

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master In Equity  
Case No 2013-CP-10-1404

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Appellate Case No. 2016-000910  

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Ten State Street, LLP.....Appellant,

v.

William E. Danielson and Carol Danielson.....Respondents.

William E. Danielson and Carol Danielson.....Respondents,

v.

Timothy D. Scrantom.....Appellant.

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**REPLY BRIEF OF APPELLANT TEN STATE STREET, LLP**  

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**TABLE OF CONTENTS**

Table of Authorities ..... iii

Respondents' Statement of the Case and Statements of Fact ..... 1

Standard of Review ..... 2

Respondents' Flawed Issues and Arguments ..... 4

    1. Respondents fail to address any of the Order's factual errors ..... 4

    2. The errors of fact in the Order are material ..... 5

    3. Some key evidence quoted in the Order is fabricated ..... 6

    4. Respondents have no explanation for the malignancy of the Order ..... 7

    5. The findings of law and equity of the Master-in-Equity are unsustainable ..... 9

Conclusion ..... 10

**TABLE OF AUTHORITIES**

*Dixon v. Dixon*, 362 S.C. 388, 395, 608 S.E.2d 849, 852 (2005).....2  
*Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*,  
347 S.C. 642, 645-46, 557 S.E.2d 670, 672 (2001).....2  
*Lewis v. Lewis*, 392 S.C. 381, 387-88, 709 S.E.2d 650, 653 (2011).....3,4  
*Townes Assoc., Ltd. v. City of Greenville*,  
266 S.C. 81, 85-86, 221 S.E.2d 773, 775-776 (1976).....3  
*ZAN, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 751 S.E.2d 664 (2013).....2

South Carolina Constitution: Article V, § 5 .....3

## RESPONDENTS' STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Echoing with the Proposed Order they drafted for the Master-in-Equity's signature following the trial of this case, Respondents' Initial Brief in this Appeal is replete with material misstatements for which no evidence was adduced at the trial of the matter. In their "Statement of the Case", Respondents state the initial complaint filed in this matter contained equitable claims for rescission based on mutual and unilateral mistakes of fact, unjust enrichment and for breach of contract (Respondent Br. p. 2; Complaint, filed March 11, 2013), but fail to point out that the initial complaint requested *exclusively* equitable relief (rescission, injunctions, return of benefits received). (Complaint). Moreover, the Master-in-Equity found for the Danielsons on a single breach of contract claim (not "claims") which, contrary to Respondents' Brief, were not against Scrantom but only against Ten State Street. (Respondent Br. p. 3)

In their "Statement of the Facts", the Danielsons allege that "Scrantom utilized the assistance of John Hagerty, Esquire with Nelson, Mullins, Riley and Scarborough, LLP to draft and develop the Agreement, obtained, reviewed and analyzed the Respondents' mortgage documents himself, with his attorney and Certified Public Accountant,"... (Respondent Br. p. 4). Contrary to Respondent's statement of fact and misleading citations, there is no evidence to support the statement that Scrantom "analyzed" any documents or that Mr. Hagerty or a "Certified Public Accountant" ever saw mortgage documents. Just as they did in drafting the Proposed Order, Respondents play fast-and-loose with the facts: Scrantom never "drafted the Agreement with his attorney for execution." (Respondent Br. p. 4) More accurate is the Danielson's statement later in their Initial Brief (Respondent Br. p. 20) that "the Agreement was negotiated between sophisticated parties,..."

More important, even if he *were* a party to the Agreement, there is no evidence in the trial record that “Scrantom located an alternative house located at 200 Bank Street that he liked better than the Property...,” (Respondent Br. p. 5) as Respondents would have this Court believe. Nor is there any support for the assertion that “[Scrantom] looked for ways to try to create a dispute in order to rescind the Agreement”, as Respondents state in their Brief (Br. P. 6). Other misstatements of fact in Respondents’ Initial Brief are discussed below.

