, III, Esquire, page 40, line 20 – page 41, line 22). Mr. Swagart did not testify regarding any standard of care related to the actions by the Attorneys. Rather, Mr. Swagart limited his

testimony to state that he believed there was not an enforceable fee agreement between the Plaintiffs and Attorneys. Further, to the extent the Court considers Ms. Ballard's affidavit filed on November 18, 2013, Ms. Ballard stated in her affidavit that she "was asked to assume, and [has] assumed, the facts as set forth in the verified complaint and proposed amended complaint are accurate." In other words Ms. Ballard did not review any documents or verify the accuracy of the facts alleged in the Plaintiff's Amended Complaint. As a result, the Plaintiffs have failed to put forth any expert testimony to establish the standard of care as it relates to the Attorneys' action in this case.

Second, the Plaintiffs have not put forth any evidence of a breach of the standard of care by the Attorneys. Rather, all the evidence in this case demonstrates that on April 26, 2010, the Attorneys entered into a simple fee agreement with the Plaintiffs wherein they would receive a contingency fee on any savings realized by the Plaintiffs from the debt owed to Ameris Bank on the apartment complex loan. The Plaintiffs and Attorneys entered into the fee agreement while Mr. Papa represented Ms. Gibson with regard to certain financial matters.

After Mr. Richter withdrew his representation of Ms. Gibson, she contacted Mr. Papa about possible bankruptcy issues and financial matters. Prior to referring the Plaintiffs to the Attorneys, Mr. Papa advised the Plaintiffs on possible bankruptcy but reached the conclusion that bankruptcy was not a viable option. Mr. Papa described a financial disaster about to fall upon the Plaintiffs, in particular Ms. Gibson. (Exhibit #23: Deposition of Robert L. Papa, page 38, line 22 – page 39, line 6). As a result of the apartment complex loan, Ms. Gibson faced possible foreclosure actions by Ameris on the apartment complex and by First Citizens on her beach house with sufficient unencumbered assets to cover any deficiency judgments. (Exhibit #24: Deposition of Andrew K. Epting, Jr., Esquire, page 22, line 1 – page 25, line 14). At that

time, Mr. Papa believed it was best to put together a team of lawyers to assist Ms. Gibson with her financial situation, and he did so by referring Ms. Gibson to the Attorney Kefalos. (Exhibit #23: Deposition of Robert L. Papa, page 38, line 22 – page 39, line 6).

From the very outset of possible representation, Attorney Kefalos informed Ms. Gibson's attorney, Mr. Papa, that the fee arrangement may require a reverse contingency fee secured by a mortgage on real property. (Exhibit #2: November 27, 2009, Kefalos E-mail). Specifically, Attorney Kefalos informed Mr. Papa that "since the most significant benefit to be had from the case might be limited to a forgiveness of the $2 mil + loan, there would be no corpus from which to calculate a fee. Under these circumstances we would have to work out a contingency fee arrangement with the client, that would provide for a fee in a percentage of the savings and be secured by a mortgage on property." (Exhibit #2: November 27, 2009, Kefalos E-mail). From the very beginning of the possible representation, Mr. Papa, Ms. Gibson's attorney at the time, understood that the representation by Attorneys Kefalos and Epting would involve a fee based upon the percentage on the deficiency savings secured by a mortgage.

After a meeting among Attorneys Kefalos and Epting and Mr. Papa and Ms. Gibson, Ms. Gibson, through Mr. Papa, retained Attorney Epting on an hourly basis to represent her in negotiations with Ameris Bank related to forgiveness of the loan. (Exhibit #3: December 11, 2009, Papa E-mail). At this time, the fee arrangement with Attorney Epting was limited to negotiations with Ameris Bank and did not include litigation services. (Exhibit #3: December 11, 2009, Papa E-mail). However, if Ameris Bank filed a foreclosure action or it became "more provident than not to bring the bank into either the existing litigation or a separate lawsuit," Mr. Papa stated Ms. Gibson would enter into a separate fee agreement with Attorney Epting "based on the contingency discussion we had yesterday." (Exhibit #3: December 11, 2009, Papa E-

mail). Mr. Papa wrote that this option had been agreed to by the Plaintiffs after he spent time reviewing the various options with Ms. Gibson. (Exhibit #3: December 11, 2009, Papa E-mail).

On February 4, 2010, as Attorney Epting initiated settlement discussions with Ameris Bank on behalf of Ms. Gibson, in an e-mail from Attorney Epting to Mr. Papa, Attorney Epting memorialized the fee agreement. (Exhibit #5: February 4, 2010, Epting Office E-mail). The e-mail stated that all litigation except for the Ameris case would be handled on a contingency of 33%, 40% if placed on the active trial roster, and 50% if the case has an appeal filed. (Exhibit #5: February 4, 2010, Epting Office E-mail) (emphasis added). Attorney Epting agreed that he would work for the next sixty (60) days on an hourly basis to see if an early resolution with Ameris was possible, but thereafter, if resolution was not possible, Ms. Gibson would enter into a contingency fee agreement based upon the savings from any possible deficiency judgment. (Exhibit #5: February 4, 2010, Epting Office E-mail).

When appeared a resolution would not be forthcoming with Ameris Bank, after sixty days passed, on April 7, 2010, Attorney Epting sent Ms. Gibson the contingency fee agreement discussed in the February 4, 2010, e-mail to Mr. Papa. (Exhibit #6: April 7, 2010, Epting Letter). The letter stated that "George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010." (Exhibit #6: April 7, 2010, Epting Letter). Ms. Gibson signed the fee agreement on April 26, 2010. (Exhibit #6: April 7, 2010, Epting Letter). During this time, Attorneys Kefalos and Epting also conversed with Attorneys Howe and West regarding strategy (i.e., whether to join Ameris in the pending suit against Re/Max, where to file suit against Ameris, jury vs. non-jury, when to file suit, etc.). (Exhibit #24: Deposition of Andrew K. Epting, Jr., Esquire, page 124, line 23 – page 125, line 12).

At the conclusion of the Ameris foreclosure action, Ms. Gibson and the Attorneys then executed the November 18, 2010, fee agreement and then a mortgage to Attorneys West and Howe. (Exhibit #18: November 18, 2010, Fee Agreement). The November 18, 2010, fee agreement specified the total savings to be $1.7 million, approximately the deficiency amount claimed by Mr. McVey in his October 25th letter. (Exhibit #18: November 18, 2010, Fee Agreement). The November 18, 2010, fee agreement merely reflected an application of the prior fee agreement entered into by the Plaintiffs on April 26, 2010, for a contingency fee based on the savings realized by the Plaintiffs from the alleged deficiency, not a new fee agreement. Because the April 26, 2010, required a calculation of the savings (which continued to increase due to interest), the Attorneys informed the Plaintiffs that they would need to seek the advice of independent counsel, and the Plaintiffs selected Mr. Tecklenburg. Mr. Tecklenburg advised the Plaintiffs that they had entered into a "simple but likely enforceable agreement with Drew Epting, providing that one-third of any savings in the litigation with Ameris would be considered a fee earned by your counsel of record." (Exhibit #25: December 8, 2010, Letter from Tecklenburg to Gibson). Mr. Tecklenburg further advised the Plaintiffs that they "negotiated the total amount of the fee earned in the Ameris deficiency litigation to be limited to $567,000.00." (Exhibit #25: December 8, 2010, Letter from Tecklenburg to Gibson).

The evidence clearly demonstrates that the Attorneys dutifully informed the Plaintiffs about the fee arrangement from the very beginning, offering to work on an hourly basis for a period of time before converting to a contingency fee. The Plaintiffs clearly understood the fee arrangement, as the Plaintiffs' attorney, Mr. Papa, confirmed the fee arrangement in writing on December 11, 2009, and informed the Attorneys that this option had been selected after reviewing the various options with the Plaintiffs. When it came time to apply the fee agreement

to the settlement reached in this case, the Attorneys informed the Plaintiffs that they needed the advice of independent counsel, allowed the Plaintiffs to select their own counsel, and allowed the independent counsel to negotiate the amount of actual savings realized by the Plaintiffs (and thereby, the amount of the fee earned).

Third, to the extent the Plaintiffs allege that the fee earned by the Attorneys is excessive, there is no evidence to suggest the fee earned by the Attorneys is anything but reasonable and in line with exactly what the parties agreed to from the outset of the representation. Rule 1.5(c) of the Rules of Professional Conduct state that a "fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law." Rule 1.5(d) prohibits a contingency fee in domestic relations matters and in criminal matters. Rule 1.5(c) requires that a contingent fee agreement be in a writing signed by the client and state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, and the issue of expenses. At the conclusion of a contingent fee matter, Rule 1.5(c) requires that the lawyer "provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination."

The American Bar Association has addressed the validity of reverse contingency fee agreements under the Model Rules of Professional Conduct. "[W]hen reasonably determinable civil damages between private parties are at issue, there is no similar basis in public policy for prohibiting a fee arrangement based on a percentage of the amount saved a defendant, so long as the reasonableness and informed consent requirement of Rule 1.5 are satisfied." ABA Op. 93-373, p. 2-3. In calculating the specific damage figure saved when there is no specified amount,

"it is up to negotiation between the lawyer and the client defendant to establish a fair dollar figure to attribute to plaintiff's claim." ABA Op. 93-373, p. 4-5. "Needless to say, the lawyer negotiating with the unsophisticated client will have a significantly greater burden of demonstrating fairness in this process than the lawyer, for example, who negotiates a reverse contingent agreement with an experienced in-house counsel." ABA Op. 93-373, p. 5. "The propriety of a contingent fee must be judged upon the facts of each case, and no per se rule applies." ABA Op. 93-373, p. 6. "It is evident that the reasonableness of a fee contingent on the savings or reduction of financial losses of a client necessarily depends upon the reasonableness of the percentage as well as the reasonableness of the setting of the benchmark figure from which savings will be calculated." ABA Op. 93-373, p. 6. "In each case, reasonableness should be judged on the basis of the way the engagement looked at the time the reverse contingent fee arrangement was set." ABA Op. 93-373, p. 6 (emphasis added). The ABA concluded that "the Model Rules do not prohibit contingent fee agreements for representation of defendants in civil cases based on the amount of money saved a client--provided the amount of the fee is reasonable under the circumstances, and the client has given fully informed consent." ABA Op. 93-373, p. 6.

In determining the reasonableness of a fee, Rule 1.5(c) lists eight (8) factors to be considered:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

As suggested by the ABA Opinion, these reasonableness factors should be considered at the outset of the representation.

In evaluating the reasonableness of the fee agreement with the Plaintiffs at its outset, there is no question the fee agreement is reasonable. At the outset of the representation, the Attorneys agreed to represent the Plaintiffs on an hourly basis to determine if a quick resolution with Ameris Bank was possible. When it became clear a resolution was no possible short of litigation, in accordance with the fee agreement, the Plaintiff executed a reverse contingency fee agreement to calculate the fee based upon any savings from the alleged deficiency. In this case, there is no question that the savings could be readily calculated by determining the total debt owed (principal, interest, and fees) to Ameris less the value of any collateral used to offset the total debt. As recommended by the ABA Opinion, the Attorneys and the Plaintiffs could then negotiate a fair dollar figure to attribute to the collateral and thereby calculate the net debt owed by the Plaintiffs. From the net debt owed, the Attorneys and the Plaintiffs could calculate the total savings by subtracting any remaining deficiency owed by the Plaintiffs to Ameris Bank at the conclusion of the foreclosure action, either by reason of settlement or by trial.

At the outset of the representation, it was only clear that the foreclosure action could not be resolved short of litigation. In fact, Ameris Bank filed a foreclosure action on June 14, 2010, seeking a deficiency judgment against the Plaintiffs. It was not clear the amount of time that

would be required. However, contrary to the Plaintiffs' assertions, it was not just a simple foreclosure action because Ms. Gibson had sufficient assets to satisfy a deficiency judgment. Further, as raised at the hearing on the motion to appoint a receiver, there were issues related to potential wrongful conduct by Ameris Bank in initiating the loan to the Plaintiffs that could serve as possible affirmative defenses in the action. Given the financial storm Ms. Gibson and the Plaintiffs faced, Mr. Papa believed it was in their best interest to put together the best team of attorneys possible to navigate the complexities of the legal and financial issues involved. (Exhibit #23: Deposition of Robert L. Papa, page 38, line 22 – page 39, line 6).

Further, as evidenced by the demands from Mr. McVey on behalf of Galt Valley (purchaser of the note from the Ameris Bank), Ms. Gibson and the Plaintiffs faced the possibility of a deficiency judgment in excess of One Million Seven Hundred Thousand Dollars ($1,700,000.00). (Exhibit #14: October 25, 2010, McVey Letter). The Plaintiffs had significant liability exposure on the loan, and Galt Valley had undertaken steps to prosecute those claims by filing a Motion to Appoint Receiver and serving Requests to Admit upon the Plaintiffs seeking to have them admit the validity of the debt. (Exhibit #26: Time Records of Ian McVey, Esquire). While many debtors and guarantors may have been judgment proof to such a deficiency judgment, Ms. Gibson was not. Ms. Gibson had sufficient equity in her real property holdings to satisfy a deficiency judgment exceeding one million dollars ($1,000,000+). (Exhibit #24: Deposition of Andrew K. Epting, Jr., Esquire, page 22, line 1 – page 25, line 14).

As a result, for the Attorneys to obtain a result wherein the lender waived the entire deficiency amount despite Ms. Gibson's other assets was a "home run." (Exhibit #23: Deposition of Robert L. Papa, page 86, line 6 – page 87, line 12). In addition to the waiver of the deficiency, the lender also did not tender the Plaintiffs a 1099, thereby limiting the tax exposure

the Plaintiffs incurred as a result of the waiver. (Exhibit #23: Deposition of Robert L. Papa, page 86, line 6 – page 87, line 12). The results obtained by the Attorneys on behalf of the Plaintiffs was nothing short of a miracle.

For these reasons, when evaluating the reasonableness of the reverse contingency fee agreement between the Attorneys and the Plaintiffs, there is only one conclusion: the fee agreement provided for a reasonable reverse contingency fee based upon the savings from any alleged deficiency owed to the lender. Because the Plaintiffs have failed to establish the standard of care with expert testimony and there is no evidence to show that the Attorneys breached the standard of care or recovered an excessive fee from the Plaintiffs, this Honorable Court must grant the Attorneys' Motion for Summary Judgment as to the Plaintiffs' legal malpractice causes of action.

II. Breach of Fee Agreements / Rescission / Cancellation

Because the Attorneys performed the services agreed to under the terms of the fee agreement with the Plaintiffs and obtained the result desired by the Plaintiffs, the Plaintiffs have failed to put forth any evidence of a breach of the fee agreement by the Attorneys. The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Id. Rescission is an undoing of a contract from the beginning, as if the contract had never existed. Ellie, Inc. v. Miccichi, 358 S.C. 78, 95, 594 S.E.2d 485, 494 (Ct. App. 2004). "In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the

contract been performed." S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990).

The Plaintiffs argue that in the alternative, if a fee agreement existed between the Attorneys and the Plaintiffs, that the Attorneys breached the fee agreement by failing to provide services thereunder. However, the evidence demonstrates only that the Attorneys performed the services required under the fee agreement and obtained a tremendous result for the Plaintiffs. The Attorneys researched issues related to the non-jury nature of the lender's claims, tendering the deed to the lender, the best venue for the Plaintiffs' defenses and claims against the lender, the costs and benefits of adding the lender to the existing Re/Max litigation, and many more issues. They reviewed thousands of pages of documents from the loan file, communicated with the lender's attorneys, and filed counterclaims against the lender. They also researched and opposed the lender's Motion to Appoint Receiver. There is simply no question that the Attorneys performed the work required under the fee agreement.

Also, contrary to the Plaintiffs' assertions, the November 18, 2010, agreement is merely an application of the fee agreement between the parties and is not a new or modified fee agreement. Mr. Tecklenburg, Ms. Gibson's attorney for purposes of calculating the fee and negotiating the mortgage, confirms this interpretation of the November 18, 2010, agreement by stating that he believed that Ms. Gibson had entered into a "simple but likely enforceable agreement with Drew Epting, providing that one-third of any savings in the litigation with Ameris would be considered a fee earned by your counsel of record." (Exhibit #25: December 8, 2010, Letter from Tecklenburg to Gibson). Attorney Epting executed the April 7, 2010, fee agreement while all the Attorneys executed the November 18, 2010, agreement. It is clear that Mr. Tecklenburg is referring to the enforceability of the April 7, 2010, fee agreement. This is the

same a fee agreement the parties previously agreed to in December 2009 at the outset of the representation and subsequently in an executed fee agreement on April 26, 2010. It called for the Attorneys' fees in the foreclosure action to be one-third of any savings from the lender's alleged deficiency. The terms of the fee agreement were explained to the Plaintiffs by the Attorneys, Mr. Papa, and again by Mr. Tecklenburg at the conclusion of the foreclosure action.

Further, contrary to the Plaintiffs' assertions, the terms of the fee agreement between the Plaintiffs and Attorneys is unambiguous, and as a result, the fee agreement expresses the clear intent of the parties to establish a contingency fee on any savings the Attorneys obtained on behalf of the Plaintiffs on the debt owed to Ameris Bank. When a contract is unambiguous, there is no need to admit extrinsic evidence to ascertain the parties' intention because the contract terms themselves evidence the parties' clear intent. Worley v. Yarborough Ford, Inc., 317 S.C. 206, 452 S.E.2d 622 (Ct. App. 1994); Hansen v. DHL Laboratories, Inc., 316 S.C. 505, 450 S.E.2d 624 (Ct. App. 1994), reh'g denied, (Dec. 6, 1994) and cert. granted, decision aff'd, 319 S.C. 79, 459 S.E.2d 850 (1995); Bates v. Lewis, 311 S.C. 158, 427 S.E.2d 907 (Ct. App. 1993); United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992). In other words, when there is no ambiguity in the language, the court will find that the contract expresses the entire and exact meaning of the parties, and the court will presume that every material part of the agreement has been expressed in the four corners of the contract. Suttles v. Wood, 280 S.C. 272, 312 S.E.2d 574 (Ct. App. 1984). Courts must confine their interpretation of an unambiguous provision of an agreement to the language contained within the four corners of the instrument itself. Lindsay v. Lindsay, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997). Extrinsic evidence of contemporaneous statements, allegedly made by the parties to the agreement, are inadmissible if they contradict or vary the terms of the

written agreement or give a perfectly clear agreement a different meaning or effect than that indicated by the plain language of the agreement. Visual Graphics Leasing Corp., Inc. v. Lucia, 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993); Skinner v. Elrod, 308 S.C. 239, 417 S.E.2d 599, (Ct. App. 1992); Taylor by Taylor v. Taylor, 291 S.C. 261, 353 S.E.2d 156 (Ct. App. 1987).

Because the fee agreement expressly states that the Attorneys would be entitled to a one-third fee calculated on any savings in the foreclosure matter, the Court must hold as a matter of law that there is no ambiguity in the fee agreement. First, in February 4, 2010, e-mail, the percentages for calculation of the Attorneys' fees are set forth. The e-mail stated that all litigation except for the Ameris case would be handled on a contingency of 33%, 40% if placed on the active trial roster, and 50% if the case has an appeal filed. (Exhibit #5: February 4, 2010, Epting Office E-mail). With regard to the Ameris litigation, "the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris)." (Exhibit #5: February 4, 2010, Epting Office E-mail). However, Attorney Epting agreed that he would work for the next sixty (60) days on an hourly basis to see if an early resolution with Ameris was possible. (Exhibit #5: February 4, 2010, Epting Office E-mail). After sixty days passed, on April 7, 2010, Attorney Epting drafted a subsequent contingent fee agreement in accordance with the February 4, 2010, e-mail. (Exhibit #6: April 7, 2010, Epting Letter). The letter stated that "George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010."

The Plaintiffs attempt to create an ambiguity by arguing that there was no "existing case" against Ameris, but the Plaintiffs' emphasis is misplaced. While Ameris did not file suit against the Plaintiffs until June 14, 2010, there were existing claims against the Plaintiffs that Ameris had been actively pursuing since November 2009. (Exhibit #27: Ameris Bank E-mails). Prior to

the Attorneys' involvement, Mr. Richter had withdrawn as counsel because a conflict of interest in bringing Ameris Bank into the Re/Max litigation. Mr. Papa had been negotiating a work out with Ameris Bank on the apartment complex loan and deficiency. (Exhibit #27: Ameris Bank E-mails). While no formal lawsuit or foreclosure action was pending, Ameris Bank had an existing claim it was actively pursuing against the Plaintiffs, including Ms. Gibson. Because there is no evidence of a breach of the fee agreement by the Attorneys and the language "existing case" does not create an ambiguity in the fee agreement, this Honorable Court must grant the Attorneys' Motion for Summary Judgment as the breach of contract causes of action.

III. Misrepresentation

Under the law of negligent misrepresentation, "[t]here is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence." AMA Mgt. Corp. v. Strasburger, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992). "[W]hile issues of reliance are ordinarily resolved by the finder of fact, 'there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.'" McLaughlin v. Williams, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008) (quoting Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct. App.1992)). "Thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact." Id. at 458, 665 S.E.2d at 671. "A determination of justifiable reliance involves the evaluation of the totality of the circumstances, which includes the positions and relations of the parties." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 241, 692 S.E.2d 499, 508 (2010); West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000). Courts will find reliance justifiable in a negligent misrepresentation claim "only if the relationship of the parties is such that the

defendant occupies a superior position to the plaintiff with respect to knowledge of the truth of the statement made." Harrington v. Mikell, 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Ct. App. 1996) (citing Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 419 S.E.2d 795, 799–800 (Ct. App. 1992)). The Plaintiffs' claims for misrepresentation fail as a matter of law because there is no evidence of any misrepresentation by the Attorneys and because the Plaintiffs understood the nature of the fee agreement entered into between the parties.

First, there simply is no evidence of any misrepresentation by the Attorneys. As outlined in detail above, the notion of a contingency fee based upon any savings of the deficiency amount claimed by the lender started from the very outset of Mr. Papa's referral to the Attorneys. Attorney Kefalos discussed the nature of the likely fee arrangement in his reply to Mr. Papa's initial inquiry about possible representation. (Exhibit #2: November 27, 2009, Kefalos E-mail). From the very outset of possible representation, Attorney Kefalos informed Ms. Gibson's attorney, Mr. Papa, that the fee arrangement may require a reverse contingency fee secured by a mortgage on real property. After several meetings with Attorneys Kefalos and Epting, on December 11, 2009, Ms. Gibson, through Mr. Papa, retained Attorney Kefalos to represent her in the pending action against Re/Max and retained Attorney Epting on an hourly basis to represent her in negotiations with Ameris Bank related to forgiveness of the loan. (Exhibit #3: December 11, 2009, Papa E-mail). Ms. Gibson, through Mr. Papa, agreed to enter into a separate reverse contingency fee agreement if Ameris Bank filed a foreclosure action or it became "more provident than not to bring the bank into either the existing litigation or a separate lawsuit." (Exhibit #3: December 11, 2009, Papa E-mail).

The parties then operated under the terms of this fee agreement. Attorney Epting proceeded to attempt to resolve the foreclosure action short of litigation, but when it became

clear that a resolution could not be reached, the parties entered into reverse contingency fee agreement. (Exhibit #6: April 7, 2010, Epting Letter). The Attorneys made no misrepresentations about the nature of the fee agreement or the need to enter into a contingency fee arrangement should negotiations fail. The agreement was for the benefit of the Plaintiffs and Ms. Gibson. In the event a resolution could be reached quickly, she would only be liable for the hourly work performed. However, if a resolution could not be reached and litigation ensued, rather than risk the possibility of a protracted litigation that could incur hundreds of hours and hundreds of thousands of dollars in fees, the parties would enter into a contingency fee arrangement. There is simply no evidence of any misrepresentations by the Attorneys inducing the Plaintiffs into the April 7, 2010, agreement, but instead, the events occurred as initially set forth by the Attorneys in November and December 2009.

Second, as Mr. Papa conveyed the Plaintiffs' agreement to the fee agreement in December 2009, it clear that the Plaintiffs understood the nature and truth about the fee agreement and how it worked. In the December 11, 2009, e-mail, Mr. Papa wrote "we would like to hire you initially on an hourly basis at $400/hr with a $5,000 retainer to begin negotiations with Ameris Bank." (Exhibit #3: December 11, 2009, Papa E-mail) (emphasis added). The hourly services were limited to negotiations and did not involve litigation services. (Exhibit #3: December 11, 2009, Papa E-mail). If the negotiations failed or circumstances dictated that switching to a contingency fee was in the Plaintiffs' best interests, they would "enter into a separate retainer agreement with Drew based on the contingency discussion we had yesterday." (Exhibit #3: December 11, 2009, Papa E-mail). Mr. Papa stated that this plan was the result of discussing Ms. Gibson's various options with her for "a while" and confirming the plan with her that morning. Based upon this e-mail, it is impossible to suggest that the Plaintiffs did not

understand their retainer of Attorney Epting was on an hourly basis for a period of time and would move to a contingency fee in the event a lawsuit was filed, it was necessary to add the lender to the lawsuit against Re/Max, or it became Ms. Gibson's best interest to do so. Ms. Gibson's attorney at the time confirmed this course of action in writing and indicated that Ms. Gibson chose this course of action after carefully reviewing her options and sleeping on it. Because there is no evidence that the Attorneys made any misrepresentations to the Plaintiffs about the nature of the fee agreement and because the Plaintiffs, as evidenced by their attorneys' communications, understood the terms of the fee agreement, this Honorable Court must grant the Attorneys' Motion for Summary Judgment as to the Plaintiffs' misrepresentation causes of action.

IV. Unjust Enrichment / Conversion / Money Had and Received / Accounting

Because the Attorneys performed the services agreed to under the terms of the fee agreement with the Plaintiffs and obtained a reduction in the debt owed by the Plaintiffs in the amount of One Million Seven Hundred Thousand Dollars ($1,700,000.00), the Plaintiffs have failed to put forth any evidence of any unjust enrichment or conversion of funds by the Attorneys. "A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." Dema v. Tenet Physician Servs. – Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The remedy for unjust enrichment is restitution. See Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) ("Restitution is a remedy designed to prevent unjust enrichment."). To recover restitution in the context of unjust enrichment, the plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.

Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012); Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc., 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988).

The Plaintiffs' cause of action for unjust enrichment fails as a matter of law because the Attorneys performed legal services in exchange for the fees earned and paid by the Plaintiffs and those services provided tremendous value to the Plaintiffs. First, the Plaintiffs have not conferred a non-gratuitous benefit upon the Attorneys by paying the fees earned by the Attorneys in the foreclosure action. Instead, the Attorneys performed legal work and services in exchange for the fees paid. The Attorneys researched issues related to the non-jury nature of the lender's claims, tendering the deed to the lender, the best venue for the Plaintiffs' defenses and claims against the lender, the costs and benefits of adding the lender to the existing Re/Max litigation, and many more issues. They reviewed thousands of pages of documents from the loan file, communicated with the lender's attorneys, and filed counterclaims against the lender. They organized the Plaintiffs' financial affairs as they relate to the management of the apartment complex and the loan from Ameris Bank. They also researched and opposed the lender's Motion to Appoint Receiver, drafted proposed orders, and negotiated with the lender's attorney. The fee paid by the Plaintiffs to the Attorneys does not represent a non-gratuitous payment but instead represents payment in exchange for legal services rendered by the Attorneys.

Second, the legal services rendered by the Attorneys conferred a tremendous benefit upon the Plaintiffs, namely the waiver of the deficiency judgment sought by the lender. Ameris Bank filed the foreclosure action seeking over One Million Seven Hundred Thousand Dollars ($1,700,000.00) in a deficiency judgment beyond the value of the security. When the lender waived the deficiency judgment as part of the settlement after legal services rendered by the Attorneys, the Plaintiffs received the benefit of that waiver. In other words, the Plaintiffs were

no longer obligated to pay the remainder of the debt owed to the lender beyond the value of the security. The lender waived the right to seize other assets owned by the Plaintiffs to satisfy the deficiency. As a result, the legal services performed by the Attorneys conferred a tremendous benefit on the Plaintiffs, and the fee paid by the Plaintiffs was in exchange for this benefit and the work performed. For these reasons, the Plaintiffs' claim for unjust enrichment fails as a matter of law.

Conversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified. Id. As the Plaintiffs and Attorneys entered into a fee agreement wherein the Attorneys would provide certain legal services in exchange for a contingent fee on any savings from the deficiency alleged by the lender, there can be no action for conversion related to the fee. The Plaintiffs paid the fee as set forth in the fee agreement between the parties, and the Plaintiff had representation both at the outset in the negotiation of the fee (Mr. Papa) and in the calculation of the fee at the conclusion of the foreclosure action (Mr. Tecklenburg). Pursuant to the fee agreement between the Plaintiffs and Attorneys, the fee belonged to the Attorneys, and as a result, the Attorneys did not exercise ownership over money belonging to the Plaintiffs. For these reasons, the Plaintiffs' cause of action for conversion fails as a matter of law.

V. UTPA

Under the South Carolina Unfair Trade Practices Act ("UTPA"), "[a]ny person who suffers any ascertainable loss of money or property ... as a result of the use or employment by another

person of an unfair or deceptive method, act or practice ... may recover actual damages." S.C. Code Ann. § 39-5-140 (1976). The UTPA allows for the recovery of actual damages. See Global Prot. Corp. v. Halbersberg, 332 S.C. 149, 159, 503 S.E.2d 483, 488 (Ct.App.1998) (citing S.C.Code Ann. § 39-5-140(a) (1976)). "Actual damages under the UTPA include special or consequential damages that are a natural and proximate result of deceptive conduct." Id. (citing Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996)).

As outlined above, the Plaintiffs have not put forth any evidence of any misrepresentation or deceptive practice to substantiate their UTPA cause of action. The notion of a contingency fee based upon any savings of the deficiency amount claimed by the lender started from the very outset of Mr. Papa's referral to the Attorneys. Attorney Kefalos discussed the nature of the likely fee arrangement in his reply to Mr. Papa's initial inquiry about possible representation. (Exhibit #2: November 27, 2009, Kefalos E-mail). Based upon Mr. Papa's e-mails to the Attorneys, it clear that the Plaintiffs understood the nature and truth about the fee agreement and how it worked. In the December 11, 2009, e-mail, Mr. Papa wrote "we would like to hire you initially on an hourly basis at $400/hr with a $5,000 retainer to begin negotiations with Ameris Bank." (Exhibit #3: December 11, 2009, Papa E-mail) (emphasis added).). If the negotiations failed or circumstances dictated that switching to a contingency fee was in the Plaintiffs' best interests, they would "enter into a separate retainer agreement with Drew based on the contingency discussion we had yesterday." (Exhibit #3: December 11, 2009, Papa E-mail). Mr. Papa stated that this plan was the result of discussing Ms. Gibson's various options with her for "a while" and confirming the plan with her that morning. Based upon this e-mail, it is impossible to suggest that the Plaintiffs did not understand their retainer of Attorney Epting was on an hourly basis for a period of time and would move to a contingency fee in the event a

lawsuit was filed, it was necessary to add the lender to the lawsuit against Re/Max, or it became Ms. Gibson's best interest to do so. Ms. Gibson's attorney at the time confirmed this course of action in writing and indicated that Ms. Gibson chose this course of action after carefully reviewing her options and sleeping on it. Because the Plaintiffs have failed to put forth any evidence of any misrepresentation or deceptive act by the Attorneys, the Plaintiffs' cause of action for a violation of the South Carolina Unfair Trade Practices fails as a matter of law.

VI. Declaratory Judgment

Because the Plaintiffs and Attorneys entered into an enforceable fee agreement between December 2009 and April 2010, the Plaintiffs' cause of action for declaratory judgment to rescind the fee agreement fails as a matter of law. The Uniform Declaratory Judgments Act "does not create substantive rights or duties." Felts v. Richland County, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct. App. 1989), aff'd, 303 S.C. 354, 400 S.E.2d 781 (1991); see S.C. Code Ann. §§ 15-53-10 to -140 (1977). Rather, it authorizes an action to establish a party's entitlement to a pre-existing right. Noisette v. Ismail, 299 S.C. 243, 247 n.1, 384 S.E.2d 310, 312 n.1 (Ct. App. 1989), rev'd in part by 304 S.C. 56, 403 S.E.2d 122 (1991).

"A declaratory judgment action is neither legal nor equitable per se." Harvey v. South Carolina Dep't of Corrections, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000). "Rather, its character is determined by the nature of the underlying issue." Id. at 506, 527 S.E.2d at 768-69; Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991); Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 S.C. 206, 494 S.E.2d 465 (Ct. App. 1997). Courts "look to the kind of action in which the issue involved would have been decided if there were no declaratory judgment procedure." Felts, 299 S.C. at 216, 383 S.E.2d at 263. Because the Plaintiffs' underlying issue sounds in legal malpractice and breach of contract,

the Court should evaluate the declaratory judgment cause of action under the elements to those causes of action. For the reasons addressed above in Section I and Section II, there exists no genuine issue of material fact regarding the existence of an enforceable fee agreement between the Plaintiffs and Attorneys. As a result, this Honorable Court must grant the Attorneys' Motion for Summary Judgment as to the Plaintiffs' declaratory judgment cause of action.

CONCLUSION

Based upon the arguments discussed above, this Honorable Court must grant the Attorneys' Motion for Summary Judgment. There is no evidence that the Attorneys breached any standard of care with regard to the legal services they performed or the fee agreement entered into with the Plaintiffs. The Plaintiffs were fully aware of the fee agreement negotiated with the Attorneys and were even represented by counsel both in the negotiation of the fee agreement and in the calculation of the fee owed under the terms of the fee agreement. There is no evidence that the Attorneys breached the fee agreement or were unjustly enriched as a result of the fee agreement. Rather, the evidence only shows that there existed a reasonable reverse contingent fee agreement between the parties and that the Attorneys earned the fee paid in the foreclosure action by saving the Plaintiffs One Million Seven Hundred Thousand Dollars ($1,700,000.00).

[SIGNATURE BLOCK ON THE NEXT PAGE]

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY:

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR THE DEFENDANTS

October 19, 2015
Charleston, South Carolina

13-CP-10-4450

Certificate of Service

I hereby certify that the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

James R. Davis, Esquire
BB&T Plaza Mail Stop Box 16
234 Seven Farms Drive, Suite #211B
Daniel Island, SC 29492

FILED
2015 OCT 19 PM 3:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This the 19th day of October 2015.

Cheryl Rogers
Legal Secretary

From: Robert Papa [mailto:papa@btitelecom.net]
Sent: Friday, November 13, 2009 3:12 PM
To: George J. Kefalos
Subject: referral

HI George,
Hope all is well.
Have a 2.8 million dollar issue/case to ask you about.
I have a client that I am working on some general business things with. She has a lawsuit against Remax and a realtor regarding an apartment complex on Otranto Road. Kevin Holmes initially filed the case but wasn't comfortable in the new water he was wading in. The case got transferred to Larry Richter. Larry now tells this client that he has a conflict with Ameris Bank who made the loan and therefore cannot bring them into the suit. The appraiser has also not been brought into the case yet. The "dual" agent made some horrific representations about the value of the property and the rent rolls, etc, to get the sale. The appraiser not surprisingly brought back a value right on the value of the contract price. The current value is about 1.2.

Would you, or if not you, who might you think about taking over the case.
Rob

From: George J. Kefalos [mailto:george@kefaloslaw.com]
Sent: Friday, November 27, 2009 10:51 AM
To: Robert Papa
Cc: Oana Johnson; Andrew K. Epting
Subject: RE: referral

Rob,

I am sorry I did not get back to you sooner. I am interested in working on the case.

I've gone over the file again and discussed it with Drew Epting. I think it is a good case, (though it has serious issues) and I would be willing to undertake it on a couple of conditions. First, Drew would have to be involved and agree to handle the banking aspect of the case. Drew has considerable experience with today's banking issues and the FDC examiners by reason of his position as a bank director. He is familiar with the issues involving defaults on loans like this, and knows the hot buttons for banks.

Second, we would need an opinion from an expert regarding the accuracy of the appraisal before proceeding against the appraiser.

And third, since the most significant benefit to be had from the case might be limited to a forgiveness of the $2 mil + loan, there would be no corpus from which to calculate a fee. Under these circumstances we would have to work out a contingency fee arrangement with the client, that would provide for a fee in a percentage of the savings and be secured by a mortgage on property. Give me a call when you get back in town so we can discuss this.

George

From: Robert Papa [mailto:papa@btitelecom.net]
Sent: Friday, December 11, 2009 12:32 PM
To: George J. Kefalos; Andrew K. Epting; Oana Johnson
Cc: papa@btitelecom.net
Subject: Linda Gibson

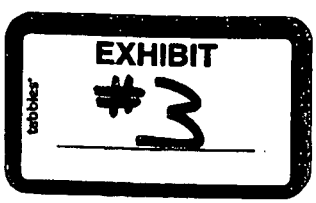
Good afternoon George, Drew, and Oana,

Thank you for your time yesterday meeting with Linda and myself. The information you added Drew was very helpful and gave us hope. As you know, I stayed for a while in your conference room and discussed Linda's options. I gave her some input and let her sleep on it. I spoke to her this morning and confirmed the following plan or should I say, proposal:

1. George to sign on to represent Linda in the pending action. An opinion will be sought to determine if there was appraiser negligence with the goal of bringing in the appraiser and his insurance. Linda and George can discuss seed "cost" money for the expert opinion and other suit costs. Otherwise, George's contingency will be 40%. The bank will NOT be brought into the suit at this stage nor without Drew's involvement.

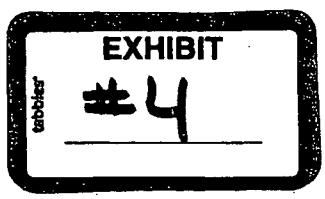
2. As to Drew, we would like to hire you initially on an hourly basis at $400/hr with a $5,000 retainer to begin negotiations with Ameris Bank. This would be limited to no litigation services. If the negotiations prove successful, end of story. If it becomes more provident than not to bring the bank into either the existing litigation or a separate lawsuit, (e.g., if they file a foreclosure action), then we would enter into a separate retainer agreement with Drew based on the contingency discussion we had yesterday.

Please discuss this at your earliest convenience and get back to me. If for some reason you have a high degree of conviction that this course of action is not in Linda's best interests, please let me know. As with most people, money is an issue and Linda has to manage it carefully. We believe this is a reasonable way of moving her forward. Thank you and I look forward to working together with you on Linda's behalf.
Rob



From: Andrew K. Epting
Sent: Monday, December 14, 2009 5:36 PM
To: Robert Papa; George J. Kefalos; Oana Johnson
Cc: Sheri Towne; Michelle Endemann
Subject: RE: Linda Gibson

Rob, I enjoyed meeting with both you and Linda and I think it does make sense to try and handle the banking piece by the hour as I think there is some prospect that we may be successful. That said I think suit needs to be filed against all as I do not think we will have success with the Bank because of Linda's liquidity absent a suit. My suggestion is that George and I get the suit prepared, that Linda and I go then to meet with Carl and I will tell him we prefer to negotiate not litigate and see if this gains traction. If so, we can do it hourly. If not, we will be in a protracted battle with no result certain and she may benefit by a contingency. I know the documents will be one sided so I would like to view these quickly, along with a short vita so I can determine her sophistication and a simple financial statement to see if there is any chance to plead poverty. Rob, lastly can you help her pen the letter confirming the conversation with Carl about go to Richter. I would like to help with this as well as getting her retainer back from Richter.



Sheri Towne

From:	Epting Office
Sent:	Thursday, February 04, 2010 5:04 PM
To:	papa@btitelecom.net
Cc:	George J. Kefalos; Andrew K. Epting; Sheri Towne; Oana Johnson
Subject:	Linda Gibson
Sensitivity:	Confidential
Categories:	ADM

SENT ON BEHALF OF DREW EPTING:

Rob,

George and I have talked about how to move this forward with Linda. It seems we have agreed that, as to the litigation with all others than Ameris, it will be handled on a contingency of:

1. 33%;
2. 40% - if the case is not settled before it is placed on the active trial roster; or
3. 50% if an appeal is filed.

As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris). However, as to Ameris, George and I agree that our past work and work for the next 60 days, including filing the litigation, will be on an hourly basis so that if an early resolution with Ameris by discounting their debt can be achieved, our fee would be limited. I think we will know in two weeks if this is likely, but I have used 60 days as this can accommodate practical considerations.

In the event she pays an hourly fee and achieves a settlement as to any Defendant, the hourly fee will be deducted from the contingency.

In all events, she will pay our cost (depositions, filing fees, etc.) on an interim basis. Please consider this.

With kindest regards,
Drew

Roni Burk
Legal Assistant to Drew Epting
3 State Street, Charleston, SC 29401
p: 843.377.1871
f: 843.377.1310
office@epting-law.com

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this in error, or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

EXHIBIT 5

ANDREW K. EPTING, JR.
ATTORNEY AT LAW

April 7, 2010

Linda Gibson
133 Horse Trail Road
St. George, SC 29477

Re: Gibson, Linda – Matter #2042-001

Dear Linda,

So, let's supplement our fee agreement with this writing. You have asked that George and I help with the larger work out of your financial problems:

1. Return of the Richter fee;
2. Save your home and farm in St. George;
3. Keep creditors at bay on Daniel Island;
4. Ditto the shopping center;
5. The beach house: try to work you out of this without losing other assets. I am not, at this time, taking on defending this suit.

We agree that George and I will charge you $400.00 per hour. I will use Rhonda McCraw, together with our paralegals, where necessary. We do not bill in increments of less than .2 of an hour, and do not bill cost except those billed to me by a third party or for travel. You agree to send a check every month for $2,500.00, beginning at the time of the execution of this letter agreement, to be applied to these services. George and I will handle the existing case against Re/Max, Rolando, Moore & Ameris on a contingency, as set forth in our agreement of February 4, 2010.

Linda, as I told you, you have some serious problems here. I guarantee no results, but I will give you my best.

With kindest regards,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.

AKE:rb

AGREED: Linda Gibson DATE: 4/22/10
Linda Gibson

ANDREW K. EPTING, JR., LLC
3 STATE STREET -- CHARLESTON, SC -- 29401
PHONE: (843) 377-1871 – FAX: (843) 377-1310 - E-MAIL: AKE@EPTING-LAW.COM

EXHIBIT #6

Sheri Towne

From:	Epting Office
Sent:	Thursday, February 04, 2010 5:04 PM
To:	papa@btitelecom.net
Cc:	George J. Kefalos; Andrew K. Epting; Sheri Towne; Oana Johnson
Subject:	Linda Gibson
Sensitivity:	Confidential
Categories:	ADM

SENT ON BEHALF OF DREW EPTING:

Rob,

George and I have talked about how to move this forward with Linda. It seems we have agreed that, as to the litigation with all others than Ameris, it will be handled on a contingency of:

1. 33%;
2. 40% - if the case is not settled before it is placed on the active trial roster; or
3. 50% if an appeal is filed.

