

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

S.C. Supreme Court

THE HONORABLE MARVIN H. DUKES, III, MASTER-IN-EQUITY

CIRCUIT COURT CIVIL ACTION No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Petitioner,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

**APPENDIX TO PETITION
FOR WRIT OF CERTIORARI
VOLUME II OF II**

James Y. Becker
Hamilton Osborne, Jr.
Sarah P. Spruill
Mary M. Caskey
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
P.O. Box 11889 (29211-1889)
Columbia, SC 29201
Telephone: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com
Email: hosborne@hsblawfirm.com
Email: sspruill@hsblawfirm.com
Email: mcaskey@hsblawfirm.com
*Attorneys for Petitioner Wachovia Bank,
N.A.*

Gregory M. Alford, Esq.
Alford & Wilkins, P.C.
P.O. Drawer 8008
Hilton Head Island, S.C. 29938
Telephone: (843) 842-5500
Fax: (843) 842-8400
Email: gregg@awslawfirm.com
Attorney for Respondent Ann T. Coffey

Steven R. Anderson
P.O. Box 12188
2008 Marion St., Ste. J
Columbia, SC 29211-2188
Telephone: (803) 252-2828
Fax: (803) 254-1935
Email: sraatlaw@bellsouth.net
*Attorney for Respondent Bank of America,
N.A.*

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Record on Appeal, Volumes I and II, dated November 25, 2008

Brief of Appellant, dated December 5, 2008

Final Brief of Respondent, Ann T. Coffey, dated December 22, 2008

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Petition for Rehearing, dated June 4, 2010

Respondent's Motion to Dismiss Appellant's Petition for Rehearing, dated August 17, 2010

Order Denying Petition for Rehearing, dated September 20, 2010

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT
4 WACHOVIA BANK, N.A.,
5 Plaintiff,
6 vs. CASE NO. 2006-CP-07-1655

7 ESTATE OF MICHAEL D. COFFEY, ANN
8 T. COFFEY, BOTH INDIVIDUALLY AND
9 AS PERSONAL REPRESENTATIVE OF THE
10 ESTATE OF MICHAEL D. COFFEY,
11 MAUREEN COFFEY EDRI, MICHAEL P.
12 COFFEY, CHRISTOPHER COFFEY, BANK
13 OF AMERICA, N.A., FRANK KONCUL, AND
14 JOHN DOE AND RICHARD ROE AS
15 REPRESENTATIVES OF ALL HEIRS AND
16 DEVISEES OF MICHAEL D. COFFEY,
17 DECEASED, AS REPRESENTATIVES OF ALL
18 PERSONS ENTITLED TO CLAIM UNDER OR
19 THROUGH ANY OR ALL OF THE HEIRS AND
20 DEVISEES, AND AS REPRESENTATIVES OF
21 OTHER UNKNOWN PERSONS OR CORPORATIONS
22 CLAIMING ANY RIGHT, TITLE, INTEREST
23 IN OR LIEN UPON THE REAL ESTATE
24 DESCRIBED HEREIN, ANY UNKNOWN ADULTS
25 OR CORPORATIONS BEING AS A CLASS
DESIGNATED AS JOE DOE, AND ANY UNKNOWN
INFANTS OR PERSONS IN MILITARY SERVICE
DESIGNATED AS A CLASS RICHARD ROE,

Defendants.

DEPOSITION OF: ANN T. COFFEY

Computer-Aided Transcription By:

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Charleston, SC
(843) 722-8414

Columbia, SC
(803) 731-5224

Myrtle Beach, SC
(843) 839-3376

Greenville, SC
(864) 234-7030

Charlotte, NC
(704) 573-3919

A. William Roberts, Jr. & Associates (800) 743-DEPO

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1 (TITLE PAGE CONTINUED)

2 DATE: August 22, 2007

3 TIME: 9:59 AM

4

5 LOCATION: Law Offices of
Alford, Wilkins & Strickroth, P.C.
18 Pope Avenue Executive Park Road
6 Hilton Head Island, SC

7 TAKEN BY: Counsel for the Plaintiff

8 REPORTED BY: KELLY A. BALL, Court Reporter

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1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 WACHOVIA BANK, N.A.:

4 HAYNSWORTH, SINKLER & BOYD

5 BY: R. DAVID PROFFITT

6 1201 Main Street, 22nd Floor (29201)