### **STANDARD OF REVIEW**

In an apparent attempt to disguise them (or admit their weakness), Respondents sprinkle throughout their legal arguments submissions as to the standard of review applicable to the instant case. Contrary to their assertions, the clear standard of review to be applied by this Court is a *de novo* standard of review. Appellant sent to Respondents Notice of Rescission of the Agreement prior to the end of the first year term of the Agreement. (Complaint, Ex. A) The initial complaint filed by Appellant prayed for exclusively equitable relief in the form of rescission. (Complaint, Prayer). Rescission was *all* Appellant sought. This circumstance is identical to the circumstance in *ZAN, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 751 S.E.2d 664 (2013). It is well-settled law that “In an action alleging entitlement to both money damages and equitable relief, the characterization of the action as legal or equitable depends on the plaintiff’s “main purpose” in bringing the action. *Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass’n*, 347 S.C. 642, 645-46, 557 S.E.2d 670, 672 (2001). In *Zan*, the Court held that “ZAN’s “main purpose” in instituting this action was to rescind the contract; thus, the main purpose of the action was equitable in nature. *See Dixon v. Dixon*, 362 S.C. 388, 395, 608 S.E.2d 849, 852 (2005) (stating an action for rescission of a contract is an equitable action).” *ZAN, LLC* at 667. Here, it is abundantly clear from the Notice of

Rescission and the initial Complaint that Appellant's "main purpose"—indeed sole purpose--in bringing the action was to effect rescission of the Agreement. That Complaint requested exclusively equitable relief. Respondent's awkward attempt to suggest another standard of review should apply is transparent.

It is indisputable that the appellate court reviews factual findings and legal conclusions in an equitable action *de novo*. *Lewis v. Lewis*, 392 S.C. 381, 387-88, 709 S.E.2d 650, 653 (2011). "*De novo* review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court's findings." *Id.* at 390, 709 S.E.2d at 654-55. Accordingly, the standard of review to be applied to this appeal is clearly a *de novo* review. *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775-776 (1976) contains the classic decision on this difference in standards of review. The Court there held:

- in an action at law, factual findings will not be disturbed unless there is no evidence which reasonably supports the finding. This is true whether the case is tried to a jury or to the trial judge.
- in an action in equity, the Supreme Court may find facts in accordance with its views of the preponderance of the evidence. This is true if the case is tried to a judge alone or if the case is tried to a master and the master and trial judge later disagree.
- in action in equity, tried first by a master and concurred in by the judge, the factual findings will not be disturbed unless the finding lacks any evidentiary support or is against the clear preponderance of the evidence.

This case was tried to a Master. There was no concurrence by a judge or post-trial proceedings involving a judge. The *de novo* standard of review is clearly applicable. To hold otherwise would be contrary to the South Carolina Constitution: Article V, § 5 of the South Carolina Constitution

provides in relevant part that the Court's appellate jurisdiction in cases of equity requires that it "review the findings of fact as well as the law." The Court has interpreted this provision and held that "it may now be regarded as settled that this court may reverse a finding of fact by the circuit court [in a case of equity] when appellant satisfies this court that the preponderance of the evidence is against the finding of the circuit court." *Finley*, 55 S.C. at 202, 33 S.E. at 360-61. This language served as the forerunner to the often-quoted language that an appellate court may take its own view of the preponderance of the evidence, as included in the landmark standard of review case, *Townes Associates, Ltd., supra*.

"*De novo* review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the [family] court's findings." *Lewis*, 392 S.C. at 390, 709 S.E.2d at 654-55. Here Appellant has "satisfied the burden of showing the preponderance of the evidence actually supports contrary factual findings by this court." *See Lewis*, 392 S.C. at 390, 709 S.E.2d at 654-55.