As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris). However, as to Ameris, George and I agree that our past work and work for the next 60 days, including filing the litigation, will be on an hourly basis so that if an early resolution with Ameris by discounting their debt can be achieved, our fee would be limited. I think we will know in two weeks if this is likely, but I have used 60 days as this can accommodate practical considerations.

In the event she pays an hourly fee and achieves a settlement as to any Defendant, the hourly fee will be deducted from the contingency.

In all events, she will pay our cost (depositions, filing fees, etc.) on an interim basis. Please consider this.

With kindest regards,
Drew

Roni Burk
Legal Assistant to Drew Epting
3 State Street, Charleston, SC 29401
p: 843.377.1871
f: 843.377.1310
office@epting-law.com

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this in error, or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)
) CIVIL ACTION COVER SHEET
Ameris Bank,)
) 2010 -CP- 08 - 2434
Plaintiff,)
)
vs.)
)
Linda A. Gibson, et al.)
)
Defendants.)

FILED
2010 JUN 15 PM 12:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

(Please Print) SC Bar#: 3977
Submitted By: Ben N. Miller Telephone #: (803)252-0500
Address: 1704 Main Street, 2nd Floor Fax #: (803)252-6705
Post Office Box 58 Other:
Columbia, South Carolina 29202 Email:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check all that apply)*

*If Action is Judgment/Settlement do not complete

☐ JURY TRIAL demanded in Complaint. ☑ NON-JURY TRIAL demanded in Complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☑ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check one box below)*

Contracts
☐Constructions(100)
☐Debt Collection(110)
☐Employment(120)
☐General(130)
☐Breach of Contract (140)
☐Other(199)

Torts-Professional Malpractice
☐Dental Malpractice(200)
☐Legal Malpractice(210)
☐Medical Malpractice(220)
Previous Notice of intent Case # 20____-CP_____-_____
☐Notice/File Med Mal (230)
☐Other(299)

Torts-Personal Injury
☐Assault/Slander/Libel(300)
☐Conversion(310)
☐Motor Vehicle Accident(320)
☐Premises Liability(330)
☐Products Liability(340)
☐Personal Injury(350)
☐Wrongful Death(360)
☐Other(399)

Real Property
☐Claim &Delivery(400)
☐Condemnation(410)
☑Foreclosure(420)
☐Mechanic's Lien(430)
☐Partition(440)
☐Possession(450)
☐Building Code Violation(460)
☐Other(499)

Inmate Petitions
☐PCR(500)
☐Mandamus(520)
☐Habeas Corpus(530)
☐Other(599)

Judgements/Settlements
☐Death Settlement(700)
☐Foreign Judgement(710)
☐Magistrate's Judgement(720)
☐Minor Settlement(730)
☐Transcript Judgement(740)
☐Lis Pendens(750)
☐Transfer of Structured Settlement Payment Rights Application (760)
☐Other(799)

Administrative Law/Relief
☐Reinstate Driver's License(800)
☐Judicial Review(810)
☐Relief(820)
☐Permanent Injunction(830)
☐Forfeiture-Petition (840)
☐Forfeiture-Consent Order (850)
☐Other (899)

Appeals
☐Arbitration(900)
☐Magistrate-Civil(910)
☐Magistrate-Criminal(920)
☐Municipal(930)
☐Probate Court(940)
☐SCDOT(950)
☐Worker's Comp(960)
☐Zoning Board (970)
☐Administrative Law Judge(980)
☐Public Service Commission (990)
☐Employment Security Commission (991)
☐Other (999)

Special/Complex/Other
☐Environmental(600)
☐Automobile Arb.(610)
☐Medical(620)
☐Other (699)
☐Pharmaceuticals (630)
☐Unfair Trade Practices (640)
☐Out-of State Depositions (650)
☐Motion to Quash Subpoena in Out-of-County Action (660)
☐Sexual Predator (510)

Submitting Party Signature: _____ Date: 6-14-10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C Code Ann,§ 15-36-10 et. seq.

SCCA/234 (10/09)

EXHIBIT #7

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests from temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statue.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten(10)days after the ADR conference has been concluded.

Please note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

SCCA/234 (10/09)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Ameris Bank,

Plaintiff,

vs.

Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, Heritage Seven, LLC, and Access Portable Toilets, Inc.,

Defendants.

2010-CP-08-2134

FILED
2010 JUN 15 PM 12:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

CERTIFICATE OF EXEMPTION FROM ADR

I certify that this action is exempt from ADR because:

___ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;

___ this action is appellate in nature;

___ this is a post-conviction relief matter;

___ this is a contempt of court proceeding;

___ this is a forfeiture proceeding brought by the State;

X this is a case involving a mortgage foreclosure; or

___ the parties submitted the case to voluntary mediation with certified mediator prior to the filing of this civil action.

Plaintiff/Attorney(s) for Plaintiff(s)
Ben N. Miller III
P.O. Box 58
Columbia, SC 29202
(803) 252-0500

Defendant/Attorney(s) for Defendant

June 14, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

Ameris Bank,

Plaintiff,

vs.

Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, Heritage Seven, LLC, and Access Portable Toilets, Inc.,

Defendants.

2010-CP-08-2134

SUMMONS
(Non-Jury Foreclosure)

FILED
2010 JUN 15 PM 12:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 1704 Main Street, P. O. Box 58, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint. Your answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney, if signed by your attorney.

This communication is an attempt to collect a debt, and any information obtained will be used for that purpose.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

BY: _____
BEN N. MILLER III
Attorneys for the Plaintiff
P. O. Box 58
Columbia, South Carolina 29202
(803) 252-0500

Columbia, South Carolina

June 14, 2010

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)

Ameris Bank,

Plaintiff,

vs.

Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, Heritage Seven, LLC, and Access Portable Toilets, Inc.,

Defendants.

2010 CP-08 2436

COMPLAINT

FILED
JUN 15 PM 12:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiff above named, complaining of the Defendants above named, herein alleges that:

AS TO BOTH CAUSES OF ACTION:

1. Upon information and belief, the Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, is a resident of the County of Dorchester, State of South Carolina, and is named as a defendant in this action both individually and in her capacity as Trustee of the Paul William Gibson Family Trust; the Defendant Heritage Seven, LLC, is a limited liability company doing business in the County of Charleston, State of South Carolina; the Defendant Access Portable Toilets, Inc. is a corporation doing business in the County of Charleston, State of South Carolina; and the properties subject of this action are real properties located in the County of Berkeley and in the County of Charleston, in the State of South Carolina.

2. If Plaintiff secures the premises being foreclosed herein, Plaintiff's costs of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges or real estate taxes which constitute liens on said premises, Plaintiff's costs should be added to any judgment rendered on its behalf.

3. The Plaintiff does not waive, but specifically demands judgment against the

Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, for the full amount found to be due to Plaintiff on the Notes and Mortgages held by Plaintiff, with the right to enter a personal deficiency judgment against the Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, for any deficiency in this action remaining after sale of the mortgaged premises.

4. The foreclosure of the mortgage described in paragraph nine (9) infra. is made subject to the terms of that certain lease dated April 12, 1991, by and between Linda Gibson and GTE Mobilnet of the Southeast, Incorporated, as evidenced by Memorandum of Lease dated April 12, 1991, and recorded April 12, 1991, in the Office of the Register of Deeds for Berkeley County in Miscellaneous Book C-297 at page 110, as extended and amended thereafter.

5. The Defendant Access Portable Toilets, Inc. has or may claim to have some interest in or lien upon the subject property by virtue of that certain Notice and Certificate of Mechanic's Lien in the amount of $235.00, against Heritage Seven, LLC, and Triton Construction, recorded by it on July 22, 2008, in Book J-665 at page 524 in the Office of the Register of Deeds for Charleston County; the interest or lien of the Defendant Access Portable Toilets, Inc., if any, is junior and subordinate to the lien of the Plaintiff's purchase money mortgage.

6. Ameris Bank has not agreed to participate in the Home Affordable Modification Program (HMP); further, the loans subject of this action are not subject to modification under HMP because they are not FHLMC or FNMA loans.

FOR A FIRST CAUSE OF ACTION:

7. The allegations of paragraphs 1 through 6 supra., are incorporated herein as if fully restated.

8. Heretofore, on November 2, 2007, the Defendant Heritage Seven, LLC, made,

Page 2

executed and delivered to Ameris Bank a certain Mortgage Note in writing, wherein and whereby by it promised to pay to the order of Ameris Bank the principal sum of $2,810,164.50, together with interest at the initial rate of 7.75% per annum on the unpaid balance; said interest being payable in monthly installments commencing on the second day of December, 2007, and on the second day of each month thereafter, said principal being payable in monthly installments commencing on the second day of December, 2008, and both continuing until said note is fully paid; among other things the said Note provides as follows:

If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the Interest Rate payable on the outstanding Principal balance of this Note. In such event, interest will accrue on the outstanding Principal Balance at 16.000 percent until paid in full.

On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interest in connection with any bankruptcy proceedings initiated by or against me.

9. In order to secure said note, the said Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, did, on November 2, 2007, make, execute and deliver to Ameris Bank, its successors and assigns, a certain mortgage covering the premises located in the County of Berkeley, State of South Carolina, and described as follows:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, being shown and delineated as "Residual Property of Linda Ann Gibson TMS 271-00-01-037" (now bearing TMS #271-00-01-129), on a "Plat Showing a 100' Right-of-Way Designated Parcels "A" & "B" and a 50' Right-of-Way Designated Parcels "C" & "D," "Parcels "B" and "D" Being Owned by Linda Ann Gibson, Parcels"A" & "C" Being Owned by Heirs of Ben Bellinger, Parcels "A" Thru "D" About to be Acquired by the South Carolina State Ports Authority, Parcels Located in Saint Thomas - Saint Dennis Parish, Berkeley County, South Carolina," prepared by Cornerstone Surveying & Engineering, Inc. on June 6, 1997, and recorded in the Office of the Register of Deeds for Berkeley County in Plat Cabinet N at page 86. TMS# 271-00-01-129.

Said property is a portion of the property conveyed to Linda A. Gibson, formerly known as Linda Ann

B. Page 3

Avinger, by Deed of Mary Ann Baptist Church, also known as Maryann Baptist Church, dated May 24, 1985, recorded September 12, 1985, in the Office of the Register of Deeds for Berkeley County in Deed Book A-616 at page 220, and by Deed of W.R. Detyens dated May 15, 1969, recorded September 28, 1973, in said Register's Office in Deed Book A-261 at page 40.

10. Said mortgage constitutes a first lien on the subject property.

11. On November 7, 2007, said Mortgage was recorded in the Office of the Register of Deeds for Berkeley County in Record Book 6975 at page 204.

12. As additional security for the payment of said Note, an Assignment of Leases and Rents was given by Linda A. Gibson, formerly known as Linda Ann Avinger, to Ameris Bank, said Assignment being dated November 2, 2007, recorded November 7, 2007, in the Office of the Register of Deeds for Berkeley County in Record Book 6975 at page 212, and covering the real estate described in paragraph nine (9) supra.

13. As further security for the payment of said note, the Defendant Heritage Seven, LLC, did, on November 2, 2007, make, execute and deliver to Ameris Bank, its successors and assigns, a certain mortgage covering the premises located in the County of Charleston, State of South Carolina, and described as follows:

All those certain pieces, parcels or tracts of land containing in the aggregate 3.633 acres, more or less, with the improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, being shown and delineated as "Tract A" and "Tract B" on a plat prepared by Sigma Engineers, Inc., dated April 14, 1971, and recorded in the Office of the Register of Deeds for Charleston County in Plat Book AA at page 37. Said property has such size, shape and dimensions as will be shown by reference to said plat. TMS# 485-03-00-114.

Said property is the same property conveyed to Heritage Seven, LLC, by Deed of ABESPRO, LLC, dated November 2, 2007, recorded November 6, 2007, in the Office of the Register of Deeds for Charleston County in Book L-643 at page 16.

14. Subject mortgage constitutes a first lien on the subject property and is a purchase money mortgage.

15. On November 6, 2007, said Mortgage was recorded in the Office of the Register of Deeds for Charleston County in Book L-643 at page 739.

R. Page 4.

16. As further security for the payment of said note, an Assignment of Leases and Rents was given by Linda A. Gibson, formerly known as Linda Ann Avinger, to Ameris Bank, said Assignment being dated November 2, 2007, recorded November 6, 2007, in the Office of the Register of Deeds for Charleston County in Book O-643 at page 226, and covering the property described in paragraph thirteen (13) supra.

17. On January 9, 2009, the Defendant Heritage Seven, LLC, executed a Renewal Note in the amount of $2,809,681.86, with accrued interest at the initial rate of 6% per annum being payable monthly commencing February 2, 2009, and with the balance of principal and interest due on October 2, 2009.

18. On December 26, 2008, the Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, individually guaranteed the payment of the renewal Note described in paragraph seventeen (17) supra.

19. On December 26, 2008, the Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, as Trustee of the Paul William Gibson Family Trust guaranteed the payment of the renewal Note described in paragraph seventeen (17) supra.

20. Among other things, said mortgages provide as follows:

> On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Data. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interest in connection with any bankruptcy proceedings initiated by or against Mortgagor.

21. The installment of principal and interest which became due on October 2, 2009, has not been paid although demand for the payment thereof has been made and the plaintiff, as the

B. Page 5

holder of the said note, mortgages, and guaranties, after giving all required notices, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; there is now due and owing and unpaid upon the said note, mortgages, and guaranties the sum of $2,796,466.75, together with interest thereon at the rate of 6% per annum from September 2, 2009, to October 2, 2009, and thereafter at the rate of 16% per annum, together with a reasonable sum as attorney's fees and the costs of this action.

FOR A SECOND CAUSE OF ACTION:

22. The allegations of paragraphs 1 through 21 supra., are incorporated herein as if fully restated.

23. Heretofore, on October 1, 2009, the Defendant Heritage Seven, LLC, made, executed and delivered to Ameris Bank a certain Mortgage Note in writing, wherein and whereby it promised to pay to the order of Ameris Bank the principal sum of $50,071.96, together with interest at the initial rate of 4.5% per annum on the unpaid balance; said principal and interest being payable on December 1, 2009; among other things the said Note provides as follows:

> If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the Interest Rate payable on the outstanding Principal balance of this Note. In such event, interest will accrue on the outstanding Principal Balance at 16.000 percent until paid in full.
>
> On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interest in connection with any bankruptcy proceedings initiated by or against me.

24. By its terms, said Note is secured by the mortgages described in paragraphs nine (9) and thirteen (13) supra.

Page 6.

25. The installment of principal and interest which became due on December 1, 2009, has not been paid although demand for the payment thereof has been made and the plaintiff, as the holder of the said note, mortgages, and guaranties, after giving all required notices, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; there is now due and owing and unpaid upon the said note, mortgages, and guaranties the sum of $50,071.96, together with interest thereon at the rate of 6% per annum from October 1, 2009, to December 2, 2009, and thereafter at the rate of 16% per annum, together with a reasonable sum as attorney's fees and the costs of this action.

WHEREFORE, Plaintiff prays judgment:

(1) That the amount due upon said notes and mortgages held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

(2) That the said Plaintiff's mortgages be declared first liens on the subject properties and that the said 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, with a reasonable sum as attorney's fees, and for the costs of this action.

(3) That the mortgaged premises be sold under the direction 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 notes and mortgages, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

(4) Plaintiff have judgment against the Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, for the full

B. Page 7

amount found to be due Plaintiff on the notes and mortgages with the right to enter a personal judgment against the Defendant Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, for any deficiency in this action remaining after the sale of the mortgaged premises.

(5) For such other and further relief as may be just and proper.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

BY: _____
BEN N. MILLER III
Attorneys for the Plaintiff
P. O. Box 58
Columbia, South Carolina 29202
(803) 252-0500

Columbia, South Carolina

June 14, 2010

B. - Page 8.

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

1. The amount of the debt is stated in the Complaint attached hereto.

2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.

3. If the original creditor is different from the current creditor, the creditor's law firm will provide the debtor with the name and address of the original creditor if requested by the debtor, in writing, within thirty (30) days of the receipt of this notice.

4. The debt described in the Complaint attached hereto and evidenced by the Note and Mortgage described therein will be assumed to be valid by the creditor's law firm unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.

5. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereon 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.

6. Written requests should be addressed to Ben N. Miller III, Attorney at Law, Post Office Box 58, Columbia, South Carolina 29202-0058.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 3/08/2013
Time Printed: 7:18AM
Printed By: ODJ

Date 7/09/2010 Time 2:20PM 12:00AM Duration 0.00 (hours) Code
Subject FW: Review Draft Staff Oana D Johnson
Client Linda Gibson MatRef Gibson MatNo
From Epting Office
To Linda A. Gibson
CC To Andrew K. Epting; George J. Kefalos; Rhonda H. McCraw; Sheri Towne; Oana Johnson; Michelle Endeman
Bcc To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status

User1 User3
User2 User4

SENT ON BEHALF OF DREW EPTING: Via Email and U.S. Mail:

Linda,

So, you and the entities that you control have been sued in Berkeley County. It had been our hope to sue first in Charleston County and involve Ameris in the larger complaint with Rolando, et al. While we could have gotten only so much of the suit involving the apartments in Charleston, Ameris could have sued, notwithstanding the Charleston County suit, in Berkeley because one piece of property subject to the mortgage is in Berkeley. I cannot yet file our claim or respond to the Berkeley suit as I cannot understand from your records whether the apartments are owned by Heritage Seven (I know this is how it is shown in the RMC office) or Seven Oaks, which you have indicated is the owner. While I wish your records were more centralized and understandable, we will overcome so that a deed can be given to Ameris. It is imperative, Linda, that the deed be from the true owner, which might not be the recorded owner. (Linda, I am sending this letter after you advised the Seven Oaks, LLC was created, but no transfer occurred, and I want to verify this first with Moore Van Allen.)

As we are in Berkeley and this case will move more quickly, I suggest that if a reference is sought to the Master that we agree. I also recommend that you allow me to associate Gedney Howe and John West. It will not cost you any more, as you have a contingency fee with George and me as to the Ameris litigation. Linda, as I explained, the fee with regard to Moore/ReMax/Rolando, is a percent of what is collected so there will be funds available to pay the fee. With Ameris, the fee is based on what is actually saved. So, for example, assume that Ameris seeks principal, interest, and fees of $3MM and we convince the judge that, because of Ameris' conduct, they should only get the property (which will have been deeded to them), which was worth $1.5MM at the time it was deeded (and I use this by way of example only as you knew the offers have been substantially less), your contingency is on the $1.5MM savings, but you have no money coming in to pay it. As I said, we will work this so that the fee would not be due until the conclusion of the Charleston County suit; however, Linda, your portion of any recovery from the Charleston County litigation may or may not be sufficient to pay the fee for the Berkeley litigation, so it would entail your coming up with the funds.

EXHIBIT
tabbies
#8

Linda, while there may be opportunities to settle this case in the future, one of your options is to deed some other property to them or give them a mortgage on the property they requested. I know you did not want to do it when the settlement offer came in, but it is an option. Yes, you lose valuable property given you by your father, but you have a tough case with Ameris and your sanity is worth something. I will call Rob Papa about the foreclosure hearing and see what is up in August.

With kindest regards,

Drew

Roni Burk

Legal Assistant to Drew Epting

3 State Street, Charleston, SC 29401

p: 843.377.1871

f: 843.377.1310

office@epting-law.com

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this in error, or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Ameris Bank Plaintiff, vs. Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, Heritage Seven, LLC and Access Portable Toilets, Inc., Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2010-CP-08-2134 ANSWER & COUNTERCLAIM

FILED
2010 AUG 18 AM 9:46
CLERK OF COURT
BERKELEY COUNTY, SC

Defendants Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust and Heritage Seven, LLC, answering the Complaint of the Plaintiff, allege and say as follows:

1. Defendants admit the allegations contained in paragraph 1 of the Complaint.
2. The allegations contained in paragraphs 2 and 3 of the Complaint call for legal conclusions, and Defendants are not required to admit or deny said allegations.
3. In response to the allegations contained in paragraphs 4, 8, 9, 12, 13, 16, 17, 18, 19, 20, 23 and 24, Defendants crave reference to the documents themselves.
4. Defendants admit the allegations contained in paragraph 5, 6, 10, 11, 14, and 15 on information and belief.
5. In response to the allegations in Paragraph 7, Defendants re-allege Paragraphs 1 through 4 of its answer as repeated verbatim.
6. Defendants admit so much of the allegations of paragraph 21 as alleges that the principal and interest which became due on October 2, 2009 were not paid and demand was made

EXHIBIT
#9

by Plaintiff. The rest of the allegations call for a legal conclusion and Defendants are not required to admit or deny said allegations.

7. In response to the allegations in Paragraph 22, Defendants re-allege Paragraphs 1 through 6 of its answer as repeated verbatim.

8. Defendants admit so much of the allegations of paragraph 25 as alleges that the principal and interest which became due on October 2, 2009 were not paid and demand was made by Plaintiff. The rest of the allegations call for a legal conclusion and Defendants are not required to admit or deny said allegations.

9. Each and every allegation not specifically admitted or otherwise explained is denied.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF FIRST COUNTERCLAIM
(Negligent Misrepresentation)

10. Plaintiff had a pecuniary interest in making certain representations to Defendants as they were made in the course of the Plaintiff's business, profession, and/or employment, and they stood to gain financially from the transactions in question.

11. Plaintiff had a duty to be fair, complete, reasonable and accurate in their representations.

12. Plaintiff and its agents breached this duty by representing to the Defendants that the purchase price of the property was market value and that it was a suitable investment for Defendants when in fact it was not.

13. Plaintiff, experienced in matters such as these, knew or should have known of the falsity of the representations/omission made to the Defendants; or made said representations/omissions with reckless disregard for the truth and intended that the representations be acted upon.

14. Said representations/omissions were material.

15. Plaintiff induced Defendants into entering into a contract for the purchase of the Otranto property.

16. Defendants did not know that said representations were false, relied on the misrepresentations to their detriment, and had the right to so rely thereon. Defendants would not have undertaken the written agreements if they had known of the falsity of the representations of the Plaintiff.

17. As a direct and proximate result of the Plaintiff's fraudulent and/or negligent misrepresentations the Defendants' have been injured and suffered damages. Defendants are entitled to a judgment against the Plaintiff for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by this Court.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF THIRD COUNTERCLAIM (Civil Conspiracy)

18. The foregoing paragraphs are incorporated herein by reference.

19. By and through the conduct alleged herein, the Plaintiff, together with others, formed a combination for the purpose of injuring the Defendant.

20. The conspirators committed overt acts in furtherance of the conspiracy as aforesaid.

21. In addition to the damages caused by the Plaintiff's fraudulent and other improper conduct as alleged herein, damage to the Defendants as a result of the overt acts done pursuant to the combination has caused the Defendants to have to incur substantial legal fees in defending this action, have caused Defendant Gibson physical manifestations of loss of sleep, stress, nervousness, and other physical manifestations, and such other special damages as the evidence may show.

22. As a direct and proximate result of the Plaintiff's civil conspiracy, the Defendants have been injured and suffered damage. Defendants are entitled to a judgment against the Plaintiff for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by this Plaintiff and others, in an amount determined by the trier of fact.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF THIRD COUNTERCLAIM (Equitable Relief)

23. The foregoing paragraphs are incorporated herein by reference.

24. The Plaintiff's conduct toward the Defendants was inequitable so that this Court should relieve the Defendants of the obligations of the note and mortgage, and enter an award that is equitable considering the Plaintiff's and its agents conduct.

25. In conjunction with this claim the Defendants herein tender the deed to the Otranto property to the Plaintiff together with the advice that the Defendants will no longer insure the property, expressly reserving their claims herein, collect the rent, or pay the taxes. The Defendants will cooperate fully so that this transaction can be accomplished without detriment to the Plaintiff.

WHEREFORE, the Defendants **LINDA A. GIBSON formerly known as Linda Ann Avinger, individually and as Trustee of the Paul William Gibson Family Trust, and HERITAGE SEVEN, LLC** pray for judgment against the Plaintiff **AMERIS BANK** for actual, special, consequential, treble, and punitive damages to the fullest extent allowed by law in the amount determined by the trier of fact, for the costs of this action, for such equitable relief as the Court may deem appropriate, and for such other relief as this Honorable Court deems just, prudent, and proper.

Respectfully Submitted:

George J. Kefalos, Esquire
GEORGE J. KEFALOS, P.A.
3 State Street
Charleston, SC 29401
P: 843-722-6612
F: 843-377-1310
George@kefaloslaw.com

Andrew K. Epting, Jr., Esquire
ANDREW K. EPTING, JR., LLC
3 State Street
Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com

On this 30 day of July 2010

Charleston, SC

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, First Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Telephone (803) 404-6900
Facsimile (803) 404-6901

FACSIMILE MESSAGE

The information contained in this facsimile message is subject to attorney-client privilege and/or attorney work product privilege and is confidential information intended only for the use of the individual or entity named herein. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original facsimile message to us at the above address via the U.S. Postal Service. Thank you.

DATE: August 11, 2010 **TIME SENT:**

TO: Andrew K. Epting **PHONE NO:**
FAX NO: 843.377.1310

FROM: Ian D. McVey

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

CLIENT/MATTER NUMBER: 5565.002

IN RE: Heritage Seven, LLC

COMMENTS:

Please call (803) 404-6900 x_____ if you have any questions or comments.
Transmitted by: Laura Hood

EXHIBIT #10

Ian D. McVey - Attorney
803-404-6900
IanMcVey@callisontighe.com

CALLISON TIGHE

August 12, 2010

VIA FACSIMILE AND U.S. MAIL
Andrew K. Epting, Jr.
Andrew K. Epting, LLC
3 State Street
Charleston, South Carolina 29401

Re: Heritage Seven, LLC
Our File No.: 5565.002

Dear Drew:

I enjoyed speaking with you earlier yesterday. As you know, the Note, Mortgage and Assignment of Leases and Rents that are the subject of the above-referenced matter have been transferred and assigned to my client, Galt Valley, LLC. What follows are the demands my client has asked me to make that you and I discussed yesterday.

While I know your client has tendered a deed to this property, there are some problems with doing so. First of all, the deed does not seem to be properly executed nor does it convey the property to the correct lender. I would draw your attention to the signature block for Heritage Seven, LLC as well as the probate. Second of all, my client has not accepted said deed and, at this point, I would not recommend it do so until we work out a resolution.

As I am sure you are aware, the mortgage dated November 2, 2007 and recorded on November 6, 2007 in the Office of the Register of Mesne Conveyances for Charleston County in Book L 643 at page 739 (hereinafter "Apartment Complex Mortgage") provides for a right of entry to the Lender for the purposes of inspection of the collateral, in this case the real property located at 2625 Otranto Road ("Apartment Complex"). Please consider this correspondence a demand for entry under the Mortgage for the purposes of inspection of the Apartment Complex. To that end, I would appreciate you providing some dates two (2) weeks from the date of this correspondence that are convenient for a representative of Heritage Seven, LLC to meet my client's representatives for an inspection of the property.

As you are probably also aware, both the Apartment Complex Mortgage and Assignment of Rents and Leases dated November 2, 2007 and recorded on November 6, 2007 in the Office of the Register of Mesne Conveyances for Charleston County in Book O 643 at Page 226 ("Apartment Complex Assignment") provide for, upon default and demand, payment of all rents, profits, income, and the like to the Lender, i.e. Galt Valley, LLC. Please let this correspondence further serve as a demand for payment of all rents, income, profits, etc. pursuant to the Apartment Complex Mortgage and Assignment.

Likewise, the Mortgage encumbering the real property located at 316 Klister Lane. ("Cell Tower Property") dated November 2, 2007 and recorded on November 7, 2007 in the Office of the Register of Deeds for Berkeley County in Book 6975 at Page 204 ("Cell Tower Mortgage") and the Assignment of Rents and Leases dated November 2, 2007 and recorded on November 7, 2007 in Book 6975 at Page 212 ("Cell Tower Assignment") both provide for, upon default and demand, payment of all rents, profits, income, and the like to Galt Valley, LLC. Please also consider this correspondence a demand for those profits, rents, income, etc. pursuant the Cell Tower Mortgage and Assignment.

All payments should be made to Galt Valley, LLC c/o Callison Tighe & Robinson, LLC, attention Ian D. McVey, Esquire, P.O. Box 1390, Columbia, South Carolina 29202 and should commence immediately. If your client is unable to comply with this request, please let me know so I can take appropriate action.

Your attention to the foregoing is greatly appreciated, and I look forward to working with you on this matter. Of course, should you have any questions or comments, please do not hesitate to contact me.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey

IDM:lfh

Charleston Co
NORTHWOODS ESTATES

STATE OF SOUTH CAROLINA)) COUNTY OF BERKELEY)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No. 2010-CP-08-2134
Galt Valley, LLC, Plaintiff, v. Linda A. Gibson, formerly known as Linda Ann Avigner, Individually and as Trustee of the Paul William Gibson Family Trust, Heritage Seven, LLC and Access Portable Toilets, Inc., Defendants.	**NOTICE OF MOTION AND MOTION FOR APPOINTMENT OF RECEIVER**
Linda A. Gibson, formerly known as Linda Ann Avigner, Individually and as Trustee of the Paul William Gibson Family Trust and Heritage Seven, LLC, Counterclaimants, v. Ameris Bank, Counterclaim Defendant.	

FILED
2010 AUG 27 PM 4:14
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: ANDREW K. EPTING, JR. AND GEORGE J. KEFALOS, ATTORNEYS FOR DEFENDANTS HERITAGE SEVEN, LLC AND LINDA A. GIBSON FORMERLY KNOWN AS LINDA ANN AVINGER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; ROBERT E. STEPP, ATTORNEY FOR AMERIS BANK:

YOU WILL PLEASE TAKE NOTICE that within ten (10) days or as soon as this motion can be heard, the Plaintiff, Galt Valley, LLC (hereinafter "Plaintiff"), will move this Honorable Court for an order appointing a receiver, pursuant to S.C. Code Ann. § 15-65-10 *et seq.*, for Defendant

EXHIBIT #11

Heritage Seven, LLC ("Heritage Seven") and the real property described below ("Subject Property"). This motion is based upon the pleadings filed with the Court, such statutory authority and case law as is applicable, the arguments of counsel and the following:

1. The Plaintiff is the owner and holder of that certain Note ("Note") dated January 9, 2009 given by Heritage Seven to Ameris Bank by virtue of an Allonge ("Allonge") dated July 14, 2010, true and accurate copies of which are attached hereto as **Exhibits A and B**;

2. The Plaintiff is the owner and holder of that certain Mortgage ("Mortgage") given by Heritage Seven to Ameris Bank dated November 2, 2007 and recorded on November 6, 2007 in the office of the Register of Mesne Conveyances for Charleston County on in Book L 643 at page 739 by virtue of that certain Assignment of Mortgage ("Assignment of Mortgage") dated July 14, 2010 and recorded on August 3, 2010 in the office of the Register of Mesne Conveyances for Charleston County in Book O 136 at Page 540, true and accurate copies of which are attached hereto as **Exhibits C and D**;

3. The Plaintiff is the owner and holder of that certain Assignment of Leases and Rents ("Assignment of Leases and Rents") dated November 2, 2007 and recorded on November 6, 2007 in the office of the Register of Mesne Conveyances for Charleston County in Book O 643 at Page 226 by virtue of the Assignment of Mortgage. A true and accurate copy of said Assignment of Leases and Rents is attached hereto as **Exhibit E** (all of the foregoing documents shall be referred to collectively herein as "Loan Documents");

4. The Subject Property is described as follows:

> ALL that certain tract, piece or parcel of land with improvements thereon in Northwood Estates containing 3.633 acres, situate, lying and being in the County of Charleston, State of South Carolina, as shown and designated on a plat made by

Sigma Engineers, Inc., which plat is dated April 14, 1971 and was duly recorded in the RMC office for Charleston County on April 28, 1971 in Plat Book AA, Page 37. The exact property herein conveyed is as shown on the aforesaid plat as "Tracts A & B". The said tracts having such size, shape and dimensions as will be shown by reference to the aforesaid plat.

5. The Mortgage provides in pertinent part:

> At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain appointment of a receiver pursuant to S.C. Code § 15-65-10, et seq. or as otherwise permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or receiver may collect any rents and profits from the collateral and may rent, sell operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or there should be a sale of the collateral, Mortgagor, or any other person in possession of the collateral, shall become a tenant at will of the Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

6. The Assignment of Leases and Rents provides as follows:

> On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of the Lender to take possession Property and Leases, with power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.

7. The Plaintiff is informed and believes, based upon representations of counsel for Heritage Seven, that the Subject Property is in peril. Specifically, the Plaintiff is informed and believes that rents are going uncollected, fixtures are being removed and the Subject Property is being vandalized by not only its inhabitants but other individuals. The Plaintiff is further informed

and believes that the Subject Property is value is rapidly declining due to mismanagement.

8. Therefore, the Plaintiff would respectfully submit that it is entitled to an order of this Court appointing a receiver who shall be empowered to take control of the Subject Property, collect rents, make necessary repairs, and take all such steps authorized by the Mortgage, the Assignment of Leases and Rents and South Carolina law.

9. The Plaintiff would further submit that, due the rapidly deteriorating condition of the Subject Property, it is entitled to have its motion heard on an expedited basis.

10. Counsel for the Plaintiff has consulted with counsel for Ameris Bank who has no objection.

RESPECTFULLY SUBMITTED,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey
P.O. Box 1390
Columbia, South Carolina 29202
Tel. (803)404-6900
Fax (803)404-6901

Attorney for Plaintiff Galt Valley, LLC

Rule 11 Certification:

The undersigned counsel for the Plaintiff certifies that, prior to filing this Motion for Protective Order, he made a good faith attempt to consult with the Counsel for the Defendants Heritage Seven, LLC and Linda A. Gibson, formerly known as Linda Ann Avinger, Individually and as Trustee of the Paul William Gibson Family Trust in order to avoid the necessity of filing this motion, to no avail.

Ian D. McVey, Counsel for the Plaintiff

Tamekia Hunter

From:	Andrew K. Epting <AKE@epting-law.com>
Sent:	Monday, September 20, 2010 4:05 AM
To:	Ian Mcvey; George J. Kefalos
Cc:	Stepp, Robert E.; Michelle Endemann; Sheri Towne; Epting Office
Subject:	RE: Galt Valley, LLC v. Heritage Seven, LLC

Ian, we do not object but will be filing our own motion and want it heard the same day. It will involve our efforts to deed the property and that a receiver is not needed.

From: Ian Mcvey [mailto:IanMcvey@callisontighe.com]
Sent: Friday, September 17, 2010 1:30 PM
To: George J. Kefalos; Andrew K. Epting
Cc: Stepp, Robert E.
Subject: Galt Valley, LLC v. Heritage Seven, LLC

Gentlemen, please be advised that the hearing on the Plaintiff's Motion for Receiver has been moved up to September 29, 2010 at 11:30 AM before the Master-in-Equity for Berkeley County. I requested this re-scheduling due to the rapidly deteriorating condition of the Charleston Property. I have a BPO which I am happy to provide to you which indicates that one of the buildings has been condemned and another should be condemned. The BPO also indicates that the units are being vandalized and need to be secured. The BPO as well as my conversations with the agent lead me to believe that this motion must be heard as soon as possible.

Further, as my demand for payment under the assignment of leases and rents has gone unanswered, I think it is necessary to also file a motion for a receiver for the Berkeley County Property as well. I intend to have that motion heard on the same day.

Drew, I understand you are out of the country until the end of the month, and I hope you understand that I am not trying to spring this on you while you are away. However, I think it is imperative that these matters be addressed as soon as possible.

I understand George is named as co-counsel and should be able to represent your clients.

Bobby, I assume you have no objection to my motion. Please let me know if you do.

Please do not hesitate to contact me should you wish to discuss resolving these matters.

Thanks, Ian.

Ian D. McVey
Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390
Columbia, SC 29202-1390
P: 803.404.6900 **F:** 803.404.6901
Email: IanMcVey@callisontighe.com

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient,

EXHIBIT tabbies #12

JRD R45 CALLISON 00656

you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, First Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Telephone (803) 404-6900
Facsimile (803) 404-6901

FACSIMILE MESSAGE

The information contained in this facsimile message is subject to attorney-client privilege and/or attorney work product privilege and is confidential information intended only for the use of the individual or entity named herein. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original facsimile message to us at the above address via the U.S. Postal Service. Thank you.

DATE:	October 18, 2010	TIME SENT:
TO:	Andrew K. Epting	FAX NO: 843.377.1310
CC:	George Kefalos	FAX NO: 843.377.1310
	John S. West	FAX NO: 843.761.~~5027~~ 5627
	Gedney M. Howe, III	FAX NO: 843.722.2140
FROM:	Ian D. McVey	

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

CLIENT/MATTER NUMBER: 5565.002

IN RE: Please see attached letter.

COMMENTS:

Galt Valley VA
Jm 10/19/10

Please call (803) 404-6900 x_____ if you have any questions or comments.
Transmitted by: Laura Hood

EXHIBIT #13

Ian D. McVey - Attorney
803-404-6900
IanMcVey@callisontighe.com

CALLISON TIGHE

October 18, 2010

VIA FACSIMILE (843.377.1310)
Andrew K. Epting, Jr.
Andrew K. Epting, LLC

Re: Galt Valley, LLC v. Linda A Gibson, *et al.*
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

As always it was a pleasure seeing you at the hearing the other day. I have been discussing with my client your proposal to deed over the property in the above-referenced matter. However, I keep getting hung up on what do we do about the remainder of the debt. Obviously, the values of both properties are significantly low in comparison to the debt total. By my math, there would be something well in excess of a million dollar deficiency.

Therefore, I am going to put it on you and your client for a proposal to try and resolve this matter. I believe that my client would be willing to accept deeds for both properties (or in the alternative, a friendly foreclosure to wipe out any junior liens); however, I cannot recommend that until such time as you provide me proposal as to what to do with the remainder of the debt after the collateral is liquidated.

Please give this matter some thought and get in touch with me. I will remind you that I believe we have ten (10) days to submit briefs on the issues that you raised at the hearing, "deed in reduction." Therefore, time is short to resolve this matter.

I look forward to hearing from you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile 843.377.1310)
John S. West, Esquire (via facsimile 843.761.5027)
Gedney M. Howe, III, Esquire (via facsimile 843.722.2140)

Ian D. McVey - Attorney
803-404-6900
IanMcVey@callisontighe.com

CALLISON TIGHE

FOR SETTLEMENT PURPOSES ONLY

October 25, 2010

VIA FACSIMILE (843.377.1310)
Andrew K. Epting, Jr.
Andrew K. Epting, LLC

Re: Galt Valley, LLC v. Linda A Gibson, *et al.*
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

As of October 22, 2010, a total of $3,035,678.10 is owed pursuant to the terms of the Notes, Guaranties, and Mortgage. Breakdowns for each loan follow:

Loan #1:

Principal Balance:	$2,796,466.75
Interest to October 22, 2010: Per Diem, $349.5563437	$146,813.66
Late Fees:	$300.00
Property Taxes Paid:	$22,382.46
Appraisal:	$150.00
Costs of Collection:	$1,169.10
Attorney's Fees:	$9,367.00
Total for Loan #1:	**$2,976,648.97**

Loan #2:

Principal Balance:	$50,071.96
Interest to October 22, 2010: Per Diem, $22.2542044	$8,857.17
Late Fees:	$100.00
Total for Loan #2:	**$59,029.13**

Based upon my client's valuations of the properties in question, the collateral has a total value of $1,338,000.00. This is based upon a value for 2625 Otranto Road of $1,000,000.00 and a value for 615 Klister Lane of $338,000.00. You will recall that Geoff Southerd testified that the value of 2625 Otranto Road was $750,000.00; however, for purposes of this letter, my client is assigning it a value of $1,000,000.00. This leaves $1,697,678.10 deficiency for which your clients are liable, jointly and severally.

With the foregoing as a basis, my client is willing to resolve this matter on the following terms:

a. Your client will execute a non-merger deed-in-reduction for both properties in favor of Galt Valley, LLC or a related entity including an assignment of all leases, contracts, rental agreement, or the like currently in place for both properties. In the event that a title update reveals any further liens, your client will consent to foreclosure with a waiver of all defenses as they apply to Galt Valley, LLC;

b. Your client will execute a new promissory Note in the total amount of $1,500,000.00 in favor of Galt Valley, LLC. Said Note shall have a term of twenty (20) years with interest accruing at five (5%) percent per anum with monthly payments of principal and interest in the amount of $9,899.34;

c. Your client will execute whatever documents are necessary to ensure Galt Valley, LLC has a first priority lien on sufficient unencumbered collateral to secure the Note, including but not limited to Mortgages, UCC Liens, and/or Assignments of Rents and Leases; and

d. Linda Gibson will execute Guaranty Agreements on behalf of herself and the Paul William Gibson Family Trust guaranteeing payment and performance of the Note by the borrower.

Assuming the above terms are acceptable and no other liens have been filed, the parties will further agree to dismiss all claims against one another as they relate to the Notes, Guaranties and Mortgages which are the subject of this action. I would appreciate you presenting this offer to your client and letting me know something by the end of the week.

This correspondence is for settlement purposes only. Nothing herein shall be construed to be an admission by the Plaintiff nor a waiver of any right, remedy, defense or cause of action available to Galt Valley, LLC.

