

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS)
COURT FILE NO. 2014-CP-22-01109)

WELLS FARGO BANK, N.A. and)
WELLS FARGO EQUIPMENT)
FINANCE, INC.,)

Plaintiffs,)

vs.)

**ORDER APPROVING SALE OF REAL)
AND PERSONAL PROPERTY FREE AND)
CLEAR OF LIENS)**

C.J.B. HOLDING & TRUST)
COMPANY, LLC, CORNELIUS J.)
BECK, JR.; INLET DENTAL)
CENTER, INC. N/K/A CAMERON)
BANKS, LLC, SEASIDE)
SURGICAL, INC., ANDREWS)
DENTAL CENTER, INC.,)
GEORGETOWN DENTAL CENTER)
OF SOUTH CAROLINA, INC.,)
SOUTH BEACH DENTAL CENTER,)
INC., SOUTHPARK CENTRE)
PROPERTY OWNERS)
ASSOCIATION, INC., MYRTLE)
BEACH FARMS COMPANY, INC.,)
WACHESAW WAREHOUSES)
PROPERTY OWNERS)
ASSOCIATION, INC. AND)
PATTERSON DENTAL SUPPLY,)
INC.,)

Defendants.)

RECEIVED
NOV 23 2016
SC Court of Appeals

FILED
GEORGETOWN COUNTY S.C.
2016 OCT 27 PM 3:21
ALMA Y. WHITE
CLERK OF COURT

THIS MATTER COMES BEFORE ME upon Plaintiff's Motion to Approvc Sale of Real and Personal Property Free and Clear of Liens filed August 16, 2016 (the "Motion"). Plaintiffs' Motion is made pursuant and in accordance with the Order Appointing Receiver filed March 5, 2015 and the Order Granting Motion to Supplement Order Appointing Receiver to Sell Real and Personal Property Free and Clear of Licns filed August 10, 2015 (collectively, the "Receiver

Order”) and seeks authorization for the Receiver’s sale of real property known as 8848 Hwy 17 Bypass, Myrtle Beach, SC free and clear of liens (“Contract Property”).

I. PROPOSED SALE

1. The Contract Property is the subject of that certain mortgage in favor Plaintiff Wells Fargo Bank, N.A., more fully described as that certain Mortgage recorded in the Office of the R.O.D. for Horry County, South Carolina, on November 12, 2013 in Book 5551, Page 3176 (the “Mortgage”), and covers the following described real property, to wit:

ALL AND SINGULAR, that certain piece, parcel or lot of land located in, Horry County, South Carolina, together with all improvements thereon, containing 2.31 acres and being more particularly shown and designated on that certain Map or Plat entitled SUBDIVISION PLAT OF 2.31 ACRES (1.68 ACRES PORTION OF TMS 191-00-01-372 AND 0.63 ACRES PORTION OF TMS 191-00-01-350) LOCATED ON SOUTHWESTERN R/W OF U.S. HWY. 17 BYPASS NEAR SURFSIDE BEACH, HORRY COUNTY, SOUTH CAROLINA PREPARED FOR: BECK HOLDING COMPANY, LLC by Associated Land Surveyors dated July 20, 2010 and recorded August 12, 2010 in Plat Book 249 at Page 184, records of Horry County, South Carolina, which plat is incorporated herein by this reference.

This being a portion of the property conveyed to C.J.B. Holding & Trust Company, LLC, by Deed of Beck Holding Company, LLC dated October 31, 2013 and recorded November 12, 2013 in Book 3697 at Page 2890.

T.M.S. #191-00-01-399

The Contract Property is included within that certain lis pendens filed in Horry County by Plaintiffs in conjunction with the within action on December 11, 2014.

2. The Contract Property is proposed to be sold to Todd Brown (“Purchaser”) pursuant to the terms of that certain Contract of Sale dated August 2, 2016 (the “Contract”) attached to the Motion as Exhibit “C”. The material terms of the Contract are as follows:

- a. Property: Former Sparkle Building, located at 8848 US Highway 17 Bypass, Horry County, TMS# 191-00-01-399 (the “Contract Property”)
- b. Purchase Price: \$1,100,000.00
- c. Purchaser: Todd Brown

- d. Deposit: \$15,000.00 initial earnest money deposit to be payable upon execution of the Contract, increased to \$30,000.00 if the Contract is not terminated upon conclusion of Due Diligence Period
- e. Due Diligence Period: 45 days from the date the Receiver receives Court approval of the Contract
- f. Closing Date: On or before 30 days from end of Due Diligence Period
- g. Limitations: The Contract Property is being sold "As-Is" pursuant to a "Special Warranty Deed".

3. Pursuant to the Motion, Receiver would proceed with the sale of the Contract Property within the following parameters:

(a) The Receiver be authorized to deliver a deed similar in form and substance to the deed attached to the Motion as Exhibit "D" upon the closing of the sale in accordance with the foregoing or comparable terms to Purchaser, or in the event the sale is not consummated with Purchaser, to a third party on similar or comparable terms;

(b) The Receiver shall be authorized to adjust the sale price to provide for customary closing and related costs, including any pro rata adjustments, outstanding taxes, sales commissions, court costs (including a commission to the Special Referee comparable to the commission accorded a master in equity), etc.;

(c) The Receiver shall be further authorized to pay over any net sale proceeds ("Proceeds") to the total outstanding debt owed to the Plaintiff, including principal, accrued interest, late fees, advances, attorneys' fees, and the costs and expenses associated with the Receivership that have been advanced by the Plaintiff, in accordance with the indebtedness established and approved by the Court at the hearing on the within Motion;

(d) The Receiver shall file a report of the disposition of the Proceeds, including any surplus funds to be held subject to further order of the Court.