7 Columbia, SC 29201

(803) 779-3080

dproffitt@hsblawfirm.com

8 ATTORNEYS FOR THE DEFENDANT

9 ESTATE OF MICHAEL D. COFFEY, et al:

10 ALFORD, WILKINS & STRICKROTH, P.C.

11 BY: GREGORY M. ALFORD

12 18 Pope Avenue Executive Park Road

13 Hilton Head Island, SC 29938

14 (843) 842-5500

15 Gregg@awslawfirm.com

16 ALSO PRESENT:

17 Maureen T. Coffey-Edri

18 (INDEX AT REAR OF TRANSCRIPT)

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1 (PLF. EXH. 1, Title to Real Estate, was
2 marked for identification.)

3 (PLF. EXH. 2, Form 14 - Title to Real
4 Estate, was marked for identification.)

5 (PLF. EXH. 3, Equity BankLine Agreement
6 and Initial Truth-In-Lending Disclosure, was marked
7 for identification.)

8 (PLF. EXH. 4, Inventory and
9 Appraisement of the Estate of Michael D. Coffey,
10 was marked for identification.)

11 (PLF. EXH. 5, Affidavit of Yannick
12 Madiot, was marked for identification.)

13 (PLF. EXH. 6, Affidavit of Charles C.
14 Laughlin, was marked for identification.)

15 (PLF. EXH. 7, St. Barts Yachts, Inc.
16 Documents, were marked for identification.)

17 (PLF. EXH. 8, Affidavit of Marion L.
18 Young, was marked for identification.)

19 (PLF. EXH. 9, Carolina First Bank
20 Documents, were marked for identification.)

21 (PLF. EXH. 10, Wachovia Appraisal
22 Documents, were marked for identification.)

23 (PLF. EXH. 11, Wachovia Uniform
24 Residential Loan Application, was marked for
25 identification.)

1 (PLF. EXH. 12, Copies of Checks Written
2 to Wachovia, were marked for identification.)

3 (PLF. EXH. 13, Copies of Checks Written
4 to Wachovia, were marked for identification.)

5 (PLF. EXH. 14, State of Delaware, 2001
6 Annual Franchise Tax Report, was marked for
7 identification.)

8 (PLF. EXH. 15, Income Tax Documents,
9 were marked for identification.)

10 (PLF. EXH. 16, St. Barts Yachts
11 Documents, were marked for identification.)

12 (PLF. EXH. 17, St. Barts Yachts
13 Documents, were marked for identification.)

14 (PLF. EXH. 18, Answers to Plaintiff's
15 First Set of Requests for Admission Dated June 11,
16 2007, were marked for identification.)

17 (PLF. EXH. 19, General Objections, was
18 marked for identification.)

19 (PLF. EXH. 20, General Objections, was
20 marked for identification.)

21 STIPULATION

22 It is stipulated by and between Counsel
23 that this deposition is being taken in accordance
24 with the South Carolina Rules of Civil Procedure,
25 Rule 30; that all objections as to Notice of this

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1 deposition are hereby waived; that all objections
2 except as to form are reserved until the time of
3 trial; and that the deponent does not waive reading
4 and signing of this deposition.

5 * * * * *

6 ANN T. COFFEY

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. PROFFITT:

10 Q. Good morning, Ms. Coffey. My name's
11 David Proffitt, and we've just met. And as you
12 know, I represent Wachovia Bank in the lawsuit.

13 I believe that you've just mentioned
14 that you've never been deposed before.

15 A. Right.

16 Q. Well, your attorney has probably
17 explained this to you, but I'll tell you again.

18 A. She sort of, you know, told me what
19 goes on.

20 Q. Okay.

21 A. But you can tell me.

22 Q. Okay. Three basic rules: You need to
23 answer out loud and say yes or no. You can't just
24 nod your head because the court reporter --

25 A. Right.

1 Q. -- can't take down a nod of the head.

2 Secondly, I'm not intending to ask you
3 any confusing or misleading or tricky questions.

4 A. Right.

5 Q. That's not what I'm here for.

6 I want to know what you know about the
7 case and what your answers are to the case. And
8 what you're going to testify to at trial.

9 A. Right.

10 Q. So if I ask you what you think is a
11 tricky question or --

12 A. I'll ask you.

13 Q. -- misleading question -- yeah, ask me
14 about it. And don't -- just don't answer that one,
15 just ask me, say, would you clarify that.