I look forward to hearing from you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile 843.377.1310)
John S. West, Esquire (via facsimile 843.761.5027)
Gedney M. Howe, III, Esquire (via facsimile 843.722.2140)

TECKLENBURG & JENKINS, LLC
PO BOX 20667
CHARLESTON, SC 29413

PH:(843) 534-2628 FAX:(843) 534-2629
FEDERAL ID No. 57-1121025

Linda Gibson
133 Horse Trail Road
St. George, SC
29477

November 19, 2010

File #: 1104.01
Inv #: ~~4649~~

Attention: Linda Gibson

RE: Newell, et al v. Gibson, et al

Professional Services Rendered Through Oct 31/10

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Dec-02-09	CON. WITH OPPOSING COUNSEL JOE FARRELL RE: LAND PURCHASE FROM SCSPA.	0.20	30.00	WJJ
Dec-03-09	TELEPHONE CALL WITH LINDA GIBSON RE: FUNDS FOR CLOSING AND OTHER POSSIBLE OPTIONS.	0.20	30.00	WJJ
Dec-04-09	TELEPHONE CALL WITH LINDA GIBSON ABOUT FINANCIAL STATUS AND POSSIBLE OPTIONS; REVIEW OF EVALUATION MATERIALS, TMS MAPS, AND OTHER DOCUMENTATION TO DETERMINE THE VALUE OF EACH PARCEL.	0.50	75.00	WJJ
Dec-07-09	TELEPHONE CALL WITH JOE FARRELL REPRESENTING SCSPA RE: SALE OF LAND TO GIBSON.	0.20	30.00	WJJ
Jan-04-10	TELEPHONE CALL WITH OPPOSING COUNSEL RE: OPTIONS FOR PURCHASING PARCELS.	0.20	30.00	WJJ
Jan-05-10	TELEPHONE CALL WITH CLIENT RE: SCSPA OPTIONS AND TIMELINE.	0.20	30.00	WJJ

EXHIBIT #15

Jan-08-10	LISTEN TO VOICEMAIL FROM CLIENT; TELEPHONE CALL TO CLIENT RE: OPTIONS FROM SCSPA.	0.20	30.00	WJJ
Jan-15-10	TELEPHONE CALL WITH JOE FARRELL FROM SCSPA RE: POSSIBLE OPTIONS FOR LAND PARCEL PURCHASE.	0.20	30.00	WJJ
Jan-19-10	TELEPHONE CALL WITH JOE FARRELL REQUESTING 6 MONTH EXTENSION FOR PURCHASING PARCEL.	0.20	30.00	WJJ
Mar-08-10	TELEPHONE CALL WITH JOE FARRELL OF SCSPA RE: OPTIONS FOR PURCHASING LAND FROM SCSPA.	0.20	30.00	WJJ
Mar-10-10	TELEPHONE CALL WITH LINDA GIBSON RE: DATES AND OPTIONS FOR PURCHASING PARCELS; TELEPHONE CALL TO JOE FARREL RE: SAME.	0.20	30.00	WJJ
Sep-27-10	TELEPHONE CALL WITH CLIENT RE: STATUS.	0.20	30.00	WJJ
Oct-25-10	T/C W/L. GIBSON;	0.30	67.50	PFT
Oct-28-10	CON. WITH EAL RE: CLIENT AND CONFERENCE CALL WITH DREW EPTING.	0.20	30.00	WJJ
Oct-29-10	CONFERENCE W/KEFALOS AND EPTING;	0.80	180.00	PFT
	Totals	4.00	$682.50	

*#277.50

Summary by Timekeeper

Timekeeper	Category	Rate	Hours	Amount
Paul F. Tecklenburg	Senior Partner	$225.00	1.10	$247.50
W. Joe Jacumin, Jr.	Associate	$150.00	2.90	$435.00
Totals				$682.50

DISBURSEMENTS

Photocopy Charges	1.00

Scan Charges	0.50	
Totals	$1.50	
Total Fee & Disbursements		**$684.00**
Balance Forward		$8,913.81
Balance Now Due		**$9,597.81**

TAX ID Number 57-1121025

PAYABLE UPON RECEIPT

All unpaid invoices are subject to monthly interest charges of 1 1/2 %.

TECKLENBURG & JENKINS, LLC
PO Box 20667
CHARLESTON, SC 29413

PH:(843) 534-2628 FAX:(843) 534-2629
FEDERAL ID No. 57-1121025

Linda Gibson
133 Horse Trail Road
St. George, SC
29477

January 27, 2011

File #: 1104.01
Inv #: 4724

Attention: Linda Gibson

RE: Newell, et al v. Gibson, et al

Professional Services Rendered Through Dec 31/10

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-05-10	DRAFT AND REVISE GIBSON AGREEMENT;	1.30	292.50	PFT
Nov-08-10	MEETING W/ GIBSON;	1.50	337.50	PFT
Nov-09-10	T/C W/ GIBSON;	0.40	90.00	PFT
Nov-17-10	REVIEW GIBSON FILE; CONFER W/ KEFALOS; T/C W/ EPTING; T/C W/ HOWE; REVISE FEE AGREEMENT; NUMEROUS EMAILS W/ KEFALOS' OFFICE;	3.20	720.00	PFT
Dec-03-10	T/C W/GIBSON; REVIEW MORTGAGE; MEETING W/GIBSON;	1.00	225.00	PFT
Dec-06-10	CONFERENCE CALL W/GIBSON; LETTER TO GIBSON;	1.00	225.00	PFT
	Totals	8.40	$1,890.00	

Summary by Timekeeper

Timekeeper	Category	Rate	Hours	Amount
Paul F. Tecklenburg	Senior Partner	$225.00	8.40	$1,890.00
Totals				$1,890.00

DISBURSEMENTS

	Photocopy Charges	5.00	
	Scan Charges	0.30	
Dec-31-10	Postage Expense DECEMBER 2010	0.44	
	Totals	$5.74	
	Total Fee & Disbursements		$1,895.74
	Balance Forward		$9,097.81
	Balance Now Due		**$10,993.55**

TAX ID Number 57-1121025

PAYABLE UPON RECEIPT

All unpaid invoices are subject to monthly interest charges of 1 1/2 %.

Ian D. McVey - Attorney
803-404-6900
ianMcVey@callisontighe.com

FILE COPY

CALLISON TIGHE

November 4, 2010

VIA FACSIMILE AND US MAIL
Andrew K. Epting, Jr.
Andrew K. Epting, LLC
3 State Street
Charleston, South Carolina 29401

EXHIBIT
#16

Re: **Galt Valley, LLC v. Linda A Gibson, *et al***
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

I am in receipt of your letter dated November 3, 2010. I must say that I am disappointed that your client does not want to attempt to negotiate a resolution in this matter. That being said, if she does not want to do so, that is certainly her right.

I am further disappointed by the change of your position in regards to the payment of the rent. It was my specific recollection that you agreed to pay the rent into this firm's trust account pending the resolution of this matter. Unfortunately, that no longer seems to be the case. Therefore, I am withdrawing any consent that I gave at the hearing for you to amend your pleadings and would suggest that you need to file a motion in that regard.

I will discuss the issue of a deed with my client; however, if your client does not want to negotiate, I am not sure why my client would accept a deed to the property.

If you would like to discuss this further, I am always happy to speak with you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile and US Mail)
John S. West, Esquire (via facsimile and US Mail)
Gedney M. Howe, III, Esquire (via facsimile and US Mail)

Ian D. McVey - Attorney
803-404-6900
IanMcVey@callisontighe.com

CALLISON TIGHE

FOR SETTLEMENT PURPOSES ONLY

November 8, 2010

VIA FACSIMILE AND US MAIL
Andrew K. Epting, Jr.
Andrew K. Epting, LLC
3 State Street
Charleston, South Carolina 29401

Re: **Galt Valley, LLC v. Linda A Gibson, *et al.***
Case No.: 2010-CP-08-2134
Our File No.: 5565.002

Dear Drew:

I have had a chance to discuss the issue of a deed in reduction with my client further. Please be advised that my client has authorized me to make the following settlement offer:

1. Your clients will execute deeds in favor of Galt Valley, LLC or a related entity for all properties subject to Galt Valley, LLC's liens. In the event that a title update indicates further liens, your clients will consent to foreclosure with no deficiency judgment being rendered against your clients;

2. Your clients will execute such documents as are necessary to assign any and all leases currently in place on the properties to Galt Valley, LLC or a related entity;

3. Your clients will execute a bill of sale for any and all remaining furniture, fixtures, equipment, and the like located on both properties;

4. My client will forgive the remainder of the debt and waive any right to a deficiency judgment against your clients;

5. My client will refrain from issuing a 1099 as to the remainder of the debt to your clients;

6. Our clients will execute a consent order of dismissal with prejudice as to the claims in this action solely as they apply to Galt Valley, LLC, Heritage Seven, LLC, Linda A. Gibson, and the Paul William Gibson Family Trust; and

7. The parties will execute a mutual release as to all claims, known and unknown, past, present and future, that arose or should have arisen out of this litigation, the loan transaction, etc.

EXHIBIT #17

Nothing herein is to be interpreted as a bar to any claims you may have against any other party to this litigation.

Please be advised that this is a final settlement offer made by my client, and it will expire at noon on Monday, November 15, 2010.

If this proposal is acceptable to your client, please indicate by signing below and having your client execute below. I will then prepare the necessary paperwork to memorialize the settlement.

This correspondence is for settlement purposes only. Nothing herein shall be interpreted to be a waiver of any claim, defense, cause of action or remedy available to my client.

I look forward to hearing from you.

With kind regards, I am

Yours truly,

CALLISON TIGHE & ROBINSON, LLC

Ian D. McVey

IDM:lfh

cc: George Kefalos, Esquire (via facsimile and US Mail)
John S. West, Esquire (via facsimile and US Mail)
Gedney M. Howe, III, Esquire (via facsimile and US Mail)

I accept and consent to the settlement proposed above on behalf of my clients Heritage Seven, LLC; Linda A. Gibson, Individually and as Trustee of the Paul William Gibson Family Trust.

Andrew K. Epting
Attorney for the Defendants

I accept the settlement proposal above.

Linda A. Gibson
Individually

Linda A. Gibson
As Trustee of the Paul William Gibson Family Trust

Linda A. Gibson
As Managing Member of Heritage Seven, LLC

STATE OF SOUTH CAROLINA)
) ATTORNEY-CLIENT CONTRACT
COUNTY OF CHARLESTON)

This attorney-client contract made this 18 day of November 2010, by and between Linda Gibson, hereinafter referred to as "CLIENT", and George J. Kefalos, Esq., Andrew K. Epting, Jr. Esq., Gedney Howe, III, Esq., and John West, Esq., hereinafter referred to as "LAW FIRM".

CLIENT hereby hires LAW FIRM to represent CLIENT in the defense of and pursuit of a counterclaim in a foreclosure action brought by Ameris Bank presently pending in Berkeley County, South Carolina, Case No. 2010-CP-08-2134. In that action, Ameris seeks to foreclose on a loan of approximately $3,000,000.00 and seeks a deficiency judgment against CLIENT. Two parcels of land are subject to a mortgage and are valued at approximately $1,300,000.00, leaving a potential deficiency judgment of $1,700,000.00.

For their services, LAW FIRM shall receive a fee based upon the total recovery according to the following schedules:

a. One-third (1/3) of all sums saved CLIENT from the deficiency amount claimed by Ameris, in the amount of $1,700,000.00.

In addition to the fees above, CLIENT will be responsible for paying the costs and expenses reasonably necessary and incurred by LAW FIRM. LAW FIRM will advance these costs during the prosecution of the case but will deduct them at the conclusion of the case from CLIENT'S portion of the proceeds following the payment of attorney's fees.

This obligation of CLIENT under this Contract shall be secured by a Mortgage to Gedney Howe III and John West on that certain real estate in Berkeley County, identified on Exhibit A attached hereto. LAW FIRM shall be entitled to enforce the obligations under

EXHIBIT #18

this Contract by foreclosure of the Mortgage only after the expiration of twelve (12) months from the later of (i) the date of final judgment (including final appeal) entered in a case pending in Charleston County Court of Common Pleas, captioned *Linda A. Gibson, et al v. Rolando V. Villavicencio, et al.*, Case No. 2008-CP-10-4282, or (ii) the date of final judgment (including final appeal) entered in a case pending in Berkeley County Court of Common Pleas, captioned *Galt Valley, LLC v. Linda A. Gibson, et al*, Case No. 2010-CP-08-2134.

Charleston, S. C.

Charleston, S. C.

Charleston, S. C.

Charleston, S. C.

Mondks Corner, S. C.

CLIENT

Linda Gibson

LAW FIRM

BY: _____
George J. Kefalos

BY: _____
Andrew K. Epting, Jr.

BY: _____
Gedney Howe, III

BY: _____
John West

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00024871 Vol: 8734 Ps: 255

53 2010 00024871

Instrument Number: 2010- 00024871
As
Mortgage

Recorded On: December 08, 2010
Parties: GIBSON LINDA
To
HOWE GEDNEY
Recorded By: ANDREW K EPTING JR LLC
Comment:

Billable Pages: 8
Num Of Pages: 13

** Examined and Charged as Follows: **

Mortgage	18.00
Recording Charge:	18.00

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:
Document Number: 2010- 00024871
Receipt Number: 304883
Recorded Date/Time: December 08, 2010 01:43:13P
Book-Vol/Pg: Bk-R Vl-8734 Pg-255
Cashier / Station: B Blake / Cash Station 7

Record and Return To:
ANDREW K EPTING JR LLC
4542 SUMMIT PLANTATION ROAD
MEGGETT SC 29449

EXHIBIT
tabbies
#19

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY) MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 6th day of December, 2010, by Linda Gibson (Mortgagor), whose address is 133 Horse Trail Road St. George SC, 29477 to Gedney Howe, Esquire and John West, Esquire (Mortgagees), whose addresses are P.O. Box 1034, Charleston SC 29401 and respectively PO Box 1869, Moncks Corner SC, 29461.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagees in the principal sum not to exceed Five Hundred Sixty Six Thousand Six Hundred and Sixty Six Dollars and Sixty Six Cents ($566,666.66), as evidenced by that certain Fee Agreement dated November 18, 2010, executed by Mortgagor and delivered to Mortgagees, the final payment of which is due pursuant to the FEE AGREEMENT (the "Fee Agreement") which by reference is made a part hereof to the same extent as though set out in full herein;

NOW, KNOW ALL MEN BY THESE PRESENTS, that the undersigned, in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said Fee Agreement; which with all its provisions is hereby made a part hereof, by reference; and also in consideration of Ten and No/100 ($10.00) Dollars to the said Mortgagor in hand well and truly paid, by the said Mortgagees, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Mortgagees, its successor and/or assigns, the following described property, to-wit:

SEE PROPERTY DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED BY THIS REFERENCE

TOGETHER with all the rights, privileges, interests, easements, tenements, hereditaments and appurtenances thereto belonging, and the rents, issues and profits thereof, and any and all improvements and fixtures now or subsequently attached to or used in connection with the mortgaged premises.

TO HAVE AND TO HOLD, all and singular, the Premises unto the said Mortgagees, its successors and/or assigns forever.

AND, the Mortgagor hereby bind themselves, their heirs, successors, executors and administrators, to procure or execute any further necessary assurances of title to the said premises, and also warrants and forever defends all and singular the said premises unto the said Mortgagees, their heirs and/or assigns, from and against them and their heirs, successors, executors and administrators and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagees the principal and interest payable under the Fee Agreement together with all other sums secured hereby, at the times and in the manner stipulated therein, and in all other instruments securing the Fee Agreement, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

THERE SHALL BE NO PREPAYMENT PENALTY.

AND IT IS AGREED, by and between the parties hereto, that the said Mortgagor, their heirs or administrators, shall keep the buildings erected, or to be erected on said premises, insured against loss or damage by fire, for the benefit of the said Mortgagees, for an amount not less than the full insurable value, in such company as shall be approved by the said Mortgagees, and shall deliver the policy to the said Mortgagees, and in default thereof, the said Mortgagees, their heirs and/or assigns, may effect such insurance and reimburse himself under this Mortgage for the expense thereof, with interest thereon, from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said Mortgagees, their heirs and/or assigns, shall be entitled to receive from the aggregate of the insurance moneys to be paid a sum equal to the amount of the debt secured by this Mortgage.

AND IT IS AGREED, by and between the said parties, that if the said Mortgagor, their heirs, executors, administrators or assigns, shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the Mortgagees, their heirs and/or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse themselves under this Mortgage for the sums so paid, with interest thereon, from the dates of such payments.

THE lien of this Mortgage shall secure the payment of any insurance costs or taxes paid by the Mortgagee on behalf of the Mortgagor to the same extent it secures payment of the Fee Agreement.

AND IT IS AGREED, by and between the said parties, that provided fifteen (15) calendar days advance written notice of default has been given and after said notice there remains any default in the payment of the interest on the said Fee Agreement, or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this Mortgage, that then the entire amount of the debt and all other sums secured, or intended to be secured hereby, shall forthwith become due, at the option of the said Mortgagee, their heirs, successors or assigns, although the period for the payment of the said debt may not then have expired.

ANY sums which shall not be paid when due, whether maturing by lapse of time or by reason of acceleration under the provisions of the Fee Agreement and whether principal,

interest or money owing for advancements by the holder pursuant to the terms of this Mortgage, shall bear interest at the rate provided in Fee Agreement until paid.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then and in that event, the said Mortgagee, their heirs or assigns, shall have the right to have a receiver appointed of the rents and profits of the above-described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings, and the execution of the said trust as receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the said parties, that should legal proceedings be instituted for the foreclosure of this Mortgage, or for any purpose involving this Mortgage, or should the debt hereby secured be placed in the hands of an attorney at law for collection, by suit or otherwise, that all costs and expenses incurred by the Mortgagee, their heirs, successors or assigns, including a reasonable counsel fee shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

NO delay by Mortgagees in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

THIS instrument is to be governed by and construed in accordance with the laws of the State of South Carolina and each of the remedies provided for herein shall be cumulative so that the right of the Mortgagee to exercise one or more of such remedies shall not be construed to limit or preclude the right of the Mortgagee to exercise any other remedy or remedies set forth herein.

PROVIDED, ALWAYS, and it is the true intent and meaning of the parties to these Presents, that when the said Mortgagors, their heirs, executors or administrators, shall pay, or cause to be paid, unto the said Mortgagee, its certain attorneys, their heirs or assigns, the said debt, with the interest thereon, if any shall be due, and also all sums of money paid by the said Mortgagee, their heirs, successors or assigns, according to the conditions and agreements of the said Fee Agreement, and of this Mortgage and shall perform all the obligations according to the true intent and meaning of the said Fee Agreement and Mortgage, and the conditions thereunder written, then this encumbrance shall cease, determine and be void, otherwise it shall remain in full force and virtue.

AND IT IS LASTLY AGREED, by and between the said parties that the said Mortgagors agree to hold and enjoy the said premises until default of payment shall be made.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first above written.

WITNESSES:

MORTGAGOR:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Mortgagor, sign, seal and as their act and deed, deliver the within written instrument and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 6th
day of December, 2010.

Notary Public for South Carolina
My Commission Expires:

MICHELLE N. ENDEMANN NOTARY PUBLIC SOUTH CAROLINA Comm. Exp. 01-14-2020

EXHIBIT "A"

All of that piece, parcel or tract of land, situate, lying and being near Cain Hoy, School District Number ONE, State and County aforesaid, MEASURING AND CONTAINING Five (5) acres, more or less, BUTTING AND BOUNDING as follows to wit:

North, by lands of Henry Jenkins;
East, by lands of Joe Smith;
South, by lands of Charlie Smith;
West, by lands of a man named Smith;

SAVING AND EXCEPTING a 0.47 acre parcel and a 1.44 acre parcel (Parcels A and B respectively) as more particularly described in that certain deed of Linda Ann A. Gibson A/K/A Linda Gibson A/K/A Linda Ann Gibson A/K/A Linda Anne Avinger A/KA Linda Ann Avinger, Grantor, to the South Carolina Ports Authority by deed dated January 27, 1998 and found of record in the Office of the Register of Deeds for Berkeley County in Book 1245 at Page 146, leaving a residual of the properties first described of 3.09 acres, more or less, according to the records of the Tax Assessor for Berkeley County.

Being the properties conveyed to Linda Ann Avinger, ALSO KNOWN AS LINDA Gibson by deed of Henry Jenkins, Sr. dated January 25, 1969 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A 198 at Page 5.

TMS# 271-00-01-003

ALSO

All that certain piece, parcel or lot of land, situate, lying and being on Family Cemetery Road (unpaved) in the Cainhoy Section, St. Thomas Parish, County of Berkeley, State of South Carolina, measuring and containing Three and one-half (3.5) acres, more or less, butting and bounding as follows, to wit; To the North by Grave Yard; West by lands now or formerly of Robert Martin, Heirs of Hannah Porcher and Ruben Logan; to the East by Heirs of Washington, and to the South by Heirs of Jack White.

Being the same property conveyed to George H. Avinger by deed of Rosabell Ford, Gussie Willis, Clayton Willis and Eula Logan, as heirs of Jack Bryant, dated February 23, 1967, recorded October 9, 1968, in Deed Book A-189, Page 142 in the RMC Office for Berkeley County; ALSO being the same property devised to Edwardine Avinger by Will of George Avinger dated April 9, 1975, the said George Avinger having died on July 22, 1978, and his Will having been admitted into Common Form in the Probate Court for Berkeley County as will appear by reference to the records in the Probate Court for Berkeley County in File No. 142-63.

Being a portion of the property conveyed to Linda Ann Avinger Gibson by Deed of Distribution of the Estate of Edwardine Avinger Case Number 95-ES-08-301 dated March 19, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book 1036 at Page 019.

TMS# 263-00-01-032

ALSO

All that certain piece, parcel or lot of land, situate, lying and being on Dickerson Road (unpaved) in the Cainhoy Section, St. Thomas Parish, County of Berkeley, State of South Carolina, measuring and containing Seventeen (17) acres, more or less, butting and bounding as follows, to wit: North by lands now or formerly of Pompey Grey, East by lands now or formerly of William Gaeliard, South by lands now or formerly of Phoebe Dickerson, and West by lands now or formerly of Luther Collins.

The above described property is also shown and designated as Tract B on a plat dated June 27, 1973, prepared by R.D. Guerry and entitled "TRACTS A AND B OWNED BY (A) THE HEIRS OF PHOEBE DICKERSON AND (B) CHARLIE O'NEAL, ST. THOMAS & ST. DENNIS TAX DISTRICT, HUGER AREA, BERKELEY COUNTY, SOUTH CAROLINA", said plat being recorded in Plat Book W, at Page 359 in the RMC Office for Berkeley County.

Being the same property conveyed to George H. Avinger, aka George Avinger, by deed of Charlie O'Neal dated January 12, 1978, recorded June 23, 1978, in Book A-356, Page 168 in the RMC Office for Berkeley County; ALSO being the same property devised to Edwardine Avinger by Will of George Avinger dated April 9, 1975, the said George Avinger having died on July 22, 1978, and his Will having been admitted into Common Form in the Probate Court for Berkeley County as will appear by reference to the records in the Probate Court for Berkeley County in File No. 142-63.

~~Being a portion of the property conveyed to Linda Ann Avinger Gibson by Deed of~~ Distribution of the Estate of Edwardine Avinger Case Number 95-ES-08-301 dated March 19, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book 1036 at Page 019.

TMS# 248-00-02-042

ALSO

All that certain lot, piece and parcel of land situated in St. Thomas Parish, State and County aforesaid, containing Six and one-fourth (6 and 1/4) acres, more or less, being a portion of the Shingler Plantation, Farm No. 15, on a plat of Shingler Plantation by T.A. Huguenin, dated January and April, 1872 and recorded in the R.M.C. Office in Charleston County in McCrady Book of Plats No. 6, at Page 14, BUTTING AND BOUNDING as follows to wit; North, by Solomon Bellinger Estate; East, by Mary Anne Baptist Church; South, by P.O. Parsons; and West, by Clouter Creek. SAVING AND EXCEPTING a 0.39 acre parcel and a 0.20 acre parcel, together 0.59 acres, (Parcels "B" and "D") in that conveyance by Linda Ann A. Gibson A/K/A Linda Gibson A/K/A Linda Ann Gibson A/K/A Linda Anne Avinger A/KA Linda Ann Avinger, Grantor to the South Carolina State Ports Authority by deed dated January 27, 1998 and found of record in the Office of the Register of Deeds for Berkeley County in Book 1245 at Page 146 and SAVING AND EXCEPTING FURTHER the parcel designated "LEASE PARCEL FOR COMMUNICATIONS TOWER" (now bearing TMS# 271-00-01-129) on a plat entitled "PLAT SHOWING A 100' RIGHT-OF-WAY DESIGNATED PARCELS "A" & "B", AND A 50' RIGHT-OF-WAY DESIGNATED PARCELS "C" & "D", PARCELS "B" & "D" BEING OWNED BY LINDA ANN GIBSON, PARCELS "A" & "C" BEING OWNED BY HEIRS OF BEN BELLINGER, PARCELS "A" THRU "D" ABOUT TO BE ACQUIRED BY THE SOUTH CAROLINA STATE PORTS AUTHORITY, PARCELS LOCATED IN SAINT THOMAS-SAINT DENNIS PARISH, BERKELEY COUNTY, SOUTH CAROLINA" prepared by Cornerstone Surveying & Engineering, Inc., dated June 6, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Plat Cabinet N at Page 86. Being a portion of the property conveyed by W.R. Detyens to Linda Ann Avinger by deed dated May 15, 1969 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A 261 at Page 40. Reference also that certain deed from New Mary Ann Baptist Church to Linda Ann Gibson dated May 24, 1985 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A616 at Page 220.

TMS# 271-00-01-037

ALSO

All of that certain piece, parcel, or lot of land, situate, lying and being in St. Thomas Parish, Berkeley County, State of South Carolina located approximately five miles from Cainhoy on Road S-8-33 and designated as Tract "A" on that certain survey by James E. Shuler dated August 13, 1982, and revised December 6, 1984, and entitled Plat of Tracts "A" & "B" Owned by W.R. Detyen and Sub-divided as Shown Linda Ann A. Gibson to be Conveyed as Shown Tract-"A: Linda Ann A. Gibson Tract-"B" W.R. Detyens, all of which will more fully appear by reference to said plat which was recorded December 7, 1984, in Cabinet E page 388, in the R.M.C. Office for Berkeley County, measuring and containing 10.05 acres, more or less, butting and bounding as follows: East on the Road designated as Road S-8-33 for a distance of 211.2 feet; South for 2,036 by land now or formerly of the heirs of Irene Fordham; West by Clouter Creek and North by Tract B, now of the Grantor for a distance of 2,064 feet. This conveyance is made subject to the rights, if any, of others in the dirt road shown on said plat. SAVING AND EXCEPTING all that lot, piece or parcel of land situate, lying and being in Berkeley County, South Carolina and designated as Lot E1, Total Area 2.930 AC. 127623 Sq. Ft. on a Plat entitled PLAT SHOWING THE COMBINATION OF LOT D1 & LOT E TO FORM LOT E1 OWNED BY LINDA ANN A. GIBSON ABOUT TO BE CONVEYED TO BARTONE ENTERPRISES, INC.- LOCATED ON THOMAS ISLAND, BERKELEY COUNTY, S.C. by Ashley Surveying, Inc., dated January 12, 1996 and recorded January 17, 1996 in CAB L, 303A (actual 303B) in the RMC Office for Berkeley County, SC. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat appear. Subject to the easement for ingress and egress as shown on said plat and on the plat entitled PLAT SHOWING 10.092 AC. OWNED BY BARTONE ENTERPRISES AND LOT D1 AND LOT E OWNED BY LINDA A. GIBSON ABOUT TO BE CONVEYED TO BARTONE ENTERPRISES-LOCATED ON THOMAS ISLAND, BERKELEY COUNTY, S.C., by Ashley Surveying, Inc., dated September 22, 1993 and recorded January 3, 1996 in CAB L, 291A in the RMC Office for Berkeley County, SC; SAVING AND EXCEPTING FURTHER all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on Daniels Island,

County of Berkeley, State of South Carolina, shown and designated as Lot D2, on a plat entitled: "SUBDIVISION PLAT OF LOT D, OWNED BY LINDA A. GIBSON, LOT D2 BEING CONVEYED TO CHRISTOPHER C. NORTON, LOCATED ON THOMAS ISLAND, BERKELEY COUNTY, SOUTH CAROLINA" and prepared by Paul C. Lawson, Jr., RLS, dated March 28, 1994, and recorded at Berkeley County RMC Office in Plat Book CAB K, at Page 248-E. Said lot having such size, shape, buttings, boundings and dimensions as are shown on said plat. Subject to all restrictions, reservations and easements of record; SAVING AND EXCEPTING FURTHER all that certain piece, parcel, or lot of land, situate, lying and being in St. Thomas Parish, Berkeley County, State of South Carolina, being a portion of the property designated as Marina Drive extending from road S-8-33 (Clements Ferry Road) a distance of approximately 999.49 feet and shown on a plat entitled "Plat showing: The Subdivision of Proposed Variable Width Right-of-Ways Across the Lands of Linda Ann A. Gibson, Designated Parcels "A" Thru "H" and Adjacent Easements" by Cornerstone Surveying and Engineering, Inc. dated July 28, 1997 and recorded January 13, 1998, in Plat Cabinet N at Page 88 in the RMC Office for Berkeley County, South Carolina; SAVING AND EXCEPTING FURTHER all of that certain piece, parcel or lot of land, situate, lying and being in Saint Thomas Parish, Berkeley County, South Carolina, a proposed right-of way (now bearing TMS# 271-00-01-122) on a plat of Cornerstone Surveying & Engineering, Inc., entitled 'PLAT SHOWING VARIABLE WIDTH RIGHT-OF-WAYS DESIGNATED PARCELS 'A" THRU "H" AND ADJACENT EASEMENTS, ALL OWNED BY LINDA ANN A. GIBSON ABOUT TO BE ACQUIRED BY THE SOUTH CAROLINA STATE PORTS AUTHORITY, LOCATED IN SAINT THOMAS - SAINT DENNIS PARISH, BERKELEY COUNTY, SOUTH CAROLINA," dated July 28, 1997, revised October 2, 1997, and recorded in the RMC Office for Berkeley County in Plat Cabinet N at page 88. Reference is craved to said Plat for a more complete description. The residual properties having been subdivided by various plats of record in the Office of the Register of Deeds and bearing TMS#'s 271-00-01-040; 271-00-01-084; 271-00-01-185 and 271-00-01-085, respectively. Being the same property conveyed to Delta Marine, Inc. by deed from W.R. Detyens dated January 23, 1985 and recorded in Book A590, Page 345, RMC Office for Berkeley County, South Carolina. Reference that certain deed

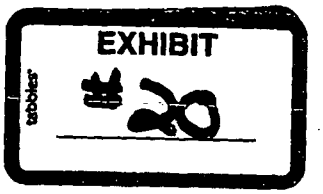
from Delta Marine, Inc. to Linda Ann A. Gibson dated January 23, 1985 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A590 at Page 348.

TMS#'s 271-00-01-040; 271-00-01-084; 271-00-01-185 and 271-00-01-085

ALSO

All that certain piece, parcel or lot of land, situate, lying and being on Clements Ferry Road in the Cainhoy Section, St. Thomas Parish, County of Berkeley, State of South Carolina, and shown and designated as Tract B containing 22.5 acres on a plat by James E. Shuler dated October 28, 1982, and revised by William H. Dennis on August 21, 1991, entitled "PLAT OF LAND DIVIDED AS SHOWN OWNED BY EDWARDINE AVINGER", recorded in Cabinet J, Page 302 on December 3, 1992, in the RMC Office for Berkeley County; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear and said plat being made a part and parcel of this conveyance by reference thereto.

Being the same property conveyed to Edwardine W. Avinger, aka Edwardine Avinger, by deed of Adeline R. Murphy dated February 12, 1992, recorded March 30, 1992, in Book 71, Page 194 in the RMC Office for Berkeley County. NOTE: Deed from Adeline R. Murphy to Edwardine W. Avinger, aka Edwardine Avinger, was executed pursuant to an Order of The Honorable William L. Shipley, Master-in-Equity for Berkeley County, dated April 17, 1991, which Order confirmed title in said property and authorized the conveyance of the above mentioned deed to Edwardine W. Avinger in proceedings filed



DISBURSEMENT STATEMENT

$850,000.00 SETTLEMENT PROCEEDS

FROM ROLANDO VILLAVICENCIO, RPV INVESTMENTS, LLC AND DPS OF CHARLESTON, INC d/b/a RE/MAX PROFESSIONAL REALTY

PROCEEDS:

Seven Oaks Apartments Proceeds, Check #100572105	$1,000.00
Heritage Seven LLC Proceeds, Check #100572106	$449,000.00
Linda A. Gibson Proceeds, Check #100572107	$400,000.00
TOTAL PROCEEDS RECEIVED	**$850,000.00**

ATTORNEY FEES & COSTS:

Attorney fees – Galt litigation	$566,666.00
Litigation Costs advanced by George J. Kefalos, PA	$21,245.00 ← ✓ okt
Litigation Costs advanced by Andrew K. Epting, Jr., LLC	$21,015.00
SUBTOTAL – ATTORNEY FEES & COSTS	**$608,926.00**
NET PROCEEDS TO LINDA GIBSON*	**$241,074.00***

LAG

*Released in consideration of consent to assignment and reduction of mortgage given originally to Gedney Howe and John West, recorded 12-8-2010, Instrument No. 2010-00024871

BK 17

Recorded On-2011-Mar-24 As-5369

Berkeley County
Cynthia B. Forte
Register of Deeds 00005369 Vol: 8868 Ps: 20
Moncks Corner 294616120

53 2011 00005369

Instrument Number: 2011- 00005369
As
Release of Mortgage

Recorded On: March 24, 2011
Parties: GIBSON LINDA
To
HOWE GEDNEY
Recorded By: GEORGE T KEFALOS
Comment: 8734/255

Billable Pages: 2
Num Of Pages: 4

** Examined and Charged as Follows: **

Release of Mortgage	8.00
Recording Charge:	8.00

EXHIBIT
#21

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:
Document Number: 2011- 00005369
Receipt Number: 318872
Recorded Date/Time: March 24, 2011 11:13:20A
Book-Vol/Pg: Bk-R Vl-8868 Pg-20
Cashier / Station: H Sexton / Cash Station 2

Record and Return To:
GEORGE T KEFALOS
3 STATE STREET
CHARLESTON SC 29401

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte
Cynthia B Forte - Register of Deeds

JRD Brownyard Doc 0210

Recorded On-2011-Mar-24 As-5369

Doc # 00005369

00005369 Vol: 8868 Pg: 21

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PARTIAL RELEASE OF MORTGAGE LIEN
(Book 8734, Page 255)

WHEREAS, the undersigned are the owners and holders of certain Fee Agreements and a Mortgage of Real Estate ("Mortgage") from Linda Gibson, which Mortgage, on its face, is in the original principal amount of $566,666.66, and said Mortgage was dated December 6, 2010 and recorded December 8, 2010 in Book 8734 at Page 255 in the Office of the Register of Deeds for Berkeley County, South Carolina; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the undersigned, being the present owners and holders of the Mortgage described hereinabove, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby release, discharge and renounce from the lien of the above described Mortgage the real estate described hereinbelow:

All that certain lot, piece and parcel of land situated in St. Thomas Parish, State and County aforesaid, containing six and one-fourth (6 and ¼) acres, more or less, being a portion of the Shingler Plantation, Farm No. 15, on a plat of Shingler Plantation by T.A. Huguenin, dated January and April, 1872 and recorded in the R.M.C. Office in Charleston County in McCrady Book of Plats No. 6, at Page 14, BUTTING AND BOUNDING as follows to wit: North, by Solomon Bellinger Estate; East, by Mary Anne Baptist Church; South, by P.O. Parsons; and West, by Clouter Creek. SAVING AND EXCEPTING a 0.39 acre parcel and a 0.20 acre parcel, together 0.59 acres, (Parcels "B" and "D") in that conveyance by Linda Ann A. Gibson a/k/a Linda Gibson a/k/a Linda Ann Gibson a/k/a Linda Anne Avinger a/k/a Linda Ann Avinger, Grantor to the South Carolina State Ports Authority by deed dated January 27, 1998 and found of record in the Office of the Register of Deeds for Berkeley County in Book 1245 at Page 146 and SAVING AND EXCEPTING FURTHER the parcel designated "LEASE PARCEL FOR COMMUNICATIONS TOWER" (now bearing TMS # 271-00-01-129) on a plat entitled "PLAT SHOWING A 100' RIGHT-OF-WAY DESIGNATED PARCELS 'A' & 'B', AND A 50' RIGHT-OF-WAY DESIGNATED PARCELS 'C' & 'D', PARCELS 'B' & 'D' BEING OWNED BY LINDA ANN GIBSON, PARCELS 'A' & 'C' BEING OWNED BY HEIRS OF BEN BELLINGER, PARCELS 'A' THRU 'D' ABOUT TO BE ACQUIRED BY THE SOUTH CAROLINA STATE PORTS AUTHORITY, PARCELS LOCATED IN SAINT THOMAS-SAINT DENNIS PARISH, BERKELEY COUNTY, SOUTH CAROLINA" prepared by Cornerstone Surveying & Engineering, Inc., dated June 6, 1997 and found of record in the Office of the Register of Deeds for Berkeley County in Plat Cabinet N at Page 86. Being a portion of the property conveyed by W.R. Detyens to Linda Ann Avinger by deed dated May 15, 1969 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A 261 at Page 40. Reference also that certain deed from New Mary Ann Baptist Church to Linda Ann Gibson dated May 24, 1985 and found of record in the Office of the Register of Deeds for Berkeley County in Deed Book A616 at Page 220.

Tax Parcel No.: 271-00-01-037

The lien of the above described Mortgage shall remain in full force and effect as to other property not herein described and released.

[SIGNATURES ON FOLLOWING PAGE]

3

IN WITNESS WHEREOF, the undersigned has executed the within instrument this 17 day of March, 2011.

WITNESSES:

Witness #1 Signature

Witness #2/ Notary Public Signature

Gedney Howe (SEAL)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I hereby certify that before me personally appeared Gedney Howe, to me known to be the person described in and who executed the foregoing instrument, and said party acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS, my hand and official seal in the county and state aforesaid this 17 day of MARCH, 2011.

(SEAL)
Notary Public for SOUTH CAROLINA
My commission expires: 8-21-16

Partial Release of Mortgage Lien
(Book 8734; Page 255)

00005369 Vol: 8868 Pg: 23

IN WITNESS WHEREOF, the undersigned has executed the within instrument this 15th day of March, 2011.

WITNESSES:

John West (SEAL)

Priscilla C. West
Witness #1 Signature

Witness #2/ Notary Public Signature

STATE OF South Carolina)
)
COUNTY OF Berkeley) ACKNOWLEDGMENT

I hereby certify that before me personally appeared **John West**, to me known to be the person described in and who executed the foregoing instrument, and said party acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

WITNESS, my hand and official seal in the county and state aforesaid this 15th day of March, 2011.

(SEAL)
Notary Public for South Carolina
My commission expires:

JAMES CARMEN WEST NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 10-20-2018

Partial Release of Mortgage Lien
(Book 8734, Page 255)

Recorded On-2012-Apr-09 As-7917

Berkeley County
Cynthia B. Forte
Register of Deeds 00007917 Vol: 9408 Pg: 109
Moncks Corner 294616120

53 2012 00007917

Instrument Number: 2012- 00007917
As
Modification of Mortgage

Recorded On: April 09, 2012
Parties: GIBSON LINDA A
To
HOWE GEDNEY
Recorded By: WEST, JOHN S LLC
Comment: 8734/255

Billable Pages: 6
Num Of Pages: 8

** Examined and Charged as Follows: **

Modification of Mortgage	12.00
Recording Charge:	12.00

EXHIBIT
PENGAD 800-631-6989
Brownyard - 77
9/4/15 cgs

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:
Document Number: 2012- 00007917
Receipt Number: 369152
Recorded Date/Time: April 09, 2012 02:19:23P
Book-Vol/Pg: Bk-R Vl-9408 Pg-109
Cashier / Station: D Smith / Cash Station 9

Record and Return To:
WEST, JOHN S LLC
PO BOX 1869
MONCKS CORNER SC 29461

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte
Cynthia B Forte - Register of Deeds

JRD Brownyard Doc 0214

00007917 Vol: 9408 Pg: 110

AGREEMENT TO MORTGAGE ASSIGNMENT, MODIFICATION AND REDUCTION OF DEBT

COMES NOW the undersigned parties who affirm and agree to enter into the following Agreement to Assign and Modify the Mortgage recorded in Berkeley County, South Carolina on December 8, 2010 in Mortgage Book 8734, Page 255, and FURTHER, to reduce the amount of that Mortgage, as follows:

1. Linda Gibson gave a mortgage in favor of John West and Gedney Howe recorded December 8, 2010 in the RMC Office for Berkeley County, Mortgage Book 8734, Page 255, in the amount of $566,666.66 (for fees earned by them and Andrew K. Epting, Jr., and George J. Kefalos in the reduction of the debt to Gault Valley, LLC).

2. Present Mortgage holders, upon payment of $566,666.00, the receipt of which is acknowledged by their signatures below, assign the Mortgage described above to George J. Kefalos and Andrew K. Epting, Jr. This Assignment will be recorded in Berkeley County, South Carolina.

3. Linda Gibson owes to George J. Kefalos and Andrew K. Epting, Jr. attorneys fees in the amount of $297,500.00 for a fee earned in a case styled *Linda Gibson, Heritage Seven, LLC, and Seven Oaks Apartments, LLC v. Rolando V. Villavicencio, RPV Investments, LLC, and DPS of Charleston, Inc, d/b/a RE?MAX Professional Realty,* CA No 2008-CP-10-4282.

4. George J. Kefalos and Andrew K. Epting, Jr. agree to reduce the Berkeley County mortgage to the sum of $297,500.00, and further agree that payment is not due from Linda Gibson until the conclusion of the case *Linda A. Gibson, f/k/a Linda Ann Avinger, Individually and as Trustee of the Paul William Gibson Family Trust and Heritage Seven, LLC v. AMERIS Bank,* CA No 2010-CP-08-2134.

5. By her signature below, Linda Gibson by her signature below consents the assignment of the mortgage, approves the reduction of the debt, and agrees to the payment of the debt at the time the case styled *Linda A. Gibson, etc, et al v. AMERIS Bank,* CA No 2010-CP-08-2134 is concluded.

[SIGNATURES ON THE FOLLOWING PAGES]

WITNESSES:

Linda A. Gibson, Mortgagor

Gedney Howe, Assignor/Mortgagee

John West, Esquire, Assignor/Mortgagee

Andrew K. Epting, Jr.