(e) Upon disbursement of the Proceeds in accordance with the foregoing procedure, Plaintiff shall report to the Court the remaining indebtedness, if any, and shall be free to apply for an order of confirmation of sale free and clear of liens.

(f) If sale to the Purchaser is unsuccessful, the Receiver shall be free to sell and convey the Contract Property subject to comparable or better terms without need of further Court order provided such terms do not represent a material departure from the Contract.

4. At the hearing on the Motion, the Receiver presented the testimony of its real estate broker, B. W. "Rusty" Helm, M.B.A., an experienced commercial real estate broker with Keystone Commercial Realty of Myrtle Beach and is Keystone's broker in charge. Mr. Helm testified that he has extensive experience in the commercial real estate profession in the Myrtle Beach area. He testified that in setting the price for the Contract Property he consulted the Receiver, contacted Wells Fargo about a price for which it was willing to release its mortgage lien, the Contract Property's appraised value, the relative pros and cons of the location and the "as-is" nature of the sale contemplated by the Receiver. He pointed out that the Contract is relatively free of contingencies, except for a reasonable due diligence period of inspection. He also testified that if Mr. Brown failed to close on the Contract, he believed there were other interested purchasers willing to buy the Contract Property under comparable terms.

5. In short, the purchase price proposed herein is supported by a recent appraisal, appears to be reasonable and approximates current market value. Mr. Helm testified that it was his belief that there existed other prospective purchasers that would be interested in purchasing the Contract Property under similar terms, if necessary.

6. Wells Fargo presented evidence that the Mortgage secures two promissory notes as described in its First and Second Causes of Action, with a current indebtedness of no less than One

Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Three and 56/100 (\$1,447,533.56) Dollars as more fully set forth below:

(a) For the amount due under Note #1 and Mortgage #1 in the amount of no less than One Hundred Twenty-Two Thousand One Hundred Fifty-Nine and 98/100 (\$122,159.98) Dollars, comprised of \$109,961.27 in principal, \$11,237.08 in interest from June 15, 2016 through October 13, 2016 and late charges of \$961.63, together with continuing interest thereon at the applicable contract and default interest rates, until paid, late charges, advances, and attorneys' fees;

(b) For the amount due under Note #2 and Mortgage #2 in the amount of no less than One Million Two Hundred Forty-Five Thousand Seven Hundred Ninety-Three and 05/100 (\$1,245,793.05) Dollars, comprised of \$1,119,080.62 in principal, \$114,308.75 in interest from June 29, 2015 through October 13, 2016 and late charges of \$12,403.68, together with continuing interest thereon at the applicable contract and default interest rates, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee;

(c) Advances authorized under the Mortgage totaling \$79,580.53, comprised of Receiver fees and costs to date of \$11,211.93, tax advances of \$40,432.75 (Horry County) and \$2,135.85 (Georgetown County) and insurance advances for the Contract Property of \$25,800.00.

7. Based on the foregoing, the amount due Wells Fargo under its Third Cause of Action through the date of hearing total One Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Three and 56/100 (\$1,447,533.56) Dollars, together with interest thereon at the applicable contract and default interest rates from June 30, 2015, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee.

8. The Court finds that the Mortgage secures two promissory notes with a current indebtedness of no less than One Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Three and 56/100 (\$1,447,533.56) Dollars together with interest thereon at the applicable contract and default interest rates from June 30, 2015, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee.

9. Plaintiff Wells Fargo Bank, N.A. acknowledges it is agreeable to releasing its Mortgage lien upon the Contract Property in exchange for payment of the net proceeds from the proposed sale.

II. LAW

The power to appoint a receiver lies within the sound discretion of the circuit court. *Andrick Dev. Corp. v. Maccaro*, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (1984). The receiver is an officer of the court and is the agency through which the court acts. *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d. 764 (1964).

The ability of a receiver to sell property free and clear of liens, claims, and encumbrances is essential to the basic equitable fairness function of receivers. See *Seaboard National Bank v. Rogers Milk Products Co.*, 21 F.2d 414, 416 (2d Cir. 1927) ("There is no doubt of the power of a court of equity under proper circumstances to sell property free of liens, transferring the lien to the proceeds."); *Miner's Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933) ("A court of equity under proper circumstances has power to order a receiver to sell property free and clear of all (e)ncumbrances"); *Spreckels v. Spreckles Sugar Corp.*, 79 F.2d 332 (2d Cir. 1935) (affirming sale of property free and clear of all liens, including taxes).

Similarly, in South Carolina, the ability of a court to authorize the sale of property by a receiver has long been recognized. *Utley v S.W. Wilson & Sons, Inc.*, 205 S.C. 469, 32 S.E.2d 654 (1944). Just as with sales held in accordance with a foreclosure action, such sales constitute judicial sales. *Hannon v Mechanics Bldg. & Loan Ass'n*, 177 S.C. 153, 180 S.E. 873 (1935). Similarly, sales of receivership property free and clear of liens by a receiver in a foreclosure action are appropriate. Not only is such relief consistent with the terms of the Receiver Order in the case *sub judice*, but as discussed in the Memorandum in Support of the Motion, it is a form of relief that has been recognized and utilized by other trial courts in South Carolina.

Here, approving a sale of the Contract Property under the Contract is in the best interest of all parties. The optimal method to maximize the return on the Contract Property—which in turn will reduce the overall obligations to Wells Fargo, and, consequently, any resulting deficiency judgment, is through such a sale. The alternative would likely result in a larger deficiency against the Borrower and Wells Fargo Guarantors, a lower return to the Plaintiffs, and uncertainty as to status of the Contract Property. Clearly such an outcome would not be in the best interest of the Plaintiffs or Defendants.

Further, as borne out by the testimony of Mr. Helm, the sale to Purchaser is the product of good faith, extensive discussions, and arms-length negotiations between the Receiver and Purchaser, and the purchase price is fair and reasonable. Notice of this Motion and the Contract was served upon all parties in interest in this case.