16 A. Right.

17 MR. ALFORD: And you can't ask me.

18 BY MR. PROFFITT:

19 Q. Right.

20 A. No, I'll ask him.

21 Q. That's the third rule. You got to talk
22 to me.

23 A. He told me that.

24 Q. Right, you got to talk to me. If you
25 could just direct your questions to me. If there's

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1 some matter of privilege, he knows what to say and
2 what to assert, so he'll worry about that.

3 A. Okay.

4 Q. Okay. Well, let's -- hopefully part of
5 this won't take very long. It'll be just
6 identifying some documents.

7 So let's start with sort of -- with
8 some of the documents that are at the beginning of
9 this story. I'll show you what we've marked as
10 Plaintiff's Exhibit 1 and see if you recognize that
11 or tell me what it is.

12 A. You know, I have no clue. I mean, I'm
13 looking at this and -- oh this is -- I mean
14 Dowling, it has to be from a long time ago is all
15 I'm thinking -- Dowling, because that was years
16 ago.

17 Q. Well, do you know what the document is
18 in general?

19 A. No, I mean -- oh, that's my house in
20 Homewood. **Redacted** -- right here.
21 (Indicating).

22 Q. Right.

23 A. Yeah.

24 Q. Well, if I represent to you that this
25 is a deed where you bought the property that you

1 now live in from Russell Socienski, I believe.

2 A. I have no clue what the person's name
3 is, but I bought it from a lady of the house.

4 Q. Okay.

5 MR. ALFORD: I want to take a short
6 break. Can I help you a little --

7 MR. PROFFITT: Sure.

8 MR. ALFORD: -- if I can, off the
9 record.

10 (Off-the-record conference.)

11 BY MR. PROFFITT:

12 Q. Ms. Coffey, this is -- what I'm
13 representing to you, is this is a deed in 1980
14 where Russell Socienski sold the house at Redacted
15 Redacted --

16 A. No, he sold a lot to us then.

17 Q. It was a lot, okay, I'm sorry. The lot
18 to you and your husband, Dr. Coffey.

19 A. Oh, I saw that address on there.

20 Q. Okay.

21 A. I don't know who sold me the lot.

22 Q. Okay.

23 A. But, you know, it says what it says --
24 it says that.

25 Q. All right. Fair enough.

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1 MR. ALFORD: David, we'll stipulate to
2 recorded documents --

3 MR. PROFFITT: Okay.

4 MR. ALFORD: -- if that helps you.

5 MR. PROFFITT: It will. It will.
6 We've got two or three here that we can stipulate
7 to.

8 BY MR. PROFFITT:

9 Q. Here's Plaintiff's Exhibit Number 2,
10 which is another deed in 1984, I believe, in which
11 Michael Coffey, Dr. Coffey, deeded the property,
12 the same property, **Redacted** --

13 A. That's when we moved here.

14 Q. -- to you.

15 A. Right. I'm sure that's true, because
16 the other house is in my name too.

17 Q. All right. And then we come to the
18 infamous document. I'm going to hand you what's
19 been marked as Plaintiff's Exhibit 3, which is a
20 Home Equity Line of Credit note and the mortgage
21 that Dr. Coffey signed on July 23rd, 2001.

22 A. Well, what can I say?

23 Q. No argument about it, correct?

24 A. If he signed it, he signed it. You've
25 got the papers.

1 Q. Right.

2 A. I didn't sign it.

3 Q. Right.

4 A. Right, okay.

5 Q. Now --

6 A. Now what?

7 Q. I want to call your attention to one
8 page of this document -- on Page 3 of the mortgage
9 in Paragraph 15 -- you're welcome to read it, I'll
10 tell you what it says. It says that --

11 MR. ALFORD: Good ahead and tell her.

12 THE WITNESS: I can -- I can read it.

13 Well, I understand that, but this isn't
14 mine, is it?

15 BY MR. PROFFITT:

16 Q. Right. Just let me ask my question.

17 A. Okay.

18 Q. I just want you to understand that if
19 Wachovia ends up prevailing in this lawsuit --

20 A. Right.

21 Q. -- that you are responsible, if this
22 document is deemed valid, that you'll end up being
23 responsible for attorneys fees and costs.

24 A. Yeah, I know that.

25 Q. Which means you're paying not only --

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1 A. Right. I saw that.