George J. Kefalos

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Linda A. Gibson** sign, seal and as her act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3rd day of April, 2012

SHERI TOWNE NOTARY PUBLIC STATE OF SOUTH CAROLINA My Comm. Exp. 06-14-2017

Notary Public for South Carolina
My Commission Expires: 6/14/17

00007917 Vol: 9408 Pg: 113

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Gedney Howe** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 2nd day of April, 2012

Notary Public for South Carolina
My Commission Expires: 6/14/17

SHERI J. OWNS NOTARY PUBLIC My Comm. Exp. 06-14-2017 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

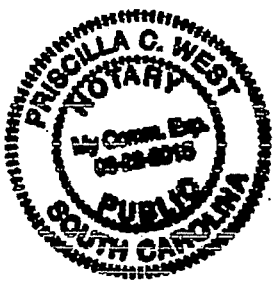
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **John West** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 5th day of April, 2012

Priscilla C. West
Notary Public for South Carolina
My Commission Expires:_____



00007917 Vol: 9408 Pg: 115

STATE OF SOUTH CAROLINA)
) **PROBATE**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Andrew K. Epting, Jr.**, sign, seal and as his act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3 day of April, 2012

VICKI SHERI TOWN NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 08-14-2017

Notary Public for South Carolina
My Commission Expires: 8/14/17

00007917 Vol: 9408 Pg: 116

STATE OF SOUTH CAROLINA)
) **PROBATE**
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **George J. Kefalos** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage and Reduction and that (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3rd day of April, 2012

Notary Public for South Carolina
My Commission Expires: 6/14/17

Recorded On-2012-Apr-09 As-7918.

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00007918 Vol: 9408 Pg: 117

53 2012 00007918

Instrument Number: 2012- 00007918
As
Modification of Mortgage

Recorded On: April 09, 2012

Parties: GIBSON LINDA
To
HOWE GEDNEY

Recorded By: WEST, JOHN S LLC

Comment: 8734/255

Billable Pages: 4

Num Of Pages: 6

** Examined and Charged as Follows: **

Modification of Mortgage	10.00
Recording Charge:	10.00

EXHIBIT
Brownyard - 78
9/4/15 cgf
PENGAD 800-631-6989

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:

Document Number: 2012- 00007918
Receipt Number: 369152
Recorded Date/Time: April 09, 2012 02:21:11P
Book-Vol/Pg: Bk-R Vl-9408 Pg-117
Cashier / Station: D Smith / Cash Station 9

Record and Return To:

WEST, JOHN S LLC
PO BOX 1869
MONCKS CORNER SC 29461

REGISTER OF DEEDS SEAL BERKELEY COUNTY

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

JRD Brownyard Doc 0222

Recorded On 2012-Apr-09 As-7918

00007918 Vol: 9408 Pg: 118

STATE OF SOUTH CAROLINA)
) **ASSIGNMENT AND MODIFICATION**
COUNTY OF BERKELEY) **OF MORTGAGE**

FOR VALUABLE CONSIDERATION PAID, Gedney Howe, Esquire, and John West, Esquire, whose addresses are P.O. Box 1034, Charleston, SC 29401 and P.O. Box 1869, Moncks Corner, South Carolina, 29461, respectively, the sole owners and holders of the Mortgage dated December 6, 2010 from Linda Gibson, Mortgagor, to Gedney Howe, Esquire, and John West, Esquire,

SAID MORTGAGE being originally secured in the amount of Five Hundred Sixty Six Thousand Six Hundred Sixty Six 66/100 Dollars ($566,666.66), and RECORDED in the RMC Office for Berkeley County, South Carolina in Mortgage Book ~~0237~~, Page ~~751~~, DO HEREBY transfer, assign and set over the same Mortgage along with any and all promises to pay to Andrew K. Epting, Jr., Esquire, and George J. Kefalos, Esquire, whose addresses are one and the same, that being 3 State Street, Charleston, South Carolina 29401.

NO m+g. ref.

FURTHER, THIS MORTGAGE is hereby MODIFIED and REDUCED to the secured amount of Two Hundred Ninety Seven Thousand Five Hundred No/100 Dollars ($297,500.00) as agreed to in a separate promise to pay entered into by the above-named Mortgagor and the above-named and below-signed Assignees and Assignors;

IN WITNESS WHEREOF, Gedney Howe, Esquire, and John West, Esquire, have caused their names to be signed hereto this 9th day of April 2012; and by agreement to the Modification of this Mortgage, Andrew K. Epting, Jr., Esquire, and George J. Kefalos, Esquire, have also caused their signatures to be signed hereto this 9th day of April 2012.

V. Shi Tom

Gedney Howe, Esquire, Assignor

V. Shi Tom

John West, Esquire, Assignor

Priscilla C West

V. Shi Tom

Andrew K. Epting, Jr. Esquire, Assignee

V. Shi Tom

George J. Kefalos, Esquire, Assignee

* Book 8734 Page 255

5

JRD Brownyard Doc 0223

STATE OF SOUTH CAROLINA)

) **PROBATE**

COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Gedney Howe, Esquire,** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 4th day of April, 2012

Notary Public for South Carolina
My Commission Expires: 6/14/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **John West, Esquire,** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 5th day of April, 2012

Priscilla C. West
Notary Public for South Carolina
My Commission

PRISCILLA C. WEST NOTARY My Comm. Exp 03-22-2015 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **Andrew K. Epting, Jr., Esquire,** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this
day of April, 2012

SHERI TOWNE
NOTARY PUBLIC
SOUTH CAROLINA
My Comm. Exp.
06-14-2017

Notary Public for South Carolina
My Commission Expires: 6/14/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **George J. Kefalos, Esquire,** sign, seal and as his act and deed, deliver the within written Assignment of Mortgage (s)he with the other witness named above witnessed the execution thereof.

(Signature of Witness)

SWORN to before me this 3rd day of April, 2012

SHERI BROWNYARD NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 6-14-2017

Notary Public for South Carolina
My Commission Expires: 6/14/17

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF HARRY SWAGART, III, ESQ.

LINDA A. GIBSON, individually and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC, and 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs. Case No. 2013-CP-10-4450

ANDREW K. EPTING, JR., LLC; GEORGE J. KEFALOS, P.A.; GEDNEY M. HOWE, III, P.A.; and JOHN S. WEST, ATTORNEY AT LAW, LLC,

Defendants.

DEPONENT: HARRY SWAGART, III, ESQ.

DATE: APRIL 22, 2015

TIME: 10:03 AM

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SOUTH CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter

CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

APPEARANCES

APPEARING ON BEHALF OF PLAINTIFF:

LAW OFFICE OF JAMES R. DAVIS
BY: JAMES R. DAVIS
234 Seven Farms Drive, Suite 211B
Charleston, SC 29492

APPEARING ON BEHALF OF DEFENDANTS:

BARNWELL, WHALEY, PATTERSON & HELMS, LLC
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
P.O. Drawer H
Charleston, SC 29402

ALSO PRESENT: JEREMY BOWERS, ESQ.

EXAMINATION

BY MR. COOKE 4

EXHIBITS

Exhibit No. 1 11/13/09 e-mail, Papa to Kefalos 70
Exhibit No. 2 12/11/09 e-mail from Papa to Kefalos, Epting, and Johnson 82
Exhibit No. 2A 11/27/09 e-mail from Kefalos to Papa 87
Exhibit No. 3 12/14/09 e-mail from Epting to Papa, Kefalos and Johnson 88
Exhibit No. 4 2/4/10 e-mail from Epting to Papa 91
Exhibit No. 5 4/7/10 letter from Epting to Gibson 101
Exhibit No. 6 Suit filed by Ameris against Gibson 102
Exhibit No. 7 7/9/10 e-mail from Epting to Gibson 139
Exhibit No. 8 Motion for appointment of receiver 42
Exhibit No. 9 10/18/10 letter from McVey to Epting 45
Exhibit No. 10 10/25/10 letter from McVey to Epting 155
Exhibit No. 11 11/8/10 letter from McVey to Epting 156
Exhibit No. 12 11/18/10 attorney-client contract 169
Exhibit No. 13 12/8/10 letter from Tecklenburg to Gibson 191
Exhibit No. 14 Series of e-mails 7
Exhibit No. 15 Resume of Mr. Swagart 29
Exhibit No. 16 Notes of the witness 29
Exhibit No. 17 Notes of the witness 164
Exhibit No. 18 Invoice from Tecklenburg

HARRY SWAGART, III, ESQ.,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. COOKE:

Q All right. Mr. Swagart, thanks for being here. Would you state your full name for the record, please.

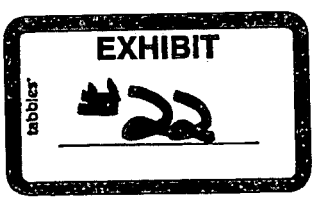
A Yeah. Harry Agustus -- I hate that one -- Swagart, III.

Q And I assume you're familiar with the normal admonitions about a deposition, that if you have any questions, you should address them to me. If you need to raise an issue of possible privilege or any objection at all, just call for a timeout, and the rules provide for an opportunity for you to speak with counsel if need be.

And I'll ask you, are you under any kind of disability today or ill for any reason or taking any medications that would prevent you from answering questions truthfully, to the best of your ability?

A I am not.

Q Okay. Good.



Page 37

A Right.
Q -- as part of your opinion.
A Right. And they all relate to my opinion. Don't have anything to do with the Unfair Trade Practices Act.
Q They have to do with breach of fiduciary duty; they have to do with reasonable attorney's fees; they have to do with enforceability of fee contracts?
A Those do right there, yeah. But that's not we're talking about. We're talking about other discussions I had with him.
Q Let me just be straight to him. You don't get to edit the favorable opinions and the unfavorable opinions and delete the ones that don't help your case.
MR. DAVIS: I'm going to object to form. I don't think that he has testified that he has deleted favorable or unfavorable or any opinions as to what he's deleted. I think the testimony has been that he had some communications with counsel that may be protected by attorney work product.
And I'll object as to that

Page 38

point as well, that any of our communications with respect to attorney work product from my office would be protected. But I don't think that he has testified that he's cherrypicked or favorably chosen what to delete or not to delete, so I'll object to form on that question.
MR. COOKE: Right. But the way that we preserve privilege issues is we create a privilege log. We don't unilaterally delete the documents so that they can't be retrieved or argued about or shown to a judge.
And, frankly, I don't understand the distinction he's making between what he chose to delete and what is relevant because this whole case has to do with fiduciary duties, reasonability of attorney's fees, enforceability of a fee contract. And so it sounds like he's deleted some communications relating to that and has chosen to type out or handwrite others and produce them to us. And I'm trying to drill down a little bit on how he decided which ones to delete and which ones he decided to

Page 39

produce to us.
A And that's fair. And, you know, my belief is that I didn't delete anything that related to the case. You know, and you probably do this too. A lot of things you don't do e-mails on. They're done over the phone, just so you don't run into that problem. And that's the way Jim and I dealt.
So if I felt -- if it was just some inconsequential e-mail, I didn't worry about it. If we were going to have a substantive important discussion about something, it would be over the telephone.
Q All right. And I get that. But you can understand my problem, is that if you wrote something to Jim and said, you know, I don't think you're going to be able to prevail on this or I think this argument is a stretch and then decided to delete it because it's not something you relied on or not part of your opinion, I'd be concerned about that.
A And that's fair.
Q Okay. But there's no way we can get to that if you have deleted all those and then deleted them from your deleted box.

Page 40

A And, you know, my testimony is I don't recall anything that was of substantive import that related to my opinion and related to why I'm in the case and related to my testimony because that type of thing we know to discuss over the telephone.
MR. DAVIS: And, Dawes, I might interject here, if I may. I haven't deleted everything, and I will review the file. Any e-mails that I have received from Harry that are not subject to the attorney work product privilege or otherwise, I'll produce them for you.
MR. COOKE: Great.
MR. DAVIS: And to the extent that there's any privileges, we'll put together a privilege log to satisfy that, but I can say that I have not deleted anything.
MR. COOKE: Fair enough.
Q What subject matter were you asked to express opinions on?
A The reasonableness of the fee, the enforceability -- well, whether the contingent -- the reverse contingency fee arrangement resulted in a reasonable fee,

Page 41

whether it was enforceable, whether there was any basis for determining any type of fee, whether there was a breach of fiduciary duty in connection with the fee, and whether the involvement of Papa or Tecklenburg somehow relieved the defendants from their duties as attorneys to the plaintiff.

Q Okay. Now, did he ask you specifically to form opinions on those subjects, or are those subjects that -- are those opinions that you expressed to Jim?

A Those are opinions that I came up with. Because the first two, whether the fee agreement is enforceable and whether the fee is reasonable, the only reason I looked at the breach of fiduciary duty was in connection with the reasonableness of the fee and enforceability. I wasn't looking at it to determine whether or not, you know, he'd stated a good cause of action or there was any liability for that. I was looking at it as it related strictly to the fee.

Same thing with he -- you know, I saw in the depositions that -- and I can't remember which of the defendants it was.

Page 42

They were making an issue of the involvement of Papa and Tecklenburg somehow being agents of the plaintiff and that relieved them of all their duties of disclosure and everything else, and so I looked at that.

Q When did they say that, that it relieved them of all duties of disclosure? Who said that?

A Well, that's the inference that I drew from the testimony, that because Papa and Tecklenburg were supposedly agents of the plaintiff, then there's no way the defendants could be held liable for an unreasonable fee or -- or there's no way that the fee agreement could be found unenforceable.

Q Okay.

A That's what I took from their testimony.

Q All right. Can you cite the particular piece of testimony where they said that?

A I'd be glad to -- I can't do it now, but I'd be glad to do it for you. They were just -- it was talking about them being agents of the plaintiff.

Page 43

Q All right. But I -- and I get that part. But who testified that they believed that that relieved them of my duties of disclosure to Mrs. Gibson?

A No. That's an inference that I drew from the testimony about Papa and Tecklenburg being agents. So if Papa and Tecklenburg agreed to the fee agreements for her, she was stuck with the fee agreements.

Q Well, would you agree that the fact that she was represented by independent counsel is relevant to the issue of whether she had informed consent to enter into the agreements?

A No.

Q So --

A It's -- it's only relevant from this. The way I look at it, when the rules of professional responsibility require you to have somebody outside look at it, it's -- it's kind of just to give an assurance of reasonableness from somebody that doesn't really have a dog in the fight.

And, you know, my view is that there's no way that Papa or Tecklenburg could

Page 44

really make the disclosures that the defendants were required to make because they didn't have enough information about the relationship in the case to do that.

Q Well, rather than me get this piecemeal, why don't I just ask you to tell me what your opinions are.

Before I do that, have you formed opinions about any fees other than this reverse fee in the Galt matter?

A No.

Q So you have not -- have you formed any opinions regarding their entitlement to fees in the recovery, if any, that she'll receive from Ameris?

A That would be the lender case that's on appeal?

Q Yes.

A No.

Q All right. Have you asked -- been asked to or have you formed opinions about any of the fees that they received with regard to any other representation of her?

A There were -- only in connection with the fiduciary duty in the case. I was

Page 45

not to asked to form an opinion as to whether or not the fee that was paid on the Re/Max case was reasonable.
Q Was it reasonable?
A With some modifications.
Q What are --
A Small ones. Well, first of all, she had the right to the use of the money for 12 months interest free but, you know, she had 12 months before she paid off the -- the fee on the foreclosure case. And she was required before that 12 months had expired to pay off the fee on the foreclosure case and was denied the right to earn interest on that money until the end of the 12-month period.
In addition, they took the -- the costs that were incurred in that case, added them to the one-third contingency fee, then -- or, you know, the attorney's fees, and then took one-third of the total, which ended up costing her $14,000 because they don't get as a fee one-third of the costs.
Are you following me?
Q Uh-huh.
A Okay. So, you know, with that,

Page 46

other than those two things, I don't have an opinion about the reasonableness of the fee if it had been correctly computed.
Q All right. And were you asked to form an opinion about the fee in the Re/Max matter?
A No.
Q Okay. So your testimony here today is going to be about the fee in the Galt matter?
A Well, it's going -- my testimony about reasonableness is only going to be about the fee in the Galt matter. But there's some connections between the two fees that relate to the issue of the enforceability of the fee agreements. And there was a mortgage that she received in the Galt matter that ended up somehow being transferred over to the other matter and, you know, things like that that were interconnected with the Galt matter.
Q But you'll disclose those as you get into your opinions, though?
A Yes.
Q First of all, do you know any of

Page 47

the attorneys in this case?
A Well, I knew you.
Q Any of the party attorneys.
A In fact, you and I worked on a case together a long time ago with Marvin Infinger.
Q Yeah, right.
A The other attorneys, I don't know -- no, I don't know any of them. I probably met Gedney Howe before. I don't know John West. I never met Drew Epting. Never met Kefalos.
Q Ever been involved in a case where they were involved?
A No.
Q All right. Tell me what your opinions are.
A Okay. Do you mind if I use my notes to do it?
Q Please do. You're referring to Exhibit 16 right now? Or 16 and 17?
A Yeah.
Q Okay.
A The first opinion is that the contract is not enforceable for two reasons.

Page 48

You know, my understanding of the law is that when you have an existing fee agreement and then you modify it, there are certain things that the attorneys are required to do. And, you know, the modification needs to be in writing.
These are just drawn from other cases. The modification needs to be in writing. The attorney has to make full disclosure of a number of things, which I'll get into. There has to be adequate consideration for the modification. The modification is presumptively void if it's not made within a reasonable time after the representation began. The lawyer has to show that the client was aware of the effects and material disadvantages of the proposed modified contract and the circumstances concerning the need for modification.
There were -- the lawyer has to show that the client was aware of the effects -- oh, I've said that. And that the client was not pressured to agree in order to avoid -- agree to the modification in order to avoid problems.

Page 49

And in -- particularly with respect to the contract that was entered into on 11/18 of 2010, what I got from the depositions, especially Tecklenburg's deposition, was that she was told if she did not agree to that contract, that West and Howe would no longer continue to represent her.

None of the other disclosures did I find any evidence in the depositions to any of the other disclosures I just listed were made.

Q Who -- who told her that West and Howe would not represent her if she did not sign the contract?

A Tecklenburg.

Q Where did he get that information?

A I'm assuming that he would not have made it up so that it came from Epting and/or Kefalos.

Q All right. Elaborate on that, would you? Do you recall him testifying that any of those lawyers told him that Howe and --

Who else did you say?

Page 50

A Kefalos.

MR. DAVIS: West. It was Howe and West.

Q -- that Howe and West wouldn't represent her anymore if she didn't sign that agreement?

A Yeah, I don't recall him testifying that anybody told him that.

Q Okay. But you're assuming that one of them must have told him that?

A I'm inferring that one of them must have -- must have told him that.

Q Okay. You've read their testimony except for Kefalos's?

A Right.

Q And do you see any testimony where any of them said that they ever threatened to withdraw from representation?

A I don't remember seeing any.

Q They actually could not withdraw from representation without leave of the court; is that correct?

A That's correct.

Q Okay. So if they had threatened to withdraw, that would be a hollow threat, wouldn't it?

Page 51

A No, because they could have stated differently and just said we'll ask the court for leave to withdraw. It would have had the same effect.

Q What was it about that November 18, 2010, contract that was the -- that they were insisting upon in order for them to continue to represent her?

A What was it in what respect?

Q I mean, was there a particular term of that contract that was essential to their continued representation?

A The mortgage.

Q Okay. And can you refer to what specific testimony you rely upon, or what evidence, for your contention that the lawyers threatened to withdraw from representation if she would not sign the mortgage?

A The only thing I can recall is Tecklenburg's testimony.

Q Okay. So your testimony would be -- or your opinion is that the contract is not enforceable. Which contract are you

Page 52

referring to?

A All of them.

Q All right. Which one is the modification?

A Well, let me -- let me tell you what I think the chronology of the contracts were.

I think, to start off, there was an oral contract that she would pay hourly fees at $400 an hour. Looking at the deposition, there's a claim that an e-mail between -- I think it's either Epting or Kefalos and Papa, and I think it was dated February 14th of 2010, constituted a -- an agreement -- split agreement, part contingency and part hourly.

And I don't think this was an agreement. I saw no evidence that it was signed. I think Jim told me that plaintiff doesn't recall ever signing the thing. And I saw no evidence that the disclosure -- if that was -- if that was, in fact, a contract, I saw no evidence in the depositions that any of the things that needed to be disclosed and discussed were done in connection with that February 4th, 2010.

Page 53

Moving from that one, we come to a contract that I think was signed either on April 26th, 2010, or April 27th, 2010. And that contract purported to modify the e-mail of February 4th, 2010. In fact, it states that it's a change to -- it constitutes a change to that contract. Therefore, it was a modification and, as a modification, that contract needed to be accompanied by the disclosures and the discussions which I had listed with respect to the -- the February 4th e-mail.

Then the next one was the attorney-client contract of November 18th, 2010. This is the first writing -- and this materially changed whatever existed prior to them. This is the first writing in which I saw that all four attorneys were being hired by the plaintiff. It changed language in the prior -- the other -- the earlier, if they were contracts, talked about reducing the debt. This contract talks about reducing the deficiency, and that's two different things.

The debt, from what I understand, was the $3 million note. The deficiency --

Page 54

well, I don't know what the deficiency was because there really wasn't any deficiency at that time.

It also changed the pre-existing relationship by requiring a mortgage securing the reverse contingency fee. It capped fees. It stated that the apartment and lots were only worth $1,300,000. For the first time, it said that attorney's fees, which was something that was needed in the other contract, were calculated before deducting expenses.

And for all of those reasons, it was a -- a large modification which required the disclosures and explanations that were -- that we discussed in connection with the earlier agreements, and I didn't see any evidence that those disclosures and explanations had ever been given.

Q Okay. Any others?

A Yeah. No, that's -- those are the only agreements that I'm aware of.

Q Explain to me the difference between the deficiency -- reducing the deficiency and reducing the debt.

Page 55

A All right. This is the way I understand it. You have a debtor, and the debtor is sued in a foreclosure case. And at the same time, a claim is brought against the guarantor. Now, the amount of debt that the debtor is sued on is the amount of the note.

Now, if after the foreclosure and the property is sold the property doesn't sell for a high enough price to pay off the debt, the result is a deficiency. Okay? And then the guarantor would be liable for the amount of deficiency.

And so, in my view, the earlier contracts before the November 18th contract were ambiguous because they talk about reduction of the debt and not reduction of the deficiency as the November 18th contract did. So one or both or all of those contracts, in my view, were ambiguous.

Q All right. Let's say that the debt was $3 million.

A Okay.

Q The property that could be applied to the debt was 1 point -- was worth $1.3 million.

Page 56

A I don't agree with that.

Q I'm asking you to assume that.

A Okay.

Q Okay? This is to illustrate for me the difference between reducing the debt and reducing the deficiency.

A Okay.

Q So -- but since you brought it up, why do you not agree that the property is worth 1.3 million?

A Because the defendants never did due diligence into the value of the property. They didn't have an appraisal of the property. They -- they just accepted an estimate of value provided by the lender.

Q Okay. But you've done an appraisal yourself?

A No.

Q Then why do you say it wasn't worth 1.3 million?

A Because there's no evidence that it was. I don't know what it was worth. I don't believe --

Q Well, you --

A I don't believe -- it may have been

Page 61

Valley not a bank?
A No, I agree. Galt Valley is a bank.
Q All right. So, Mr. Swagart, is it your testimony that these lawyers are not entitled to a fee based on the reduction of the debt because there was never a deficiency?
A No. My testimony is they're not entitled to a fee because there was no enforceable contract entitling them to that fee and also that the amount of the fee -- well, there's a lot of other things.
Q Yeah, we'll go through those. I do want to show you some documents just so that we're all talking about the same things.
A Okay.
(Exhibit No. 1 was marked for identification.)
Q Let me show you what's been marked as Exhibit 1.
MR. DAVIS: Mine are not marked, so as a courtesy, can you just yell them out as to what we're looking at?
Q Yeah. The first one in your stack

Page 62

here is an e-mail from Robert Papa to George Kefalos dated November 13, 2009.
MR. DAVIS: Thank you.
Q Have you seen this e-mail before?
A Yes.
Q Have you ever spoken to Mr. Papa?
A No.
Q And you've not seen the deposition from him?
A No.
Q What information, if any, do you have about what Mr. Papa did or counseled Mrs. Gibson?
A Since Mr. Papa hasn't been deposed yet, the only thing that I can infer from the documents that I saw was that he did basically nothing in counseling her.
Q So you infer from the fact that he hasn't been deposed that he did nothing to counsel her?
A And there's nothing in the documents that I've seen, including the e-mails, that he had played any role in counseling her on the reverse contingency fee in the Galt case.

Page 63

Q And you draw that inference because he's not been deposed and because you don't see any e-mails to that effect?
A Well --
MR. DAVIS: Object to the form as a mischaracterization of the testimony.
A I don't draw the inference because he's not been deposed. I don't have anything but the e-mails to alert me to what his -- his involvement was.
I understand that he's going to be deposed because I believe that Mr. Davis told me that he was going to be deposed, and if through his deposition information comes out either contrary to my position or for my position, I would alter my opinion on that -- on his involvement.
Q Okay. But your opinion assumes that Mr. Papa provided no counseling to Mrs. Gibson about the reverse contingent fee?
A It does assume that.
Q Okay. Did you ask Ms. Gibson what -- I mean, I'm sorry, did you ask Jim to tell you what counseling Mr. Papa gave to Mrs. Gibson?

Page 64

A I don't remember.
Q Okay. Wouldn't that be an important fact in knowing whether she had informed consent to this fee agreement to know whether she was counseled by her own lawyer?
A Well, the important thing to me was not whether Papa counseled her but whether Epting and Kefalos did. And --
Q Explain that to me.
A Well, it's their fee agreement with her, not Papa. And just because they've asked Papa -- well, according to this e-mail, Papa has asked them to take over the cases and that all he's doing is marshaling cases for her. But, in my view, if it's their fee agreement, it doesn't matter whether Papa is around to look at it or give another opinion on reasonableness. They still had duties to her, and they had to fully counsel her on all those things we've already discussed.
Q Well, what -- what rule do you rely upon for the proposition that the attorneys could not rely upon Mr. Papa to act as the representative of Mrs. Gibson?

Page 81

difference to you whether she got a copy of this memo?
A Because if she got a copy of the memo and didn't respond to it, then I -- then I would assume that she agreed to it. And, you know, there's nothing that tells me that she agreed to these terms and there's nothing that tells me that she didn't.
Q That's why we call it a proposal.
A Okay.
Q And I was just asking you if you agreed that that was the proposal, that the proposal was that Mr. Epting would initially represent her on an hourly basis?
A I agree that Papa says that this is what the proposal was.
Q Okay. Do you have some reason -- some evidence upon which you might believe otherwise?
A No.
Q Okay. Has somebody told you that Mr. Papa was acting as a rogue representative without authority for Mrs. Gibson?
A No.
Q Do you believe that that was the

Page 82

case?
A No.
Q Do you believe that he was acting as her representative?
A For some things, yes.
Q Including for the purpose of retaining Mr. Epting and Mr. Kefalos?
A No. For the purpose of advising her as to whether or not she should -- she should retain them.
Q And under what terms she should retain them; is that right?
A Yes.
Q Okay.
(Exhibit No. 2A was marked for identification.)
Q Let me show you 2A. I'm not trying to trick you with that, but that actually would go between --
A Okay.
Q -- 2 and 3. It's dated November 27, 2009, from George Kefalos to Rob Papa.
Have you ever seen this one before?
A I don't think so.

Page 83

Q Take a moment and read it, if you would.
A Okay.
Q I wanted to call your attention to the last paragraph where he says, "And third, since the most significant benefit to be had from the case might be limited to a forgiveness of the $2-plus million loan, there would be no corpus from which to calculate a fee. Under these circumstances, we would have to work out a contingency fee arrangement with the client that would provide for a fee in a percentage of the savings and be secured by a mortgage on property. Give me a call when you get back in town so we can settle this" -- so we can discuss this."
A Okay.
Q So you've never seen that statement before?
A No.
Q All right. Does that affect your opinions in any way?
A No.
Q Does it appear that on November 27

Page 84

Mr. Kefalos did inform Mrs. Gibson's representative that -- that their resolution with the bank might not create an affirmative recovery from which an attorney contingent fee could be charged?
A I agree that he informed Mr. Papa of those things.
Q Okay. And did he also say that they would have to work out a contingency fee with the client that would provide for a fee in a percentage of the savings?
A He did say that.
Q And that that fee would have to be secured by a mortgage on a property?
A He did say that.
Q Okay. What other important facts, in your opinion, did Mr. Kefalos need to convey to Mr. Papa about the proposal for the fee arrangement?
A You know, the way I look at this is it's a very general -- it's a very general thing in that I don't think Mr. Papa was trying to -- Mr. Kefalos was trying to nail down everything that needs to be in a contingency-fee agreement to be signed by the

Page 85

client. He's talking to another lawyer, and he's talking in terms of generalities.
Q Right. So what other information do you believe Mr. Kefalos was required to convey to Mr. Papa?
A At this point in time, nothing.
Q Okay. So do you infer that the matters that were related in this e-mail were the subject of the meeting that occurred on December 10?
A No.
Q Okay. Why not?
A Didn't mention a mortgage on December 10.
Q Well, actually, on the e-mail from December 11, he refers to -- he says that "We would enter into a separate retainer agreement with Drew based on the contingency discussion we had yesterday if it were a contingent fee."
Do you recall that?
A Yeah. It still doesn't say anything -- yeah, December 11th doesn't say anything about mortgage.
Q So it's your belief that that was

Page 86

not even discussed at the December 10 meeting?
A I see nothing in that e-mail that -- that tells me that it was discussed at the December 10 meeting.
Q So is it your assumption that that was not discussed at the December 10 meeting?
A Let me think about that.
Yes, that's my assumption.
Q Okay. Is it further your assumption that Mr. Papa never said anything to Mrs. Gibson about the possibility that she might have to give a mortgage to secure a reverse contingent fee?
A Would you repeat that?
Q Do you -- is it your opinion or do you assume that Mr. Papa never advised Mrs. Gibson that she might have to give a mortgage to secure a contingent fee -- a negative contingent fee?
A I know -- all right. My assumption is that he did not advise her about the need for a mortgage.
Q Okay. Why do you assume that?
A Well, based upon this document that

Page 87

you just showed me, it wasn't mentioned in there. It wasn't mentioned in the e-mail dated February 4th, 2010. It wasn't mentioned in the agreement dated -- that she signed on April 27th of 2010.
(Exhibit No. 3 was marked for identification.)
Q Okay. Now I'm going to show you Exhibit 3. This is an e-mail from Drew Epting to Mr. Papa and to Mr. Kefalos and Ms. Johnson on December 14, 2009.
Have you ever seen this one before?
A No.
Q Does that have any impact on your opinions?
A It -- it confirms them to the extent that Epting is predicting success on the claims so that it really wasn't going to be that difficult a case.
Q What words are you relying on to say it's not going to be a difficult case?
A "I think there's some prospect that we may be successful."
Q "Some prospect that we may be successful" is predicting success and that

Page 88

the suit will not be difficult?
A That's -- that's the inference I drew from those words.
Q By him saying that there is some prospect?
A Again, those words confirm other things that Kefalos said, and that's my opinion what the words mean. Not my opinion. My inference.
Q Okay. What is it that Kefalos said that leads you to --
A One other thing, and I'll mention it here. Again, mortgage is not mentioned in this e-mail, which confirms my opinion that it was never discussed between Papa and Mrs. Gibson.
Q Okay.
A Go ahead. I'm sorry I interrupted you.
Q No, that's all right. I want to know how this affects your opinion.
A That's it.
(Exhibit No. 4 was marked for identification.)
Q Okay. Exhibit 4. And this is a

Page 109

what do you base your belief that he never disclosed those things to her?
A Because I saw nothing in the depositions or the documents that showed that he did disclose them to her.
Q Well, he did discuss alternate fee arrangements with regard to the hourly rate, which he was willing to do as long as that was to her advantage.
Do you remember that?
A I don't remember him discussing that with her.
Q Well, do you remember seeing it in these e-mails that we've looked at this morning?
A It might have been in an e-mail between him and Papa.
Q Okay. And then in terms of the likely result, what do you think he should have said?
A Well, in my view, based on this type of litigation, I think he should have said that Galt -- well, we're still with Ameris, right?
You know, I don't know when Ameris

Page 110

bought the thing, so I don't know, was this -- this was in -- I mean, Galt bought it, so this was -- Ameris was still the party at that time?
Q According to the pleading that we just looked at, yes.
A All right. Well, you know, I would say that in a lot of cases the lender is only interested in the property, doesn't want it tied up for years in litigation, and there's always a possibility that the lender will drop the lawsuit on the guaranty. Okay?
Alternate fee arrangements. I mean, there's a number of things that they could have done. Could have been hourly. Could have been -- there's other ways to work it.
You know, to me, in addition, I don't think this reverse contingency fee was a fair fee for her purposes. I don't think it would be found to be reasonable under Rule of Professional Conduct 1.5.
Q Explain that to me.
A Well, there's six factors that you need to apply in determining the

Page 111

reasonableness of the fee. Do you want me to go through all six?
Q If they apply, yes.
A Well, first, it's the nature, extent, and difficulty of the case. I mean, this was not a difficult case, in my experience.
Q Explain to me. I want you to tell me every fact that says --
A It was a simple foreclosure case. There was a counterclaim in the case but, you know, big deal. The case had just started, okay? There was no discovery in the case, and they're seeking a $570,000 fee.
The defendants, you know, I haven't seen any time records, so it's hard to tell how much time they spent but, you know, Gedney Howe pretty much admits that he spent very little time. So did John West, Kefalos and -- I don't think Kefalos and Epting kept contemporaneous time records. I didn't see anything difficult about this case.
Q Can I stop you on that?
A Sure.
Q You're still on the first factor?

Page 112

A Yes.
Q First of all, do time records have any relevance whatsoever in a contingent-fee case?
A They have relevance to determining the reasonableness of the amount of the fee in a contingency-fee case.
Q Have you ever handled automobile accident cases?
A I have.
Q Okay. Have you handled them on a contingent fee?
A I have.
Q Do you keep your hours in those cases?
A Well, I keep my hours on almost every case.
Q I mean, do you adjust your --
A You don't have to.
Q Do you adjust your contingent fee based on the number of hours you spent?
A No, I don't, not in that type of case.
Q So if you had an automobile accident case, the client comes in; they sign

Page 113

a contingent fee agreement. You write a letter to the insurance company and send them the medical bills and then settle. You take the full want contingency, don't you?
A Yes.
Q Regardless of whether you spent an hour or 100 hours?
A Yes.
Q Isn't that the very nature of a contingent-fee agreement?
A Of a straight contingency-fee agreement, yes.
Q Why would a reverse contingent fee be any different?
A Because, first of all, it -- a number of reasons. The customary fee in -- this is the last of the six factors, the Jackson versus Speed factors.
The customary fee for similar services is an hourly fee. And I bet 99.9 percent of lawyers defending a client against a suit on a guaranty do so on an hourly basis or a fixed-fee basis. A reverse contingency fee is not the customary fee in South Carolina.

Page 114

And so going back to all factors. First of all, the nature of the suit doesn't justify using a reverse contingency fee, the extent doesn't justify the amount of the fee, and the difficulty doesn't justify the amount of the fee.
The time necessarily devoted to the case. Now, in a normal case, if one party is going to be required to pay the hours of another party using a lodestar, you got to be able to calculate the lodestar, and that's the number of hours times the hourly rate.
Q You're talking about in a fee-shifting situation?
A Well, in a fee-shifting -- fee-shifting situation, yes.
There was no articulated strategy in this case except for the deed in lieu of reduction. Well, you know, that's worse than a deed in lieu, because what happens is you give them a deed and then you've still got to pay the remainder of the debt. And if that's the only strategy they had, that certainly isn't worth the contingency fee.
The standing of counsel. They're

Page 115

experienced, successful attorneys and they're good lawyers. I don't quibble with that.
The beneficial results obtained. You know, at this point, you know, since we're right at the beginning of it, no results have been obtained, so I can't really apply all of these factors as I would after the fee had been determined.
Are you following me?
Q No.
A All right. Let's look at it this way. Let's say the fee is $570,000. Okay? I'm saying it's not justified by the nature and extent and difficulty of the case. There's no way to justify it based on the time necessarily devoted to the case because there's no contemporaneous time records.
Standing of counsel, no quibble with that.
The beneficial results obtained. It's really strange to me that they offered to give the bank the property and pay the balance after the bank sold it and they never requested a deed in lieu. Now, to me, I don't see how they can say their actions

Page 116

resulted in the bank making a unilateral decision to agree to settle this on a deed-in-lieu basis.
Q When did they offer on her behalf to give the property to the bank and enter into a deficiency debt?
A Okay. There's an e-mail from Kefalos to Tecklenburg, I think, that admits that. And I also believe that in the bank's letter -- in Galt's letter agreeing to the deed in lieu, Galt mentioned this offer to give them the deed.
Q Well, we'll get to that in a little while. But do I understand you right that you think -- you think that Epting or Kefalos made to Galt or Ameris, on behalf of Ms. Gibson, an offer to give them the deed and subject her to a deficiency indebtedness?
A That's the way I read the document.
Q Okay. We'll get to that in a little while.
A Okay.
Q Jackson versus Speed, what kind of case is that?
A It's a fee case.

Page 141

A No.
Q Do you -- are you aware of any evidence of what occurred at the hearing on the motion?
A Just what was in the depositions.
Q So what is your understanding, based on the depositions, of what happened?
A I don't -- the receivership, I think, was denied.
Q Do you know why it was denied?
A No.
Q Do you know what authorities the attorneys cited to defeat the appointment of the receiver?
A No.
Q Do you have any criticism of the quality of the work that they did?
A Well, I don't know what they did, so I don't -- they had a good result, so it's hard to criticize it.
Q Don't let that stop you.
A Well, I am a lawyer.
Q True. True.
Do you know what impact, if any, that ruling had on the bank's approach to the

Page 142

case?
A I would doubt that it had any impact.
Q Do you know -- do you know? I mean, have you seen any evidence one way or the other?
A Well, the bank, on its own, unilaterally granted -- agreed to take a deed in lieu. And, you know, my feeling is, when Galt took this over, the reason it bought the paper was because it wanted the property, and the guaranty was not -- not at all a factor in its decision.
So I don't have any information from Galt as to what its thinking was, and everything I just told you is assumptions and inferences on my part.
(Exhibit No. 9 was marked for identification.)
Q Okay. Let me show you a few more documents, then. This is Exhibit 9.
A Okay.
Q This is a letter from Ian McVey to Drew Epting dated October 18, 2010.
Have you seen this letter before?

Page 143

A Yes.
Q Does it appear -- do you infer from this letter that Mr. Epting had proposed deeding the property over to the bank?
A Yes.
Q Did you infer from this letter whether Mr. Epting proposed a deed in lieu of foreclosure with a waiver of deficiency, or did he offer something on the deficiency as well?
A He offered something -- my understanding is that he offered something on the deficiency. In other words, he didn't offer a deed in lieu.
Q Okay. And what do you base that assumption on?
A Because McVey is, even with the deed to the property, still hung up with what he's going to do with the remainder of the debt.
Q Right. And then he calls upon, quote, "you and your client for a proposal to try and resolve this matter."
So does that imply to you that -- that Mr. Epting had not previously made a

Page 144

proposal to resolve this matter, that is, the matter being the deficiency?
A A formal proposal. It implies to -- it implies to me that there's been no formal offer.
Q Because he doesn't say, "I'm going to put it on you and your client for another proposal to try to resolve this matter." He says, "I'm going to put it on you and your client for a proposal to try and resolve this matter."
A That's right.
Q And by "this matter," do you think he's referring to the deficiency?
A I think he's referring to the claim on the -- on the guaranty.
Q Yeah. And at this point it looks like the court had not yet ruled on the motion for appointment of a receiver. Is that right?
A I can't tell, looking at this letter. And I don't know when the court ruled on it.
Q Well, the way I get that is he says, "It was a pleasure seeing you at the

Page 145

hearing the other day," and then at the bottom he says, "I will remind you that I believe we have ten days to submit briefs on the issues that you raised at the hearing, 'deed in reduction.' Therefore, our time is short to resolve this matter."
A Okay. Then I agree with what you just said.
Q Okay.
A That the receivership hadn't been denied.
(Exhibit No. 10 was marked for identification.)
Q I'm going to show you Exhibit 10. You've seen this letter before?
A I have.
Q This is dated October 25th of 2010.
A Correct.
Q And it's from Mr. McVey to Mr. Epting.
And could you summarize for me what the proposal that he makes is here?
A That -- that Mrs. Gibson turned over the property and signed a note for $1.5 million to be paid over a term of 20

Page 146

years at the rate of 9,899 a month.
Q And that would accrue at 5 percent per annum?
A Correct.
Q So they are still asking her to be responsible for the deficiency?
A That is the tenor of this particular offer, yes.
Q Does he also make any representation about the value of the property?
A He doesn't make a representation as to the value. He states what his client has valued the property at.
Q Okay. Is there a -- well, it says, "Based upon my client's valuations of the properties in question, the collateral has a total value of $1,338,000."
A And the fact that a bank who has a dog in the fight might undervalue the property for settlement purposes doesn't shock -- shock me.
Q Okay.
A So the fact that the bank valued the property at $1.338 million doesn't mean

Page 147

that's what its actual value was. It could have been less. It could have been more.
Q Who is Geoff Southerd?
A Where is his name mentioned?
Q It says, "You will recall that Geoff Southerd testified that the value of 2625 Otranto Road as $750,000."
A I don't know who Geoff Southerd is.
Q "However, for purposes of this letter, my client is assigning it a value of a million dollars. This leaves $1,697,678.10 deficiency for which your clients are liable, jointly and severally."
So have you reviewed any documents that would bear on the actual value of the property -- the properties at that time?
A The appraised value?
Q Well, fair market value.
A The appraised fair market value?
Q Any documents -- I'm not limiting it to appraisals.
A No, I haven't -- no, I haven't seen any.
Q Okay. So if you were -- if this were your case, on October 25th, 2010, how

Page 148

would you assess the likelihood of convincing the bank to waive the deficiency?
A Based on that letter, I couldn't assess the likelihood. I would respond to the letter, tell them how long this litigation was going to go on, and offer to resolve the entire dispute with a deed in lieu. And after I got a response to that, then I could evaluate it.
Q We've talked in the past about -- you know, you said, well, oftentimes the banks are willing to just walk away, take a deed in lieu to avoid litigation.
Is there anything about this letter that would encourage you to believe, as of October 25th, that this bank, Galt Valley, intended to accept a deed in lieu and walk away from any deficiency?
A No. It doesn't -- it doesn't tell me anything. It's -- it looks like the first step in settlement discussions, and they've come and this is their first offer.
Q Okay. What strategy would you employ on behalf of Ms. Gibson, if you were representing her, to convince the bank or to

Page 149

force the bank to reduce or waive the deficiency?
A Well, I would make an offer to resolve the dispute, including the counterclaim, for a deed in lieu. And I would explain to him that this litigation could be protracted, it could be expensive, and it would be in everybody's interest to settle it on that basis.
Q Give me a -- in a nutshell, what legal arguments you'd make? I'm the bank lawyer. I'm saying I'm going to move for summary judgment. I've got a note, a mortgage with a guaranty. The client admitted that she signed it. She's admitted she's in default, so I'm going to move for summary judgment.
Now, what arguments would you have made that, no, I should have accepted less?
A Well, the only defense that I'm aware of that was suggested was based on the alleged wrongdoing of Ameris, and so if Ameris remained in the suit, maybe its wrongdoing precluded it from trying to enforce its note and mortgage.