### **RESPONDENTS' FLAWED ISSUES AND ARGUMENTS**

#### **1. Respondents fail to address any of the Order's factual errors**

Respondents' Initial Brief and Issues on Appeal and Appellant's Initial Brief and Issues on Appeal are like two ships crossing in the night. Respondents, who chose to file no cross-appeal in this matter, nonetheless lodge seven (7) *new* issues on appeal; Appellant raised only one (1) issue. To make matters worse, in their Initial Brief Respondents fail to address Appellant's *only* Issue on Appeal in any meaningful fashion—the egregious fictionalization of the facts on which the Order is based; in fact, they relegate their only *mention* of Appellant's single Issue on Appeal (factual error) to a protestant footnote on page 9: "...the Appellant merely points to a number of

miscellaneous factual findings, the vast majority of which are irrelevant...”. (Br. P. 9, fn 1). Taking their one argument that the Order contains no factual errors as written, one can only infer that at least a “minority” of factual findings at issue in Appellant’s Initial Brief must indeed be relevant. In fact, Appellant raises fifty-five (55) separate material and erroneous factual findings in the Order, not one of which is addressed, much less explained or controverted, by Respondents in their Initial Brief.

It is also telling that footnote 1 to their Initial Brief is the only place Respondents deign to address the standard of review for a case in equity such as this one: there, they feebly and without clear case-law support argue that a *de novo* review of facts is an inappropriate standard of review for this appeal. This is a quite convenient for them since they quite obviously *drafted* the Order to contain omnipresent errors of fact, some of which are outright fabrications of material evidence produced at trial. In other words, Respondents made up facts in their draft of the Order which they make no attempt in this appeal to explain or defend. The best Respondents can do is argue that “the majority” of the factual errors in the Order are not material. That is woefully insufficient to meet their burden on appeal.

2. The errors of fact in the Order are material.

“Materiality” is patently a matter to be judged by this Court based on a *de novo* review of the facts in the Order and the transcript of trial based on the *de novo* standard of review applicable here. The materiality of these erroneous findings of fact is well described in Appellant’s Initial Brief. There is no support in the trial record that Appellant and Timothy Scrantom are one-and-the-same (or even that the latter “controls” the other, as set forth in the Order and in Respondent’s Initial Brief), yet the Order refers countless times to a registered limited liability partnership as “he”, obviously personifying a juridical entity. Such ecological fallacies are not only lazy; they

are material and highly probative of error. But they are myriad in the Order. It describes Ms. Wilkes, who testified at trial as an employee of Ten State Street, LLP, as “Mrs. Scrantom”, even though that has never been her name and even though she was not married to Mr. Scrantom at any time relating to the facts alleged in the Amended Complaint; that fact *is* in the trial record. Marriage, and acts undertaken by married persons, give rise to numerous presumptions in the law. To assume marriage incorrectly has a like effect. The Order ignores these plain facts, and holds as the “primary reason” Ten State Street LLP cancelled the Contract was because “he” and his supposed “wife” (at the time, only an employee of Ten State Street) found a house they “liked better”. This is obviously a passage of pure fiction, particularly because there was cogent (uncontested) evidence adduced at trial that the reason Ten State Street LLP entered into the Contract in the first instance was for business purposes—investment and leasing of the subject property on Sullivan’s Island. In fact, there is no evidence in the trial transcript to support that the conclusion of both fact and law that “Mr. and Mrs. Scrantom” (as opposed to Ten State Street) “liked Bank Street better”, only contrary evidence: (see, *e.g.*, testimony of Ms. Wilkes: Q. Did you prefer to be in the Atlantic Avenue house rather than the Bank Street property? A. *Absolutely.*)(Tr. Transcript p. 164).

3. Some key evidence quoted in the Order is fabricated.

The most startling findings of fact in the Order are those which are wholly fabricated rather than (intentionally or unintentionally negligent). Indeed, because of their materiality to the Master-in-Equity’s conclusions of law, it is hard to imagine the fabrication was mere inadvertence by the drafter of the Order. Most significant among these is the finding in the Order that Ten State Street instructed Bill Danielson to pursue its assumption of the main mortgage “*but only if*” the rate could

be modified.<sup>1</sup> Simply put, these words are made up. Ten State Street did not put this condition on assumption of the mortgage--a key and material part of the bargain in the Contract. As argued in Appellant's Initial Brief (p. 23), Ten State Street wanted to assume the first mortgage and placed no conditions on that assumption. That is clear from the terms of the Agreement itself. (see Tr. Ex. 7A). Respondents failed to pursue the assumption, they allege, based on the false premise that the assumption was conditional on a reduction of the interest rate. They have no evidence to support this position, other than made-up evidence.