THEREFORE, IT IS HEREBY ORDERED AND DECREED that:

- 1) Sale of the Contract Property by the Receiver free and clear of liens and encumbrances is approved;
- 2) The Mortgage on the Contract Property secures two promissory notes with a current indebtedness of no less than One Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Three and 56/100 (\$1,447,533.56) Dollars together with interest thereon at the applicable contract and default interest rates from June 30, 2015, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee.
- 3) The Receiver shall proceed with the sale of the Contract Property within the following parameters:

(a) The Receiver be authorized to deliver a deed similar in form and substance to the deed attached to the Motion as Exhibit "D" upon the closing of the sale in accordance with the foregoing or comparable terms to Purchaser, or in the event the sale is not consummated with Purchaser, to a third party on similar or comparable terms;

(b) The Receiver shall be authorized to adjust the sale price to provide for customary closing and related costs, including any pro rata adjustments, outstanding taxes, sales commissions, court costs (including a commission to the Special Referee comparable to the commission accorded a master in equity), etc.;

(c) The Receiver shall be further authorized to pay over any net sale proceeds ("Proceeds") to the total outstanding debt owed to the Plaintiff, including principal, accrued interest, late fees, advances, attorneys' fees, and the costs and expenses associated with the Receivership that have been advanced by the Plaintiff, in accordance with the indebtedness established and approved by the Court;

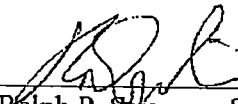
(d) The Receiver shall file a report of the disposition of the Proceeds, including any surplus funds to be held subject to further order of the Court.

(e) Upon disbursement of the Proceeds in accordance with the foregoing procedure, Plaintiff shall report to the Court the remaining indebtedness, if any, and shall be free to apply for an order of confirmation of sale free and clear of liens.

(f) If sale to the Purchaser is unsuccessful, the Receiver shall be free to sell and convey the Contract Property subject to comparable or better terms without need of further Court order provided such terms do not represent a material departure from the Contract.

3) Upon receipt of the net proceeds from the sale of the Contract Property, Wells Fargo shall release its mortgage lien on the Contract Property.

4) The Receiver is authorized to take any and all steps reasonably necessary to effectuate the sale of the Contract Property as described herein.



Ralph P. Sifoman, Special Referee

GEORGETOWN, SC
October 27, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS)
)
COURT FILE NO. 2014-CP-22-01109)

WELLS FARGO BANK, N.A. and)
)
WELLS FARGO EQUIPMENT)
)
FINANCE, INC.,)

Plaintiffs,)
)
)

vs.)

**ORDER GRANTING PARTIAL)
)
SUMMARY JUDGMENT)**

C.J.B. HOLDING & TRUST)
)
COMPANY, LLC, CORNELIUS J.)
)
BECK, JR.; INLET DENTAL)
)
CENTER, INC. N/K/A CAMERON)
)
BANKS, LLC, SEASIDE)
)
SURGICAL, INC., ANDREWS)
)
DENTAL CENTER, INC.,)
)
GEORGETOWN DENTAL CENTER)
)
OF SOUTH CAROLINA, INC.,)
)
SOUTH BEACH DENTAL CENTER,)
)
INC., SOUTHPARK CENTRE)
)
PROPERTY OWNERS)
)
ASSOCIATION, INC., MYRTLE)
)
BEACH FARMS COMPANY, INC.,)
)
WACHESAW WAREHOUSES)
)
PROPERTY OWNERS)
)
ASSOCIATION, INC. AND)
)
PATTERSON DENTAL SUPPLY,)
)
INC.,)

Defendants.)
)
)

FILED)
)
SECRETOWN COUNTY, SC)
)
ALMA Y. WHITE)
)
CLERK OF COURT)
)
2016 OCT 27 PM 2:57)

RECEIVED
)
)
NOV 23 2016)
)
SC Court of Appeals)

THIS MATTER came before the Court on the Motion for Partial Summary Judgment and Memorandum In Support Of Motion for Summary Judgment pursuant to SCRPC 56, filed by Plaintiffs, Wells Fargo Bank, N.A. ("Wells Fargo") and Wells Fargo Equipment Financing, Inc. ("WFEFI"), on October 14, 2016 (the "Motion"), supplemented by a Memorandum in Support of Motion for Partial Summary Judgment (with supporting affidavits) served on October 15, 2016.

The undersigned was appointed as Special Referee in this matter by Order filed herein on May 29, 2015. Having conducted a hearing in this matter on October 27, 2016, the Court makes the following rulings based on the legal memoranda and affidavits filed by the Plaintiffs, testimony and arguments of counsel.

BACKGROUND AND FACTUAL FINDINGS

This is an action for, *inter alia*, the foreclosure and replevin of commercial real and personal property owned by Defendant C.J.B. Holding & Trust Company, LLC ("CJB") located in Georgetown and Horry Counties and for collection pursuant to guaranties by Beck and others of the debt owed by CJB to Wells Fargo and WFEFI.

On September 20, 2013, CJB executed a promissory note ("Note #1") in favor of Wells Fargo in the principal amount of \$117,000.00. (Complaint at ¶ 5). In connection with Note #1, CJB also granted Wells Fargo a mortgage ("Note #1 Mortgage") of even date on certain of its real property located in Horry County (as further described in the Complaint at ¶ 6, the "Note Mortgage #1 Real Property"). (Complaint at ¶ 6). Simultaneously, the Wells Fargo Guarantors each executed a Commercial Guaranty (the "Wells Fargo Guaranties") of payment for the amount due under Note #1, as well as any other indebtedness due Wells Fargo by CJB then existing or thereafter occurring, including interest, costs, and attorneys' fees. (Complaint at ¶ 7).

