THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
S. Jackson Kimball, Circuit Court Judge

C.A. Nos: 2013-CP-46-00438; 2013-CP-46-00440
Appellate Case No: 2016-001272

Robert Clay Sparrow and Mickey Crowe..... Respondents,

v.

Fort Mill Holdings, LLC, David Baucom and Maurer Holdings, LLC..... Appellants.

REPLY BRIEF OF APPELLANTS

Paul S. Landis
FAYSSOUX & LANDIS, P.A.
209 E. Washington Street
Greenville, South Carolina 29601
(864) 233-0445
(864) 233-4781 (Fax)

Attorney for Appellants David Baucom, Fort Mill Holdings, LLC, and Maurer Holdings, LLC

December 15, 2016

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ARGUMENT

I. The Cases Cited by Plaintiff Sparrow are Distinguishable

In the instant case, the settlement memorandum unquestionably violates the substantive law of the case. In other words, Sparrow's causes of action seeking deficiency judgments on the North Carolina purchase money notes are in direct contravention to North Carolina law which, *inter alia*, unequivocally prohibits a seller such as Sparrow from obtaining a deficiency judgment and provides that any waiver of the North Carolina deficiency statute by a defaulting party is void. This is not a situation in which the applicable law was uncertain or whether there were risks and benefits to be weighed in deciding whether to settle the case. Accordingly, the instant case is distinguishable from the cases cited by Sparrow.

The Court in Kirkland v. Moseley, 109 S.C. 477, 96 S.E.2d 608 (1918) stated that it was "distinctly satisfied that the plaintiffs in good faith with full knowledge compromised a reasonably doubtful question and they must abide the consequences." (Emphasis added). Unlike Kirkland, the underlying cases here do not involve a reasonably doubtful question or a novel issue of law. The North Carolina anti-deficiency statute has been in effect since the era of the Great Depression, and there are a number of reported North Carolina cases dating back several decades which establish that a personal guaranty in a seller financed transaction is void. Numerous cases which support these principles are cited in Appellants' Brief. Furthermore, as far back as 1941, the Supreme Court of North Carolina stated "[i]t will be noted that the limitation created by the [anti-deficiency] statute is upon the jurisdiction of the court in that it is declared that the holder of notes given to secure the purchase price of real property 'shall not be entitled to a

deficiency judgment on account' thereof. This closes the courts of this state to one who seeks a deficiency judgment on a note given for the purchase price of real property." Bullington v. Angel, 220 N.C. 18, 16 S.E.2d 411, 412 (1941).

Petty v. Timken Corp., 849 F.2d 130 (4th Cir. 1988) involved a situation in which the plaintiff faced a high burden of proof and the plaintiff agreed to settle after considering his attorney's advice on the likelihood of success at trial. In Petty, even the trial judge commented that the settlement, under the circumstances, was probably "excellent." In Petty, the Fourth Circuit indicated that judicial economy commands enforcement of a voluntary settlement, **"[u]nless the resulting settlement is substantially unfair**." (Emphasis added). Here, the settlement is substantially unfair and unjust. Defendants are being bound to a settlement of claims arising from a document that is void under substantive law. Under these circumstances, the settlement which Sparrow seeks to enforce is not a compromise of reasonably doubtful and disputed claims but is rather a $1.4 million windfall that arises from a personal guaranty that was void from inception.

The other cases cited by Plaintiff Sparrow are likewise distinguishable. In Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 488 S.E.2d 334 (1997), the primary issue was whether ratification of a settlement agreement by a client barred a malpractice case against the client's attorney. In Shelton v. Bressant, 312 S.C. 183, 439 S.E.2d 833 (1993), minimal facts are recited, but there was no argument or discussion that the law applicable to the case was in any way in doubt. Furthermore, the issue in that case was whether the party should be bound by his attorney's statement in open court, on the record, stating that the case was settled. Shelton does not contain any discussion or

holding which provide guidance in this case. Finally, Smothers v. U.S. Fidelity and Guar. Co., 322 S.C. 207, 470 S.E.2d 858 (1996) dealt with whether a release of a claim against underinsured motorist coverage could be rescinded. The case did not involve settlement of pending litigation. Furthermore, the Court of Appeals recognized that the state of the law in that case had not been firmly established at the time the settlement was reached.