As relatively minor as it is in the overall scheme of the Master's findings in the Order, he found that the Appellant held over occupancy of the house and therefore owed a full month's rent--\$8,000.00 the Master ordered Appellant to pay. In the Order, the Master found as material fact that Appellant "never returned the keys to the home." In fact, Mr. Danielson testified at trial that "He [Scrantom] left the keys on the counter for me [on the last day of the lease term]." There was no evidence that Appellant remained in occupancy of the house after leaving the keys on the counter for Respondents, only evidence that Appellant left some personal property at the house, according to Scrantom's testimony, because Bill Danielson crept into the house on the last night of the lease term resulting in a police incident. (Appellant Initial Brief, p. 23). Accordingly, the Master's Order that Appellant (and contract guarantor, Scrantom) should pay Respondents \$8000.00 is without supporting evidence and worse, based on a fabrication of Respondents' own clear evidence.

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<sup>1</sup> Compare the e-mail quoted in footnote 10 of Appellant's Initial Brief with the Order quoting that same e-mail with Respondents' quotation of the same e-mail in footnote 5 of Respondents' Initial Brief. It must now be clear to Respondents that the words "*but only if*" (which were not included in the correct quotation of the subject e-mail in their footnote 5) were *highly* material, and the fact that the Order fabricated them is highly relevant to this appeal, if not other proceedings. Significantly, they lead the reader to believe that the modification of the existing mortgage loan was a condition to the assumption of the mortgage loan, which it was not.

These are but a few examples of the materiality of the misstatements and fabrications of evidence contained in the Order. The result is a fundamentally flawed Order and Judgment that must be overturned in its entirety. The consequence no doubt lies squarely at the feet of Respondents: they were overzealous<sup>2</sup> at best in drafting an Order the Master took no real care to review.

4. Respondents have no explanation for the malignancy of the Order.

Respondents have failed utterly to respond to any part or subpart of the single, simple issue presented by Appellant on appeal, the Order is fundamentally flawed, and the judgment cannot be sustained. Grasping at straws, the Respondents in their Initial Brief attempt to invent an entirely new appeal, one which can result in a sustainable judgment by this Court to substitute for the corrosive Order they drafted for the Master to sign. That tactic is not the way the common law works.

It is respectfully submitted that there is only one way this Court should interpret Respondent's Initial Brief: as non-responsive and consequently void as to the single, simple issue: ***Whether the trial court erred in finding numerous material facts and conclusions of law that not only were unsupported by evidence adduced at trial, but were contrary to some or all evidence adduced at trial?***

Respondents attempt to re-litigate select portions of the evidence adduced at trial while not making a straightforward response to the sole issue raised on appeal should not be countenanced by this Court, as it is retrograde to the purposes of the common-law appeals process altogether. It

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<sup>2</sup> "Overzealous" is a generous interpretation of the "advocacy" demonstrated in the Order. Certain of its fictional contents are so nuanced—like inserting a highly material condition to assumption of the mortgage where none exists in the clear evidence from trial—are difficult to explain even in this most favorable way.

also sends a clear signal that Respondents have no meaningful response to the allegations of rampant factual fabrications, misstatements and invention in the Order, other than to state in a footnote that Appellant's entire Appeal is "immaterial". If they did, they would have made at least one argument to the contrary in their Initial Brief.

5. The findings of law and equity of the Master-in-Equity are unsustainable.

The errors of fact and mixed questions of fact and law and/or equity are so pervasive and infectious in the Order that none of the conclusions reached in it are sustainable. It is respectfully submitted they must be overturned by this Court, irrespective of how those errors match up to specific conclusions of law and denials of equitable remedies. However, two illustrations are illustrative.