On October 31, 2013, CJB executed a second promissory note ("Note #2") in favor of Wells Fargo in the principal amount of \$1,142,500.00. (Complaint at ¶ 8). In connection with Note #2, CJB executed and delivered in favor of Wells Fargo mortgages of even date ("Obligor Note #2 Mortgages") on several parcels of its real property located in Horry and Georgetown Counties and Beck executed and delivered in favor of Wells Fargo a mortgage on the real property more fully described therein ("Beck Note #2 Mortgage") (the real property subject to

the Obligor Note #2 Mortgages and the Beck #2 Mortgage being more fully described in the Complaint at ¶ 10 as the "Mortgage #2 Real Property," with the Mortgage #1 Real Property and Mortgage #2 Real Property being collectively referred to as the "Real Property"). (Complaint at ¶¶ 9-10). As additional security for repayment of the indebtedness of CJB to Wells Fargo, payment of Note #2 was also guaranteed by the Wells Fargo Guarantors pursuant to the Wells Fargo Guaranties.

On November 1, 2013, CJB executed a promissory note (the "WFEFI Note" and together with Note #1 and Note #2, the "Notes") in the principal amount of \$743,985.00 in favor of WFEFI. (Complaint at ¶ 21). In connection with the WFEFI Note, CJB also granted WFEFI a security interest in certain of its personal property pursuant to a Security Agreement of even date (the "Security Agreement"). (Complaint at ¶ 22). Simultaneously, Beck, along with Defendants Andrews Dental Center, Inc., Georgetown Dental Center of South Carolina, Inc., Inlet Dental Center, Inc., Seaside Surgical, Inc., and South Beach Dental Center, Inc. (collectively the "WFEFI Guarantors" and together with the Wells Fargo Guarantors, the "Guarantors") each executed a Commercial Guaranty (the "WFEFI Guaranties" and together with the Wells Fargo Guaranties, the "Guaranties") of payment for the amount due under the WFEFI Note, as well as any other indebtedness due WFEFI by CJB then existing or thereafter occurring, including interest, costs and attorneys' fees. (Complaint at ¶ 24).

CJB failed to make the payments as required under Note #1, Note #2, and the WFEFI Note, and Beck and the remaining Wells Fargo Guarantors failed to make the payments required under the Wells Fargo Guaranties and Beck and the remaining WFEFI Guarantors failed to make the payments required under the WFEFI Guaranty. (Complaint at ¶¶ 42-43 and 49-50). As a result, Plaintiffs filed this action on December 1, 2014 seeking, *inter alia*, foreclosure on the

mortgages held by Wells Fargo on its Real Property collateral, replevin of WFEFI's personal property collateral under the Security Agreement, and judgments against the Guarantors, including Beck, for breach of their Wells Fargo Guaranties and WFEFI Guaranties.

Notes #1 and 2 were guaranteed by Cornelius J. Beck, Jr. ("Beck"), Andrews Dental Center, Inc., Georgetown Dental Center of South Carolina, Inc., South Beach Dental Center, Inc., Seaside Surgical, Inc. and Inlet Dental Center, Inc., n/k/a Cameron Banks, LLC ("Wells Fargo Guarantors") pursuant to those certain unconditional guaranties, which guaranteed payment of Note #1, as well as any other indebtedness due Wells Fargo by CJB then existing or thereafter occurring, including interest, costs, and attorneys' fees. (Complaint at ¶ 7).

The WFEFI Note was guaranteed by Beck, Andrews Dental Center, Inc., Georgetown Dental Center of South Carolina, Inc. Inlet Dental Center, Inc., Inlet Dental Center, Inc., n/k/a Cameron Banks, LLC, Seaside Surgical, Inc. and South Beach Dental Center, Inc. (the "WFEFI Guarantors") pursuant to those certain unconditional guaranties, which guaranteed payment of the WFEFI Note (the "WFEFI Guaranties"), as well as any other indebtedness due WFEFI by CJB then existing or thereafter occurring, including interest, costs and attorneys' fees. (Complaint at ¶ 24).

CJB failed to make the payments as required under Note #1, Note #2, and the WFEFI Note, and Beck and the remaining Wells Fargo Guarantors failed to make the payments required under the Wells Fargo Guaranties and Beck and the remaining WFEFI Guarantors failed to make the payments required under the WFEFI Guaranty. (Complaint at ¶¶ 42-43 and 49-50). As a result, Plaintiffs filed this action on December 1, 2014 seeking, *inter alia*, foreclosure on the mortgages held by Wells Fargo on its Real Property collateral, replevin of WFEFI's personal property collateral under the Security Agreement, and judgments against the Guarantors,

including Beck, for breach of their Wells Fargo Guaranties and WFEFI Guaranties (collectively, the "Guaranties").

As to the relief sought in the Complaint's First Cause of Action Wells Fargo now seeks a judgment against CJB in an amount not less than One Hundred Twenty-Two Thousand One Hundred Fifty-Nine and 98/100 (\$122,159.98) Dollars, (comprised of \$109,961.27 in principal, \$11,237.08 in interest from June 30, 2015 through October 13, 2016 and late charges of \$961.63) together with continuing interest thereon at the applicable contract and default interest rates, until paid, late charges, advances, and attorneys' fees and costs as more fully documented in the Affidavit of Kenneth R. Williams being filed in conjunction herewith.

