

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RECEIVED

FEB 09 2017

SC Court of Appeals

3702 Parkers, LLC
Plaintiff

Jerry H. Petrus et al.
Defendants

Plaintiff(s) Attorney
Elizabeth R. Poit, SC Bar No. 11673
Jamaal N. Taylor, SC Bar No. 80069
Starr & Eisenberg Southern, PC
1709 Devonshire Drive
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Telephone: (803) 929-0760
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Defendant(s) Attorney
Roger P. Roy, Jr., Esq.
Roger P. Roy, Jr., P.A.
Post Office Box 4086
North Myrtle Beach, SC 29597

FILED
Horry County, SC
2017 FEB 7 AM 9:01

- MOTION HEARING REQUESTED (attach written motion and complete Sections I and III)
- FORM MOTION, NO HEARING REQUESTED (complete Sections II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Order Denying Defendant's Motion for Summary Judgment on Waiver of Deficiency
Estimated Time Needed: None
Court Reporter Needed: YES / NO

SECTION II: Motion Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

1/23/2017
Date Submitted

SECTION III: Motion Fee

- Paid - Amount: \$25.00
 - Exempt Motion for Stay in Bankruptcy
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court reporter: _____
 Other: _____

JUDGE'S SECTION

- Motion fee to be paid upon filing of the attached order.
- Other: _____

JUDGE

Code: _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____
 Motion fee Collected;
 Contested Amount Due;

DATE FILED

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

5102 Partners, LLC,

PLAINTIFF,

v.

Jerry H. Pettus, Individually and as
Successor Trustee of the Eleanor P. Pettus
Trust Under Agreement Dated April 1,
2010; Waccamaw Bank; Strand Capital
Group, LLC; Tiente Limited Partnership, a
South Carolina Limited Partnership,

DEFENDANT(S).

(7950.000009-1)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-26-00774

**ORDER DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT ON WAIVER
OF DEFICIENCY**

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FEB 09 2017

SC Court of Appeals

2017 FEB -7 AM 9:01
HORRY COUNTY, SC
CLERK OF COURT

This matter came before the Court on January 5, 2017 for a hearing on the Motion for Summary Judgment on Waiver of Deficiency filed by Defendant Jerry H. Pettus, Individually and as Successor Trustee of the Eleanor P. Pettus Trust Under Agreement Dated April 1, 2010 ("Pettus"). Present at the hearing ^{were} ~~was~~ Elizabeth R. Polk, attorney for 5102 Partners, LLC ("Plaintiff"), and Roger P. Roy, Jr., attorney for Pettus. The remaining defendants' attendance at the hearing was not required.

On December 13, 2016, Pettus filed his Motion for Summary Judgment on Waiver of Deficiency seeking an award of summary judgment finding that Plaintiff is not entitled to a personal judgment against him should the proceeds from the foreclosure sale of the property not satisfy the Loan's indebtedness in full. In support of his position, Pettus contends that E*Trade, a prior holder of the Loan, commenced foreclosure in Civil Action No. 2011-CP-26-06284 (the "Prior Foreclosure") and waived its right to seek a deficiency judgment in that action. Pettus argues that said waiver in the Prior Foreclosure was final and binding for the life of the Loan, rather than only being applicable to ^{that} ~~that~~ ^{CA# (2011-CP-26-06284) QPH} case, at that time, thereby formulating his

argument that Plaintiff is not entitled to a deficiency judgment in the instant action. Pettus relies on several authorities to support his proposition; however, said authorities do not apply to the issues in this case. In particular, *State v. Battle*, 304 S.C. 191, 403 S.E.2d 331 (Ct. App. 1991), is a criminal case, and the issues pertain to conduct at trial, the South Carolina Rules of Criminal Procedure, and the South Carolina Rules of Evidence as they relate to criminal matters, none of which are applicable to Pettus' argument.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "Summary judgment should be granted only where it is perfectly clear that no genuine issue of material fact exists, and an inquiry into the facts is not desirable to clarify application of the law." *Bates v. City of Columbia*, 301 S.C. 320, 321, 391 S.E.2d 733, 733 (Ct. App. 1990) (citation omitted). "In determining whether to grant summary judgment, the pleadings and documents on file must be liberally construed in favor of the nonmoving party, who must be given the benefit of all favorable inferences that might reasonably be drawn from the record." *Id.* (citation omitted). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) (citation omitted). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id.* (citation omitted). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant." *Id.* (citation omitted).

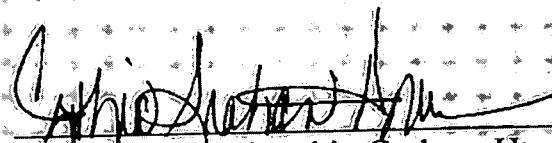
After considering the arguments of counsel and the parties, the pleadings and filings of record in this matter, the affidavits and evidence submitted to the Court, and the facts of this case, I find that Pettus' Motion for Summary Judgment on Waiver of Deficiency should be

denied. Plaintiff has a statutory right to a deficiency judgment against Pettus should the ensuing foreclosure sale not render funds to satisfy the Loan in full. E*Trade's waiver of its right to a deficiency judgment in the Prior Foreclosure was not permanent and only applied to that civil action. No judgment was rendered in the Prior Foreclosure finding that the right to a deficiency judgment on the Loan could not be pursued. E*Trade could have amended its complaint to seek deficiency in the same case or followed the foreclosure action with a debt collection action to recover the remaining amount of the indebtedness.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion for Summary Judgment on Waiver of Deficiency filed by Defendant Jerry H. Pettus, Individually and as Successor Trustee of the Eleanor P. Pettus Trust Under Agreement Dated April 1, 2010 be, and hereby is, denied.

IT IS FURTHER ORDERED that Plaintiff is entitled to a deficiency judgment in this matter should the ensuing foreclosure sale not render funds to satisfy the Loan in full.

AND IT IS SO ORDERED.


The Honorable Cynthia Graham Howe
Horry County Master-in-Equity

February 16, 2017
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
5102 Partners, LLC,

PLAINTIFF,

v.

Jerry H. Pettus, Individually and as
Successor Trustee of the Eleanor P. Pettus
Trust Under Agreement Dated April 1,
2010; Waccamaw Bank; Strand Capital
Group, LLC; Tiente Limited Partnership, a
South Carolina Limited Partnership,

DEFENDANT(S).

(7950.000009-1)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-26-00774

CERTIFICATE OF SERVICE

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HORRY COUNTY
CLERK OF COURT

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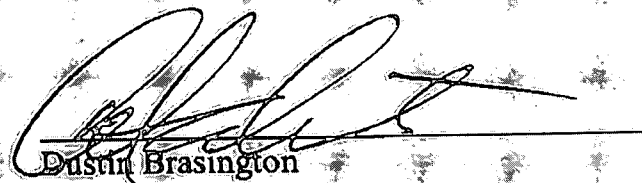
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SC Court of Appeals

I, Dustin Brasington, employee of Stern & Eisenberg Southern, P.C., hereby certify that I served a true and accurate copy of the proposed *Order Denying Defendant's Motion for Summary Judgment on Waiver of Deficiency* by first-class, U.S. Mail with postage prepaid upon the following:

Roger P. Roy, Jr., Esq.
Roger P. Roy, Jr., P.A.
Post Office Box 4086
North Myrtle Beach, SC 29597

This 23 day of January, 2017.



Dustin Brasington
Paralegal