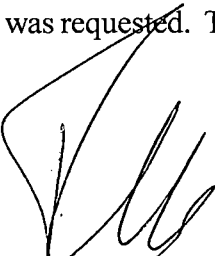
If the Appellant left the keys on the counter before the end of the lease term and had no physical occupancy of the property after the lease term, it vacated the premises even if certain personal property may have been abandoned. No award of damages for "hold-over" rent is sustainable. Certainly, any such award would be inequitable. Similarly, just as the Master erroneously assumed Scrantom and Ten State Street LLP were interchangeable, he consider the Danielsons to be interchangeable because they were husband and wife, even though Carol Danielson was the only mortgagor on the loan Ten State Street sought to assume. Respondent Carol Danielson admitted at trial she did not think the crucial "SPS loan" was in default. (Tr. Transcript p. 168; Appellant Initial Br. at p. 24). Her belief is perfectly mutual with Appellant's belief—that the "SPS loan" was not in default. This is classic material, mutual mistake. The fact that Carol Danielson's "agent" (the description used for him by the mortgage company, since he had no privity with them), Bill Danielson, believed the SPS loan *was* in default is either irrelevant to the determination of mutual mistake between the key parties to the contract (Carol Danielson,

the sole mortgagor on the SPS loan, and Appellant) or constitutes a flagrant misrepresentation by Bill Danielson, who signed the Agreement containing no fewer than four (4) different warranties and contractual covenants against the mortgages being in default.

These are but two examples of how the *true* evidence at trial (rather than the imagined facts recited in the Order) led to erroneous conclusions of law and denials of equity in the Order. There are others.

### CONCLUSION

The Order of the Master-in-Equity, drafted by Respondents and lazily signed by the Master-in-Equity, is a work of fiction, not fact. Many, if not most, of the fictional facts it contains are highly material to the Master's conclusions of law and fact. To make matters worse, Respondents continue their tirade of misrepresentations of facts found at trial in their Initial Brief. Not only is this Court is bound to review the entire record in this case to find facts *de novo*, it should consider itself compelled to do so in light of the miscarriage of justice the Order represents. Appellant respectfully submits that this Court should ignore Respondents' Initial Brief to the extent it attempts to fabricate a cross-appeal, when no cross-appeal was requested. The other Conclusions reached in the Appellant's Initial Brief are adopted herein.



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PROOF OF SERVICE

I, Timothy D. Scrantom hereby certify that I have served a true and accurate copy of the Appellant's Reply Brief by U.S. Mail on November 11, 2016 to counsel of record as shown below:

Clayton B. McCullough  
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[Signature of following page]

# SCRANTOM DULLES

November 11, 2016

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**U.S. Mail**

The Honorable Jenny Abbott Kitchings  
Clerk of the S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Ten State Street, LLP v. Danielson  
Appellate Case No: 2015-002199

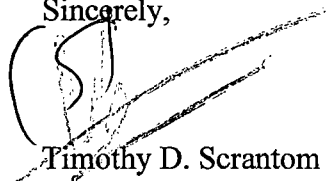
Dear Ms. Kitchings,

Enclosed please find the Appellant's Reply Brief for filing in the above referenced matter.

In the event you have any questions, please do not hesitate to contact our office.

With kindest regards,

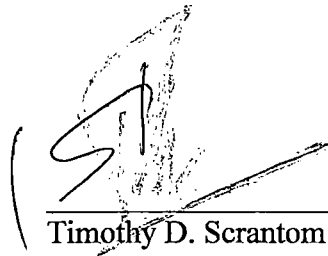
Sincerely,

A handwritten signature in black ink, appearing to be "T. Scrantom", written over a horizontal line.

Timothy D. Scrantom

Enclosures

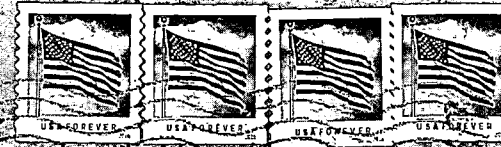
cc: Clayton B. McCullough, Esquire

A handwritten signature in black ink, appearing to read 'T. Scrantom', is written over a horizontal line.

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