As to the relief sought in the Complaint's Second Cause of Action Wells Fargo seeks a judgment against CJB and Beck in an amount not less than One Million Two Hundred Forty-Five Thousand Seven Hundred Ninety-Three and 05/100 (\$1,245,793.05) Dollars (comprised of \$1,119,080.62 in principal, \$114,308.75 in interest from June 29, 2015 through October 13, 2016 and late charges of \$12,403.68), together with continuing interest thereon at the applicable contract and default interest rates, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee as more fully documented in the Affidavit of Kenneth R. Williams being filed in conjunction herewith. Mr. Williams's affidavit also addresses the advances Wells Fargo has made in conjunction with its loans to CJB and this action. Receiver fees and costs to date total \$11,211.93, tax advances total \$40,432.75 (Horry County) and \$2,135.85 (Georgetown County) and insurance advances for the Contract Property total \$25,800.00, for a combined advances total of \$79,580.53 and an aggregate total due under the Second Cause of Action through the date of hearing of One Million Three Hundred Twenty-Five Thousand Three Hundred Seventy-Three and 58/100 (\$1,325,373.58) Dollars, together with continuing interest

thereon at the applicable contract and default interest rates, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee; as more fully documented in the Affidavit of Kenneth R. Williams filed with the Motion.

As to the relief sought in the Complaint's Third Cause of Action Wells Fargo seeks a judgment against the Wells Fargo Guarantors for the indebtedness due under the promissory notes described in the First and Second Causes of Action pursuant to their commercial guaranties in an amount not less than One Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Three and 56/100 (\$1,447,533.56) Dollars, together with interest thereon at the applicable contract and default interest rates from June 30, 2015, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee; as more fully documented in the Affidavit of Kenneth R. Williams filed with the Motion.

As to the relief sought in the Complaint's Fourth Cause of Action WFEFI seeks a judgment of replevin and a money judgment under the WFEFI Note against CJB in an amount not less than \$771,497.12, together with interest thereon at the default rate of 12% per annum from May 27, 2015 until paid in full, plus late charges, advances, attorneys' fees and costs as may hereafter be established as more fully documented in the Affidavit of Henry C. Magel, Jr. previously filed in this case.

As to the relief sought in the Complaint's Fifth Cause of Action WFEFI seeks a judgment the WFEFI Guarantors for the indebtedness due under the promissory note described in the Fourth Cause of Action pursuant to their commercial guaranties in an amount of not less than \$771,497.12, together with interest thereon at the default rate of 12% per annum from May 27, 2015 until paid in full, plus late charges, advances, attorneys' fees and costs as may hereafter be

established as more fully documented in the Affidavit of Henry C. Magel, Jr. previously filed in this case.

As to the relief sought in the Complaint's Sixth Cause of Action, WFEFI seeks a judgment of replevin against the WFEFI Guarantors in an amount of not less than no less than \$771,497.12, together with interest thereon at the default rate of 12% per annum from May 27, 2015 until paid in full, plus late charges, advances, attorneys' fees and costs as may hereafter be established as more fully documented in the Affidavit of Henry C. Magel, Jr. previously filed in this case.

Neither CJB nor any of the Guarantors have answered the Complaint and they were held in default by Order filed November 24, 2015.¹ On December 31, 2014, Beck, proceeding *pro se*, filed a pleading titled "Notice of Constitutional Challenge Rule 5.1" (the "Beck Filing"), in which Beck claims unsubstantiated constitutional prohibitions to the enforcement of Plaintiffs' loan documents and the statutory foreclosure process, as well as references to inapplicable Federal Rules of Civil Procedure and Maryland law. Notably, however, the Beck Filing does not deny, or respond to in any manner, to the well-pleaded factual allegations set forth in Plaintiffs' Complaint. In any case, the Beck Filing was struck by consent order filed December 18, 2015 and he has failed to timely file a subsequent responsive pleading to the Complaint.

This matter was originally referred to the Hon. Joe M. Crosby, as Master in Equity for Georgetown County, by General Order of Reference filed on March 16, 2015. Judge Crosby

¹ Affidavits of Default as to all the Guarantors, with the exception of Beck, were filed in conjunction with the motion for default on March 18, 2015. After the dismissal of the ensuing bankruptcy filing by CJB, the Guarantors and CJB were held in default by Order filed November 24, 2015. Defendant Patterson Dental Supply, Inc. was added to the Complaint by Order filed November 24, 2015 and was held in default by Order filed January 19, 2016. Beck filed a response to the Complaint entitled "Notice of Constitutional Challenge Rule 5.1", which was struck by consent order filed December 18, 2015 and he thereafter failed to file a responsive pleading. Plaintiffs filed an affidavit of default as to Beck on September 28, 2016.

subsequently recused himself pursuant to an Order dated May 12, 2015. Following Judge Crosby's recusal, an Order of Reference by the Hon. Larry B. Hyman, Jr. was filed on May 29, 2015 referring Plaintiffs' action, and any matters arising in connection therewith, to the Hon. Ralph Stroman as Special Referee.

On May 27, 2015, CJB filed a petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, designated as Case No. 15-02839-dd, which case was ultimately dismissed by Order Dismissing Case filed October 30, 2015.

Upon resumption of the state court action, and as stated above, the Beck Filing was struck by consent order entitled, "Order Regarding Plaintiffs' Motion to Strike Beck Filing", filed December 18, 2015, which acted to strike Beck's "Notice of Constitutional Challenge Rule 5.1" and granted him 30 days from the hearing date in which to file an Answer. Beck failed to timely file an Answer. Beck appealed the Order Regarding Plaintiffs' Motion to Strike Beck Filing, which appeal was dismissed by the South Carolina Court of Appeals on March 10, 2016.

On July 11, 2016, the Plaintiffs moved to supplement the Receiver Order to allow the Receiver to market and sell the Real and Personal Property constituting collateral for the Notes (the "Supplemental Motion"). On August 10, 2016, following notice and a hearing, Special Referee Stroman, overruling Defendant Beck's objection to the Supplemental Motion, granted the Supplemental Motion and authorized the Receiver to market the Property for sale pursuant to the "Order Granting Motion to Supplement Order Appointing Receiver to Authorize Receiver to Sell Real and Personal Property Free and Clear of Liens" ("Supplemental Receiver Order"). A hearing to consider Plaintiffs' motion to approve the sale of Real Property subject to Mortgage #2 was scheduled for September 12, 2016 ("Sale Approval Hearing").