Page 150

Q Okay.
A But, you know, that's -- Galt purchased it. I don't know whether Galt would be subject to that defense or not. I haven't looked at it. But I don't believe -- and I don't know enough about the claims that were made against Ameris, so I don't know how good the defense would have been. So --
Q I mean, you -- you knew about lender liability. You'd written a piece for CLE in 1998 on lender liability.
A Right.
Q So would Galt have been a holder in due course?
A Might have been.
Q So would that have meant that they -- that defenses that they might -- that she might have had against Ameris would not be good against Galt?
A If Galt was a holder in due course, that's what it would have meant.
Q So why did Galt agree later to waive the deficiency?
A Because it wanted to get control of the property at the earliest possible time.

Page 151

I don't know. Maybe it had a buyer for the property. It could have been -- there's any number of reasons. I don't know why Galt did it, and we won't find out until Galt's deposed.
Q Could Galt have moved for summary judgment?
A Not having seen the entire record -- well, I mean, you know, it cost $25 to file a summary judgment motion, so certainly Galt could have moved for summary judgment.
Q Okay. Could it have been that Galt was afraid of the team of lawyers that had been assembled with Mr. Epting and Mr. Kefalos and Mr. West and Mr. Howe and that they were intimidated into giving up their legal rights?
A I seriously doubt it, and I see not anything in the record that would indicate that that was the case.
Q Why do you doubt that?
A Because, you know, based on my limited knowledge of those guys, you know, I -- I'm sure Galt's attorneys weren't afraid

Page 152

to go into court with them, and I wouldn't be afraid to go into court with them.
Q Okay. So do you think it was out of the goodness of their hearts that they agreed to waive the deficiency?
A No. Again, I think, for some reason, they needed to get control of that property, clear title to that property, as soon as they could.
Q Why do you think that?
A I -- and as I testified to earlier, I don't know exactly why they did it. But it may be -- you know, I don't know. We won't know until Galt's deposed. I told you that before.
Q Could it have been because they were afraid that the court was going to deny their motion to appoint a receiver and, therefore, they would have lost control of the property?
A Well, if I was in Galt's position and I was Galt's attorney, that wouldn't be a fear at all because, like I say, I'm aware of as many instances of receiverships are denied as they are granted. And, you know, the fact

Page 189

A No.
Q Why not?
A I don't see anything wrong with it. Why should it have surprised me?
Q Well, why wouldn't -- don't you normally just ask for complete releases of all -- any and all claims against any person for fear that Ameris might come back against Galt for indemnity or contribution or --
A I don't think -- well, first of all, I don't know why Galt entered into the settlement, but it may be that it wasn't worried about any claims from Ameris against it. And, you know, it just depends on the circumstances of the individual case.
Q Right.
A It doesn't surprise me at all, if they really wanted to get their hands on this property, that they'd let her keep her lawsuit against Ameris. And they may have had some -- some deal with Ameris where Ameris couldn't come back on them.
Q Have you seen that before and is it common in your dealings with workouts with banks that they would allow you to -- they

Page 190

would waive their deficiency, take the deed in lieu, and then in their releases not ask for complete releases of all parties that might be responsible?
A I see -- no. In fact, that's not -- that's not my experience. They typically ask for releases for themselves, their officers, their directors, their agents, their successors, their assigns, and their representatives. They don't add nonparties to the dispute to the thing.
Q Okay. That's been your experience?
A That's been my experience.
Q So the language "and all others that might be legally liable," you don't remember seeing that in typical releases?
A No, I haven't. I don't remember seeing that.
(Exhibit No. 14 was marked for identification.)
Q Okay. I'm going to show you a series of e-mails. Have you seen these before? This has been marked as -- what's the exhibit number there?
A I haven't seen these.

Page 191

Q Do you want me to read every page of it?
A Well, you probably should.
Q What's the exhibit number?
MR. DAVIS: 14.
Q This was an exhibit to Mr. Epting's deposition. Did you not see those exhibits when you read his deposition?
A No.
Q Did you see any of the exhibits to his deposition?
A The copy I got did not have any exhibits.
Q Okay. You better take a minute to read these. Let me know when you've finished reading them.
A Okay. I'm done.
Q Have you ever seen these before?
A No.
Q Do any of them surprise you?
A No. It kind of surprised me that Epting didn't agree to the offer as soon as it came in.
Q Does it suggest to you that this was very much an arm's length transaction

Page 192

between Ms. Gibson and the bank, that the bank was not already predisposed to waive the deficiency?
A No, it doesn't suggest that to me.
Q Okay. So the tone of these doesn't suggest to you that they -- the language of, "Okay. We can talk, but it seems like a simple yes or no from the defendant is all we needed. They've jerked us around long enough, and we've been generous in our past extensions."
Does that suggest that there was collusion between the bank and Mr. Epting or -- or the other attorneys?
A No.
Q Do you see -- do you infer from these e-mails that it was important for the bank to get this resolved before the proposed orders were submitted to Judge Watson on the receivership issue?
A I think the bank was suggesting that it ought to be important to Epting and Kefalos to agree to the settlement before the judge decided the receivership issue because it was likely to go against them and not the

Page 193

bank. That's the way I read it.
Q Show me what you're referring to that --
A I'm not referring to anything in particular. That's the sense I got from reading it.
Q Do these e-mails give you any insight into why the bank agreed to waive the deficiency?
A No. But they were really upset that this was dragging out so long, and I noted some real impatience on the part of the bank, which says to me that they had some use for the property -- could say to anyone that there was use to the property and they wanted to get their hands on it quick.
Q What did the bank wind up doing with the property?
A Don't know. I think the separate parcel they might have sold for $500,000, but I don't know.
Q The one that they valued at how much?
A 300-and-some.
Q Why do you think they sold it for

Page 194

500,000?
A I read something somewhere, and I can't remember what it was.
Q Did the bank --
A It may be that Jim Davis told me that.
Q Did the bank also agree as part of the settlement not to issue a 1099?
A Yes.
Q What's the significance -- significance of that?
A Taxes.
Q I know that, but what's the significance of it?
A Well, the 1099, it shows nonsalary income of some types that would become taxable maybe.
Q Did you have any knowledge as to whether normally, when a bank forgives a debt, that that has to be 1099'd as income to the debtor?
A It does. But I don't know how the bank computes the number that goes on the 1099. It's not straight off the debt, okay? It's -- there's some offsets to it and, you

Page 195

know, I don't know what -- what it is.
You know, say, for example, the bank gets property in return for the debt. I don't know that the entire amount of the debt that's forgiven would go on the 1099. It might be something considerably less, like the -- the amount of the debt minus the value -- the appraised value of the property.
Q Why was the bank able to agree not to issue a 1099 in this situation?
A Don't know. I'm not a tax lawyer.
Q All right. You'd never dealt with that in your workouts with banks?
A I have not.
Q How did you deal with tax consequences of workouts?
A I'd associate a tax lawyer.
Q But you didn't observe what they -- what they did?
A I did. Doesn't mean I understood it all the time.
Q All right. Let's look at -- look back at your notes again, Exhibit 16 and 17. And I want you to tell me about anything that this reminds you of that you haven't already

Page 196

given me today as part of your opinions in this case.
A Okay. Let me make sure I didn't lose any of these exhibits.
All right. In my view, she was required to sign the mortgage that secured the West and Howe payments of the fees over to Kefalos and Epting and then the lien of the mortgage was -- they somehow tried to make it attached to the Re/Max fee debt.
In my view, once the $567,000 was paid, the mortgage was over. It was nonassignable. It couldn't be switched to another debt. That was the end of it.
Q Have you seen the mortgage?
A Yes.
Q Okay.
A She was not credited with fees that she had already paid from January through November of 2010. Even though they got a mortgage, they wouldn't let her pay on an hourly fee basis even though the hourly fees would be secured.
They did not ascertain the true value of the property and had no appraisals

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ROBERT PAPA

LINDA A. GIBSON, individually and in capacity as TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST; HERITAGE SEVEN, LLC; SEVEN OAKS APARTMENTS, LLC, and 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs. Case No. 2013-CP-10-4450

ANDREW K. EPTING, JR., LLC; GEORGE J. KEFALOS, P.A.; GEDNEY M. HOWE, III, P.A.; and JOHN S. WEST, ATTORNEY AT LAW, LLC,

Defendants.

DEPONENT: ROBERT PAPA

DATE: APRIL 28, 2015

TIME: 8:43 AM

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SOUTH CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter

CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

Page 2

APPEARANCES

APPEARING ON BEHALF OF PLAINTIFF:

LAW OFFICE OF JAMES R. DAVIS
BY: JAMES R. DAVIS
234 Seven Farms Drive, Suite 211B
Charleston, SC 29492

APPEARING ON BEHALF OF DEFENDANTS:

BARNWELL, WHALEY, PATTERSON & HELMS, LLC
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
P.O. Drawer H
Charleston, SC 29402

Page 3

EXAMINATION

BY MR. COOKE 5
BY MR. DAVIS 87
BY MR. COOKE 146

EXHIBITS

Exhibit No. 19 Subpoena 5
Exhibit No. 20 Papa billing summary 10
Exhibit No. 21 11/6/09 retainer agreement 13
Exhibit No. 22 E-mail from Zerbst 15
Exhibit No. 23 11/12/09 letter from Papa to Richter 19
Exhibit No. 24 11/13/09 e-mail, Papa to Kefalos 25
Exhibit No. 25 11/17 e-mail, Zerbst to Charpia 30
Exhibit No. 26 11/17 e-mail, Zerbst to Papa 34
Exhibit No. 27 11/27 e-mail from Kefalos to Papa 36
Exhibit No. 28 12/11/09 e-mail from Papa to Kefalos, Epting, and Johnson 43
Exhibit No. 29 12/14/09 e-mail from Epting to Kefalos, Papa, and Johnson 50
Exhibit No. 30 12/30/09 e-mail from Whitener to Charpia 52
Exhibit No. 31 2/4/10 e-mail from Epting office to Kefalos, Epting, Towne, and Johnson 54
Exhibit No. 32 4/7/10 letter from Epting to Gibson 59
Exhibit No. 33 E-mail chain 64
Exhibit No. 34 Summons and complaint, Ameris v. Gibson, et al. 65
Exhibit No. 35 7/9/10 e-mail from Epting to Gibson 67
Exhibit No. 36 8/12/10 e-mail from McVey to Epting 72
Exhibit No. 37 Notice of motion and motion 75

Page 4

EXHIBITS (Continued)

Exhibit No. 38 10/18/10 letter from McVey to Epting 76
Exhibit No. 39 10/25/10 letter from McVey to Epting 77
Exhibit No. 40 11/8/10 letter from McVey to Epting 79
Exhibit No. 41 11/18/10 attorney-client contract 82
Exhibit No. 42 12/8/10 letter from Tecklenburg to Gibson 83

Page 5

ROBERT PAPA,
having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY MR. COOKE:
Q All right. Mr. Papa, you are here by virtue of subpoena. And let me show you a copy of the subpoena and ask if you received that.
A Interestingly, I had this on my calendar for tomorrow. And I checked with Jeremy because I had it on for tomorrow, and I had something nagging in my mind about today, because this subpoena says Wednesday, October 29th.
Q Okay.
A And he confirmed to me that it was this morning. And I didn't keep my copy of the subpoena.
Q Okay.
A But --
Q So you were right. It does say Wednesday, then.
A Correct. And I'm -- this does appear to be a copy of what I signed for.

Page 6

Q Well, rather than make you come back tomorrow, why don't we just agree that this is the subpoena you received and you're here.
A Correct.
(Exhibit No. 19 was marked for identification.)
Q Why don't we start with a -- why don't we give the usual instructions. You're not represented by counsel here. Under the rules, I'm supposed to tell you that if you have a question about something I ask you or you don't understand, you should address your questions to me.
Questions of privilege undoubtedly will arise. I will invite you to speak, if you need to, off the record with Jim, who is here as counsel for Ms. Gibson.
But that's a good segue into a discussion of attorney-client privilege. And while we were off the record you made the statement that you need to have a written waiver signed by Mrs. Gibson of attorney-client privilege in order for you to testify to anything that might arguably be

Page 7

attorney-client privilege in your mind.
I have suggested that because we didn't know of that requirement before and we don't have a signed waiver here with us, we do have Ms. Gibson's attorney here. He is counsel of record, so there hopefully won't be any argument later about whether, in fact, he's her authorized representative. And I've actually seen her in his presence before, and so he is her counsel of record.
But I don't think we have any choice but to honor your -- whatever objections you raise as to attorney-client privilege, which probably means that we'll have to come back another day, either with a signed waiver in hand or an order from a court that resolves attorney-client privilege.
Because I -- I don't agree that everything that a lawyer does for a client is protected by attorney-client privilege. But you're not a judge and I'm not a judge, and I don't want to put you in a position of making a judgment that turns out to be wrong to your detriment.

Page 8

So what we'll do is we'll proceed. I'll ask you the questions. If you get to a point where you feel that you can't answer, I would, again, invite you to discuss that with Jim or refuse to absence, and we'll move on to the next question.
A Very good.
Q Okay. So tell me what your full name is.
A Robert Lawrence Papa.
Q Where do you live?
A 43 Seagrass Lane, Isle of Palms, 29451.
Q And how long have you lived in Charleston?
A 34 years.
Q Can you just give me a little bit about your educational background and professional background?
A Undergraduate in political science from UNCW. Law degree from South Carolina, '80 or '81. It was like December. I'm not sure what the official date was. Practiced law for 32 years. Now I'm operating some businesses.

Page 9

Q Okay. And when you practiced law, you were with a firm called Papa Ungaro & Falkiewicz?
A That was the majority of time in the last one, yes.
Q Is that the notorious Conrad Falkiewicz that you practiced with?
A That is the notorious --
Q Okay. What kind of -- what did your practice consist of generally?
A Mostly financial and business bankruptcy. Some other civil matters. Some other civil areas.
Q Okay. When -- how did you come to represent Mrs. Linda Gibson?
A I don't remember how she came to me. That's been a few years, and I don't remember if somebody referred her or she threw a dart at the phone book.
Q When did you come to represent her?
A I -- it's been a number of years. Probably, I'm guessing, a half a dozen, give or take.
Q I'm going to show you some records that have been produced and maybe that will

Page 10

help refresh your memory as to, you know, how you came to represent her.
Let me show you first --
MR. COOKE: Mark this as Exhibit 20.
(Exhibit No. 20 was marked for identification.)
Q And this appears to be a billing summary from your office. Is that what that looks like to you?
A A billing. I don't know about the word "summary," but --
Q Okay. Well, I couldn't tell whether it was a -- couldn't tell whether it's actually a bill or whether it is a -- some sort of a report from your timekeeping system.
Can you tell me what it is?
A Pages -- well, the first page appears to be a summary, and the following pages appear to be an itemization of activity in that case.
Q Okay. And do you know how this came into my possession?
A No.

Page 11

Q Did you provide a copy of this to Ms. Gibson or to her attorney?
A Ms. Gibson would have received it monthly.
Q But how about this actual document, which looks like a --
A I don't remember providing it. It obviously was provided, but I don't remember how that happened.
Q All right. Let me ask you, what -- what, if anything, have you done to prepare for this deposition?
A Not a thing.
Q Okay. Have you reviewed any records at all?
A No.
Q Have you ever met with -- have you met with Ms. Gibson about this case?
A Sometime last year I went to her counsel's office as a result of a notice of deposition. Was informed that the deposition was off for whatever reason. Ms. Gibson was there, and I met with her and her present counsel.
Q Okay. Were you -- were you still

Page 12

her attorney at that time?
A No.
Q Okay. Can you tell me what you discussed at that meeting?
A A review of some of the e-mails and chronology of the case.
Q Okay. Was there --
A The present case.
Q Okay. Was there any discussion during that meeting as to whether you had been authorized to act on her behalf in retaining Mr. Kefalos and Mr. Epting and/or Mr. Howe and Mr. West on her behalf?
A No.
Q Was there any discussion about whether you had had her authority to negotiate the terms of their retainer on her behalf?
A No.
Q Can you recall -- and, again, I'm asking you this question on the premise that you were not still her attorney at the time you had this meeting.
Can you recall for me any details of the meeting, anything you discussed, other

Page 13

than looking at the e-mails?
A It was a very brief meeting, so I just remember one particular e-mail, and I think her counsel did most of the talking.
Q Okay. What was the e-mail that you remembered?
A It was an e-mail to Mr. Epting.
Q Okay. We may see that today in one of our exhibits. We'll keep this exhibit in front of you because we may refer to that from time to time as we go.
Let me show you a document.
(Exhibit No. 21 was marked for identification.)
Q This appears to be a retainer agreement that was signed on or about November 6th, 2009.
A And I'm presuming that's a question.
Q Well, yes. It's a rhetorical question.
A Okay.
Q But was this -- do you recognize this document?
A Yes. And it was, in fact, on

Page 14

November 6th, 2009.
Q Okay. And I notice from your billing statement that that also is your first entry, is November 6th, 2009, conference with client.
A That's correct.
Q So do you think that that's when you first began to represent Ms. Gibson?
A I do not recall if I met with her beforehand to discuss anything, so from Exhibits 20 and 21, I think it's clear that I began to represent her on November 6th, 2009.
Q And I didn't mean to force you into that answer. Do you remember any other communication or contact or representation of her before then?
A No. There may have been, but I do not remember.
Q And you said earlier that you don't recall or didn't know how she chose you, whether she threw a dart at a phone book or was referred by somebody. So do you have any idea at all?
A Actually, something has come into my mind. She had a realtor, a gentleman -- I

Page 15

don't remember his name -- and somehow I have a funny feeling that he had something to do with referring her to me.
Q What was the nature of the matters that brought her to you?
A They were financial and -- just that; they were financial.
Q Okay. And we'll see some more documents as we go through that will probably flesh that out to some extent.
(Exhibit No. 22 was marked for identification.)
Q This is not your e-mail, but it's one that we have. And it appears to be something that came from Ameris Bank, but it's an e-mail from Mr. Zerbst.
Do you know who Mr. Zerbst is?
A The name is familiar, but I can't recall.
Q Okay. Could he be an official at Ameris Bank that you dealt with?
A I had a meeting once with Ms. Gibson at Ameris Bank, and I believe that was the gentleman that we met with.
Q Okay. And do you know who David

Page 16

Charpia is?
A He could be a gentleman that bought a condo from me last month --
Q Okay.
A -- if he's like a mortgage banker or something, works at a bank.
Q Small world, huh?
A Yeah.
Q How about Don Snipes? Do you know who that is?
A That name does not sound familiar.
Q So this is an e-mail from Mr. Zerbst to Mr. Charpia and Mr. Snipes dated November 9, 2009, at 6:10 p.m. And he says, "I met with her" -- it's regarding Subject: Linda Gibson -- "I met with her and her lawyer, Robert Papa, today. He is helping her work out her issue with the banks, particularly First Citizens, but he came with her today to get an understanding of where we are. Meeting went well, and they plan to visit with First Citizens tomorrow. They will get back to me very soon with a plan to resolve the current status. I'll let you know."

Page 17

So would it be fair to say that at least two of the issues that you were dealing with on her behalf were her indebtedness to Ameris Bank and her indebtedness to First Citizens Bank?
A Yes.
Q Okay. Then if you refer back -- why don't you keep that time record in front of you because we may need it again.
You have an entry there on November 9, and it says, Meeting with Ameris Bank, an hour and a half. Does that appear to coincide with this e-mail that says that you met with them on November 9th?
A Yes.
Q Where was the meeting?
A At the bank.
Q Okay. Was -- what happened during that meeting?
A That involved my representation of Ms. Gibson, and at this -- without a written waiver from her of attorney-client privilege, I must assert attorney-client privilege.
Q Okay. Now, I'm going to posit that because this was a meeting with a third

Page 18

party, that there would be no attorney-client privilege associated with that because this was a communication you had with a third party.
Does that position change your mind at all on whether you have to assert attorney-client privilege?
A Because strategy was certainly a part of the conversation, I need to assert attorney-client privilege.
Q Okay. And consistent with your introductory statement, can I assume that, even if Mr. Davis were to waive that privilege on behalf of Mrs. Gibson, that you would still need a written waiver from her?
A I would still need a written waiver --
Q Okay.
A -- from Ms. Gibson.
MR. DAVIS: And if I may interject, I concur with Dawes's assessment that any communications between yourself and Ms. Gibson to third parties would be nonprivileged under our rules.
Does that change your opinion

Page 19

or ability to testify with respect to Mr. Cooke's questions this morning?
A I understand the third-party scenario versus communications solely between Ms. Gibson and myself, but in that strategy was always involved in those communications, I do not think I should discuss matters without her consent and waiver.
Q Well, we'll respect that, at least for now.
(Exhibit No. 23 was marked for identification.)
Q Exhibit 23 is a letter that you wrote to Larry Richter on November 12, 2009.
What was Mr. Richter's role?
A Mr. Richter was representing Ms. Gibson in, I believe, a pending lawsuit. It's been obviously half a dozen years, and I -- I don't remember if it was -- I don't remember which bank it was against.
Q Okay. Why don't you just take a minute to read that letter and see if it refreshes your memory.
A All right.
Q Does that refresh your memory as to

Page 20

what he was -- what matters he was representing her on?
A A lawsuit against Re/Max, the agent, and the appraiser.
Q Did that lawsuit have to do with her purchase of the apartment complex that was now the subject of her debt to Ameris?
A That is my recollection.
Q Okay. So your letter starts out, "Linda Gibson engaged me to assist her in advising and coordinating the various financially complicated matters that she is facing at this time. She briefed me on your representation of her in a lawsuit against Re/Max, the agent, and the appraiser. There are a couple items that Linda and I need to know in order to continue to shuffle the pieces of her complicated puzzle. In case we do not connect by phone, I wanted to get this information communicated to you."
Now, let me pause and go back to Exhibit 20. It looks like you -- on the 11th, which is the day before this letter, you had a telephone call to Larry Richter and left a message, which I infer from that you

Page 25

A I believe he either had or -- well, had in the past or had at that time some representation of who I believe was Carl Zerbst at Ameris.

(Exhibit No. 24 was marked for identification.)

Q All right. I'm showing you an e-mail from yourself to George Kefalos dated November 13th, 2009. Do you remember sending that e-mail?

A In a general way, yes.

Q Take a minute and read it if you need to.

A I'm finished.

Q Okay. So is this your first contact with Mr. Kefalos about Linda's problem with Ameris Bank?

A Probably. I don't remember any other.

Q Okay. Did you communicate with him with regard to any of the other legal issues that were troubling her at that time?

A I don't recall.

Q Was he ever retained in connection with First Citizens?

Page 26

A He may have been. I don't recall.

Q What was your purpose for contacting Mr. Kefalos?

A Mr. Richter indicated that he had a conflict and was having to be relieved or relieve himself from the Re/Max lawsuit. George was, and is, one of the most competent civil plaintiff's attorneys that I know, and I was hoping that he would take a look at the case and consider taking it.

Q Okay. And would that be for the purpose of doing -- as you had suggested previously to Mr. Richter, that some lender liability claim be asserted against Ameris Bank?

A That's what the e-mail indicates.

Q The last line of the first -- or the big paragraph says, "The current value is about 1.2."

Where did you get that value from?

A I don't recall.

Q Do you know whether an appraisal was ever done of the apartment complex?

A Yes.

Q When was that done?

Page 27

A Based on the e-mail in Exhibit 24, it refers to the appraiser not surprisingly bringing back a value right on the value of the contract price, so that would have been done postcontract, preclosing.

Q Okay. And this would be the appraiser whose appraisal was questionable, in other words, a potential defendant in a lawsuit?

A Correct.

Q Do you know whether a real appraisal was ever done to determine what the actual value was?

A I don't recall.

Q So that 1.2 million number, as far as you know, that didn't come directly from an appraisal?

A I don't recall where it came from.

Q Okay. Going back to your billing statement, it appears that on the day of that e-mail, you had a conference with Ms. Gibson.

Do you remember having that conference?

A No, but the billing statement indicates that I did.

Page 28

Q Did she authorize you to contact Mr. Kefalos on her behalf?

A Assert the attorney-client privilege.

Q Would you have contacted Mr. Kefalos, as you did on the 13th, if you did not have permission to do it?

A Since that appears to be a side doorway to get into the first question, I will assert attorney-client privilege.

Q All right.

A Very tactful, however.

Q Well, how about this one: Would it have been your normal practice to make such a contact or an overture without permission from your client?

A I would always have -- strike that. Scratch that.

MR. DAVIS: I'm going to object to form.

MR. COOKE: Okay.

MR. DAVIS: Go ahead.

A I hoped that I always did things with my clients' consent and blessing.

Q Is there any doubt in your mind but

Page 29

that you were representing Mrs. Gibson at the time that you made that contact with Mr. Kefalos?
A There's no doubt.
Q And is there any doubt in your mind but that the Ameris problem was within the scope of your representation?
A Yes, but in a limited way. I was not going to sign on to the lawsuit that Mr. Richter had.
Q Okay. Now, I think my question was confusing because I said "is there any doubt but that," so it's kind of a double negative.
So was it your belief at that time that you did represent her in some way in connection with her indebtedness to Ameris?
A I -- yes, I did.
Q But you had not undertaken to be involved in the litigation against Ameris?
A Correct.
Q Were you a litigator? I mean, did you consider yourself a litigator?
A Yes.
Q Okay. But in this instance, you thought that Mr. Kefalos would be what,

Page 30

better able to assess and pursue the kind of case that you had in mind?
A Yes.
Q Okay.
(Exhibit No. 25 was marked for identification.)
Q All right. This is another e-mail that is not yours. It's dated November 17 from Mr. Zerbst to David Charpia. And he starts out with, "I met with Linda and her new attorney, Robert Papa, last Monday."
And that would -- again, if you look at the calendar, that would coincide with the meeting that you had had.
"He was to get back with me last week but did not, although I did receive this e-mail today." And we'll get to that in a minute.
"Larry Richter confirmed today that his firm no longer represents Linda. I wish he did for our benefit, but I understand why he no longer does.
"With respect to the below e-mail, I'm not sure what Robert is asking for in the way of more help from Ameris. It seems they

Page 31

need to offer something that works for both of us.
"Linda did call me today and asked for a little more time. I do and will remain hopeful that we can resolve the issues we face, but I don't think we can or should wait for First Citizens.
"I have selected two parcels of land that is income producing to Linda that would be used on the residual loan if Linda and Robert want to work for a win-win.
"David, I got your voicemail and can meet with you at 4:30 tomorrow, and I will know more then."
So the e-mail he's referring to is -- appears to be from you dated November 17, from Robert Papa to Carl Zerbst. And it says, "Hi, Carl: I have been spending quite a bit of time with Linda trying to sort out things to be able to advise her on what is in her best interest. As you know, Linda has no earned income from a 9:00-to-5:00 job. Her subsistence is based on the real estate income. What Ameris is offering re the deferment of the 300,000 is appreciated. The

Page 32

numbers for Linda are close, but we need more help from Ameris.
"The attorney for First Citizens is in New York City and returns this Thursday or Friday, so I do not have a concession package with them yet. I have court tomorrow in Charleston in the morning and Walterboro in the afternoon but will check e-mails early in the day. Rob."
Can you explain to me what you were proposing to Ameris in that e-mail?
A I haven't seen this for six years, and I don't remember what the sentence "what Ameris is offering re the deferment of the 300,000 is appreciated" really means other than its face value, and it doesn't mean much on its face value.
Q All right. So other than just what it says, you don't know whether she had a payment of 300,000 that was due, that she was asking for it to be deferred, or what that -- what that meant beyond what it says?
A Correct.
Q Okay. But then you said, "The numbers for Linda are close, but we need more

Page 33

help from Ameris."
What help were you suggesting from Ameris?
A Some sort of concession, and I don't recall what.
Q Did you ever discuss with Ameris the possibility of their just taking a deed in lieu of foreclosure and waiving the deficiency?
A I don't recall.
Q Do you remember there being any discussion about their taking the property, a deed in lieu of foreclosure, with or without a deficiency?
A I don't recall.
Q And then looking at his e-mail where he says, "I have selected two parcels of land that is income producing to Linda that would be used on the residual loan if Linda and Robert want to work for a win-win."
Does that imply that they were aware that she had other parcels of income-producing land and that they could use that as security to pay the -- any deficiency?

Page 34

A I don't know what they were aware of, but I've never seen a loan at a bank that did not have a financial statement preceding the granting of the loan.
Q Okay. Do you know whether she provided a financial statement to the bank, to Ameris, while you were representing her?
A I don't recall.
(Exhibit No. 26 was marked for identification.)
Q All right. Exhibit 26 is a -- it looks like a reply to your e-mail from Mr. Zerbst dated November 17th. Can you take a second to read that to yourself.
A The first section?
Q Yeah. Well, the middle of the page is your e-mail to him that we've just talked about, so this would be his response to you.
A All right.
Q So -- and without requiring you to talk about your internal strategy, I'm trying to piece together things that are actually in writing.
So we've got your letter to Larry Richter, your e-mail to George Kefalos, and

Page 35

then this communication with the bank.
So does this suggest that the bank at that point was pressing for Linda to sell the apartment complex and seek financing of the residual loan or use two parcels of other property that she had to finance the residual balance of that loan?
A That's the way I read what Mr. Zerbst wrote.
Q And do you remember that being what the bank was asking for at that time?
A Vaguely.
Q Do you know which parcels of property that they were interested in?
A I think there were two warehouses on Daniel Island or -- I know Daniel Island isn't all Daniel Island, but I call it all Daniel Island, and I think that's where they were.
Q Do you remember her owning any -- anything like a cell phone tower property?
A I believe that there's a cell phone tower on one of those properties.
Q Okay. Was she willing to use those properties to finance that indebtedness to

Page 36

Ameris?
A Assert attorney-client privilege.
Q Looking at your billing statement again, on November 17 it shows -- and that's the same date that you had a conference with your client, and that was two hours.
Do you recall what the substance of that conversation was?
A No.
Q And then on the 19th it said you had a call to Wyatt Dixon. Who is Wyatt Dixon?
A I believe he was a realtor involved with Linda, if I'm correct in my memory.
Q All right. The next item is on the 24th you had a conference with Linda. It looks like an hour.
Do you know what the substance of that conference was?
A No, other than related to my representation of her.
(Exhibit No. 27 was marked for identification.)
Q Exhibit 27 is an e-mail from George Kefalos to you dated November 27. Take a

Page 37

second to read that to yourself.
A I'm finished.
Q Okay. It starts out, "Rob: I sorry I did not get back to you sooner. I am interested in working on the case. I've gone over the file again and discussed it with Drew Epting. I think it is a good case (though it has serious issues), and I would be willing to undertake it on a couple of conditions.
"First, Drew would have to be involved and agree to handle the banking aspect of the case. Drew has considerable experience with today's banking issues and the FDC examiners by reason of his position as a bank director. He is familiar with the issues involving defaults on loans like this and knows the hot buttons for banks.
"Second, we would need an opinion from an expert regarding the accuracy of the appraisal before proceeding against the appraiser.
"And, third, since the most significant benefit to be had from the case might be limited to a forgiveness of the

Page 38

2 million-plus loan, there would be no corpus from which to calculate a fee. Under these circumstances, we would have to work out a contingency-fee arrangement with the client that would provide for a fee in a percentage of the savings and be secured by a mortgage on property. Give me a call when you get back to town so we can discuss this."
So taking this piece by piece, did you know who Drew Epting was?
A Yes.
Q Who is he?
A Another distinguished attorney in Charleston.
Q Did you -- did he have a good reputation as a litigator of complex cases?
A I would say he had a good reputation as an attorney. I don't want to use the phrase "litigator" or modifier "litigator" because I was not familiar with that aspect of his work.
Q So how did this request by Mr. Kefalos strike you, that is, that he would associate Drew Epting to help with the case?

Page 39

A The public record would show that Ms. Gibson had a -- and I apologize for the profanity, but a shit storm coming down on her -- and I don't know a better word than that -- and putting together the best team, in my opinion, was in her best interest.
Q Did you believe that having Mr. Epting on the team would improve the quality of the team?
A I believe that George believed that. I did not have much of an opinion at that point.
Q Were you willing to respect George's opinion, that the case would be improved by having Mr. Epting enjoined?
A In a general way, yes. It was early at that point.
Q Okay. Did you express to him any reservations about his including Mr. Epting?
A Not that I recall.
Q Do you remember whether you discussed this proposal with Mrs. Gibson?
A Did you -- was your question did I recall?
Q Yeah. Do you remember whether you

Page 40

discussed this proposal with Mrs. Gibson?
A I do not remember what most likely was that discussion.
Q Okay. Would it have been your normal course to discuss a proposal like this with your client?
A Yes.
Q Can you think of any reason why you would not have discussed this with Mrs. Gibson?
A No.
Q All right. This last paragraph, did you understand what he was referring to about the fact that there -- if the outcome were a forgiveness of the loan, there would be no corpus from which to calculate a fee?
A I did understand that.
Q What was he -- what did he mean by that?
A I don't know what he meant, but I know what I thought it meant.
Q Okay. What did you think it meant?
A What I thought it meant was if a bank gives up $100, you can't take a third of that or whatever percentage is negotiated.

Page 41

Q Okay.
A And so corpus or principal was essentially air.
Q Did you discuss this proposal with Mrs. Gibson?
A I don't recall that -- whether I -- I don't recall that.
Q Okay. You don't recall ever discussing it or don't recall around November 27 discussing it with her?
A I don't recall certainly that time period a half a dozen years ago. I discussed everything that came to my attention with her.
Q And we'll have some other communications in a few minutes that might help with that.
Did you find anything objectionable about his proposal that -- that they would have to work out a contingency arrangement with the client that would provide for a fee and a percentage of the savings and be secured by a mortgage on property?
A This Exhibit 27 was a communication with some general parameters and not a

Page 42

retainer agreement, so I was happy for Ms. Gibson to have extremely qualified people interested in helping her.
Q Okay.
A The details to be worked out between her and them.
Q Okay. Going back to your fee statement --
A To my what statement?
Q Your fee.
A Oh, I'm sorry.
Q Your next entry is December 1. It says there was a letter to Larry Richter.
By the way, did you bring any documents with you today?
A I don't have any. I -- the file was given to Ms. Gibson.
Q Okay. So you did not retain a copy of your file?
A Correct.
Q When did you give her that file?
A Sometime in 2014.
Q Did you give it directly to her, or did you give it to her counsel?
A The esteemed Mr. Falkiewicz gave

Page 43

it, I think, to her, but I'm not sure. I was not involved in that.
Q And then there is, on December 2nd, a conference with client. That would be, it looks like, one hour.
So you met with Ms. Gibson. Is it likely that you would have discussed with her at that meeting Mr. Kefalos's proposal?
A I would have discussed with her any information that was relevant to her.
Q All right.
(Exhibit No. 28 was marked for identification.)
Q This one might jog your memory. This is an e-mail from you to George Kefalos and Drew Epting and Oana Johnson.
Do you know who Oana Johnson is?
A Yes.
Q Who is she?
A At the time I believe she was -- I want to say she might have been an attorney licensed in another state or country and was working essentially as a paralegal for Mr. Kefalos.
Q Okay. It's dated December 11,

Page 44

2009. Do you want to take a minute to read that to yourself?
A Sure. I'm finished.
Q Okay. Let's see what we can piece together from this. And I'm looking back at your fee statement, and it does show that on December 10 you had a meeting with client and George Kefalos. Was Drew also at that meeting?
A Based on Exhibit 28, it appears that he was.
Q Okay. And then it also shows on the 11th, which is the date of this e-mail, you had a telephone call with client and you also did an e-mail to Jay Davis.
What was Jay Davis's involvement?
A I think that he was the attorney of record on a -- possibly a foreclosure action.
Q But not for Ameris?
A Correct.
Q Maybe First Citizens?
A Most likely.
Q Now, on the next page it says e-mail to Kefalos and Epting.
So that must refer to this e-mail,

Page 45

Exhibit 28?
A Unless there's another one, yes.
Q Okay. So the times add up. Here it says, "Good afternoon, George, Drew, and Oana. Thank you for your time yesterday meeting with Linda and myself."
That would correspond to the time on your record that says you did have that meeting.
"The information you added, Drew, was very helpful and gave us hope." What information did he add?
A I wish I could remember.
Q Okay. The next sentence says, "As you know, I stayed for a while in your conference room and discussed Linda's options."
Does that mean you discussed them with Linda?
A Linda and I stayed and had a discussion.
Q Okay. It says, "I gave her some input and let her sleep on it. I spoke to her this morning and confirmed the following plan, or should I say proposal."

Page 46

So when you say you spoke to her, would that correspond to your entry on your time record of the December 11 telephone call to client?
A I'm not seeing what you're pointing to.
Q (Indicating.)
A Okay. I wonder if I'm missing a page. Where does it start? Okay. Sorry.
Okay. December 11, you said?
Q Yes. It says telephone call with client.
A Yes.
Q In your e-mail, you said, on that same day, "I spoke to her this morning." So does that seem to corroborate your statement that you spoke to her that morning?
A Yes.
Q Did she authorize you to make these two proposals that are numbered 1 and 2?
A Attorney-client privilege.
Q Okay. Would it have been your normal practice to make a proposal like that without authority from your client?
A No.

Page 47

Q So item 1 is -- it says, "I spoke to her this morning and confirmed the following plan, or should I say proposal.
"1. George to sign on to represent Linda in the pending action."
That would not be the Ameris case, would it?
A I was referring to the Re/Max case.
Q That Larry Richter was withdrawing from?
A Yes, sir.
Q Then Number 2, "As to Drew, we would like to hire you initially on an hourly basis at $400 an hour, with a $5,000 retainer, to begin negotiations with Ameris Bank. This would be limited to no litigation services. If the negotiations prove successful, end of story. If it becomes more provident than not to bring the bank into either the existing litigation or a separate lawsuit (e.g., if they file a foreclosure action), then we would enter into a separate retainer agreement with Drew based on the contingency discussion we had yesterday."
So had you discussed this

Page 48

possibility or this proposal with Mr. Epting and Mr. Kefalos on your December 10 meeting?
A I don't want to guess, and I -- I don't remember that particular -- I remember going to George's office.
Q Uh-huh.
A I remember meeting with him. I don't remember the details of the meeting.
Q Well, did you believe that it was in Linda's best interests to propose what you just said in this paragraph 2 of the e-mail?
A Attorney-client privilege.
Q Okay. Would you have proposed it if you didn't think it was in her best interest?
A I always try to propose what I thought was in my client's best interest.
Q So would the benefit of proposing that he represent her on an hourly basis short of litigation, would the benefit of that be that if he was able to negotiate relatively easily a resolution with the bank, that it might be in -- it might cost her less to pay him by the hour to do that than on a percentage of the benefit that he could

Page 49

obtain for her?
A If you took the word "easily" out, where you said "negotiate relatively easily."
Q Right.
A Because there was nothing easy about her problems.
Q Okay.
A Exhibit 28 indicates that she would like to hire Drew on an hourly basis to try to negotiate a settlement.
Q Okay. Just doing the math, if he were able to spend 50 hours and convince the bank to waive a million-dollar deficiency, at $400 an hour, that would be less for her than if she had to pay a third of that savings. Is that fair to say?
A Did you say 50 hours or 40? I can't remember.
Q I said 50.
A Okay. Well, I'm doing the math in my head. That's $2,000. The math indicates 20,000 is either more or less than the amount that could be yielded from a contingency depending on the amount of savings that resulted.

Page 50

Q Okay. Up to this point, had there been any discussion about what the percentage would be if it escalated into litigation?
A I don't recall.
(Exhibit No. 29 was marked for identification.)
Q Exhibit 29 is an e-mail to you from -- to you and to George and to Oana Johnson from Drew Epting dated December 14. Would you take a minute and read that to yourself?
A Okay.
Q Does this refresh your memory as to any conversations you had with Drew Epting about what his strategy was -- his proposed strategy would be?
A No, other than to prepare a suit and make that sort of visible threat; you know, Here's the lawsuit, or we can do it the easy way, to use your word.
Q Looking back at your billing statements, it appears that you had a telephone call to David Charpia at Ameris Bank on the 16th and a call to him on the 17th.

Page 51

Do you remember what the nature of those calls was?
A I remember zero about that.
Q Do you know whether you ever told anybody at Ameris Bank that Linda had retained Drew Epting and/or George Kefalos?
A I don't recall. Before we go to the next exhibit, let me use the restroom.
Q Okay.
(A recess was taken.)
Q At the time of this e-mail which is Exhibit 29, is it your understanding that the parties had agreed to your proposal of December 11, which was that Drew would undertake, on an hourly basis, $400 per hour, limited to no litigation services and that, if it became more provident than not to bring the bank into either the existing litigation or a separate lawsuit (e.g., if they filed a foreclosure action), then we would enter into a separate retainer agreement with Drew based on the contingency discussion we had on the 10th?
I mean, was that -- do you believe that, as of the 14th when Exhibit 29 was

Page 52

written, that your proposal had been accepted and that's the way that Mr. Epting was representing Linda?
A I believe that Drew was initially representing her on an hourly basis.
Q Okay.
A And did not know what transpired between Linda and Drew in their private conversations.
Q Do you know whether she paid him a $5,000 retainer?
A I think the circumstances would indicate so, but I don't have any recollection or don't think that I touched that document -- the check. I may have. I don't recall.
Q I understand.
(Exhibit No. 30 was marked for identification.)
Q Exhibit 30 is another e-mail that's not yours, but it's from Dave Whitener dated December 30, 2009, to David Charpia.
It says, "David, I still have not received the promised e-mail with a demand figure from Rob Papa. I do not think it wise

Page 53

for me to ask for it a second time. When I hear from him, I will let you know immediately."

Who was Dave Whitener?

A He was my boss when I clerked in law school.

Q Really?

A Small world again. I'm sure you know he passed away.

Q Yeah.

A He was an attorney in Columbia.

Q Who was he representing?