2 Q. -- paying Mr. Alford, but Mr. Proffitt.

3 A. Right.

4 Q. Okay.

5 A. Okay.

6 Q. All right. Well, with those documents
7 identified, let's bounce back for a minute. Let me
8 talk to you about your background a little.

9 I believe you moved here from Illinois?

10 A. (Nods head up and down).

11 Q. In '80 -- 1980?

12 A. No, 1984 -- '83, the end of '83.

13 Q. Okay.

14 A. Or '84, one of the two.

15 Q. Okay.

16 A. It's been a long time.

17 Q. All right.

18 A. We bought the lot in 1980.

19 Q. Okay. And Dr. Coffey was a doctor?

20 A. Uh-huh.

21 Q. What kind of doctor was he?

22 A. Obstetrician.

23 Q. Was he an obstetrician in Illinois?

24 A. Uh-huh.

25 Q. And then he moved here?

1 A. Uh-huh.

2 MR. ALFORD: You have to say yes or no.

3 THE WITNESS: Oh, I'm sorry. Yes, yes,
4 yes.

5 BY MR. PROFFITT:

6 Q. What brought you here, just out of
7 curiosity?

8 A. The beach --

9 Q. Okay.

10 A. -- brought me here.

11 Q. Yeah.

12 A. And the cold winters in Chicago.

13 Q. Okay. All right. How many -- you've
14 got five children?

15 A. Yeah, she's the oldest. (Indicating).

16 Q. All right. And I believe I know where
17 all of them live, but tell me -- Maureen lives
18 here -- Maureen Coffey-Edri --

19 A. Uh-huh.

20 Q. -- lives here. Michael Coffey still
21 lives in Illinois?

22 A. Right. Never lived here. And the
23 other three -- well, Otis lives in Sumter and Chris
24 lives on Hilton Head, Caty lives on Hilton Head.

25 Q. Say that again.

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1 A. Caty lives on Hilton Head, Chris lives
2 on Hilton Head, Otis lives in Sumter.

3 Q. Is Caty Cathleen?

4 A. Uh-huh.

5 Q. Okay. And Otis lives where?

6 A. Sumter, South Carolina.

7 Q. Okay. What was Annie Lints Recovery?
8 That was mentioned in some of your responses.

9 A. A drug rehab program.

10 Q. Okay.

11 A. And then he stayed up there. That's
12 where it was.

13 Q. All right.

14 A. So he just stayed up there after he got
15 out.

16 Q. All right.

17 A. Hopefully doing all right.

18 Q. All right. Of those five children --
19 they're all adults, correct?

20 A. Yeah -- sometimes.

21 Q. Which of the five children have helped
22 you out in the probate of your husband's estate --

23 A. Michael and Maureen, because they're
24 both attorneys.

25 Q. -- and this lawsuit?

1 A. Michael -- he's just given me some
2 advise, but Maureen's here so obviously, you know,
3 I talk to her more than I talk to him, but he knows
4 what's going on.

5 Q. So Michael and Maureen are the ones
6 who've mainly helped you?

7 A. Yes. Are you kidding?

8 Q. Okay. All right. I want to show you
9 what's been marked as Plaintiff's Exhibit 4 --

10 A. Uh-huh.

11 Q. -- which is a Probate Court
12 Inventory --

13 A. Uh-huh.

14 Q. -- that you signed. I believe it was
15 filed on September 5th, 2006?

16 A. Probably. I don't remember that.

17 Q. Do you remember that?

18 A. No, but I -- my signature's there.

19 Q. Okay.

20 A. That's my signature. I mean, I did
21 file a probate thing. I don't remember if that's
22 the date or anything, but I guess it is.

23 MR. ALFORD: I promise you, Ms. Coffey,
24 all of Mr. Proffitt's documents are -- he's not
25 going to show you anything that --

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1 THE WITNESS: No, I know --

2 MR. PROFFITT: I'm not planning to.

3 BY MR. PROFFITT:

4 Q. All right. In Section E, Schedule E of
5 this Probate Court Inventory, you've got the
6 sailboat listed?

7 A. Uh-huh.

8 Q. Correct?

9 A. Well, because I had the sailboat.

10 Q. Right. And I believe, if I'm reading
11 this correctly, let me know if I'm wrong, that
12 you've asserted in this inventory that you owned
13 half of it and Dr. Coffey owned half of it?