On August 19, 2016, Beck filed a "Writ of Mandamus/Prohibition" against Plaintiffs, the Plaintiffs' counsel, the Receiver, the Special Referee and various court and public officials to terminate the within action.² After a hearing of numerous motions to dismiss by the Honorable Roger E. Henderson, Judge Henderson dismissed the Writ of Mandamus/Prohibition pursuant to separate Orders filed September 22, 2016 and sanctions were imposed against Defendant Beck as a result of his frivolous filing.

The Sale Approval Hearing was rescheduled for October 27, 2016, concurrent with the instant Motion for Partial Summary Judgment, with notice of hearing being served on October 4, 2016.

Rather than denying any factual allegations of his liability under the Guaranties or the Beck Note #2 Mortgage, Beck maintains in his Objection to Motion for Summary Judgment that the Beck Filing has not been addressed, notwithstanding the terms of the consent Order Regarding Plaintiffs' Motion to Strike Beck Filing previously entered by the Court. At any rate, the Beck Filing is not responsive to the pleadings of the Complaint and appears to be no more than a document containing nonsensical references to the Federal Rules of Civil Procedure (which do not apply in this action brought in state court), the Constitution of the State of Maryland (which does not apply to this South Carolina action), and the United States Constitution, all in an apparent attempt to challenge the constitutionality of the South Carolina Foreclosure Statute, S.C. Code Ann. § 29-3-610 *et seq.* (the "Foreclosure Statute"). The arguments raised therein are in the form of those espoused and frequently used by adherents to the "sovereign citizen" theory of non-liability, a theory which has been soundly rejected. *See, e.g., Hayes v. S.C. Fed. Credit Union (In re Hayes)*, 2011 Bankr. LEXIS 3675 (Bankr. D.S.C.

² The Sale Hearing was cancelled in the face of Beck's filing of the Writ of Mandamus/Prohibition.

Sept. 22, 2011) (collecting cases and finding that “sovereign citizen” theory is a “frivolous” legal theory that has been consistently rejected by courts). Indeed, the Beck Filing was just the first of numerous filings Beck has made in this matter that contain no substantive merit and appear to be motivated for the sole purpose of delay and designed to impede these proceedings.

LEGAL STANDARD

Summary judgment is proper when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Rule 56, SCRPC; *Baird v. Charleston County*, 333 S.C. 519, 529 (1999); *see also True v. Monteith*, 327 S.C. 116, 119 (1997). In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence is viewed in the light most favorable to the non-moving party. *See Hamiter v. Retirement Div. of the S.C. Budget & Control Bd.*, 326 S.C. 93, 96 (1997). “The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party’s case.” *Fender & Latham, Inc. v. First Union Nat’l Bank of S.C.*, 316 S.C. 48, 50 (Ct. App. 1994).

A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. *See* Rule 56(c), SCRPC; *accord Strickland v. Madden*, 323 S.C. 63, 448 S.E.2d 581 (Ct. App. 1994). The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *See George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Rule 8(d), SCRPC provides that:

Averments in a pleading to which a responsive pleading is required, other than those as to those of damages, are admitted when not denied in the responsive pleading.

None of the parties obligated under the Plaintiffs' Notes or Guaranties has filed a responsive pleading to Plaintiffs' Complaint, not CJB, not Beck, not the Wells Fargo Guarantors and not the WFEFI Guarantors. Accordingly, the Plaintiffs have placed them in default and they are deemed to have admitted the allegations of the Complaint pursuant to Rule 8(d), SCRCPP. Furthermore, none of the parties obligated under the Plaintiffs' Notes or Guaranties has filed a responsive affidavit placing the averments in Plaintiffs' affidavits or pleadings in dispute.

LEGAL CONCLUSIONS

As noted above, none of the parties obligated under the Plaintiffs' Notes or Guaranties has filed a responsive pleading to Plaintiffs' Complaint, not CJB, not Beck, not the Wells Fargo Guarantors and not the WFEFI Guarantors and therefore, CJB, Beck, the Wells Fargo Guarantors and the WFEFI Guarantors are, under Rule 8(d), SCRCPP, deemed to have admitted: (a) the existence of, and CJB's breached payment obligations under the Notes and Mortgages; (b) the existence of, and Beck's mortgage and guarantor obligations under, the Guaranties in favor of Plaintiff Wells Fargo; (c) the existence of, and the guaranty obligations to, Plaintiff Wells Fargo on the part of the Wells Fargo Guarantors; (d) the existence of, and CJB's obligations under, the WFEFI Note, Security Agreement, for the Personal Property, including the right of replevin; and (e) the existence of, and the guaranty obligations in favor of WFEFI on the part of the WFEFI Guarantors. Accordingly, there is no issue of material fact as to those matters. Moreover, in light of these admissions, neither Beck, nor the Wells Fargo Guarantors nor the WFEFI Guarantors can advance any legal theories that would relieve their liability under the unconditional Guaranties, thus entitling Plaintiffs to judgment as a matter of law.