A It was one of the other banks. And if Mr. Charpia was involved, I can guess that it was Ameris, but I don't recall --

Q Okay.

A -- from this e-mail.

Q Right. And we'd seen Mr. Charpia's name on some other e-mails, internal e-mails from Ameris?

A Correct.

Q Do you remember as you're sitting here what demand figure you were supposed to provide to him?

A No.

Page 54

Q Okay. Looking at your billing records, it does look like there were -- let's see. There's a call on December 18 from David Charpia, and then on the 29th, it looks like you returned call from Dave Whitener.

Do you remember what the substance of any of those calls was?

A Something to do with my representation of Ms. Gibson.

Q Okay. Do you know whether Drew Epting had had any contact with the bank at that point?

A No.

(Exhibit No. 31 was marked for identification.)

Q This is an e-mail, it says from the Epting office to you, dated February 4, 2010, marked as Exhibit 31. It's to George Kefalos, Drew Epting, Sheri Towne, Oana Johnson. Subject: Linda Gibson. Sensitivity: Confidential.

All right. Take a moment and read that to yourself, if you would.

A All right.

Page 55

Q Do you remember receiving this e-mail?

A No, I don't remember receiving it.

Q Does it seem familiar to you?

A Yes.

Q Does the substance of it seem familiar to you?

A Yes.

Q It starts out, "Rob: George and I have talked about how to move this forward with Linda. It seems we have agreed that, as to the litigation with all others than Ameris, it will be handled on a contingency of," and then there's a 1, 2, 3.

1 is 33 percent; 2 is 40 percent if the case is not settled before it is placed on the active trial roster; or, 3, 50 percent if an appeal is filed.

Stopping there, do you know why there was an agreement to treat the other litigation differently than the Ameris situation?

A I think the public record would show that one -- in one situation she was a plaintiff; in the other, she was a defendant.

Page 56

Q Okay. Ameris wasn't actually in litigation at this point yet, was it?

A I -- no, I really don't recall.

Q Okay. I'm jumping ahead a little, but -- I'm not going to bother marking this as an exhibit, but I'm just going to show you this to refresh your memory, a summons and complaint entitled "Ameris Bank versus Linda Gibson," and it was filed June 15, 2010.

A Okay. All right.

Q So if that's the -- if that's when the suit was filed, is it fair to say that as of February 4 there was no actual pending litigation with Ameris?

A Not unless there was another suit.

Q Okay. Continuing on, it says, "As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due to Ameris). However, as to Ameris, George and I agree that our past work and work for the next 60 days, including filing the litigation, will be on an hourly basis so that if an early resolution with Ameris by discounting their debt can be achieved, our

Page 57

fee would be limited. I think we will know in two weeks if this is likely, but I have used 60 days as this can accommodate practical considerations.

"In the event she pays an hourly fee and achieves a settlement as to any defendant, the hourly fee will be deducted from the contingency. In all events, she will pay our costs (depositions, filing fees, et cetera) on an interim basis.

"Please consider this. With kindest regards, Drew."

So do you remember that proposal being made?

A No, I don't remember it being made.

Q Does it seem familiar to you seeing it --

A Yes.

Q -- in the form of an e-mail?

Do you remember objecting to any of the terms that were proposed?

A I don't recall.

Q Looking back at your time sheet, it shows that on February 8 you had a conference with client, Linda Gibson, for an hour.

Page 58

Do you remember that conference?

A No.

Q Is it likely that during that conference you discussed this proposal from Mr. Epting?

A Attorney-client privilege.

Q Okay. As we've discussed before, would it be normal in your standard of practice to discuss something like this with your client?

A Yes.

Q And is there any doubt in your mind but that Mrs. Gibson was still your client as of February 8, 2010?

A No doubt.

Q Do you -- did you understand the meaning of this paragraph that begins "As to Ameris, the same percentages will apply"?

A I don't recall my interpretation back then, but I understand it today.

Q Is there anything that you would consider confusing about that?

A No.

(Exhibit No. 32 was marked for identification.)

Page 59

Q I'm showing you Exhibit 32, a letter dated April 7, 2010, from Drew Epting to Linda Gibson. And then there's a place for her signature at the bottom.

It says, "Dear Linda. So let's supplement our fee agreement with this writing. You have asked that George and I help with the large workout of your financial problems."

I'm sorry. Why don't you take a minute to read it to yourself first?

A I have.

Q Okay. Have you ever seen this letter before?

A No, not that I recall.

Q Flipping to your time records, I do note that on the day after this letter, April 8, 2010, you had a -- a meeting with Linda Gibson.

A Correct.

Q Do you -- do you know whether you discussed this proposal with her during that meeting?

A I really don't think I've ever seen this letter, so I -- and whether I did or

Page 60

not, assert attorney-client privilege.

Q Okay. Reading the -- there's a reference to the items that they would represent her on. It says, "1, return of the Richter fee. 2, save your home and farm in St. George. 3, keep creditors at bay on Daniel Island. 4, ditto the shopping center. 5, the beach house, try to work you out of this without losing other assets. I am not at this time taking on defending this suit."

Were you defending that suit at that time?

A I believe I did appear on that.

Q Just going back to your time records, on March 25th, you said, Final draft of answer, letter to Kerrison, PC to client. And then on the 5th, amended answer -- I'm sorry, 5th of April, amended answer, letter to attorney, PC to client.

Would that have been with regard to that litigation?

A If Kerrison was the attorney on that case, then I would say so.

Q Okay. The letter goes on to say, "We agree that George and I will charge you

Page 61

$400 per hour. I will use Rhonda McCraw, together with our paralegals, where necessary. We do not bill in increments of .2 of an hour and do not bill costs except those billed to me by a third party or for travel.

"You agree to send a check every month for $2,500 beginning at the time of the execution of this letter agreement to be applied to these services. George and I will handle the existing case against Re/Max, Rolando, Moore, and Ameris on a contingency as set forth in our agreement of February 4, 2010.

"Linda, as I told you, you have some serious problems here. I guaranty no results, but I will give you my best."

Does it appear likely that the February 4, 2010, e-mail that he refers to is the one that's attached, which was one we talked about earlier, his e-mail to you of February 4?

A The e-mail happens to be dated February 4. He refers to an agreement. I don't know if that's what he's referring to.

Page 62

Q Are you aware of any other e-mails dated February 4?

A No.

Q Or any other agreement entered into on February 4?

A No.

Q Taking a minute to look at this document, both pages of it, can you tell me what the agreement was with regard to Mr. Epting and Mr. Kefalos's representation of Ms. Gibson in the Ameris matter?

A In that the letter from Drew dated April 7, 2010, Exhibit 32, refers to five separate matters, I don't know that I can ferret out just the Ameris aspect of this, but I think it's included in it.

Q Well, let me -- let me walk you through it, then.

Go back to the second page there, which is the February 4. What he says is that "As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement of less than the amount due to Ameris). However, as to Ameris, George and I agree that our past work

Page 63

and work for the next 60 days, including filing the litigation, will be on an hourly basis."

So as it turns out, April 7 is about 60 days after February 4, right?

A Very close.

Q So does it appear that, looking at the last sentence of the biggest paragraph on the April 7 letter where he says "George and I will handle the existing case against Re/Max, Rolando, Moore, and Ameris on a contingency as set forth in our agreement of February 4, 2010," does it appear that what he means is that it's 33 percent or 40 percent if the case is not settled before it is placed on the active trial roster or 50 percent if an appeal is filed; in other words, referring back to the February 4 e-mail?

A I think that's a fair interpretation.

Q Do you remember Mrs. Gibson at any time objecting to any of these terms of representation?

A Attorney-client privilege.

Page 64

Q Did you ever convey to Mr. Epting or Mr. Kefalos on her behalf any objection to any of these terms of representation?

A Not that I recall.

(Exhibit No. 33 was marked for identification.)

Q This is another series of e-mails that are not really yours, but -- except for there's a copy to you of part of it.

So this is -- flipping to the back first, as you have to do with e-mail chains, there's an e-mail from Drew Epting dated June 14, 2010, to Dave Whitener. It shows a copy to you.

And it says, "Dave: Rob Papa, who is part of this equation, has been on vacation and not due to return until next week. I would request that you give me another ten days."

The response to that seems to be, "Drew, the bank wants to move forward with the filing of the foreclosure but looks forward to receiving a response to its offer."

Do you know what offer the bank had

Page 65

made at that time?
A No recollection.
Q Were you still involved at that time in advising or -- and/or representing Ms. Gibson?
A Yes.
(Exhibit No. 34 was marked for identification.)
Q I'm marking now the summons and complaint that Ameris Bank filed against Linda Gibson and other entities. It says, "Linda Gibson, formerly known as Linda Anne Avenger, individually and as trustee of the Paul William Gibson Family Trust."
Do you know what the Paul William Gibson family trust was?
A I don't recall.
Q How about Heritage 7, LLC?
A I don't recall.
Q How about Access Portable Toilets, Incorporated?
A Definitely don't recall.
Q Did you ever see this summons and complaint?
A It looks familiar.

Page 66

Q Looking on page 7, numbered 7, does it appear that the suit seeks a deficiency judgment against Ms. Gibson and the trust?
A Yes.
Q Going to your time records, things occurring around then, on June 14, it shows that you had a telephone call from Drew Epting, followed by e-mail, PC to e-mail to client.
Do you remember what the substance of those conversations was?
A No.
Q Could it have been that this lawsuit was imminent?
A Do you really want to ask me that question?
Q Well, that was --
A Sure.
Q It could have been about almost anything. You just don't remember the conversation?
A Zero.
Q Okay.
(Exhibit No. 35 was marked for identification.)

Page 67

Q 35 is an e-mail from Drew Epting to Linda Gibson dated July 9, 2010.
Have you ever -- take a minute to look at this, and tell me if you've ever seen it before.
A I don't recall ever seeing it.
Q Let me know when you finish reading it.
A All right.
Q Did you ever appear as counsel of record in the Ameris litigation?
A Not that I recall.
Q Okay. Were you involved in any of the strategy meetings or litigation strategy in defending that case?
A Not that I recall.
Q Okay. And, again, have you ever seen this e-mail before?
A Not that I recall.
Q I want to direct your attention to the explanation in the second paragraph. It says, "As we are in Berkeley and this case will move more quickly, I suggest that if a reference is sought to the master, that we agree. I also recommend that you allow me to

Page 68

associate Gedney Howe and John West. It will not cost you any more as you have a contingency fee with George and me as to the Ameris litigation."
Did you ever become aware that Mr. Epting and Mr. Kefalos had proposed associating Gedney Howe and John West?
A Sometime after the fact I became aware of it.
Q Did Ms. Gibson ever tell you that she had objected to it in any way?
A Attorney-client privilege.
Q Do you remember whether you ever discussed with her the retention of -- or the association of Mr. Howe and Mr. West?
A I have no recollection of that.
Q Okay. It says, "Linda, as I explained the fee with regard to Moore-Re/Max-Rolando is a percent of what is collected, so there will be funds available to pay the fee. With Ameris, the fee is based on what is actually saved. So, for example, assume that Ameris seeks principal, interest, and fees of $3 million, and we convince the judge that, because of Ameris's

Page 69

conduct, they should only get the property, which will have been deeded to them, which was worth 1.5 million at the time that it was deeded (and I use this by way of example only. As you know, the offers have been substantially less), your contingency is on the $1.5 million savings, but you have no money coming in to pay it. As I said, we will work this so that the fee recovery from the Charleston County litigation may or may not be sufficient to pay the fee for the Berkeley litigation, so it would entail your coming up with the funds.

"Linda, while there may be opportunities to settle this case in the future, one of your options is to deed some other property to them or give them a mortgage on the property they requested. I know you did not want to do it when the settlement offer came in, but it is an option. Yes, you lose valuable property given to you by your father, but you have a tough case with Ameris, and your sanity is worth something.

"I will call Rob Papa about the

Page 70

foreclosure hearing and see what is up in August."

So do you remember having a conversation with Drew Epting at around that time?

A No.

Q Your time records do show that on August 17 you had a meeting with Jay Davis, Epting, and Kefalos.

Do you know what the nature of that meeting was?

A Some aspect of financial representation of Ms. Gibson, but nothing specific.

Q Okay. And then on the second -- on the 18th it said you had a conference with client.

Do you remember what the substance of that conference was?

A No.

Q So what I -- the part that I just read to you out loud, is any part of that inconsistent, in your opinion, with what had been discussed and agreed to previously as -- in terms of the terms of Mr. Epting and

Page 71

Mr. Kefalos's retention in the Ameris matter?

A It appears to be consistent.

Q Okay. Do you know whether you ever discussed this communication, whether it was this e-mail or not, but this communication with Ms. Gibson?

A As I don't recall ever seeing this --

Q Okay. Would you have been available to discuss and/or explain this to her had she needed explanation or advice about it?

A I would think so.

Q Could she have asked you -- I mean, would she have had the ability to ask you about it at either -- at the August 18 meeting that's reflected on your time sheet?

A Conceivably, yes.

MR. DAVIS: Can you rephrase the question? August 18 of what year?

MR. COOKE: 2010.

MR. DAVIS: Thank you.

A Same answer.

(Exhibit No. 36 was marked for identification.)

Page 72

Q This is a letter from Ian McVey dated August 12, 2010, to Mr. Epting.

Did you ever see this letter?

A Not that I recall.

Q Would you take a minute to review it?

A Okay.

Q It says, "Dear Drew" -- I'm not going to read the whole thing, but it says, "Dear Drew: I enjoyed speaking with you earlier yesterday. As you know, the note, mortgage, and assignment of leases and rents that are the subject of the above-referenced matter have been transferred and assigned to my client, Galt Valley, LLC. What follows are the demands my client has asked me to make that you and I discussed yesterday."

So did you become aware that at some point Ameris had assigned its note, mortgage, and assignment of leases and rents to Galt Valley?

A I did hear that the bank sold, assigned, or transferred it to somebody. I didn't remember the name.

Q How did you find out about that?

Page 73

A I don't recall.
Q The next paragraph says, "While I know your client has tendered a deed to this property, there are some problems with doing so. First of all, the deed does not seem to be properly executed, nor does it convey the property to the correct lender. I would draw your attention to the signature block for Heritage 7, LLC, as well as the probate."
Do you know what he's referring to about a problem with the deed?
A No.
Q "Second of all, my client has not accepted said deed, and at this point I would not recommend to do so until we work out a resolution."
Did you ever have any conversations with Mr. McVey?
A I'm fairly convinced I have not.
Q Okay. Were you aware, at or about that -- at around that time, that Ms. Gibson had offered -- had tendered a deed to the property to Ameris?
A I don't have any recollection of that.

Page 74

Q Did you ever tender a deed while you were representing her?
A I highly doubt it.
Q Okay. Why -- why would you doubt that?
A Because I don't remember it.
Q Okay.
A And it's a significant event.
Q Okay.
A And I was less and less involved --
Q Understood.
A -- as the other team was more and more involved.
Q Now, again, this letter was dated the 12th of August, and your time record shows that you did meet on the 17th of August with Jay Davis, Epting, and Kefalos.
Now, Jay Davis didn't represent Ameris, though, did he?
A I think that might have been the First Citizens case with the beach house.
Q Okay. Then on August 18, you had a conference with client.
Do you remember anything about the substance of that meeting?

Page 75

A Zero.
Q On the 24th, a court appearance at foreclosure hearing.
Do you know what foreclosure that was?
A I believe it was the beach house.
(Exhibit No. 37 was marked for identification.)
Q Exhibit 37 is a notice of motion and motion for appointment of receiver that Galt Valley filed on August 27.
Have you ever seen that before?
A Not that I recall.
Q Were you aware that Galt had filed a motion for appointment of receiver?
A Something is joggling in my brain that I remember hearing about a motion in the Berkeley County case, but I don't remember the nature of it.
Q Did you go to the hearing on that?
A I'm pretty convinced I did not.
Q Okay. Based on your previous answers, you may not answer this. But do you know whether Ms. Gibson was in favor of a receiver being appointed for the apartment

Page 76

complex property?
A Attorney-client privilege.
(Exhibit No. 38 was marked for identification.)
Q Exhibit 38 is a letter dated October 18, 2010, from Mr. McVey to Drew Epting.
Have you ever seen this before?
A No.
Q It says, Drew -- "Dear Drew: As always, it was a pleasure seeing you at the hearing the other day. I have been discussing with my client your proposal to deed over the property in the above-referenced matter. However, I keep getting hung up on what" -- "on what do we do about the remainder of the debt. Obviously, the values of both properties are significantly low in comparison to the total debt total. By my math, there would be something well in excess of a million-dollar deficiency."
Does it appear from that statement that, at least as of October 18, 2010, the bank was still seeking a deficiency judgment?

Page 77

A That's what I read from this letter.
Q Did you have any conversations at any time with anybody at Galt or Ameris that suggested that they were willing to waive the deficiency, that is, in which they suggest -- in which you inferred or they told you or implied in any way that they were willing to waive the deficiency?
A Not during my tenure.
(Exhibit No. 39 was marked for identification.)
Q Exhibit 39 is a letter dated October 25, 2010, from Ian McVey to Drew Epting.
Have you ever seen this letter?
A No.
Q Look at the first paragraph of the second page. It says, "Based upon my client's valuations of the properties in question, the collateral has a total value of 1,338,000. This is based upon a value for 2625 Otranto Road of a million dollars and a value for 615 Clister Lane of $338,000. You will recall that Geoff Southerd testified

Page 78

that the value of 2625 Otranto Road was $750,000. However, for purposes of this letter, my client is assigning it a value of a million dollars. This leaves a $1,697,678.10 deficiency for which your clients are liable, jointly and severally."
Did you ever become aware that that statement had been made on behalf of Galt?
A No.
Q Who's Geoff Southerd?
A I've never heard his name, to my recollection.
Q Do you -- do you or have you ever had any information that would indicate that the properties that they refer to, that is, Otranto Road and Clister Lane, were worth more than $1,338,000?
A How did you start the question? Was I ever aware?
Q Right. Or have you ever -- have you ever had any information indicating that those properties were worth more than what this letter says, $1.338 million?
A I cannot discern, other than by the date of the letter, when Mr. Southerd placed

Page 79

the value on one or both properties. I think he -- it looks like only one property, so that leaves me in an unanswerable position.
Q Okay. Well, the statement is that he had valued it at less than a million dollars, so my question -- let me just simplify it. Are you aware of any information indicating that these properties were worth more than $1,338,000?
A I have no recollection, but from an earlier exhibit, there was a mention of 1.2 million. So that's the only thing I can refer to.
Q And that's less than 1.338?
A Correct.
(Exhibit No. 40 was marked for identification.)
Q Number 40 is a letter dated November 8, 2010, from Mr. McVey to Drew Epting. Take a moment to look at that, and let me know if you've ever seen this before.
A I've never seen this.
Q Read it and tell me if you ever became aware of this proposal being made.
A No, I had not.

Page 80

Q Look at item Number 4. It says, "My client will forgive the remainder of the dead and waive any right to a deficiency judgment against your clients."
And then Number 5, "My client will refrain from issuing a 1099 as to the remainder of the debt to your clients."
When did you learn that Galt was willing to waive the deficiency?
A Whenever the trial against Re/Max happened -- let me start my sentence again.
I ran into George or had some communication with him and asked about how things were. And I found out that they had won a sizable judgment against Re/Max and possibly other defendants -- we didn't go into that -- that it was on appeal, and that there was a smoking pistol, and that -- I don't know if he said Galt or the plaintiff or the bank or Ameris -- it was a very short conversation -- but as a result of the smoking pistol, waived the deficiency.
Q Okay.
A So whenever that suit ended, it was sometime after that.

Page 81

Q Okay. And you're talking about the suit against Re/Max, not against Ameris?
A Unless they were one and the same.
Q Okay.
A But, yes, Re/Max.
Q Okay. At the time that you -- and going back to earlier in the year and when you were having the discussions about retaining George Kefalos and Drew Epting, did you believe that you had the ability at that time to convince the bank to waive the deficiency?
A That hand had not been fully played out, but things were dire, and there was no waiver at that time.
Q Okay. And is it true to say that there was no hint of any inclination on behalf of the bank to waive the deficiency during the time that you were negotiating with them?
A That's what these exhibits indicate.
Q Okay. And you would assert privilege as to any further mental impressions or work product beyond what the

Page 82

documents reflect?
A That is correct.
(Exhibit No. 41 was marked for identification.)
Q Exhibit 41 is an attorney-client contract dated November 18, 2010.
Have you ever seen this before?
A Not that I recall.
Q Did you have anything to do with negotiating this agreement?
A If bringing Linda to George and then those that he associated has anything to do with it, then the answer is yes. Otherwise, no.
Q This particular document -- you did not participate in the negotiating of this particular document?
A That is correct.
Q Did you believe, as of this -- as of November of 2010, did you believe that Ms. Gibson had already retained Mr. Epting and Mr. Kefalos to represent her in connection with the Ameris indebtedness?
A As of when?
Q November. Pick any date. October,

Page 83

November of 2010, did you believe that Ms. Gibson had already retained Mr. Epting and Mr. Kefalos to represent her in the Ameris indebtedness matter?
A Give me a second. Yes.
MR. DAVIS: I'm going to object to form. I just don't understand the question.
Q Okay. Did you understand -- did you understand my question?
A Yes.
(Exhibit No. 42 was marked for identification.)
Q Exhibit 42 is a letter dated December 8, 2010, from Paul Tecklenburg to Linda Gibson.
Have you ever seen that letter before?
A Not that I recall.
Q Do you know Mr. Tecklenburg?
A A little bit.
Q Did you ever become aware that Ms. Gibson had retained Mr. Tecklenburg?
A Somehow that came to my knowledge, and I -- the answer to the next question is I

Page 84

have no recollection of how.
Q You didn't refer her to him?
A I'm confident I did not.
Q Did you ever recommend that she seek other counsel in connection with her fee agreement with the lawyers?
A Not that I recall.
Q Did you participate in any way in the negotiations between Linda and the bank regarding the deficiency?
A Which bank?
Q Galt. I'm sorry.
A No.
Q Looking back at your time records, it does appear that on December 2nd, 2010, you had a telephone call. It shows a half an hour.
Do you know what that call was about?
A No.
Q The last entry on these time records is May 25th, 2011. It's a telephone call with client.
Do you remember what that was about?

Page 85

A No.
Q How did your representation of Ms. Gibson end, or did it ever formally end?
A I don't recall how we subsisted.
Q Okay.
A Essentially -- I'm not sure "subsisted" is the right word.
Q Subsided?
A Yes. Thank you.
Q Okay. So there was never a formal termination or ending of your relationship that you can recall?
A There was. I don't remember how -- the details.
Q How is it -- as somebody who is familiar with the circumstances that Ms. Gibson was facing, how would you evaluate the results that were achieved on her behalf by Mr. Epting and Mr. Kefalos and Mr. Howe and Mr. West?
A A waiver of deficiency and not getting a 1099, given that she had valuable assets that I think the public record would show were lien-free, was a damn good result. But I don't know the details, and -- and this

Page 86

was one little quick conversation with George. I've never seen the judgment on the Ameris case or an order ending the -- or the Re/Max case, and I've never seen an order ending the Ameris case.
Q Would it have surprised you that Galt Bank was not only willing to waive the deficiency but willing to allow her to pursue her counterclaim against Ameris Bank and that that would result in a verdict for almost $3 million in her favor against Ameris Bank?
A Was the question would it surprise me?
Q Would it have surprised you, yes, given what you knew about her overall circumstances.
A With all the pieces that fell into place, that was a home run.
Q The 1099, is that because normally, if a bank forgives a debt, that that's a taxable event?
A Yes, it is.
Q And it has -- so in the normal course of events, if a bank forgives a million dollars' worth of debt, that would be

Page 87

a million dollars of income to the debtor?
A That's correct. And I don't know if she ended up buying a note which enables that to be avoided or not. I don't know the details of it.
Q Okay. But would you say that that was a good piece of work, to allow her to avoid that tax liability for the forgiveness of that debt?
A Any time anybody can avoid getting a 1099 for forgiveness of a debt is a good result on that side.
MR. COOKE: Well, reserving the ability to come back once we've resolved the attorney-client privilege issues and work-product privilege issues, I would -- that's all the questions I have. I would move to recess the deposition at this point, of course, subject to Jim's questioning.
MR. DAVIS: Are we taking a quick break and then reconvening?
(A recess was taken.)
EXAMINATION
BY MR. DAVIS:
Q Mr. Papa, do you prefer Rob or

Page 88

Mr. Papa?
A I prefer Rob.
Q Thank you, sir. Thank you for being here today again.
As you know, I represent Linda Gibson in a fee disagreement that has arisen out of this litigation.
Rob, I believe you testified earlier that the scope of your representation with respect to Linda in the -- in the Ameris action was essentially the same as what Mr. Epting and Mr. Kefalos were doing. Essentially it was general civil litigation with respect to Linda's assets and liabilities and particularly this Ameris potential deficiency claim and lender liability claim.
Would you characterize your representation of Linda, certainly initially in 2010, as similar or essentially the same work product that Mr. Kefalos and Mr. Epting were eventually brought on to assist you with?
A No.
Q Well, how would you distinguish the

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
LINDA A GIBSON, INDIVIDUALLY, AND IN CAPACITY AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST, AND HERITAGE SEVEN, LLC, AND SEVEN OAKS APARTMENTS, LLC, AND 3205 PALM BOULEVARD, LLC,

Plaintiffs,

vs. CASE NO. 2013-CP-10-4450

ANDREW K. EPTING, JR. LLC, and, GEORGE J. KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A., and JOHN H. WEST, ATTORNEY-AT-LAW, LLC,

Defendants.

DEPOSITION OF: ANDREW K. EPTING, JR., ESQUIRE
DATE: SEPTEMBER 10, 2014
TIME: 10:10 AM
LOCATION A. William Roberts, Jr. & Associates
234 Seven Farms Drive
Charleston, SC

TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Laura J. Bash, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

APPEARANCES OF COUNSEL:
ATTORNEYS FOR PLAINTIFF
LINDA A GIBSON, et al.:

JAMES DAVIS LAW FIRM
BY: JAMES DAVIS
STEPHANIE E. KEBLER
234 Seven Farms Drive, Suite 211B
Charleston, SC 29492
(800) 983-0455
jim@jdavispc.com
stephanie@jdavispc.com

ATTORNEYS FOR DEFENDANTS
ANDREW K. EPTING, JR. LLC, and, GEORGE J. KEFALOS, P.A. and, GEDNEY M. HOWE, III, P.A., and JOHN H. WEST, ATTORNEY-AT-LAW,LLC:

BARNWELL, WHALEY, PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
MDC@barnwell-whaley.com

ALSO PRESENT:
Linda Gibson
John S. West, Esquire
Gedney M. Howe, III, Esquire

(INDEX AT REAR OF TRANSCRIPT)

MR. COOKE: Let me put that on the record, that we agree that the South Carolina Rules of Civil Procedure apply; that all objections are reserved, except as to the form of question.

I would also like agreement that by asking the question, Ms. Gibson is waiving attorney-client privilege, or any privilege, for that matter, as to that question, so that we don't have to assert privilege and that we can answer it without --

MR. DAVIS: Agreed. Agreed.

MR. COOKE: -- fears of violating privilege.

ANDREW K. EPTING, JR, ESQUIRE, being first duly sworn, testified as follows:

EXAMINATION

BY MR. DAVIS:

Q. Good morning, Mr. Epting.

A. Good morning.

Q. Would you agree with me that contingent fees, just like any other fees, are subject to the reasonableness standard?

A. I do not know.

Q. Are you familiar with Rule 1.5?

A. I've not read it.

Q. How long have you been practicing law, Mr. Epting?

A. 38 years.

Q. In the course of 38 years that you've been practicing law, have you had the occasion to enter into fee agreements with your clients?

A. I have.

Q. And have you had the occasion to look at Rule 1.5?

A. Not that I have done for this deposition, no.

Q. Have you looked at it in the past year, since you've been practicing law?

A. I have not.

Q. As you know, Mr. Epting, Linda Gibson engaged me to conduct a sort of archeological dig into the layer of lawyer fees that have been charged in the matter of Galt v. Gibson.

Are you familiar with the case Galt v. Gibson?

A. I am.

Q. Linda feels like you took advantage of her by charging excessive fees. Linda feels like a 566,000 fee to transact what she feels is a deed in lieu of transaction is an excessive fee.

EXHIBIT tabbies #24

contract's terms be collected in a single document set?

A. If you're asking -- I'm not sure I understand your question, but if you're asking if there are a series of documents forming a contract as opposed to one document forming a contract, I would say that one document forming a contract would likely be easier to understand.

But I would also say that a problematic provision could be in the first page of a single-page contract and make it more difficult to understand than anything that follows.

Q. When you review clients -- excuse me. When you review contracts for clients, you're aware that the client's going to rely on your opinion as to the terms of the contract, correct?

A. Yes.

Q. In the course of a year, how many contracts do you think you draft?

A. I probably don't draft a contract every year.

Q. In the course of a year, how many contracts do you review?

A. Five to ten.

Q. Would it be fair to say that over 35 years of practice, then, that you've reviewed 350-plus contracts?

A. I would say that's fair.

Q. And how long have you practiced in the area of the law of commercial real estate workouts?

A. You're using the word "workouts."

I am sure that I have represented clients vis-à-vis banks in years gone by. Most workouts occur when there are financial problems in the markets.

I'd say most of the workout work that I have done would have been in the early '80s and after 2007.

Q. Do you practice in the area of commercial real estate, today?

A. Many of the cases that I handle that are the trial of real estate transactions gone bad involve real estate.

Many of the cases that I handle involve things other than real estate.

So real estate is one substantive matter that from time to time is in dispute.

Q. Do you practice in the area of debtor rights?

A. What do you mean, "debtor rights"?

Q. Insolvency, protection, defenses as to creditor claims --

A. I have --

Q. -- and commercial insolvency work?

A. I have some working knowledge of debtor rights, but if I had a case involving debtor rights and insolvency, I would likely associate somebody who does that work.

Q. Do you practice in the area of guaranty law?

A. I review guaranties only in the context of reviewing a real estate transaction that's gone bad and I'm handling the lawsuit.

Q. Mr. Epting, would you consider yourself an expert in contract law?

A. Not in a transactional way, no.

Q. What do you mean by "a transactional way"?

A. You -- I think you're confusing real estate transactions and the closing of real estate transactions and the formation of contracts and buying and selling of real estate.

I don't do that work.

Q. I'm simply asking if you consider

yourself an expert in contract law?

A. I consider myself an expert in the field of commercial litigation, whether it involves real estate, construction, two partners who are in a dispute with each other. That's my specialty.

Q. Well, would it be fair to say that you're highly trained in the area of contract law?

A. I certainly know more about it from the litigation side than most people.

Q. Mr. Epting, have you ever worked for a bank?

A. I have been on a -- several board of directors, bank's boards before.

Q. Why would these banks put you on their board of directors or invite you to be on the board of directors?

A. I sat on the First Union advisory board because I was the lawyer that handled the collection work for First Union. And I would say this is back in the early '80s.

I was put on a bank board for Harbor Bank because I was one of the original 12 investors and we each put up a fairly substantial amount of money and signed a guaranty.

Q. Do you have experience in commercial

banking processes?
A. I've learned quite a bit on the bank board, yes.
Q. Do you have experience in commercial real estate foreclosures?
A. On the litigation side, yes.
Q. Do you have experience in lender-borrower relations?
A. Some, yes.
Q. Have you ever been an officer of any bank?
A. No. Only a director.
Q. Would you agree with me that you're very knowledgeable in the area of banking law?
A. I do not consider myself an expert in banking law.
Q. Would you consider yourself very experienced in commercial banking transactions?
A. No. I would consider myself a very experienced lawyer who tries cases involving banking transactions.
The banking business is a very complicated business, Mr. Davis. And you can sit on a bank board, but it is an extremely abstract world.

Your deposits are your liabilities. It's very complicated. I would never pretend to be an expert in banking.
Do I know more than most people because I sit on the board? Yes.
Q. Do you have -- strike, please.
How did you first come to meet Linda Gibson?
A. She was introduced to me by George Kefalos and/or Rob Papa.
Q. And George Kefalos is a codefendant in this action; is that correct?
A. He is.
Q. Why did Mr. Kefalos direct Ms. Gibson to you?
A. He felt like that I was someone who was handling at that time a fair amount of workout work on behalf of customers, borrowers, who are unable to fulfill their obligations under the loan agreement.
Q. Isn't it true that Mr. Kefalos introduced Linda Gibson to you because Mr. Kefalos believed that you had substantial banking experience?
A. If you mean how banks engage in

workouts, the answer would be yes. If you mean in some generalized way, no.
Q. When Mr. Kefalos referred Ms. Gibson to you, do you recall when that was?
A. In the latter part of 2009.
Q. December 2009?
A. November, December.
Q. Now, when Linda came to see you, did you ask her if she had a law degree?
A. I did not.
Q. Did you ask her if she was an expert in contract law?
A. I did not.
Q. Did you ask her if she had substantial experience or any experience at all in banking regulations?
A. I did not.
Q. Did you ask Linda if she had a professional degree?
A. I did not.
Q. A doctor, lawyer, engineer?
A. I did not.
Q. Did you ask Linda if she routinely drafts contracts for multimillion-dollar deals?
A. I did not.

Q. Did you ask Linda if she held a business degree?
A. I did not.
Q. Did you ask her if she had a college degree?
A. Probably.
Q. And do you remember her answer?
A. I think she did some work in the theater after her secondary education in Atlanta.
Q. Did you ask Ms. Gibson if she had any professional licenses of any sort?
A. I probably did.
Q. What else did you ask Linda when she came to see you, if you recall?
A. I recall, over time, asking Linda Gibson a lot of questions.
Q. A lot of questions about what?
A. The underlying transaction or transactions; the characters involved; what they said to her; what she believed; a lot of questions about her health; a lot of questions about what she wanted to do, how she wanted to handle things.
The usual kind of pallet that you work from with a client.
Q. Did you learn that Linda was about

65 years old when she came to see you?
A. I'm not real sure.
If you're asking me did I come to find out what her age was and did I believe her to be a woman in her late 50s or early 60s, I did. She probably told me.
I certainly would have asked her her age for trial when we tried it, but I don't remember as I sit here.
Q. Did you know that Linda's husband had passed away prior to coming to meet you?
A. Well, if you mean in time, sometime in the past, she did tell me that. I don't think it was within a few weeks or months of when she came to meet me.
Q. Did you learn that she was a single woman?
A. I did.
Q. Did you discover that her education ended at high school?
A. I thought she had done some work after her secondary education.
Q. Did she tell you her source of income?
A. Yes.
Q. What did she tell you?

A. I want to say she had 15- or $20,000 a month coming in from the rental of certain properties.
Q. Did Ms. Gibson tell you that she owned some property?
A. She did.
Q. In fact, she told you that she owned quite a bit of property, did she not?
A. She told me what properties she owned. And there were some properties that were her home and farm, and some properties that she owned on Daniel Island, and a shopping center and a beach house.
Q. Did you form an opinion as to the value of her real estate holdings when you met Linda?
A. Not when I met her, no.
Q. Did you come to form an opinion as to the value of her real estate holdings?
A. Over time, yes.
Q. And what was your opinion as to the value of her real estate holdings globally?
A. I sought and received an appraisal for the home, and I want to say 50 to 60, 70 acres in St. George. I don't remember what that value was.
She retained Tommy Hartnett to give her

sort of a quick appraisal of what the beach house was worth. I don't remember what that appraisal was, but I do know that I -- I believe the highest offer that she ever got on it was around a million dollars, if it was that.
Q. But my question is, Mr. Epting, did you form an opinion as to Linda's real estate holdings when you met her, or shortly thereafter?
A. No.
And when you say "shortly thereafter," I'm assuming a month or two, because, yes, I formed an opinion of what her -- the value of her house and farm were sometime in April, May, June; and later on, in October, of the beach house; and probably in and about the same time what the value of the apartments and the cell phone tower were.
Q. In the course of your representation of Ms. Gibson did you or your firm put together a schedule of values outlining her various real estate holdings and the values and liabilities as against those holdings?
A. No. But I didn't know of any liabilities on the Daniel Island property.
Q. Did you learn that Linda inherited these real estate holdings from her father?

A. Some of them, I think that's true, yes.
Q. And what did you think these real estate holdings were worth?
A. I believe the cell phone tower, in and about the time that I came to understand what its value was, was somewhere between 200- and $350,000.
I believe the apartment complex was worth somewhere between 500- and a million dollars.
I believe the shopping center was marginally worth what the debt was, which I don't remember.
I believe that the farm and her house were worth something short of $300,000.
I believe that the beach house, because of the offers that were being made, were worth about a million dollars.
I believe that the land on Daniel Island was worth a substantial amount of money, to the point that it would serve as sufficient collateral to the lenders who were seeking to be repaid their debt.
Q. Would you agree with me that Linda's real estate holdings were worth somewhere between 2-and-a-half to $4 million, in 2009 when she came to see you?

A. Are you asking me irrespective of the debt that was against them, or are you saying that she had equity of 2- to $4 million over and beyond the debt?

Q. Do you -- did you form an opinion that she had approximately $3 million in equity, over and above any debt on the real estate holdings?

A. I didn't form an opinion that it was 3 million. I formed an opinion that it was substantial and that it would be a problem in dealing with the lenders to whom she owed money because they would want that as collateral or they would want to seize it after judgment, and that the amount of money that it was worth was substantial.

Q. Would you agree -- would you agree with me that Linda is not an expert in contracts?

A. I agree with you, she's not an expert in contracts.

Q. Would you agree with me that Linda is not an expert in complex business transactions?

A. I would agree with you that she is not as knowledgeable as many, but I would not agree that Linda is not a fairly savvy woman when it comes to business.

Q. Are you aware of any prior business

experience that Linda has?

A. All I know is what she presented with. But I had many conversations with her and she could talk about 1031 exchanges. That's not the normal vocabulary for the average person.

Q. Do you consider Linda to be sophisticated in business transactions?

A. I wouldn't say she's sophisticated, no.

Q. When Linda came to see you, do you think she had a right to rely upon your advice?

A. I do.

Q. You had an attorney-client relationship with her; is that correct?

A. Then, yes.

Q. In fact, she came to you for legal advice, didn't she?

A. She did.

Q. And she came to you at a very difficult time in her life, didn't she?

A. It was a difficult time, yes.

Q. Did Linda appear scared to you when she came to see you?

A. Disoriented, yes.

Q. How so?

A. I thought given what she was going

through, she was fairly well-composed.

That said, I didn't think that she was thinking all that clearly, because the biggest problem that she had was trying to manage these apartment buildings.

She didn't have a lot of free cash in order to bring the other apartment buildings up to speed, and as a consequence they were sitting there.

She was getting into trouble with the governmental entities about their operation and all sorts of things. People were defaulting on their rent. She couldn't figure out how to collect the rent. She did not have enough money to pay the mortgage.

And I thought that she needed help. And so I hired someone to work with her for two, three, four, five months, to get the rent rolls and the like under some kind of control so she would know what she had.

And so she was --

Q. Who did you hire to help her?

A. Rhonda McCraw.

Q. And I'm sorry to interrupt, but I -- it's just in the interest of time. I may interrupt

from time to time. And I don't mean any disrespect. It's just to keep us moving so the meter's not running for days.

Was Linda confused about her financial situation when she came to see you?

A. I don't think she was confused about her financial situation. I think she was concerned about her financial situation.

I think she understood that she owed a lot more money than what the property was worth.

Q. Now, Linda came to see you in late 2009 and early 2010.

When she came to see you, had she been served papers at that point in any litigation?

A. I believe the first -- I can't tell you whether she was served by First Citizens. I can tell you that the Ameris suit was not filed until 2010.

She had filed a suit, herself, against Rolando in, I think, around 2008.

Q. Did Linda give you any -- any ideas on how she thought you might be able to help her get out of the legal mess she was in with respect to the Ameris/Otranto Apartment obligation?

A. Linda's initial view was that she could

A. She had not.
Q. As of 2009?
A. Well, had not been sued by Ameris. I do not know when the suit was filed by First Citizens.
Q. Did you represent Linda in the First Citizens litigation?
A. I was asked by Linda to shadow Rob Papa in that litigation.
Q. What does that mean, "shadow Rob Papa"?
A. I think she had some question about what Rob's relationship was with Mr. Davis, and believed that because of George and I's relationship with Mr. Davis, who is First Citizens' lawyer, that we could be of some assistance to her in resolving that litigation on more favorable terms.
We were never substituted as counsel, but we did work on her behalf and with Rob's permission to try to conclude that litigation, which we did.
Q. So in 2009 when Linda Gibson came to see you, was she being represented by Rob Papa?
A. She was.
Q. And she was being represented by Rob

Papa for the purposes of this First Citizens litigation; is that correct?
A. And other things.
Q. When Linda came to see you in early 2010, did you discuss your fee arrangement with Linda?
A. I did.
Q. Do you recall what you told her?
A. I told her at that time that we should start out with her paying me by the hour. And I told her that because in my experience, from time to time, given the general time frame and the difficulty of bank's collecting and the pressure of the regulators to resolve what their actual nonperforming assets were, that there was some prospect that a deal could be struck with the bank pretty quickly, and that if that were the case, it would be in her best interest to pay me by the hour; and if, on the other hand, that did not turn out to be the case, that I would suggest that we convert it into a contingency.
And there were any number of discussions about that, and they're in and about or before slightly the various e-mails and communications that I had with Rob Papa and Linda.

Q. Did you give Linda a fee agreement to sign in January of 2009 when she came to see you?
A. The record will speak for itself in terms of what I gave Linda to sign and when. But most of the communications, because she was represented by Rob Papa, about the original fees, were done through her lawyer, Rob Papa.
Now, I had all the same conversations with Linda, but I wanted Rob Papa's involvement and wanted to make sure that he was on board with anything and everything that George and I were doing.
Q. What was the nature of the claim that you were most concerned about with Ameris Bank?
A. That she had signed a note, a guaranty, and had not paid them. And there didn't seem to be a lot of dispute about that.
Q. What was the dollar amount of the note, if you recall?
A. I don't recall specifically.
I know that by the time the negotiations began, trying to resolve it, I think they were claiming that it was fairly close to $3 million. But I don't know what -- the original face amount of the note, I don't remember.

If you have a document, I'll answer your question.
Q. Did you talk with Linda about a contingency fee for your services?
A. I did.
Q. Were you representing Linda in some other matters at this time?
A. There -- you'll have to look at the record or show me the documents and I can answer you when and over what period of time these things happened. But I did undertake to do other things for Linda.
For example, I undertook to work with Rob Papa to resolve the First Citizens litigation.
Linda had a lot of other issues going on that I agreed to look into and to advise her on. When that happened, I'm not exactly sure.
Q. Okay. You testified a few minutes ago that when you prepare a contract document for a client, the client has the right to rely on your opinion; is that correct?
A. The record will speak for what I said.
Q. Do you have a duty to make sure your client understands the terms of a contract that you have with the client?