14 A. Well, you know, my name ended up on the
15 partnership, which I didn't know about, so...

16 Q. Well, okay. But am I correct in saying
17 that in the inventory you assert that --

18 A. Yeah, it's in here.

19 Q. -- you own half the boat?

20 A. It's in here, yeah.

21 Q. Okay. And your half interest in the
22 boat is \$50,000?

23 A. Well, considering what the boat cost,
24 yeah, it was about that.

25 Q. Okay.

1 A. I don't know if I put that figure there
2 or Michael Jordan.

3 Q. Well, now Michael Jordan based his
4 responses and information on -- documents and
5 information from you, correct?

6 A. Probably, yeah. You know, when you go
7 through all this stuff, it's a little confusing.
8 When you lose a husband, you know.

9 Q. It's confusing for lawyers sometimes.

10 A. Yeah.

11 Q. Many times. All right.

12 Am I also correct in reading this
13 Probate Court Inventory to show that there is no
14 value in the probate estate?

15 A. Pretty much.

16 Q. Right. And as I understand it from
17 looking at the Probate Court files, the assets that
18 your husband left to you and the others in the
19 family were in credit shelter trust. He put them
20 in trust for you?

21 A. Right.

22 Q. So the Probate Court Inventory, if
23 anything, shows as negative value. Do you agree
24 with me?

25 A. I don't know. Is that what it says?

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1 Q. Well, I'm telling you that's what it
2 says, but you can --

3 A. Well, if it says a negative then, yeah.

4 Q. Okay.

5 MS. COFFEY-EDRI: You want me to --
6 I'll deal with it when you show me.

7 MR. PROFFITT: Okay.

8 BY MR. PROFFITT:

9 Q. All right. Tell me, Ms. Coffey, just
10 generally, tell me about this boat. Tell me the
11 story of the boat.

12 A. I will tell you the story of the boat.
13 When Mike was diagnosed with cancer, we had had
14 boats before. We didn't have a boat at the time.
15 He -- he said maybe I'll buy a boat, and I said,
16 you know, Mike, maybe we should get through all the
17 chemotherapy and stuff first.

18 Q. Now, when was this about? What year
19 are we talking about?

20 A. We're talking about exactly when all
21 this happened. He was diagnosed January 27th, 2001
22 with almost Stage 4 lung cancer.

23 Q. Oh, okay.

24 A. So the man had six months to live. He
25 managed to live four years, but nobody knew that at

1 the time. Only because of trial drugs. He had
2 been healthy. We came back from a vacation on the
3 25th and he was going to get a new knee, went to
4 get a blood test, found all this in his lungs.

5 Q. I'm sorry about that.

6 A. And so he said to me before he started
7 chemo, he said, maybe I'll just quit my work -- and
8 not being very practical, you know, he was being
9 very optimistic and he said, and we'll retire and
10 I'll buy a boat. And I said, you know, I think we
11 need to get through the chemo first. And he went
12 through the first chemotherapy session -- and what
13 I really remember in this, which probably has
14 nothing to do with this, is they always say now we
15 don't want you to make -- when you're going through
16 chemo, don't make any decisions because you get
17 chemo brain. Well, believe me, he got it in more
18 ways than one.

19 Q. Okay.

20 A. But he ended up, with Greg Pittirizzi
21 who had been a friend of his for years, buying a
22 boat.

23 Q. Okay.

24 A. And he did that once before to me, the
25 first boat we ever had. He went down to Florida to

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1 a boat show and bought a boat.

2 Q. Okay. That was years ago or --

3 A. Oh, yeah. It was when we first moved.
4 Maybe '85, '86, '87 -- I don't know.

5 Q. All right.

6 A. And -- but he told me it was paid for.

7 Q. Okay. Who told you?

8 A. Mike.

9 Q. Okay.

10 A. Because I said, what, you bought a
11 boat? And he said, yeah, and don't worry about it,
12 you know, it's paid for.

13 Q. All right.

14 A. And, you know, he had retirement money,
15 he had money he had gotten from Tennant because
16 they were buying out the practices. I figured -- I
17 believed him.

18 Q. Okay. Now, when did you first know
19 that he had actually, really bought it? When he
20 brought it home or when he took you to see it?

21 A. No, no, no. I think when he actually
22 made the purchase, didn't have the actual visible
23 boat, but when he and Greg -- you know, I can't
24 remember exactly when I found out, but wasn't the
25 day the boat showed up.