In summary, none of the cases cited by Plaintiff is dispositive. Here, the settlement memorandum should not be enforced for three reasons: (1) the trial court abused its discretion by refusing to consider North Carolina substantive law and enforcing a settlement that was substantially unfair and unjust; (2) the settlement agreement, if otherwise enforceable, was an impermissible waiver of the North Carolina anti-deficiency statute and was void; and (3) the settlement agreement was expressly conditioned upon the drafting and execution of documents which were not executed. Accordingly, the trial court's Order should be reversed.

II. The Settlement Should Not be Enforced on Prejudice Grounds

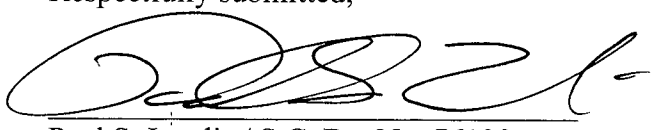
North Carolina law establishes that a seller in a seller-financed real property transaction is limited to a return of the property as his or her sole remedy in the event of a purchaser's default. Accordingly, a seller who obtains a return of the property following default will be responsible for paying property taxes and other expenses related to the property. Furthermore, this is not a situation in which Defendants excluded Sparrow from the Property. In fact, the record establishes that, prior to filing an action in South Carolina, Appellants offered to return the Property to Sparrow. Through his counsel, Sparrow agreed to accept it.

Furthermore, prejudice is irrelevant for three reasons. First, Sparrow never should have been able to pursue a claim against David Baucom for any reason because a personal guaranty on a seller-financed real estate transaction is void. Second, under the North Carolina anti-deficiency statute, a seller is limited to a return of the collateral and is not entitled to recover ancillary expenses such as attorney's fees, etc. Property taxes would fall in the same category of ancillary expenses which remain a risk of the seller. North Carolina cases have made clear that a seller must protect himself by requiring terms such as a large down payment which will offer protection in the event of default. Sellers who are the holders of purchase money notes in North Carolina are inherently at risk. Here, as the owner of the property, Sparrow would always be liable for unpaid property taxes. Finally, to Appellants' knowledge, there are no applicable cases which consider the prejudice to a party when determining whether to enforce a settlement. Even assuming, *arguendo*, that prejudice were found, such prejudice is of Sparrow's own making by pursuing deficiency judgments against Defendants which are explicitly prohibited by governing law.

CONCLUSION

For the reasons set forth herein, David Baucom, Fort Mill Holdings, LLC, and Maurer Holdings, LLC request that the trial court's Orders be reversed and the matter remanded so that the parties may have the case decided on the merits.

Respectfully submitted,



Paul S. Landis / S.C. Bar No. 76120
FAYSSOUX & LANDIS, PA
209 E. Washington Street
Greenville, SC 29601
(864) 233-0445
(864) 233-4781 (Fax)

Attorney for Appellants David Baucom, Fort Mill Holdings, LLC, and Maurer Holdings, LLC

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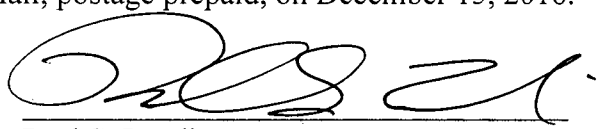
PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellants, addressed to its attorney of record, James M. Griffin at PO Box 999, Columbia, SC 29202, by depositing a copy of the same in the United States Mail, postage prepaid, on December 15, 2016.



Paul S. Landis
FAYSSOUX & LANDIS, PA
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Greenville, SC 29601
(864) 233-0445
(864) 233-4781 (Fax)
Attorney for Appellants

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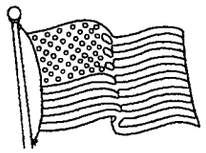

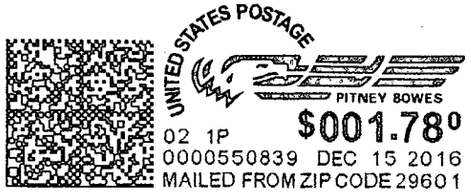

FAYSSOUX & LANDIS
Attorneys at Law, P.A.
209 E. Washington Street
PO Box 10207
Greenville, SC 29603

To: Hon. Jenny Abbott Kitchens
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211