A. As to the terms addressed here in this April 7th letter, I believe that these were probably agreed upon prior to April 7th in discussions with Linda, but she didn't sign it until April 26th.
Q. Did you have a fee agreement with Ms. Gibson on April 7th, 2010?
A. I would say yes.
Q. Was that agreement in writing?
A. I would say yes.
Q. Did Ms. Gibson sign that fee agreement?
A. When you say "that fee agreement," I take it you're talking about the one that is embodied here in the April 7th letter, and the answer is she signed it on April 26th.
Q. Is this the fee agreement with Linda Gibson in the matter of Ameris v. Gibson?
A. It and a previous one or two communications with her are, yes.
Q. Mr. Epting, you keep referring to previous communications.
What previous communications are you referring to?
A. If you'll show them to me, I will identify them for you.

Q. I'm not sure I have any previous communications that would substantiate or be a fee agreement prior to April 7th.
My question is: Prior to April 7th, did you have a fee agreement with Linda Gibson?
A. And I'm saying to you we did, and they are evidenced by other writings.
Q. Does -- did you reduce the fee agreement with Ms. Gibson to a writing?
A. On several occasions, yes.
Q. How many fee agreements do you have in the matter of Ameris v. Gibson?
A. Only one.
Q. Is it your testimony that you have one fee agreement in the matter of Ameris v. Gibson?
A. The terms of which is that it was a contingency on matters in which we saved her money and a contingency on matters for which we collected for her -- yes.
Q. You had a contingency fee agreement with Ms. Gibson in the matter of Ameris v. Gibson?
A. Yes.
Q. Mr. Epting, our office propounded a request for documents from your office in this matter.

Do you recall that?
A. Yes.
Q. Did you deliver to our office all of the documents we requested in that request for production of documents?
A. Yes.
Q. And this written fee agreement that you're referring to, did you provide that in the document production?
A. Yes.
Q. What was the date of that written fee agreement?
A. I don't know the date, or dates.
Q. Is this April 7th letter the written fee agreement?
A. It is a document confirming certain aspects of the fee agreement as to various and sundry subjects.
Q. Mr. Epting, the first sentence in this April 7th letter says, and I quote: "So, let's supplement our fee agreement with this writing."
And my question to you is: What fee agreement are you supplementing?
A. The previous writings.
Q. What might those previous writings be?

A. The ones that I turned over to you in my file.
Q. I would like to direct your attention to the bottom of the second paragraph, last sentence, and I quote: "George and I will handle the existing case against RE/MAX, Rolando, Moore, and Ameris on a contingency, as set forth in our agreement of February 4th, 2010."
Is that the agreement you're referring to, the previous writings that you're referring to?
A. That is one of them.
Q. Are there more?
A. I think so, yes.
Q. Mr. Epting, I'm handing you a document that purports to be a February 4th e-mail from your office to, I believe, Mr. Papa.
Do you recognize that document?
(PLF. EXH. 2, 2/4/2010 Epting Office to Papa@btltelcom.net, was marked for identification.)
THE WITNESS: I recognize this letter, and it is to Mr. Papa.
BY MR. DAVIS:
Q. Did you draft this document?
A. I did.
Q. And in the copy line, you copied some

individuals; is that correct?
A. I did.
Q. Who did you copy on this letter?
A. George; myself for the recordkeeping; Sheri Towne, my paralegal; Oana Johnson, George's paralegal.
Q. Did you copy Ms. Gibson on this letter?
A. I did not.
Q. Why did you not copy your client on this e-mail?
A. For purposes of negotiating this fee, Ms. Gibson was Mr. Papa's client.
Q. Is it your testimony on February 4th, Ms. Gibson was not your client?
A. That's not my testimony at all.
Q. Well, if Ms. Gibson was your client on February 4th, why wouldn't you copy Ms. Gibson on this e-mail?
A. Because Mr. Papa was Ms. Gibson's lawyer for purposes of this transaction.
Q. Is it your testimony that Mr. Papa is an agent of Ms. Gibson for the purposes of negotiating your fee agreement?
A. It's my testimony that Mr. Papa was Ms. Gibson's lawyer for purposes of assuring that

Ms. Gibson's interests were taken care of with regard to retaining us and what fee was paid to us.
Q. Why would you not just talk directly to your client about your fee agreement?
A. I did, multiple times.
Q. You testified earlier that the fee arrangement in the Ameris v. Galt matter was a contingency fee arrangement; is that correct?
A. After initial several months, yes.
Q. But it started out as an hourly fee and then converted to a contingent fee?
A. Yes.
Q. I'd like to direct your attention to the second paragraph, first sentence, and I quote: "As to Ameris, the same percentages will apply for any recovery or any savings (defined as a settlement at less than the amount due Ameris").
Is that correctly stated?
A. You read that correct.
MR. COOKE: Actually, he didn't. He left out the word "to."
THE WITNESS: Oh, did he?
I understood it, in any event.
BY MR. DAVIS:
Q. What did you mean by "any recovery or

any savings"?
A. We recognized that there were two pieces of what we could be paid, an affirmative recovery because of Ameris's wrongdoing, and a savings on the amount that Ms. Gibson owed to Ameris.
And as it turned out, the savings piece was in the hands of Galt, because Galt wound up with the note. So it wound up a recovery against Ameris and a savings as it involves Galt.
Q. So is this e-mail sort of a proposal to Mr. Papa as to your fee relationship?
A. It was a confirmation, also, of the conversations that we were having with Mr. Papa.
Q. Well, the last sentence on this e-mail ends with "Please consider this."
Did I read that correct?
A. You did.
Q. What did you mean by "Please consider this," when you sent this e-mail to Mr. Papa?
A. If there was a problem with anything that I said, it was not in keeping with the discussions we had had, then let me know.
Q. Do you know if Linda ever got a copy of this e-mail?

A. I do not know whether she did or she didn't.
Q. Would you agree with me that the terms of this e-mail set forth the essential material terms of your fee agreement with Linda to represent her in the Ameris v. Gibson matter?
A. I would say the essential terms are here, yes.
Q. Did Linda ever tell you if she saw this e-mail?
A. Linda and I never had a discussion about whether she saw this e-mail. Linda and I had many discussions.
Q. Did you ask Linda if she saw this e-mail?
A. I did not ask Linda if she saw this e-mail.
Q. Did you send these terms and conditions to Linda in some other e-mail?
A. You would have to look at my file.
Q. I'm asking you, do you remember if you sent this e-mail to Linda?
A. I think we've agreed that I didn't send this one.
You asked me the question, was this one

effective way to deal with Linda was to have her in my office. And so based on a course of dealings, I assume that is what happened, because that's normally how this was done.

Q. When Linda came to your office to sign this April 7th document, do you recall if you gave her a copy of the February 4th document, to which you refer as the agreement of February 4th?

A. Without regard to the characterization of it, no, I do not remember if I gave her a copy of the February 4th e-mail.

Q. Did you explain to Linda when she came to see you to sign this April document how you were going to compute your fee in the matter of Ameris v. Galt -- pardon me -- Ameris v. Gibson?

A. On multiple occasions, Mr. Davis, starting out in the beginning and running right on through, after the trial of the case against Ameris, multiple times I explained it to her. Multiple times I talked to her, to Mr. Papa, and to Mr. Tecklenburg.

Q. You talked to Ms. Gibson multiple times about this fee arrangement on April 7th; is that your testimony?

A. It is.

Q. What did you tell her when you talked to her?

A. What the driver was here was there was a fellow, I think, by the name of McKenzie, and the original idea of doing this on an hourly basis was because he came down and met with me and I felt like he had some understanding of what Ms. Gibson's assets were and I felt like that meeting went very, very well, and that there was some chance that indeed that Ameris was prepared to just perhaps take this property, maybe another piece of property of Linda's, but make some deal with her, which is why this case started out on an hourly basis.

It was true, it was consistent with my previous dealings in other matters, that banks in this time would cut those deals. What I did not know at the time was Mr. McKenzie had not done an asset check. And it didn't take but several months for the bank, Ameris, to figure out that Ms. Gibson had quite a few assets to her name.

And at that point in time, the negotiations changed. And so the discussions between me and Ms. Gibson had, as their basis, my explaining some of my previous experiences and the problems of her having assets and how it is that I

think that changed Mr. McKenzie's mindset.

She was not able to pay me. She said, I only have this amount of money to live off of and I can't pay you these hourly rates.

And, in fact, whatever time I had at the time, she was writing checks for me for $1,000 or $1,500 on a sporadic basis. And because she couldn't pay the fixed fee -- I mean, the hourly fee, we started talking about you're going to have to do this on a contingency or you're going to have to figure out a way to pay.

And so there were any number of conversations, because this whole hourly and fixed fee was in a context. It was in the context of what was happening with Ameris and the evolution of their position from the latter part of '09 up until February or so when I believed they understood pretty well that Linda had substantial assets, and they were not prepared to cut her any slack.

Q. Who is "they"?

A. Ameris.

And so in that context, yes, we had numerous conversations about a contingency fee and why.

Q. Mr. Epting, were you asserting claims

on behalf of Linda against Ameris Bank, as well, at the time of the Ameris litigation?

A. The claim itself was not asserted until Ameris first sued. And one of the reasons was that the difficulty that we foresaw was that Linda had waived the right to a jury trial.

One of these pieces of property subject to the Ameris note was in Berkeley and one was in Charleston.

George and I, early on, wanted to try to get Ameris into the existing Rolando suit; one, because it had been filed for some time and would come up more quickly; two, we felt like if we could get everybody together in one piece of litigation that it would be more favorable for Linda.

And we recognized, no matter what, we were going to have a separate nonjury trial as to Ameris, but we still thought consolidating these cases were best.

Q. How many notes did Ms. Gibson have with Ameris Bank?

A. I'm not sure.

Q. More than one?

A. Well, I don't know how they were structured.

I can tell you that one of the pieces of property was a cell phone tower and one of them was the apartment complex. One was in Charleston and one was in Berkeley.

Q. And the apartment complex and cell phone tower were collateral for the note; is that correct?

A. I'm not sure how that was structured.

All I know is that there was two obligations. Whether it was one note -- my guess is it would be two. But I haven't looked at the documents in years, so I don't remember.

Q. Did you come to learn that Linda might have some claims against Ameris Bank arising out of the note and mortgage?

A. I would say that that was Rob Papa's feeling. And Rob had attended meetings with Mr. Richter in which Mr. Richter said he had a conflict and was not prepared to go forward.

And one of the reasons that Mr. Papa asked George initially and me subsequently to represent Ms. Gibson, was to handle a claim against Ameris Bank. It was the idea that there may be some culpability --

Q. Did you --

A. -- that predated --

Q. I'm sorry to interrupt.

A. -- predated our involvement.

Q. Did you assert lender claims against Ameris Bank on behalf of Linda?

A. They were asserted in the summer of 2010.

Q. Did you have a fee agreement with Linda --

A. Yes.

Q. -- to assert those lender claims for that work product?

A. Yes.

Q. What was that fee arrangement?

A. All of the documents that were turned over in my file, some of which we've been discussing today.

Q. Do you recall whether your fee arrangement with Linda in prosecuting the lender liability claims against Ameris were to be based on a flat fee or a contingent fee or an hourly fee?

A. They were set forth in the agreement, saying it was a contingency fee.

Q. Well, Mr. Epting, you continually refer to agreements, and I would represent to you that

the only agreements or documents that we have received from you in our discovery is the April 7th, 2010 letter that's Exhibit 1, and the February 4th e-mail identified as Exhibit 2.

Is there some other fee agreement that I'm not aware of?

A. Yes. There are other communications involving other people, confirming these same terms.

Q. Mr. Epting, I didn't ask you if there was other communications with other people about terms.

I'm asking you whether or not there is a fee agreement, other than this April 7th document and this February 4th e-mail?

A. There's --

MR. COOKE: Objection.

THE WITNESS: There's only one fee agreement. It's a contingency fee agreement.

There are any number of writings that evidence that agreement.

BY MR. DAVIS:

Q. Is it your testimony that the April 7th document is one of the writings that evidence the contingent fee agreement in the Ameris matter?

A. Yes.

Q. Is it your testimony that the February 4th e-mail to Mr. Papa, identified as Exhibit 2, is one of those writings that evidence the fee agreement?

A. Yes.

Q. Is it your testimony that there are other documents --

A. Yes.

Q. -- that reference the fee agreement?

A. Yes.

Q. When you say you represented Ms. Gibson on a contingency in the Ameris matter, what does that mean to you? What do you mean by "on a contingency"?

A. It's stated in the February 4th letter; 33 percent, 40 percent, 50 percent, as to Ameris. The same percentage will apply for any recovery or savings defined as a settlement at less than the amount due to Ameris, the definition of savings.

Q. On the February 4th e-mail when you say "recovery or any savings," are you saying "recovery and/or any savings," or are you saying "recovery or any savings"?

A. Both.

Q. What do you mean by "recovery"?
A. In the event that we brought a claim and washed the deficiency out, and there were other tort liabilities on the bank's part, and we got a verdict, in addition to having saved her money off the face amount of debt, such as happened in this case.
Q. Is it your testimony, then, that by the word "recovery" you mean any recovery in the lender claim; and by "any savings" you mean any amount you save Linda as against the deficiency claim?
A. That's what was discussed with Mr. Papa and that's what is confirmed here.
Q. So you had essentially two contingency fees in this fee arrangement; would that be correct?
A. In the event that Ms. Gibson was fortunate enough to get the deficiency forgiven and in the event that she was fortunate enough to wind up with a substantial recovery against the bank, a punitive award, for example, the fee would apply as to the deficiency and the fee would apply as to the recovery. And it would be a contingency fee of a third, 40 percent, or 50 percent.
That's what this says.

Q. So the contingency -- the contingency fee as to the recovery would be, for example, 33 percent of whatever cash recovery you get for Linda prosecuting the lender liability claims?
A. If we settled the case under the verdict that we were fortunate to get with Judge Watson, and we settled it before trial, we would get 33 percent. And if we settled it now, after trial, we would get 40 percent.
And so, if we settled that case now for a million dollars after the trial and the verdict, we're not handling the appeal, we would get $400,000 of that million dollar settlement and Ms. Gibson would get $600,000.
Q. You withdrew from representing Ms. Gibson in this matter; is that correct?
A. Ms. Gibson terminated us. And pursuant to that, we withdrew.
Q. When did Ms. Gibson terminate you, if you recall?
A. I don't. It was handled through Mr. Cooke's office.
Q. Would it surprise you to know that Ms. Gibson doesn't think she terminated you?
A. I don't know what Ms. Gibson thinks,

Mr. Davis, so I wouldn't be surprised one way or the other.
Q. So to be clear, the fee arrangement as you interpret the February 4th document and the April 7th document, purports a percent fee award to you out of any recovery that you get for the client, and a percent fee award to you out of any money you saved the client on the deficiency claim; is that correct?
A. With one exception. I don't think I'm interpreting anything. I'm just reading what the document says.
Q. You're not interpreting these documents, Mr. Epting --
A. I'm not --
Q. -- when you read them?
I would like to direct your attention back to Exhibit 1, the last sentence, and I quote: "George and I will handle the existing case against RE/MAX, Rolando, Moore, and Ameris on a contingency, as set forth in our February -- as set forth in our agreement of February 4th, 2010."
Did I read that correct?
A. You did.
Q. So you were representing Ms. Gibson in

the RE/MAX matter; is that correct?
A. Yes.
Q. And were you representing Ms. Gibson in the Rolando matter?
A. They're one and the same, as far as I'm concerned.
Q. And did you represent Ms. Gibson in the Moore matter?
A. Yes.
Q. And did you represent Ms. Gibson in the Ameris matter?
A. Yes.
Q. And in each of these matters, the RE/MAX, Rolando, Moore, and Ameris matters, your fee arrangement with Ms. Gibson was on a contingency of whatever you recover Ms. Gibson; is that correct?
A. Or save.
Q. Can you show me on this document where it says "or save"?
And again, I'm referring to the exhibit identified 1.
A. You see it says, "As set forth in our agreement of February the 4th, 2010," Mr. Davis?
Q. My question, Mr. Epting, is: Does it

say on this agreement -- strike that.
My question, Mr. Epting, is: On this document, where does it say that you would be entitled to a third of whatever you save Linda in the deficiency claim?
A. "As set forth in our agreement of February 4th, 2010."
Q. Are you expecting Ms. Gibson to go back to February 4th, 2010, to go find an e-mail that she never got back in 2010?
A. I'm expecting that Ms. Gibson is having conversations with Mr. Papa about the agreements that are reached. And I know for a fact, in my own conversations with Ms. Gibson, that she's quite well-informed and understands all of this.
Q. Do you know if Mr. Papa told Ms. Gibson about this February 4th e-mail?
A. I don't know what Mr. Papa told Ms. Gibson about any specific document.
I do know that Mr. Papa said to me that Linda was okay with the agreements that we entered into and that we should proceed, and we did.
Q. Is it your testimony that you relied on Mr. Papa's representation to you that he told Linda the substantive terms of your fee arrangement when

you presented this April 7th letter to Ms. Gibson for her signature?
A. I certainly did rely on Mr. Papa, but I also relied on Linda. And both of them said the same thing.
Q. Mr. Epting, you represented Ms. Gibson in the RE/MAX matter for a fee of a third of whatever you recover for her, whatever cash you're able to recover from RE/MAX, correct?
A. True.
Q. And you represented Ms. Gibson in the Moore matter for a fee of whatever you recover Ms. Gibson in the Moore matter; is that correct?
A. Yes.
Q. And you testified earlier that you were representing Ms. Gibson in the Ameris matter, in part for a percent of any recovery you get her in that matter; is that correct?
A. I don't understand your question.
Q. Well, in the RE/MAX, Rolando, Moore matters, there was money to be had --
A. And there was money --
Q. -- for your fee, if there was a recovery. Is that correct?
A. Yes. And there was money to be had in

the Ameris litigation as well. And there were savings to be achieved as well.
Q. But the savings aren't mentioned in this April 7th document?
A. Yes, they are. Because they say, "As set forth in our agreement of February 4th, 2010."
Q. How many e-mails do you get a month, Mr. Epting?
A. I do not know, but I can tell you, more than what I would like.
Q. You get 40 e-mails a month?
A. I don't know, Mr. Davis.
Q. You get more than 10 a month?
A. I get more than 10 a month, yes.
Q. So between February 4th of 2010 and April of 2010, that would be some 40, 50 e-mails ago that this February 4th e-mail was sent; would that be correct?
A. I don't have any idea.
Q. And you don't have any idea whether Ms. Gibson ever saw this e-mail, do you, this February 4th e-mail?
A. I do not.
Q. So if Ms. Gibson came to your office in April to sign a fee agreement that purports to

supplement a February 4th e-mail, is it your testimony you would be asking Linda to go back through two months of e-mails to look at an e-mail that she was never even copied on?
A. It's highly probable, Mr. Davis, that if I'm referencing the e-mail; one, I would know what the e-mail said when I wrote this; two, Ms. Gibson is coming in, and the probabilities are that I had the e-mail there for her to review.
Q. Well, you --
A. You asked me --
Q. -- did say the probabilities are that you did, if you recall.
A. You asked me did I know if Mr. Papa gave it to her. I don't.
But if you ask me, here I am on April 7th, writing this, I believe she's in my office when she signs this, yes, I understood and would have known when I wrote this document, April 7th, what the February 4th e-mail said. And I know for a fact Ms. Gibson understood each and every term of this, because we talked about it laboriously.
Q. I know that you understood what the February 4th e-mail said, but how do you know that

Ms. Gibson understood what the February 4th e-mail said? If you know.

A. Well, Mr. Davis, I've been doing this a long time and I think I have some amount of acuity when it comes to what clients do and do not understand.

I certainly feel like I go out of my way and make a great effort to make sure clients do understand what it is I'm saying. I think that's important. It's been a tenet of my practice and I've done it with every client that I've ever represented, and I would not have stopped with Ms. Gibson.

And based on that, I have no doubt that Ms. Gibson understood clearly, as did Mr. Papa, exactly what was happening and what she was agreeing to.

Q. Wouldn't -- on April 7th, 2010, when you drafted this document, wouldn't it have been an opportune time for you to clarify the terms of your fee arrangement with Ms. Gibson, particularly given that the fee arrangement was transitioning from a hourly basis to a contingency fee basis?

A. It's rare, Mr. Davis, that you have the luxury of having another lawyer whose

responsibility is to make sure that it's not just you, but the other lawyer's responsibility to explain something to Ms. Gibson.

Despite Mr. Papa's most recent problem, I found Mr. Papa to be one of the most conscientious, well-meaning people with Ms. Gibson's interest high. The job he did for Ms. Gibson in that whole matter with Larry Richter and Joe Bartone and what he did to get her out of all that mess. So I would consider myself very fortunate that she was well-represented. And I know that Rob understood exactly what was going on, and I believe Rob explained it to her, as did I, very clearly.

Q. Mr. Epting, I'm confident that Mr. Papa is a competent attorney, and I am certain that you are a competent attorney.

My question is: Wouldn't it have been an opportune time for you to clarify the terms of your fee arrangement with Ms. Gibson on April 7th of 2010, in this correspondence?

A. I believed everything was understood by all and that there was no need to clarify anything. And that if Mr. Papa thought that there was anything that needed to be clarified when I invited

him to please consider this, if there's something that he wanted to know or he wanted to change, he could have asked me. But we had many subsequent conversations after that.

Q. Do you -- is it -- is it your testimony that this April 7th document is a clear and unambiguous --

A. Yes.

Q. -- reflection of your fee arrangement with Linda?

A. I think you would have to also incorporate the February 4th letter, and I think the other writings that you will find are consistent with the agreement that was reached here.

Q. Did you ever talk to Linda about what a reverse contingent fee liability to you might be --

A. I don't --

Q. -- when you met with Linda in April of 2010?

A. No. I think maybe you're the one that invented the reverse.

I just explained to Linda clearly that if she owed 3 million and we got her out of it for a million and-a-half, that we saved her a million

and-a-half dollars, and she'd be paying a fee on that.

I didn't use the word "reverse contingency."

Q. You've never heard the term "reverse contingent fee"?

A. I think I heard it along about the time, Mr. Davis, you wandered into this.

Q. Mr. Epting, I would be honored to be remembered for coining the term "reverse contingent fee," but would it surprise you to know that it's a commonly used term in corpus juris secundum and American jurisprudence?

A. I don't know.

Q. Mr. Epting, could this April 7th document have been more clear with respect to the fee liability Ms. Gibson was going to owe you, in the event that you were able to get her a complete discharge of the deficiency claim?

A. I believe the agreement is clear and unambiguous.

MR. DAVIS: Is this a good time for a break?

MR. COOKE: Any time is a good time for a break.

MR. DAVIS: Why don't we take a break.
(A recess transpired.)
BY MR. DAVIS:
Q. Mr. Epting, before the break we were talking about the April 7th document and the February 4th document.
MR. DAVIS: I'm going to ask the court reporter, Laura, if you would read back the last statements just before we took a break.
(The Court Reporter read back the last question and answer on Page 76.)
BY MR. DAVIS:
Q. Mr. Epting, you testified that the April 7th document and February 4th document were clear and unambiguous; is that correct?
A. That's what I said.
Q. And did you draft the -- strike, please.
And I believe you testified that you drafted the April 7th document; is that correct --
A. I did.
Q. -- as Exhibit 1?
And you drafted the e-mail identified as Exhibit 2, dated February 4th; is that correct?
A. I did.

Q. And Mr. Epting, I'm going to hand you a document that is titled Attorney-Client Contract, and ask that this be entered into evidence as well.
(PLF. EXH. 3, Attorney-Client Contract, Epting 1 through 2, was marked for identification.)
BY MR. DAVIS:
Q. Do you recognize this document?
A. I do.
Q. We marked this document as Exhibit 3. What is this document, Mr. Epting?
A. It's a document prepared, I think, by Paul Tecklenburg. And it had to do with liquidating the amount saved on the deficiency and preserving our fee agreement.
Q. Is this document a fee agreement?
A. It's entitled: Attorney-Client Contract.
Q. I didn't ask you what it was entitled, Mr. Epting. I asked you if it was a fee agreement with your client, Linda?
A. I would say it's a memorialization of a portion of the fee agreement.
Q. Is your testimony -- is it your testimony that this attorney-client contract is a memorialization of a fee agreement that you have

with your client?
A. This document's set out to accomplish those things that are set forth herein. What you call it, I'm not sure. It's entitled: Attorney-Client Contract. I don't know why Paul Tecklenburg used those words.
Q. Is this a contingent fee attorney-client contract?
A. It's providing for a one-third amount, and in this case on a deficiency, and an agreement on what that deficiency is.
Q. That was not my question, Mr. Epting.
My question is: Is this a contingent fee contract?
A. I would say it's a memorialization in order to allow mortgages to be prepared and providing for security for a fee agreement that was previously reached.
Q. A memorialization of what?
A. A portion of the fee agreement that was entered into by Ms. Gibson with us.
Q. How many fee agreements did you have with Ms. Gibson?
A. Well, we had a contingency fee agreement for the RE/MAX, Rolando, and appraiser.

We had a contingency fee agreement on the deficiency and recovery in the Galt and Ameris litigation.
And I had an hourly fee agreement with Ms. Gibson on various and sundry miscellaneous matters that I helped her with.
Q. And I believe you testified earlier that each of these fee agreements were contingent fee agreements; is that correct?
A. I don't think I said that. I just got through saying one of them was an hourly.
Q. Did you draft this document, this attorney-client contract identified as Exhibit 3?
A. I did not.
Q. Who drafted it?
A. I think Paul Tecklenburg did.
Q. Did you review this attorney-client contract with your client before she signed it?
A. I'm not sure that I reviewed the document with her. I think Paul Tecklenburg did that.
I did review some of the terms, because after we realized that Galt was going to walk away with us returning the property, I had some telephone calls and meetings with Ms. Gibson after

that date and before November 18th. But my primary purpose was to describe the nature of the settlement offer that was being offered by Galt.

This was primarily handled by Mr. Tecklenburg with Mr. Kefalos.

Q. Did you retain Mr. Tecklenburg to represent you with respect to your fee with Linda?

A. I told Linda that she owed us money on the basis of her savings. I told Linda that there could be some disagreement about what the savings might be. And at the time these conversations are first happening, there's no definitive agreement with Galt. But I told her I didn't think it was advisable that I represent her in terms of what is the potential amount of the deficiency because one could argue that the apartment was worth 500; you could argue it was worth a million. You could argue that the cell phone tower was worth 200; you could argue it was worth 300. And because there was a range of values of what the property was worth, then it would affect the savings.

And I told her that I thought she needed separate representation, and she chose Paul Tecklenburg.

Q. Do you know -- do you know Paul

Tecklenburg?

A. I would not know him if he walked in this room. I think I've had -- I believe I had a very short conversation with him, with George, on the phone, that I had to leave. And I had a subsequent conversation with him, which I know from having seen his notes was a day or two before this about what did I think the values of these two pieces of property were.

Q. Is it your testimony that this attorney-client contract -- I'm going to refer to it as the November agreement -- pardon me -- as the November document.

Is it your testimony that this Exhibit 3, the November document, memorializes your fee arrangement with respect to the savings in the deficiency claim in the Ameris litigation?

A. It would be Galt. But yes, that's one of the purposes of that document.

Q. Well, was there another purpose for this document?

A. I think that it is also to provide that it be secured.

Q. That the fee be secured, correct?

A. Yes.

Q. And what was the fee that you earned in the Galt/Gibson litigation as to the deficiency claim?

A. Well, the amount of the savings that Ms. Gibson and Mr. Tecklenburg agreed to was a million-seven deficiency, if you will, the savings. And we got one-third of that. And I think if you divide that number into 1.7 million, that that would be the fee.

Q. Would you agree with me that the fee is therefore $566,666, that being one-third of 1.7 million?

A. I will agree that if you divide 3 into 1.7, that it's a number in and around the number you quoted.

Q. Mr. Epting, if the February 4th document and the April 7th document are clear and unambiguous, why would you need yet another attorney fee document?

A. Because there was a potential for disagreement over what was the value of the assets that she was giving up.

Q. And the value of the assets that she was giving up would have been an important number, because that number would determine the deficiency

saved, from which you would compute your fee of 33 percent; is that correct?

A. That's what I said.

Q. Mr. Epting, how did you determine the value of the property that was traded? Did you have an appraiser?

A. I didn't determine anything, Mr. Davis.

That's why I sent Ms. Gibson to a lawyer, and said it would be in our best interest, if we only were concerned about money, and that's who we were as lawyers, that the value of the property be 500,000. But there's a potential disagreement as to what the value of the property is, you need to get another lawyer. And she did. She got Paul Tecklenburg.

I don't know what due diligence Paul did. I know as part of that due diligence he called me and we had one conversation about what I knew, and I told him what I knew. And I've seen his notes, and his notes are pretty much accurate in terms of what I remember the conversation being.

Q. Would it be a fair statement that with respect to the fee arrangement in early 2010, Mr. Papa was coordinating the fee, and then with respect to the fee arrangement in November of 2010,

Mr. Tecklenburg was assisting Linda to determine your fees.

Would that be a fair statement?

A. I'm not sure what's a fair statement.

If you ask me -- I expected -- I supposed that Linda would go to Rob Papa and that I would get a call from Rob and we would work through what is the deficiency that we have saved, what are the savings.

But I didn't want in any way to suggest a lawyer or who she might use. And I was surprised when she got Mr. Tecklenburg.

Q. Why were you surprised when she got Mr. Tecklenburg?

A. Because I assumed she would go back to Mr. Papa.

Q. Why would you assume she would go back to Mr. Papa?

A. Because she was using Mr. Papa and had used Mr. Papa to help negotiate the contingency fees in the beginning.

Q. Did it concern you that she was using two different attorneys to negotiate your attorney fee?

A. I believed it was her choice.

Q. You believed it was the client's choice to go retain independent counsel, two, no less, to determine what the client's fee is with your firm?

A. I wanted to make sure that I fulfilled my obligations to Ms. Gibson and that she had independent advice, because I felt like we had an interest in the fee, and I didn't want there to be any implication that the fee was determined by us and she didn't have independent advice. And I told her we would not do that and that she had to get separate counsel.

Q. When did you first learn that Galt would accept a deed in lieu of foreclosure and waive the deficiency?

A. I don't know the date, but it happened pretty fast. And I want to say, four or five days after a very, very favorable hearing that we had up in Berkeley. So I'll call it the first week, to 10 days of November.

Q. What was the nature of the hearing that you had in Berkeley?

A. The attorney for Galt, a fellow by the name of Ian McVey, filed a motion to appoint a receiver.

I had been doing some research on

behalf of Ms. Gibson and found a Florida Law Review that said that you shouldn't have to agree to a receiver if you wanted to give the property back because it just made it more expensive for the client.

And so we opposed the appointment of a receiver, and we also argued that they had to take the property back.

The second thing that came up at the hearing was a memo that was authored by Ameris that conceded that they had culpability in this transaction.

Mr. McVey never realized that the hunter was going to become the hunted; and he found all that out at that hearing in front of Judge Watson.

And at that hearing, Judge Watson also expressed a general favorable opinion of our idea that a receiver would be inappropriate if, in fact, the property is being tendered back to the lender.

And so to say that the hearing didn't go well for Galt would be an understatement.

Ms. Gibson was there. We were all quite elated.

Mr. West, as I recall, did most of the

arguing, except the Law Review article. And we were prepared and well-received.

And shortly after that hearing, we received a letter from Mr. McVey that said, we'll take the property and we won't seek any deficiency.

And one thing, Mr. Davis, that I do understand, because I didn't mean to minimize all the things that I have learned on a bank board, but it's all miscellaneous information, is I had a sense at that time, because of what I did on the bank board, that these lenders were paying 25 and 30 cents on the dollar for this debt.

So in my mind, I thought that maybe there might be some willingness on Galt's part if we could really tee this thing up against them, that it would make it easier for them to settle this out and settle with Ms. Gibson. And so I thought it was generally a favorable development when Galt bought this.

Now, whether that ever played into it, I don't know.

Q. Did you have any other hearings in this Galt/Gibson matter, or just that one receiver hearing?

A. I can say this. It's vivid in my mind,

claim against Ms. Gibson?
A. There's a letter to either me or Mr. Kefalos, I don't remember the date, but it's several weeks after a demand that she mortgage certain other property. And I don't think I was there the day the letter came in, but I think I learned about it the next morning, whatever that date was.
Q. I'm handing you a document dated November 8th, from Galt's attorney, Ian McVey, to you, Mr. Epting.
Do you recognize that document?
A. I do.
(PLF. EXH. 5, Document: For Settlement Purposes Only, Epting 2737 through 2739, was marked for identification.)
BY MR. DAVIS:
Q. Have you seen this document before?
A. Yes.
Q. And I would like to direct your attention to Paragraph 4 in the document.
I quote: "Your clients will execute a bill of sale" -- pardon me.
Paragraph 4 in the document says: "My client will forgive the remainder the debt and

waive any right to a deficiency judgment against your clients."
Did I read that right?
A. You did.
Q. Does this refresh your recollection of learning that Galt was going to waive the deficiency against Ms. Gibson?
A. Yes.
Q. Is this the first time, by and through this letter, that you learned that Galt was going to waive the deficiency against Ms. Gibson?
A. Yes.
Q. Now, at the time you received this letter, Mr. Epting, did you have a contingent fee agreement with Ms. Gibson --
A. Yes.
Q. -- to -- what was the contingent fee agreement with respect to the deficiency claim when you received this letter?
A. I would say the same thing to you, Mr. Davis, that I spent an hour and-a-half explaining to you this morning.
Q. Mr. Epting, what was your fee arrangement with Ms. Gibson on November 8th, 2010, when you received this letter from Galt Valley?

A. That we would get one-third of whatever the savings were.
Q. So when you received this letter, you must have been very excited for Ms. Gibson.
Would that be a fair statement?
A. That would be very fair.
Q. In fact, you had, in effect, as a result of the work you had done, saved Ms. Gibson -- or achieved for Ms. Gibson a waiver of the deficiency of 1.7; is that correct? Approximately?
A. So far, yes.
Q. And you must have been pleased also to learn that you would be getting a third of whatever the deficiency was when you received this letter?
A. I certainly was aware of it.
Q. And when you received this letter did you call anybody?
A. What I remember about this letter is that I hadn't seen the letter, but I seem to have gotten some kind of e-mail, which I do recall, from my colleague Mr. Kefalos, that said something to the effect of, holy cow, is this really what I think it says. Something to that effect.
And so I saw that before I saw this.

And I am sure George and I talked about it, wanting to make sure that he understood all the pieces and parts and that there were -- that there were not anything that we could not agree with and that it was a workable idea for the client.
And at that point in time, probably the day after or so, I would have called Ms. Gibson. We would have set up a meeting. Ms. Gibson would have come in, which she did.
Q. Do you recall the day Ms. Gibson came to see you after you received this letter?
A. Vividly. It wasn't the day after. I think when I read off there, it was the 15th.
Q. So Ms. Gibson came to see you at your office; is that correct?
A. Yes.
Q. And who was present at that meeting, if you recall?
A. Just me and Ms. Gibson.
Q. Do you recall if Mr. Kefalos was with you at the meeting?
A. I don't believe he was.
Q. Can you walk me through that meeting with Linda, when you told her the good news, that Galt waived the deficiency claim?

A. We had had a conversation about it on the phone.

I had been telling Linda that she needed to be realistic, all along. We had even gone to the trouble of appraising her home, trying to sell it to her daughter, because I thought she was going to lose everything and that maybe there was some ability to save her home. And so I was just a realist about this, with the assets that she had.

And so to go from that place where you realize you're not just saving a woman's home, but you're saving all of her other assets, was pretty emotional.

And Ms. Gibson came in. Ms. Gibson was suicidal. We had a lot of conversations about her health. We talked about her going to see a doctor. And she's quite emotional.

Q. This was at the meeting after --

A. Yes.

Q. -- the letter?

A. It was before -- it was before the meeting.

But the reason I remember it all so vividly is, is I said something to the effect that,

Linda, this is miracle that this is kind of turned around, because it means that sort of the bottom side of this is not going to occur, the worst that can happen to you is not going to occur.

And she said to me that she believed that God gave me to her. And I remember that meeting because I was very touched by it. And we had worked very, very hard, and the two of us got along very, very well. And it was a very -- it was a lot like -- Mr. Davis, I don't know if you've ever played ball, and if you didn't, when you're a team and you accomplish something and it all lays out according to a plan, whether it is luck or a plan, you don't care, the team just got a fantastic result.

The two of us are in there, having gone through a very, very, very, very miserable eight or nine months.

Q. Do you recall saying to Linda, you know the miracle you've been wanting, this is it?

A. I don't know, but I think miracle -- I don't -- I was paraphrasing. But I think the miracle was out there. Linda is a very religious person and usually talks about miracles in terms of God and prayer.

Q. Would it surprise you to -- or would it refresh your recollection to know that Linda remembers you saying, you know the miracle that you've been wanting, this is it.

Did you make that statement?

A. Well, I'll say this: It was quite a turnaround in a period of several weeks, and it was extremely favorable and hard fought.

And so miracle, hard work, whatever, we brought it about.

Q. Would you agree with me that a miracle is a sort of an inexplicable event, a surprise, unexpected event?

Would that be a fair characterization of what a miracle is?

A. This turnaround was certainly a surprise.

Q. Why was it such a surprise?

A. Because they had a signed document with her signature on it, a personal guaranty that she obligated herself to some sum close to $3 million and she had assets that would probably satisfy. And that they elected not to get into that fight was great news.

Q. So you didn't expect Galt to waive the

deficiency then, correct?

A. I absolutely did not expect it.

Q. You anticipated that the parties, that is Galt and Gibson, would be in hard-fought, lengthy litigation, possibly?

A. I believed after the hearing that Judge Watson would rule with us; that we would give the property back; that we would be able to argue that the property was worth more than what they said it was, thus reducing the amount of deficiency; that they would then be able to litigate that the deficiency was not due because they had culpability; and that we would be able to argue that certain pieces of this transaction were handled poorly and that as a result she was entitled to damage.

That's what I anticipated happening.

And part of what was going on, Mr. Davis, was running this property was driving Linda deeper and deeper into depression, and she wanted me badly to force them to take the property back so that she didn't have to run it.

And so it was more than just liquidating some sum. From her personal point of view, it was just getting it off of her back.

People were stealing from her, air conditioners. I was there one day when one of the municipalities came up and threatened to write her sanctions for things that had happened with somebody who was supposed to take debris to the dump and dropped it on the street corner.

Q. So take me back to the meeting, if you would.

You and Ms. Gibson are in a meeting in your office, you've received the November 8th letter and you break the news to Ms. Gibson that Galt waived the deficiency; is that correct?

A. She knew that before the meeting, because we had talked about it on the phone. And I just explained to her what the larger significance of it was.

Q. Do you remember where you were sitting at the meeting with Ms. Gibson?

A. I do. And I remember where she was sitting.

Q. Where were you sitting?

A. I was sitting behind my desk, in my office. I have an old wing chair that Ms. Gibson always sat in, and she was sitting in the wing chair.

Q. And do you recall Mr. Kefalos appearing at that meeting?

A. I don't think -- if George appeared, it was only for a brief period of time, because most of the client contact was with me.

Q. When you said -- strike, please.

Did you say, you know the miracle you've been waiting for, this is it?

A. I don't know what the characterization is, Mr. Davis. I think miracle got in there somewhere. And where it originated, I don't know.

I just know it was a very emotional --

Q. Did George say anything at this meeting?

A. I told you, I don't think George was there.

Q. Did George say, yeah, they just threw in the towel, I was shocked, at this meeting?

A. I think George maybe wrote an e-mail or something to me that said something to that effect. I think it actually said, holy shit, does this mean what I think it means, they're throwing in the towel.

I don't know. But in any event, something like that, because we were both

surprised.

Q. You were surprised that Galt decided to waive the deficiency; is that correct?

A. Yes.

I also knew at this meeting on the 15th that Ms. Gibson had contacted Mr. Tecklenburg.

Q. How did you know that?

A. She told me.

Q. Ms. Gibson told you she had contacted Mr. Tecklenburg?

A. Yes.

Q. With regard to assessing what a reasonable fee should be as to the deficiency claim?

A. When -- when I asked her to go and get another lawyer, it was not known that this was going to come through. And the question was more just securing any fee for a deficiency of whatever amount it might be.

And so she had some other business, which I came to understand from Mr. Tecklenburg in the one call that I remember, and so she went to him. And a couple days after me meeting with her is when Mr. Tecklenburg called me.

Q. So you were, in fact, working with

Mr. McVey to get sort of a deed reduction arrangement with the Otranto Apartments before November 8th, and then on November 8th you received this letter from Galt saying we're just going to waive the whole deficiency?

A. No. What happened was simultaneously with this, we're negotiating with Jay Davis, who is not cutting us a lot of slack in terms of time.

Q. Who is Jay Davis representing?

A. First Citizens.

And Jay Davis is interested in making some deal, and he is taking the beach house from her -- and he wants it. And he's putting a lot of pressure on us to make the deal.

Well, what we realized is the only security that we as lawyers have, because Linda is not going to have the money to pay us on a savings case, is the property she has. And we also understand that Jay Davis is going to want a mortgage on everything for the deal that we're negotiating with him on the beach house.

And so the way this whole thing got started, had absolutely nothing to do with the way it ultimately wound up, because we just assumed we were going to be in litigation with Galt for some

period of time.
It was rather, we wanted to get a mortgage securing our services. And I also had the view that if we got a mortgage securing our services that it might help Linda at a subsequent date in a subsequent negotiation with First Citizens, because at least as to certain assets she would have those who were loyal to her, and we were, her lawyers, in front of First Citizens; which would mean for First Citizens, and we knew at the time that the debt that First Citizens wanted her to sign or re-up for was around 4- or $500,000, so that when they sought to foreclose, subsequently, if Linda couldn't pay them the reduced amount, that our fee would be in between them and First Citizens and that would help Linda in a second negotiation with First Citizens.
And I, again, was not going to make that determination for Linda, because that certainly would have been in our best interest, but it is another reason that I told Linda, that you need to go and talk to another lawyer.
And so the way this started had nothing to do with this. We just thought we were negotiating, generally, some kind of deficiency and

security, whatever that may be.
And then, all of a sudden in comes this letter, and now we're not negotiating in the abstract. We're able to negotiate that the amount is $1.7 million. That's how it happened.
Q. You mentioned a few minutes ago a promissory note that Galt Valley had acquired by assignment from Ameris Bank.
I'm handing you a document labeled Promissory Note.
A. I didn't say they acquired it by assignment. I don't know how they acquired it.
I came to believe that they were driving the litigation and that there indeed was something behind it. And I confirmed that with the lawyer for Ameris.
(PLF. EXH. 6, Promissory Note, was marked for identification.)
BY MR. DAVIS:
Q. Have you seen this document before?
A. At one time, yes.
Q. And what is this document?
A. It is entitled: Promissory Note.
Q. And who is the maker on the note?
A. The borrower is Heritage Seven.