1 Q. Okay.

2 A. I probably knew about it for six weeks,
3 two months.

4 Q. Okay.

5 A. Whatever.

6 Q. All right. And Greg is Greg
7 Pittirizzi?

8 A. Pittirizzi.

9 Q. It's P-I-T-T-I-R-I-Z-Z-I?

10 A. I don't know how you spell it,
11 Pittirizzi.

12 MR. ALFORD: What brokerage is he?

13 THE WITNESS: He's not with any
14 brokerage. He's just a guy that acted as a
15 go-between. He's a boat repair man.

16 BY MR. PROFFITT:

17 Q. Okay.

18 A. But he knows people.

19 Q. What you mean when you say he was a
20 go-between?

21 A. Well, I mean, he can rope -- he was a
22 friend. He had friends wherever that was bought.
23 I read it in the thing, in Charleston somewhere.
24 He knew the guys up there and ordered the boat for
25 Mike.

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1 Q. At St. Barts Yachts?

2 A. Whatever it says on the papers, yeah.

3 Q. Okay.

4 A. So, I mean, Greg used -- he used to be
5 a, I think, a Saber boat salesman, but I don't
6 know. He kind of drank a lot and kind of got out
7 about that.

8 Q. Okay.

9 A. But, you know, he hung around the
10 marina a lot.

11 Q. Okay.

12 A. And Mike and he were friends.

13 Q. All right. So Greg helped Mike --

14 A. Yeah, he helped him purchase the boat.

15 Q. All right. And you knew about that a
16 few weeks before it was actually delivered?

17 A. Well, a few weeks, a month, whatever,
18 yeah.

19 Q. Okay. All right. And Mike comes
20 home --

21 A. Telling me he bought a boat.

22 Q. Tells you that it was paid for?

23 A. Uh-huh.

24 Q. All right. Where was the boat kept
25 when he first bought it?

1 A. It was kept at -- because we owned a
2 slip at Windmill Harbor from when we had our other
3 boat, so we kept it there.

4 Q. Is that the place that's right on the
5 left -- on the right as, you come in?

6 A. Right as you come over the bridge.
7 Because we owned a slip there.

8 Q. Okay.

9 A. And we were renting it out, and we used
10 it.

11 Q. All right.

12 A. But then he sold that and we had to
13 rent the -- rent the slip. I mean, talk about
14 decisions.

15 Q. Okay. All right.

16 A. Yeah.

17 Q. So the boat was --

18 A. Was not a good idea.

19 Q. Did you not like the boat?

20 A. You know, no. Did -- I -- I had a
21 husband who pretty much was going to die. Did I
22 want a boat? No. I'm sorry.

23 Q. Did you ever use the boat?

24 A. I think I was on that boat twice. And
25 I think most of the hours were put on by the guy

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1 that washed the boat and then took it out to make
2 sure the motor was running. No, we didn't use the
3 boat.

4 Q. Did Dr. Coffey ever use the boat?

5 A. Well, I was on it twice. He might have
6 been on it three times.

7 Q. Three times out of --

8 A. All those years. Well, it's a
9 sailboat.

10 Q. He died on March 21st, 2005, correct?

11 A. Yeah, there were only 25 or 20 hours on
12 the whole motor on that boat. Yeah, in four years
13 -- well, three-and-a-half years.

14 I don't know if you have that
15 information, but that boat wasn't even used, it was
16 a new boat. It was an older boat, but it was a new
17 boat essentially.

18 Q. All right. So the boat's at Windmill
19 Harbor from 2001 when he bought it until it was
20 sold?

21 A. Till it was sold, right.

22 Q. And you're telling me that Dr. Coffey
23 used it a few times and you used it twice.

24 A. I think I was on it once or twice.

25 Q. What about other family members?

1 A. No, the boat -- maybe. If I -- if they
2 were, it was the same time I was on and he was on,
3 so I don't -- I'll bet we weren't on that boat
4 total seven or eight times. That's being generous.

5 Q. The times you were on it, what did you
6 do on it?

7 A. Go out and sail down the Callawassie
8 sound and came back. That's all we did.

9 Q. So just --

10 A. Never went away.

11 Q. -- locally?

12 A. Yeah, uh-huh.

13 Q. Because it was a sea-going boat, wasn't
14 it?

15 A. Uh-huh.

16 Q. It was 36 feet long.

17 A. Honey --

18 Q. It was a very large boat.

19 A. -- honey -- why am I calling you honey?
20 You're cute.

21 Q. So it was a sea-going boat?

22 A. Oh my God, I'm really getting goofy.

23 No, I mean, we didn't need the boat, we
24 didn't want the boat -- it wasn't what we were
25 concentrating on.

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1 Q. Right.