In support of their motions, Plaintiffs rely on the Affidavit of Kenneth R. Williams, Senior Vice President of Wells Fargo, which was attached to the Memorandum in Support of the

Motion as Exhibit "A" and incorporated therein by reference and the heretofore filed Affidavit of Henry C. Magel, Jr., Assistant Vice President of WFEFI, which was attached to the Memorandum in Support of the Motion as Exhibit "B" and incorporated therein by reference, which Memorandum in Support of the Motion was served on October 14, 2016 and filed October 17, 2016. None of the parties obligated under the Plaintiffs' Notes or Guaranties has filed a responsive affidavit placing the averments in Plaintiffs' affidavits, or the related pleadings, in dispute. Instead, Defendant Beck has prepared a document entitled, "Notice of Intent to Prosecute and Join the Class Action Commercial Lien Against the American Bar Association (\$279 Trillion Lien)", threatening to place a commercial lien against Plaintiffs' counsel individually and his law firm in the amount of \$279,000,000,000.00 unless, "the property(s) that was foreclosed on and transfer back into the name of my estate or the previous name in which it was registered within 72 hours upon receipt of service of this notice." (sic) A copy of the referenced document was presented at the hearing.

It should be noted that while Plaintiff WFEFI seeks to conclude its replevin cause of action, Plaintiff Wells Fargo seeks to maintain the Receiver's efforts to market and sell the Plaintiffs' collateral subject to the Mortgages in accordance with the Supplemental Receiver Order.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that summary judgment is granted as follows:

(1) Judgment in favor of Plaintiff Wells Fargo Bank, N.A. under the First Cause of Action against Defendant, C.J.B. Holding & Trust Company, LLC for the amount due under Note #1 and Mortgage #1 in the amount of no less than One Hundred Twenty-Two Thousand One Hundred Fifty-Nine and 98/100 (\$122,159.98) Dollars, comprised of \$109,961.27 in

principal, \$11,237.08 in interest from June 15, 2016 through October 13, 2016 and late charges of \$961.63, together with continuing interest thereon at the applicable contract and default interest rates, until paid, late charges, advances, and attorneys' fees; and

(2) Judgment in favor of Plaintiff Wells Fargo Bank N.A. under the Second Cause of Action against Defendants, C.J.B. Holding & Trust Company, LLC and Cornelius J. Beck, Jr. for judgment on the amount due under Note #2 and Mortgage #2 in the amount of no less than One Million Three Hundred Twenty-Five Thousand Three Hundred Seventy-Three and 58/100 (\$1,325,373.58) Dollars, comprised of \$1,119,080.62 in principal, \$114,308.75 in interest from June 29, 2015 through October 13, 2016 and late charges of \$12,403.68, advances to date of no less than \$ \$79,580.53, together with continuing interest thereon at the applicable contract and default interest rates, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee; and

(3) Judgment in favor of Plaintiff Wells Fargo Bank, N.A. under the Third Cause of Action against Defendants, Cornelius J. Beck, Jr., Andrews Dental Center, Inc., Georgetown Dental Center of South Carolina, Inc., South Beach Dental Center, Inc., Seaside Surgical, Inc. and Inlet Dental Center, Inc., n/k/a Cameron Banks, LLC for judgment on the amount due under their guaranties of Note #1 and Note #2 ("Wells Fargo Guarantors") in the amount of no less than One Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Three and 56/100 (\$1,447,533.56) Dollars, together with interest thereon at the applicable contract and default interest rates from June 30, 2015, until paid, plus additional late charges, advances, costs and a reasonable attorneys fee; and;

(4) Judgment in favor of Plaintiff Wells Fargo Equipment Finance, Inc. under the Fourth Cause of Action against Defendant C.J.B. Holding & Trust Company, LLC for judgment due

under the WFEFI Note and replevin of the Obligor Personal Property in the amount of no less than \$771,497.12, together with interest thereon at the default rate of 12% per annum from May 27, 2015 until paid in full, plus late charges, advances, attorneys' fees and costs as may hereafter be established;

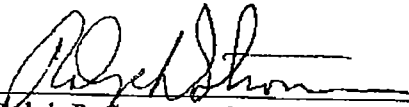
(5) Judgment in favor of Plaintiff Wells Fargo Equipment Finance Inc. under the Fifth Cause of Action against Defendants, Cornelius J. Beck, Jr., Andrews Dental Center, Inc., Georgetown Dental Center of South Carolina, Inc., Inlet Dental Center, Inc., n/k/a Cameron Banks, LLC, Seaside Surgical, Inc. and South Beach Dental Center, Inc. for judgment on the amount due under their guaranties (the "WFEFI Guarantors") in the amount of no less than \$771,497.12, together with interest thereon at the default rate of 12% per annum from May 27, 2015 until paid in full, plus late charges, advances, attorneys' fees and costs as may hereafter be established;

(6) Judgment in favor of Plaintiff Wells Fargo Equipment Finance, Inc. under the Sixth Cause of Action against the Defendant WFEFI Guarantors for replevin of their personal property pursuant to the underlying guaranties until the amount due under the Fourth and Fifth Causes of Action are paid in full; and

(7) Under the First and Second Causes of Action, Plaintiff Wells Fargo is entitled to judgment of foreclosure in the amounts indicated for the respective Mortgages, each of which represents a first priority lien on the Real Property subject thereto, that each Mortgage secures repayment of any and all debts due Wells Fargo by CJB and all or a portion of the Real Property may be scheduled for public sale upon appropriate application of Wells Fargo. Nothing herein shall preclude Wells Fargo from proceeding with sale of all or a portion of the Real Property

through the Receiver, as approved by the Court, with the proceeds there of to be applied to the amounts due Wells Fargo under the First, Second and Third Causes of Action.

AND IT IS SO ORDERED.