Q. And can you turn to the third page of the note?
Who is the borrower on the third page of the note?
A. Heritage Seven.
Q. And the note is for 2.89 million; is that correct?
A. 2.809.
Q. 2.809 million.
And did Linda Gibson sign a personal guaranty on this note, if you know?
A. She guaranteed the notes, yes.
Q. My question is: Did Ms. Gibson sign a personal guaranty document, guarantying Heritage Seven's obligations under this note?
A. I don't know the distinction, and all I have is this document, and so I don't know the answer to your question, mechanically, how it happened.
Q. Well, do you know what a personal guaranty is?
A. I think I do, yes.
Q. And do you know if Ms. Gibson signed a personal guaranty, guarantying Heritage Seven's obligations under the terms of this note?

A. I know somehow Ms. Gibson managed to get herself individually liable in this series of transactions with Ameris.
Q. Well, the maker on this note is Heritage Seven, LLC; is that correct?
A. Yes.
Q. And Heritage Seven, LLC is a separate jural person in the eyes of the law.
Would you agree with me on that?
A. I would agree that Heritage Seven and Linda Gibson are different entities.
Q. Did you ever actually see a personal guaranty document signed by Ms. Gibson that would bind Ms. Gibson to the obligations of Heritage Seven?
A. I saw sufficient documentation to indicate to me that Ms. Gibson was individually liable for this debt.
Q. Is it your professional opinion that Ms. Gibson was liable for Heritage Seven's debt under this promissory note?
A. I believe in the series of transactions that Ms. Gibson executed with Ameris, yes, Ms. Gibson was individually liable.
Q. But you don't recall seeing a separate

personal guaranty document executed by Ms. Gibson, binding her to pay the obligations of Heritage Seven, do you?

A. I don't remember, as I sit here today, what the total package of documents looked like.

Q. Is it possible that Ms. Gibson was not a personal guarantor to Heritage Seven for this $2.8 million?

A. It's not possible that Ms. Gibson didn't have exposure to Ameris on this series of transactions individually.

Q. It's not possible?

A. Ms. Gibson had exposure on these transactions, individually.

Q. When you met with Ms. Gibson shortly after receiving Galt's November 8th letter wherein Galt waived the deficiency, offered to waive the deficiency, did you discuss with Linda at that time that her fee, if she accepted Galt's offer, her fee due and owing her lawyers would be $566,000?

A. Absolutely. And that she would be giving a mortgage, and that it wasn't going to be due and payable, because we knew she didn't have the money. And so it was necessary to talk about it.

So what is she going to do, refuse this, where she gets to walk, and her lawyers are financing it for her?

It wasn't even -- and she understood it clearly. And as we sat in that room, she was ecstatic about it.

Q. She was ecstatic about what, if you recall?

A. That she was getting out of this debt, and the notion that we weren't asking to be paid at the time, because she didn't have the money, and that she was merely going to give a mortgage and that the mortgage might stand between her and the First Citizens' debt, all of which I discussed with her too.

And I noted in some of Paul Tecklenburg's notes or the like, that he too had that conversation with her. And I don't know if he came up with the idea on his own or if she told him that I had suggested that it might be to her advantage in a subsequent negotiation with First Citizens.

Because what happened is they sold the beach house. They gave her credit. She owed them about $600,000. We were able to get them to take

450, payable in two years, interest only. So we knew there was a subsequent negotiation. But we were able to get First Citizens to agree that the note and mortgage that we held as to certain property had priority.

Q. At the meeting, just after you received the November 8th letter from Galt offering to forgive the remainder of the debt, did you tell Ms. Gibson at that meeting that if she accepted this offer from Galt that she would pay her attorneys $566,000 in fees as to the deficiency claim?

A. I don't think we were able to discuss whether it was 500, 600, 700, or 800.

Q. Did you tell her that it was going to be around a half a million dollars in attorneys' fees if she accepted the Galt offer?

A. I am sure I told her it was going to be substantial. And three days later, she signed a document that said $567,000. And I assumed that Mr. Tecklenburg explained it to her, not just in concept, but in terms of the math.

Q. Mr. Epting, I'm not making any insinuations, but can you appreciate how your client, Linda, at the time that she was presented

with an offer to forgive 1.7 million in deficiency and her attorneys were going to charge her $566,000 for that, that she didn't really have any choice but to accept the attorney fee at that moment?

A. Well, if you're asking me was it the rational thing to do, the answer is yes. But I wasn't assuming that Linda made any decision with me. That's why I had Linda in the hands of Paul Tecklenburg, so he could advise her independently of me.

Q. And did Linda agree to pay you $566,000 at that meeting, if --

A. No. Because we didn't know the amount, because the conversations that evolved after that meeting and before the 18th established that the deficiency was 1.7.

I may have told her -- well, I'm sure I told her that they were saying that the deficiency was a million-seven. And I want to say the letter that came several weeks before this November 8th letter said, well, we won't insist on the entire million-seven, we'll take a million-five. Something to that effect.

And so we certainly knew that the number was a big number, and Linda and I would have

the work was appearing at the appointment of receiver hearing? That was the bulk of the work?
A. No.
Q. Why not?
A. Untold time was spent with the client and with my fellow counsel.
Just for example, the whole idea of do we want to be in Berkeley County; hours and hours and hours, what does the law say, where can we go; would the nonjury-jury clause hold. All those things were researched and all those things were discussed, item for item.
Q. So you essentially had a -- some jurisdictional questions as to the proper forum or the most beneficial forum for Linda in this foreclosure proceeding and you appeared at a hearing and talked with your co-counsel.
Is there anything else that you did that you recall with respect to representing Linda against Galt's claims for a deficiency?
A. All those things that you normally do when you have a client's best interest at heart.
Q. Did you assert any claims against Galt Valley?
A. You would have to see the pleadings.

We clearly asserted counterclaims.
Q. You asserted counterclaims against Ameris Bank; is that correct?
A. I think I said I believe so, and if you look at the pleading, then you will know.
Q. I'm handing you a document, Mr. Tecklenburg {sic} -- do you recognize this document?
A. I do.
(PLF. EXH. 7, Answer & Counterclaim, was marked for identification.)
Q. What is this document?
A. It's entitled: Answer and Counterclaim.
Q. Are these the pleadings that you prepared?
A. It's one of them. I think that --
Q. That you're referring to?
A. Yes. I think it may -- there may be some amended documents that follow, in August.
Q. You asserted three counts against Ameris Bank in August, is that correct? A count for negligent misrepresentation, civil conspiracy, and equitable relief?
A. Mine says July.

Q. Yours says July?
A. July 30th.
Q. The court appears to have docketed it on August 18th of 2010.
So you appeared at a appointment of receiver hearing and you apparently filed an answer and counterclaim pleading in the matter of Ameris v. Gibson, you spoke with opposing counsel, and you conferred with your counsel.
Did you do any other work that you recall?
A. Spoke with the client; wrote letters; engaged in strategic discussions; did research. All the things that I normally do when I represent a client.
Q. Did you assert any equitable claims for recoupment against Galt or setoff against Galt?
A. If I did, they'll be contained in the file of pleadings. As I'm saying, I think there's a subsequent pleading.
Q. Well, Galt stood in the shoes of Ameris Bank for the purposes of --
A. Galt was added.
Q. When you say "Galt was added," what do you mean by that?

A. Galt was -- some particular -- and I want to say it was a consent motion, but there's something that was consented to in which Galt was officially admitted into this proceeding. And I believe that when that happened there was another round of pleadings.
Q. And Galt -- and Linda, through your office, stipulated to Galt being substituted for Ameris in the litigation as to the deficiency claim?
A. Not substituted.
Q. Added.
A. And the reason is it was an odd thing that Ian McVey wanted to do. And I didn't want to upset the apple cart. It seemed odd the way he was going about it.
But by then, John, Gedney, George, and I had pretty well decided this fellow will likely consent to a reference; if this is the way he wants to do it, let's just keep quiet, let's just go down the road the way he wants to, let's get this thing referred to Judge Watson, we're not going to get a jury trial. And so if -- the only reason -- I don't remember it, except that I remember the idea was not to do anything out of the ordinary to have

him question should I dismiss this case and go into Charleston County.

That was the subject of months of discussion.

Q. You and your associate counsel spent months of discussion determining whether or not to --

A. Yes. It started --

Q. -- oppose --

A. It started back in --

Q. -- Mr. McVey's appointment of receiver?

A. The discussion started probably as early as January 2010, because our concern was how do we sue Ameris Bank, because at the time there was no suit.

And one of the first things I did was go over and talk to Gedney and say, Gedney, here are the possibilities, even if we get them into Charleston County, they're going to say that it's a nonjury trial; should we sue them in Berkeley County since once of the pieces of property is in Berkeley County?

So this whole discussion of how to strategically posture this case and what venue to achieve started immediately; and whether or not it

was best to be one proceeding or two proceedings.

And then it evolved when Ameris filed suit. Then all of the sudden, we didn't have to worry about could we get them to Berkeley County; they put themselves there.

Q. Mr. Epting, isn't the claims by Ameris and Galt against Linda essentially a mortgage foreclosure action?

A. It is a mortgage foreclosure action.

Q. And it seems to me that a mortgage foreclosure action would be a fairly routine proceeding in the master court.

A. It would, but a negligent misrepresentation claim against a lender who's seeking to foreclosure is not a routine matter. And whether or not it should be combined with a claim in which Rolando was involved and worked hand-in-hand with Ameris in order to secure this transaction was not a simple matter.

Q. Well, it's -- would you agree with me that it's in our rules that parties to a litigation need to assert permissive and compulsory counterclaims in litigation between the same parties?

A. They weren't the same parties,

Mr. Davis.

Q. Well --

A. Ameris was not added. Ameris was not in that claim.

Q. Ameris was --

A. Not in the Charleston action. There was nothing compulsory.

Q. What action was occurring in Charleston?

A. Rolando.

Q. Ms. Gibson's claims against Rolando were occurring in Charleston County; is that correct?

A. That's true.

Q. And Ameris filed its claims against Linda in Berkeley County; is that correct?

A. That's right.

Q. And what exactly was the jurisdictional question that was -- took months to understand?

A. We were thinking it would be advisable to have Rolando and Ameris in the same lawsuit, and we were considering moving to add Ameris into the litigation involving Rolando, but there was nothing compulsory about that.

Q. I'm handing you a document.

Do you recognize that document?

A. I do not.

Q. I represent to you this is a document entitled: Berkeley County Ninth Judicial Circuit Public Index.

It is a accurate reflection of the docket entries in the matter of Ameris Bank v. Gibson.

(PLF. EXH. 8, Berkeley County 9th Judicial Circuit Public Index, was marked for identification.)

BY MR. DAVIS:

Q. Would you turn to the last page of the four-page document set?

And this would be Exhibit 8; is that correct?

And three lines down, on Page 4, the docket entry states, and I quote: Gibson, Linda A. Next column, Answer and Counterclaim Filing, August 18th, 2010.

And the next line, just above Line 2, it says: Galt Valley, LLC. Next column, Order/ Consent Order substituting Plaintiff and Counsel. The next line says, Ameris Bank, Order/Referred to Master.

what else did you guys talk about? "You guys" being the lawyers with respect to the Ameris/Galt claims against Linda.

A. Well, we talked about Linda's state of mind, Linda's health.

Q. What did Linda's state of mind and health have to do with the claims and defenses that were asserted against her?

A. Linda's state of mind and health was always foremost, in that she was out managing this property and we were trying to give them this property, had a lot to do with filing pleadings and receiverships. And she wanted it off of her back. We wanted to force them -- force them to take the property.

And it's a novel concept, Mr. Davis, that you are not only not resisting someone taking the property, you're trying to make them take it so that there can't be a receiver. There was a lot of discussion about that. And we didn't find any state and any case in which it had ever been done. So there was a lot of discussion about that.

And the primary consideration was getting it off of Linda's back, because by this time I had paid the woman who was working with

me -- I don't know how many thousands of dollars to help Linda organize all of the records. And dealing with the tenants and vendors and city authorities was not helping her. So she had a lot to do with this.

Q. But Mr. Epting, from your testimony so far, and from the documents, it appears to me that the lawyers, yourself, Mr. Howe, Mr. West, and Mr. Kefalos appeared at an appointment of receiver hearing, filed a three-count counterclaim, had some dialogue amongst themselves as to some jurisdictional concerns, and met with the client.

It sounds to me like a routine foreclosure proceeding.

Was there anything else that you guys did with respect to the defense of the claims that Galt has brought against Linda?

A. I don't think there's a thing routine about this, Mr. Davis.

Q. What's not routine about it, Mr. Epting?

A. What's routine in a foreclosure proceeding is that the client gets slammed at the hearing, the property gets taken away from them, and they wind up with a deficiency judgment; the

property is sold on the courthouse steps. That's a routine foreclosure.

This is a foreclosure in which a lender and its assignee, or whoever, had a $3 million mortgage, a piece of property, six of the buildings were condemned, and a cell phone tower with a troubled lease in which the client walked away from the debt by assigning the property.

There's nothing routine about that. You don't find any of those cases standing in the courthouse records.

And it was achieved because we worked hard, we're good at what we did, and we gave her everything we had, and it worked.

Q. Mr. Epting, we know the result. I'm trying to understand what work product the lawyers did --

A. A lot of work product, Mr. Davis. A lot of work product.

Q. Well, the work product that you've shown me is a five-page complaint containing three counts and you appeared at a hearing.

You had some conversations about some jurisdictional concerns. You met with the client.

MR. COOKE: Objection to the form.

BY MR. DAVIS:

Q. And you apparently received a letter from Galt Valley.

Is there anything else that you guys did with respect to the claims that Galt brought against Ms. Gibson?

A. We did all the things that I have described to you that we did.

Q. Did we cover everything that you guys probably did?

A. I think I said, in my testimony, most of what it is that we did.

Q. And how much did you get paid for that work product we just discussed?

A. 560-some-odd thousand dollars.

Q. Do you think $566,000 is an excessive fee for drafting a five-page complaint, communicating with your client, your associate counsel, and appearing at an appointment of receiver hearing?

A. I disagree with the characterization of what we did. But given what we did and the result that we achieved and the agreement that we struck with the client before we undertook to do what we did, yes, we earned the fee that we contracted for.

Q. Well, I will -- I would concede that you got the result you wanted. What I'm trying to do is understand the "earned the fee" part.

Do you believe you earned $566,000 for the work product that we just discussed a few minutes ago?

A. Yes.

Q. Why do you believe that?

A. For all the reasons I have been testifying to here this morning; that it's the agreement she made with the assistance of counsel.

Q. With assistance of multiple counsel, correct?

A. Her choice.

Q. It's your client's choice as to who she's going to meet with to discuss the fee that she's ultimately going to pay you?

A. In this case, it was her choice, yes.

Q. Why wouldn't you just negotiate your fee with your client?

A. I, in part, did, Mr. Davis. But as an added layer of protection for this client, she had other lawyers involved. I was happy to have them involved in it. There were some issues that I felt like she needed independent advise on, like the

amount of the deficiency, and I was happy to have them involved.

Q. So how many attorneys did Ms. Gibson have involved in this foreclosure proceeding?

A. She only had one set of lawyers representing her in the litigation brought by Galt.

Q. That wasn't my question, Mr. Epting.

How many attorneys did Linda Gibson have representing her in this foreclosure proceeding?

A. That would be my answer.

Q. Well --

A. Rob Papa was not representing her in the foreclosure, nor was Paul Tecklenburg.

Rob Papa was representing her in a foreclosure, just not this one.

Q. Well, did Gedney Howe represent her in the foreclosure proceeding?

A. Absolutely.

Q. Did Mr. West represent her in the foreclosure proceeding?

A. Absolutely.

Q. Did Mr. Kefalos represent her in the foreclosure proceeding?

A. Absolutely.

Q. And you represented her in the foreclosure proceeding, did you not?

A. Absolutely.

Q. And did Mr. Tecklenburg assist her in determining her fee with respect to the foreclosure proceeding?

A. She did go to Mr. Tecklenburg and he did render some services to her. Exactly the scope, I don't know.

Q. And did Mr. Papa assist Ms. Gibson with respect to determine what your fee would be with the foreclosure proceeding?

A. I believe he advised her, yes. And I certainly dealt with them as if he was her lawyer.

Q. Well, if I just count: Papa, Tecklenburg, West, Kefalos, Howe, and you, Mr. Epting, that's six attorneys involved in representing Ms. Gibson with respect to a foreclosure proceeding.

Would you agree with that?

A. No.

Q. You wouldn't?

A. No.

Q. You think she had less than six attorneys assisting her with respect to the

foreclosure proceeding?

A. I know she did.

Q. Was it possible she had more attorneys representing her with respect to the foreclosure proceeding than six?

A. She had Mr. West, myself, Mr. Kefalos, and Mr. Howe. And we charged her one fee. She had the --

Q. And that fee was $566,000?

A. More or less.

Q. And did you get paid out of that fee?

A. I did.

Q. How much did you get?

A. I'm not real sure.

Q. Would it refresh your recollection if I said that you got $188,000?

A. I think that's right about -- if that's one-third of the total fee.

Q. And how much did Mr. Howe get for his participation in representing Ms. Gibson in the deficiency claim and foreclosure matter?

A. My recollection is that John and Gedney suggested that we take thirds. George and I had done most of the initial work, and John got fairly involved in the August/September --

A. I don't know.
Q. Do you think that Mr. Howe may have prepared a statement?
A. I doubt it.
Q. Do you think that if Ms. Gibson were able to see the breakdown of how this $566,000 was disbursed amongst her lawyers, that she would have an understanding of the work each attorney did for her?
A. I don't know what she would think.
Q. Did you have a meeting with Ms. Gibson before preparing this disbursement statement identified as Exhibit 10, with regard to the disbursement of the RE/MAX proceeds?
A. Can you tell me what the date of this is?
Q. I will represent to you that on information and belief, this document was signed in February of 2012, February 17th of 2012, and --
A. I -- I do know this, that I sat down with Ms. Gibson and said that there would not be enough money out of the Rolando settlement to do all the things that she needed to do.
And it was a subject of any number of things, because the whole idea was, I told Linda,

it would be unwise for her not to deal with First Citizens, and that the whole idea was to move these things around in a way that left her enough money that I could go back to First Citizens and get an extension beyond one year for when she had to pay them out.
And so we went at this backwards. And I said, Linda, what I think we need to do is I believe that First Citizens, if you can pay them half, will, one, reduce the amount of the collateral that they'll take; and two, I think that they will extend the term. And so we're going to need $250,000 in order to induce them to do that.
And so I said to her, what I propose is this, let's pay off the first thing, because I obviously wanted to take care of John and Gedney, who had helped in the first case. They had no part of this fee, and I felt it important that they get paid for having helped us.
And I told her I wanted to take the fee and pay the Galt fee, and George and I would simply defer our fee, and that we would satisfy the larger mortgage, and George and I would wind up with the mortgage for the fee on the $850,000.
And that's what was done. And it was a

result of several meetings.
Q. Did you prepare this disbursement statement?
A. I did not.
Q. Do you know who prepared this disbursement statement?
A. I imagine George did.
Q. And this disbursement statement refers to a disbursement of fees from the RE/MAX litigation; is that correct?
A. Right.
Q. Did you get paid your fees in the RE/MAX litigation?
A. We deferred them, and it was the subject of other documents.
Q. Did you get paid your fees in the RE/MAX litigation?
A. No.
Q. And what are your fees for prosecuting the RE/MAX litigation?
A. You know, I'm not sure.
Q. Was it a contingent fee agreement?
A. Yes, it was.
Q. Was it 33 percent?
A. I think it was 40 percent, and I think

we reduced it to 35.
Q. 35 percent of $850,000 would be approximately $280,500; is that correct, roughly?
A. I don't know.
Q. Well, it's more than $250,000, correct?
A. It's embodied in a mortgage signed by Ms. Gibson. And if you would show me the document, I would tell you exactly what it is.
Q. Well, it may be embodied in a mortgage that Ms. Gibson signed, but it's not listed on this disbursement statement, is it?
A. No, because it wasn't paid.
Q. Well, just because it wasn't paid, wouldn't it be worthwhile to reflect it on the statement as remaining due and owing? I mean --
A. That's why we did the mortgage.
Q. This is --
A. It was not disbursed, so it's not on a disbursement statement.
Q. Mr. Epting, is it your testimony that the disbursement statement reflecting the $850,000 settlement proceeds from the RE/MAX/Rolando litigation does not show that Ms. Gibson owes you a quarter of a million dollars for the work you did in the RE/MAX litigation?

TECKLENBURG & JENKINS, LLC
ATTORNEYS AND COUNSELORS AT LAW
www.tecklaw.net

PAUL F. TECKLENBURG
RIVERS T. JENKINS, III

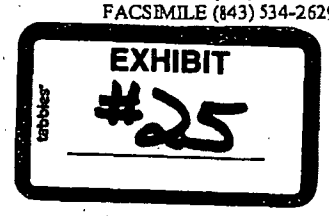
GARY E. ENGLISH +
W. JOE JACUMIN, JR.

R. RANDALL BRIDWELL *
Of Counsel

*also admitted in Texas
+ also admitted in Georgia

1819 MEETING STREET ROAD - SUITE #A
CHARLESTON, SOUTH CAROLINA 29405

POST OFFICE BOX 20667
CHARLESTON, SOUTH CAROLINA 29413
TELEPHONE (843) 534-2628
FACSIMILE (843) 534-2629



December 8, 2010

Ms. Linda Gibson
133 Horse Trail Road
St. George, SC 29477

RE: Representation by George J. Kefalos, Andrew K. Epting, Jr., Gedney Howe, III, and John West
Our File No.: 1104.01

Dear Linda:

This will confirm the many conversations and several meetings we have had over the past few weeks regarding the referenced legal representation.

We have reviewed your various financial records, litigation proceedings, and other information provided by your counsel. As I understand it, you have a mortgage from Ameris of approximately $3 million in foreclosure, with equity of only $1.3 million for an apartment complex and cell tower property. In addition, you had various other liabilities associated with your beach and commercial properties, wherein First Citizens claimed an additional $450,000 in deficiency from you. You do not have sufficient assets to meet any of these obligations, and have turned to litigation to assist in reducing these debts, as well as pursuing the original tortfeasors associated with selling the apartment complex.

We discussed your various options, which included few, if any, short of litigation. Under the circumstances, I recommended that litigation was probably your best course of action, and should be continued with the fine team of attorneys who are representing you. I further advised you that you had entered a simple but likely enforceable agreement with Drew Epting, providing that one-third of any savings in the litigation with Ameris would be considered a fee earned by your counsel of record. The referenced counsel requests that this agreement to pay them be secured by a mortgage on your property, and they requested you retain separate counsel. You selected the undersigned.

As I explained to you, with the deficiency sought by First Citizens, as well as an anticipated confession of judgment which they will hold for potential filing in the future, placing a mortgage on the land to secure the fee payable to your attorneys was appropriate. The mortgage would encourage your attorneys to vigorously pursue the various lawsuits you have pending, and place a more friendly creditor in the first position on the property. We negotiated a twelve month window, so that at the end of all litigation, you would have twelve months to reorganize your affairs. We discussed on several occasions that after collection of any judgment, insurance monies or other funds available from the litigation

process, you may continue to owe counsel money. We also negotiated the total amount of the fee earned in the Ameris deficiency litigation to be limited to $567,000.00.

I advised you that I had an opinion that it was more likely than not that you would owe your counsel money at the end of this long and arduous process. However, the one year window will allow you to reorganize your affairs with the various properties you have available. Hopefully, with a better economy and with a good result, the exposure for payment of these attorneys fees will be minimal. Nevertheless, all litigation carries with it a "no guarantee" result, and the results could be less than desirous.

Also, as mentioned during our many meetings, we stand ready, willing and able to close on the Port Authority property on Daniel Island. We wish you success in collecting the necessary funds for this closing, as we continue to recommend it to you.

Please do not hesitate to contact me if you have any questions as you move forward through your various legal hurdles and challenges.

With best regards, I remain

Sincerely,

Paul F. Tecklenburg
pft@tecklaw.net

PFT/eal

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

August 17, 2010
File No: 5565.002M
Statement No: 155393

Attn: [redacted]

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours
07/14/2010		
IDM	Telephone call from [redacted]	0.20
07/15/2010		
IDM	Receipt and review of Title Update.	0.20
KAM	Follow up email to abstractor in regard to request for title update. Telephone call from abstractor in regard to request. Receipt and review of email from Angela Hulon at Indigo Title attaching title update on property. Print and review title update. Forward to IDM via email.	0.30
07/26/2010		
KAM	Search, view and obtain copy of recorded Assignment of Mortgage from Lexington County online Register of Deeds website. Print and send via email to IDM.	0.10
07/28/2010		
IDM	Telephone call from [redacted]	0.20
IDM	Telephone call to Drew Epting re: status of suit.	0.20
IDM	Review new title.	0.50
07/29/2010		
IDM	Telephone call to Ben Miller re: substitution of plaintiff and counsel.	0.20
IDM	E-mails to/from [redacted]	0.20
IDM	Review (continued review) of title from Ben Miller.	1.30
IDM	Receipt and review of Allonges to Notes.	0.20
IDM	Telephone call from Ben Miller re: status of foreclosure and answer to pleadings.	0.30
IDM	Telephone call from Drew Epting re: status of matter and	

EXHIBIT #36

JRD R45 CALLISON 0059

Gulf Valley LLC

August 17, 2010
File No: 5565-002M
Statement No: 155333

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	answer.	0.20	
KAM	Conference with IDM re: title updates from 2 abstractors and request that they certify title to us. File review. Telephone call to Sallie Avice du Bussior (abstractor). Prepare memo containing request and instructions for title update to abstractor. Prepare email containing request and instructions to Edisto Title Services for title update for Berkeley County property. Reply email from Edisto Title Services.	0.60	
07/30/2010			
IDM	Telephone call to [redacted]	0.20	
IDM	Receipt and review of Answer and Counterclaim, Quit-claim Deed and Tax Notice.	0.30	
KAM	Telephone conference with Sallie Avice du Buissor (abstractor) in regard to our title request and instructions. Telephone conference with Todd at Edisto Title Services in regard to title request. Conference with IDM re: status of title work with abstractors in Berkeley and Charleston Counties. Email to Sallie Avice du Buissor (abstractor) in regard to certify title search. Email to Todd at Edisto Title Services forwarding our request for title update and certification.	0.50	
08/02/2010			
IDM	Telephone call from [redacted]	0.20	
08/03/2010			
IDM	E-mails to/from [redacted]	0.10	No Charge
IDM	E-mails to/from Bobby Stepp re: Ameris Counterclaims.	0.10	No Charge
IDM	Telephone call to Bobby Stepp re: Ameris Counterclaims.	0.10	No Charge
IDM	Telephone call from Bobby Stepp re: Ameris Counterclaims.	0.20	No Charge
IDM	E-mails to/from Bobby Stepp re: subpoena for records and amended complaint in collateral litigation.	0.20	
08/04/2010			
IDM	Receipt and review of E-mails to/from Bobby Stepp and Max Mahaffee re: subpoena of documents.	0.20	
08/09/2010			
IDM	Receipt and review of Answer and Crossclaim from Ben Miller and related correspondence.	0.20	
IDM	Receipt and review of correspondence from Bobby Stepp, counsel for Ameris Bank, re: return to subpoena.	0.10	
IDM	Telephone call to Drew Epting re: deed in lieu.	0.20	
IDM	Telephone call to [redacted]		

Galt Valley LLC

August 17, 2010
File No: 5565-002M
Statement No: 155333

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	[redacted]	0.30	
KAM	Receipt and review of email with title update attachment from abstractor (dated 8-4-2010). Print copy for file. Save title update to directory.	0.20	
KAM	Email from Sallie Avice du Buisson (abstractor) in regard to our title update and certification request. Prepare email reply to Sallie Avice du Buisson attaching our written request for a 40 year title search as requested by abstractor for certification statement. Revise memo to abstractor in regard to our title search request pursuant to abstractor's instructions.	0.30	
08/10/2010			
IDM	Telephone call from Drew Epling re: substitution of parties, etc.	0.40	
IDM	Telephone call to Bobby Stepp re: production of documents pursuant to subpoena.	0.20	
IDM	Office conference with LHL re: resolution and subpoena of documents.	0.30	
IDM	Online research re: assignment of mortgage in Charleston County.	0.30	
IDM	Telephone call from [redacted]	0.40	
IDM	Letter to Drew Epling re: payment of rents and demand for entry.	0.30	
KAM	Receipt and review of facsimile and title update from Sallie Avice du Buisson (abstractor) in connection with the Charleston County property. Telephone call to Sallie Avice du Buisson in regard to her facsimile and update.	0.20	
	For Current Legal Services Rendered	9.70	1,725.00
	Total Non-billable Hours	0.50	

Recapitulation

Timekeeper	Hours	Rate	Total
IAN D. MCVEY	0.40	$185.00	74.00
IAN D. MCVEY	7.10	200.00	1,420.00
Katie A. Minton	2.20	105.00	231.00

Copies	8.80
Long Distance	59.65
Facsimile	7.00
Postage	0.44
Total Expenses	75.89

JRD R45 CALLISON 0059

Galt Valley LLC

August 17, 2010
File No: 5565-002M
Statement No: 155333

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

Title Search, Examination or Update	85.50
Total Advances	85.50
Total Current Work	1,886.39
Balance Due	$1,886.39

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Gall Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

September 15, 2010
File No: 5565-002M
Statement No: 155640

Attn: [redacted]

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

			Hours	
08/11/2010				
	IDM	Draft Consent Order of substitution and reference.	1.10	
	IDM	Draft Consent Order Appointing Receiver.	2.20	
	IDM	Review and revise Consent Order Appointing Receiver.	0.40	
	IDM	Review and revise Demand Letter to Drew Epting for Leases, etc.	0.50	
08/12/2010				
	IDM	Telephone call from [redacted].	0.20	
	IDM	Telephone call to George Kefalos re: receiver.	0.20	
	IDM	Receipt and review of e-mail from [redacted]	0.10	No Charge
	IDM	Letter to Drew Epting re: demand for insurance, rents, and lease.	0.20	
	IDM	Review, revise and finalize Letter to Drew Epting re: demand for rents and entry.	0.20	
08/16/2010				
	KAM	Prepare email to Sallie Avice du Bulsson (abstractor) to inquire as to status of completing title search/update.	0.10	
08/18/2010				
	KAM	Review title update and summary from Sallie Avice du Bulsson. Scan and save to directory. Email to IDM.	0.10	
08/19/2010				
	IDM	Draft Expedited Motion for Receiver.	0.60	
	IDM	Review, revise and finalize letter to Judge Dennis re: consent order.	0.10	No Charge
	IDM	Review, revise and finalize Motion for Receiver.	0.50	
	IDM	Letter to Judge Watson re: Motion for Receiver.	0.20	
	IDM	Review Documents from client for production to Bobby		

JRD R45 CALLISON 0060

Galt Valley LLC

September 15, 2010
File No: 5565-002M
Statement No: 155640

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	Stepp.	1.00	
08/23/2010			
IDM	Telephone call to [redacted]	0.20	
08/25/2010			
IDM	Receipt and review of Answer from Ameris Bank; telephone call to Bobby Stepp re: same.	0.20	
IDM	E-mails to/from [redacted]	0.10	No Charge
08/30/2010			
KAM	Receipt and review abstract report from Stille Avice du Buisson dated 8-26-10.	0.20	
08/31/2010			
IDM	Telephone call from [redacted] e-mails to/from same re: [redacted]; review of file re: same.	0.20	
IDM	Telephone call to [redacted]	0.30	
IDM	E-mails to/from [redacted]	0.40	
IDM	Draft Requests to Admit; review of file re: same.	4.20	
09/01/2010			
IDM	Telephone call from John Grantland re: settlement.	0.20	
IDM	Review and revise Requests to Admit.	1.00	
MDM	Review and revise Requests to Admit.	0.40	
	For Current Legal Services Rendered	15.10	2,982.00
	Total Non-billable Hours	0.30	

Recapitulation

Timekeeper	Hours	Rate	Total
Mary Dameron S. Milliken	0.40	$200.00	$80.00
IAN D. MCVEY	14.30	200.00	2,860.00
Katie A. Minton	0.40	105.00	42.00

Copies	24.40
Long Distance	52.32
Facsimile	13.00
Postage	13.08
Total Expenses	102.80

JRD R45 CALLISON 0060

Galt Valley LLC

September 15, 2010
File No: 5565-002M
Statement No: 155640

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

	Title Search, Examination or Update	312.00
	Master-In-Equity	125.00
	Clerk of Court	50.00
	Total Advances	487.00
	Total Current Work	3,571.80
	Previous Balance	$1,886.09
09/13/2010	Payment - Thank You - Jeremiah Henderson Ck# 3020. Invoice # 155833	-1,886.39
	Balance Due	$3,571.80

JRD R45 CALLISON 0060

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

October 14, 2010
File No: 5565-002M
Statement No: 156021

Attn: [redacted]

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours
09/14/2010		
IDM	Review and revise Discovery Requests.	2.00
09/16/2010		
IDM	Receipt and review of Appraisal and pictures.	0.40
IDM	Telephone call to [redacted]	0.20
IDM	Telephone call to Drew Epting and George Kefalos re: receiver.	0.20
09/17/2010		
IDM	Telephone call to Geoff Southard re: affidavit.	0.30
IDM	Draft Motion for Receiver for Berkeley County Property; review and revise same; review of file re: same.	2.00
IDM	Telephone call from Geoff Southard re: subpoena.	0.20
IDM	Review, revise and finalize Motions for Receiver.	0.30
09/21/2010		
IDM	Telephone call to Tom Rehm re: receiver.	0.30
IDM	Telephone call to George Kefalos re: receiver.	0.20
09/22/2010		
IDM	E-mails to/from [redacted]	0.10
IDM	Telephone call to George Kefalos re: receiver.	0.30
09/23/2010		
IDM	Receipt and review of Document Production from Bobby Slepp, Counsel for Ameris Bank, to Max Mahalee in collateral litigation.	0.20
IDM	Receipt and review of correspondence from Drew Epting re: continuance of hearing.	0.20
IDM	Letter to Judge Watson objecting to Continuance request.	0.30
IDM	Telephone call from [redacted]	

Galt Valley LLC

October 14, 2010
File No: 5565-002M
Statement No: 156021

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	[redacted]	0.30	
09/24/2010			
IDM	Receipt and review of Insurance Binder for Heritage Seven, LLC; e-mails to/from Oana Johnson in Drew Epting's office re: same; e-mail to client re: same.	0.20	
IDM	Review and revise Discovery requests.	0.40	
09/27/2010			
IDM	Review, revise and finalize Discovery Requests and Exhibits thereto.	0.50	
09/29/2010			
IDM	Letter to Drew Epting re: adding client as additional insured on policy.	0.20	
	For Current Legal Services Rendered	8.80	1,760.00

Recapitulation

Timekeeper	Hours	Rate	Total
IAN D. MCVEY	8.80	$200.00	$1,760.00

Copies	204.55
Long Distance	72.31
Facsimile	11.00
Postage	36.63
Total Expenses	324.49
Witness Fee	40.77
Clerk of Court	25.00
Total Advances	65.77
Total Current Work	2,150.26
Previous Balance	$3,571.80
09/27/2010 Payment - Thank You - Ck# 5003 Invoice # 155640	-3,571.80
Balance Due	$2,150.26

JRD R45 CALLISON 0060

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

November 11, 2010
File No: 5565-002M
Statement No: 156460

Attn: [redacted]

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
10/12/2010			
IDM	Telephone call to Tom Rehm re: hearing.	0.20	
IDM	Telephone call to Geoff Southerd re: hearing preparation.	0.20	
IDM	Prepare for hearing on motion for receiver.	0.60	
10/13/2010			
IDM	Travel to/from Moncks Corner for Hearing on Motions to appoint receiver; meet with Geoff Southerd re: same; meet with Tom Rehm re: same; prepare for hearing; attend hearing.	7.30	
IDM	E-mails to/from client re: [redacted]	0.10	No Charge
10/14/2010			
IDM	Telephone call from [redacted]	0.30	
IDM	Telephone call from [redacted]	0.20	
10/15/2010			
IDM	Letter to Drew Epting re: settlement.	0.20	
10/18/2010			
IDM	Review, revise and finalize letter to Drew Epting re: deed in reduction.	0.20	
IDM	Draft Order re: rent.	0.40	
10/19/2010			
IDM	Review, revise and finalize Order re: rent.	0.60	
IDM	E-mails to/from Judge Watson re: proposed order regarding rent for Berkeley County property; e-mails to/from Judge Watson re: briefs on "Deed in Reduction" concept for Charleston County Property.	0.20	

Galt Valley LLC

November 11, 2010
File No: 5565-002M
Statement No: 156460

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
10/20/2010			
IDM	E-mails to/from [redacted]	0.20	
10/21/2010			
IDM	Telephone call to [redacted]	0.20	
IDM	E-mails to/from Drew Epting and clients re: settlement conference.	0.20	
IDM	Telephone call to Drew Epting re: order on rent.	0.20	
10/22/2010			
IDM	E-mails to/from Drew Epting re: settlement conference; e-mails to/from [redacted]	0.20	
IDM	Telephone call from clients re: settlement offers, etc.	1.10	
IDM	Draft Settlement letter; e-mails to/from Drew Epting and client re: [redacted]	0.50	
10/25/2010			
IDM	Legal Research re: Deed in Reduction.	0.40	
IDM	E-mails to/from clients re: [redacted]	0.20	
IDM	Review and revise Settlement Correspondence.	1.30	
10/27/2010			
IDM	Receipt and review of Responses to Requests to Admit.	0.20	
10/29/2010			
IDM	E-mail from [redacted]; e-mail to Drew Epting and George Kefalos re: same.	0.10	No Charge
11/04/2010			
IDM	Receipt and review of E-mail, correspondence and proposed order from Drew Epting.	0.20	
IDM	Letter to Drew Epting re: no consent to amend.	0.20	
IDM	Legal Research re: holder in due course defense.	1.20	
IDM	Telephone call to [redacted] Drew Epting.	0.20	
IDM	Telephone call from [redacted] re: [redacted]	0.50	
11/05/2010			
IDM	Telephone call from clients re: [redacted]	0.80	
IDM	Letter to Drew Epting re: settlement offer.	0.20	
11/08/2010			
IDM	Telephone call to [redacted]	0.20	No Charge
IDM	Telephone call to [redacted]		

Galt Valley LLC

November 11, 2010
File No: 5565-002M
Statement No: 156460

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
	[redacted]	0.20	No Charge
IDM	Telephone call to Frank Knowlton re: possible representation of client.	0.20	
IDM	Telephone call to [redacted]	0.20	
IDM	Letter to Clients re: [redacted]	0.30	
IDM	Letter to Ameris Bank re: [redacted]	0.20	
IDM	Review and revise settlement offer.	0.30	
11/09/2010			
IDM	Telephone call from Bobby Stepp re: amendment of pleadings.	0.20	
	For Current Legal Services Rendered	19.80	3,960.00
	Total Non-billable Hours	0.60	

Recapitulation

Timekeeper	Hours	Rate	Total
IAN D. MCVEY	19.80	$200.00	$3,960.00

	Mileage	110.00
	Court Reporter	465.20
	Total Advances	575.20
	Total Current Work	4,535.20
	Previous Balance	$2,150.26
11/01/2010	Payment - Thank You - Ck# 5007 Invoice # 156021	-2,150.26
	Balance Due	$4,535.20

JRD R45 CALLISON 0060

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

December 14, 2010
File No: 5565-002M
Statement No: 156860

Attn: [redacted]

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

		Hours	
11/10/2010			
IDM	Telephone call to [redacted]	0.20	No Charge
11/12/2010			
IDM	Telephone call to Alice Paylor re: transition of counsel.	0.30	
IDM	E-mail to clients re: [redacted]	0.20	
IDM	Telephone call to Drew Epting re: settlement.	0.20	
IDM	Telephone call from Drew Epting re: settlement.	0.20	
IDM	Telephone call from clients re: [redacted]	0.30	
IDM	Telephone call to Drew Epting re: settlement.	0.20	
11/15/2010			
IDM	Telephone call to Drew Epting re: settlement.	0.20	
IDM	Receipt and review of response to settlement proposal.	0.20	
IDM	E-mails to/from client re: [redacted]	0.20	
IDM	Telephone call to Will Jordan re: lease.	0.20	
IDM	Review Tilework re: memorandum of lease and amendments thereto.	0.30	
IDM	E-mails to/from client re: [redacted]	0.10	
11/16/2010			
IDM	Telephone call from [redacted]	0.20	
IDM	Telephone call to LHL re: [redacted]	0.20	
IDM	Telephone call to [redacted]	0.20	
IDM	Telephone call to [redacted] at Ameris Bank re: [redacted]	0.20	
IDM	E-mails to/from client re: [redacted]		

Galt Valley LLC

December 14, 2010
File No: 5565-002M
Statement No: 156860

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

Balance Due $1,523.38

CALLISON TIGHE & ROBINSON, LLC
Attorneys at Law
1812 Lincoln Street, Suite 200, Post Office Box 1390
Columbia, South Carolina 29202

(803) 404-6900
(803) 404-6901 (1st Floor FAX)
(803) 404-6902 (2nd Floor FAX)
FEDERAL I.D. #57-0531763

Galt Valley LLC
3540 W. Sahara Avenue #729
Las Vegas NV 89102

January 21, 2011
File No: 5565-002M
Statement No: 157576

Attn: [redacted]

Foreclosure of Mortgages formerly owned by Ameris Bank and Possible Collateral Litigation between Borrower, Guarantors, and Possible Adverse Parties

	Previous Balance	$1,523.38
12/27/2010	Payment - Thank You - Ck# 5015 Invoice # 156860	-1,523.38
	Balance Due	$0.00