2 A. And the -- we shouldn't have had the
3 boat.

4 Q. Okay.

5 A. That's my point.

6 Q. I understand. But the boat was --

7 A. I mean, we enjoyed boating when he
8 wasn't sick and dying -- or I thought he was dying.
9 And, you know, luckily he didn't die right away.
10 But you still then focus on other things because
11 you know -- you don't -- for one thing, for 26
12 weeks we went up to Duke because it was the only
13 place he could get treatment. Every week we drove
14 up to Duke, every month we had to go to Duke until
15 he finished. Well, up until three months or maybe
16 the last six months. I mean, our lives were
17 consumed with other things --

18 Q. Oh, I understand.

19 A. -- than the boat.

20 Q. Right. Would you agree with me,
21 though, that the boat belonged to Dr. Coffey, or
22 you and Dr. Coffey, and it was available for your
23 use?

24 A. It was certainly available.

25 Q. Okay.

1 A. But we didn't use it.

2 Q. I'm going to show you what's been
3 marked as Plaintiff's Exhibit 5, and I know you've
4 never seen this document. Do you know Yannick
5 Madiot, M-A-D-I-O-T?

6 A. No.

7 Q. Well, I'll represent to you that this
8 is an affidavit which says Mr. Madiot of Beneteau
9 Boats sold the boat to St. Barts Yachts.

10 A. Uh-huh.

11 Q. Any dispute with that?

12 A. Not if that's what is says, no.

13 Q. Okay.

14 A. I can't dispute that.

15 Q. I'm going to you an affidavit that's
16 been marked as Plaintiff's Exhibit Number 6, which
17 is the affidavit of Charles Laughlin.

18 A. And who is he?

19 Q. Mr. Laughlin is --

20 A. Oh, the owner of St. Barts Yachts, I
21 seen that now.

22 Q. -- the owner of St. Barts Yachts.

23 A. Uh-huh.

24 Q. And he basically described his
25 understanding of the purchase and sale of the boat.

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1 I'd like for you to read that affidavit, if you
2 would please, all the way through -- to yourself.

3 A. This isn't true, I will say that,
4 because I didn't know.

5 Q. Well, go ahead and finish it and then
6 I'll ask you questions about it.

7 A. I know. Yeah, I know what this is. I
8 see it. I haven't read it all, but you can ask me
9 questions.

10 Q. Okay. Well, one of the questions I
11 want to ask you is: Is there anything in there
12 that in your opinion or to your knowledge is
13 inaccurate or --

14 A. Well, I don't know. See -- I -- I --
15 it says in here.

16 MR. ALFORD: Tell him what paragraph
17 you're referencing.

18 THE WITNESS: Well, see, I don't know
19 -- all I know is Greg Pittirizzi and Michael
20 obviously handled it, so I'd have to take the word
21 of this.

22 BY MR. PROFFITT:

23 Q. Okay.

24 A. I mean, I can't dispute it. I don't
25 know. They would put anything in front of me. I

1 mean, they bought the boat. I didn't know it went
2 from whatever -- Beneteau to St. Barts Yachts.

3 Q. Right.

4 A. I didn't know all that.

5 Q. I understand that.

6 A. So...

7 Q. But is there anything in the
8 affidavit --

9 A. And Mike then obtained a loan from
10 Wachovia -- see, I didn't know he did that, so I
11 would have to dispute that.

12 Q. You're looking at --

13 A. Are you saying this is my understanding
14 or this is his understanding?

15 Q. No, this is Mr. Laughlin's affidavit,
16 but you're looking at Paragraph 9?

17 A. I'm looking at Paragraph 9. It says he
18 obtained a loan from Wachovia Bank to buy the boat.
19 I didn't know that. He told me the boat was paid
20 for.

21 Q. Right.

22 A. That's what I'm telling you.

23 Q. Right.

24 A. Ann Coffey signed a Yacht Brokerage --
25 yeah, in this deal here, you know when this

Page 30

1 happened? It's when I was paying all these bills
2 in March, April, May, June, July.

3 Q. Right.

4 A. Maybe in August I finally woke up out
5 of the fog and said, you know, what is this? What
6 is this Wachovia mortgage? What are these credit
7 card things? And I start looking through --
8 believe me, if you want to see my husband's office
9 -- bunch of papers.