Ralph P. Stroman, Special Referee

GEORGETOWN, SC
October 27, 2016

RECEIVED

NOV 23 2016

SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 14-CP-22-01109

WELLS FARGO BANK, N.A. and WELLS FARGO EQUIPMENT FINANCE, INC.,

CJ.B. HOLDING & TRUST COMPANY, LLC, CORNELIUS J. BECK, JR.; INLET DENTAL CENTER, INC. N/K/A CAMERON BANKS, LLC, SEASIDE SURGICAL, INC., ANDREWS DENTAL CENTER, INC., GEORGETOWN DENTAL CENTER OF SOUTH CAROLINA, INC., SOUTH BEACH DENTAL CENTER, INC., SOUTHPARK CENTRE PROPERTY OWNERS ASSOCIATION, INC., MYRTLE BEACH FARMS COMPANY, INC., WACHESAW WAREHOUSES PROPERTY OWNERS ASSOCIATION, INC. AND PATTERSON DENTAL SUPPLY, INC.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Wheeler	Attorney for : <input checked="" type="checkbox"/> Plaintiffs <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

FILED
2016 OCT 27 PM 2:57
CLERK OF COURT
ALMA Y. WHITE
GEORGETOWN COUNTY, SC

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: _____

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

SCANNED

INFORMATION FOR THE JUDGMENT INDEX

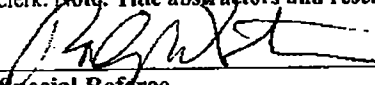
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Wells Fargo Bank, N.A.	C.J.B. Holding & Trust Company, LLC	First Cause of Action: \$122,159.98
Wells Fargo Bank, N.A.	C.J.B. Holding & Trust Company, LLC; Cornellus J. Beck, Jr.	Second Cause of Action: \$1,325,373.58
Wells Fargo Bank, N.A.	Cornelius J. Beck, Jr.; Andrews Dental Center, Inc.; Georgetown Dental Center of South Carolina, Inc.; South Beach Dental Center, Inc.; Seaside Surgical, Inc.; Inlet Dental Center, Inc., n/w/a Cameron Banks, LLC	Third Cause of Action: \$1,447,533.59
Wells Fargo Equipment Finance, Inc.	C.J.B. Holding & Trust Company, LLC	Fourth Cause of Action: \$771,497.12

[continued on next page]

Wells Fargo Equipment Finance, Inc.	Cornelius J. Beck, Jr.; Andrews Dental Center, Inc.; Georgetown Dental Center of South Carolina, Inc.; Inlet Dental Center, Inc., n/k/a Cameron Banks, LLC; Seaside Surgical, Inc.; South Beach Dental Center, Inc.	Fifth Cause of Action: \$771,497.12
Wells Fargo Equipment Finance, Inc.	C.J.B. Holding & Trust Company, LLC	Sixth Cause of Action: Order for Claim & Delivery/Replevin
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.**


Special Referee

2098
Judge Code

1027-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 27th day of October, 2016, and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of October, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

**David B. Wheeler
Moore & Van Allen PLLC
78 Wentworth Street
Charleston, SC 29401**

**Gregory R. Weathers, Esquire
Weathers Law Firm, LLC
PO Box 4209
Pawleys Island, SC 29585
ATTORNEY FOR DEFENDANTS, C.J.B.
HOLDING & TRUST COMPANY, LLC and
INLET DENTAL CENTER, INC. N/K/A
CAMERON BANKS, LLC and
FOR CAMERON BANKS, REGISTERED
AGENT FOR SPARKLE DENTAL CENTER,
INC.**

**Cornelius J. Beck, Jr.
34 Old Evergreen Lane
Pawleys Island, SC 29585**

**Stephan C. Ouverson, Esquire
Parsons, Ouverson, Stark, Guest & Sandefur, PA
PO Box 2850
Murrells Inlet, SC 29576
ATTORNEYS FOR DEFENDANT,
SOUTHPARK CENTRE PROPERTY OWNERS
ASSOCIATION, INC.**

**Daniel W. Stacy, Jr., Esquire
Oxner & Stacy, P.A.
90 Wall Street, Unit B
Pawleys Island, SC 29585
ATTORNEYS FOR DEFENDANT,
WACHESAW WAREHOUSES PROPERTY
OWNERS ASSOCIATION, INC.**

**J. Jackson Thomas, Esquire
Thomas & Brittain, P.A.
PO Box 1290
1314 Professional Drive
Myrtle Beach, SC 29578
ATTORNEYS FOR RECEIVER, PATRICE L.
SEBASTIAN**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Jody C. Bailey, Deputy
CLERK OF COURT

Court Reporter: _____

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM GEORGETOWN COUNTY
Court of Common Pleas

RALPH P. STROMAN, SPECIAL REFEREE

Case No. 2014-CP-22-01109

WELLS FARGO BANK NA., Respondent,

vs.

CORNELIUS J. BECK, Apellee,

RECEIVED

NOV 23 2016

SC Court of Appeals

PROOF OF SERVICE

I, Beck Jr, Cornelius-Johnathan, certify that I am of such age and discretion to be competent to serve papers. That on the _____ day of _____, 2016, I have served a copy of the documents listed below, by Certified Mail, sent to each of the following persons at the locations stated below, which is the last known location, and by depositing said envelope and contents in the U.S Mail.

Documents: -Orders to Attach to Notice of Appeal
 -Proof of Service

Party (ies) Served:

David B. Wheeler, Attorney
78 Wentworth Street
Charleston, S.C. 29401

Beck Jr, Cornelius J, /s/
UCC 1-207/1-308
34 Old Evergreen Lane,
Pawley's Island, SC 29585

November 23, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

NOV 23 2016

APPEALS FROM GEORGETOWN COUNTY
Court of Common Pleas

SC Court of Appeals

RALPH P. STROMAN, SPECIAL REFEREE

Case No. 2014-CP-22-01109

WELL FARGO BANK N A., Respondent,

vs.

CORNELIUS J. BECK, Appellee,

ORDERS TO ATTACH TO NOTICE OF APPEAL

David B. Wheeler, Attorney
78 Wentworth Street
Charleston, S.C. 29401

Cornelius J. Beck Jr.
34 Old Evergreen Lane,
Pawley's Island, SC [29585]