10 Q. Right.

11 A. And I found something that, you know,
12 was similar to -- the amounts were always
13 different, but it said boat loan. So I said, boat
14 loan? He told me -- you know, I could have killed
15 him, but he was all really dead -- I would have.

16 And -- so I assumed we had a boat loan
17 in September, and that's when I noticed in some
18 order that -- she told me, that I said -- I wrote
19 boat loan on the thing. I said, because that's
20 when I realized there was a boat loan. So when I
21 sold the boat I told this Ron Stoddard, I said, you
22 know, there must be some mortgage on the boat loan.
23 He called me back and said -- and he checked and he
24 said, there is no mortgage on it, it's paid for. I
25 said, well that's what I thought, but then I don't

1 know what this mortgage is. And he said, but I
2 can't make out the check to you because it's in a
3 corporation. So he made the check out to the
4 corporation.

5 Q. And the corporation you're talking
6 about is A & M Partners?

7 A. Yeah.

8 Q. Okay.

9 A. That Mike must of incorporated.

10 Q. All right.

11 A. In Delaware or wherever it was.

12 Q. All right.

13 A. But, I mean, he's the one that told me
14 it was paid for, that he didn't have to pay
15 Wachovia Bank..

16 Q. He being Dr. Coffey?

17 A. No, he being Ron Stoddard.

18 Q. Oh.

19 A. Ron Stoddard called me back after I
20 gave him the information on the -- the bill that
21 came. The bills that would come from Wachovia had
22 a number on it; you know, an account number.

23 Q. Right.

24 A. I said, there must be some mortgage
25 left on this boat. God no, did I know it was a

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1 line of equity? I thought maybe he had taken out a
2 small mortgage and paid off part of it or
3 something. And he called me back and he said, you
4 don't owe Wachovia anything, the boat's paid for.

5 Q. He being Ron Stoddard?

6 A. Ron Stoddard. So he made the check out
7 to me, to A & M Partners. I didn't tell him to do
8 it.

9 Q. All right. We'll talk more about that
10 in a few minutes.

11 A. Okay.

12 Q. So again, I mean, I understand what
13 you're saying with Paragraph 9. You didn't know
14 that there had been a loan.

15 A. Right.

16 Q. We went through that.

17 A. Uh-huh.

18 Q. Are there any other paragraphs with
19 which you take issue?

20 A. What is the second sale? I mean, what
21 does that mean?

22 MS. COFFEY-EDRI: It's when you sold
23 the boat.

24 THE WITNESS: Oh; oh, well, I'm
25 thinking -- what am I thinking?

1 MR. ALFORD: I'm going to interpose a
2 general objection to the form, because it think it
3 --

4 THE WITNESS: It's confusing me.

5 MR. ALFORD: If you could be a little
6 more specific about the concepts it might be
7 helpful, because I'm concerned that --

8 MR. PROFFITT: Okay. Well, let's just
9 do it -- I'm trying to think of the best way so we
10 don't have to go through this twice or three times.

11 THE WITNESS: With me you might have
12 to.

13 MR. ALFORD: Could we -- could we take
14 a short break?

15 MR. PROFFITT: Go off the record a
16 second.

17 (Off-the-record conference.)

18 BY MR. PROFFITT:

19 Q. Well, if you skip down to Paragraph 7,
20 where Mr. Laughlin asserts that, as you told me
21 basically --

22 A. Greg Pittirizzi.

23 Q. Greg was the intermediary?

24 A. Right.

25 Q. So that's more or less accurate as far

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1 as you know?

2 A. Right.

3 Q. All right. Paragraph 8 says that St.
4 Barts Yachts purchased it to resell it.

5 A. Uh-huh.

6 Q. We all know that.

7 A. I guess, yeah.

8 Q. Paragraph 9 we've talked about. How
9 you said you did not know there was a loan --

10 A. Right.

11 Q. -- until some point after Dr. Coffey's
12 death.

13 A. Right.

14 Q. Now, on the sale of it --

15 A. Uh-huh.

16 Q. -- that was in September 2005,
17 Paragraph 10.

18 A. Yeah.

19 Q. And you signed the Yacht Brokerage sale
20 agreement. Let's take a look that.

21 A. Uh-huh. And that is not true. Do you
22 know how I found out about St. Barts Yachts? Some
23 guy at the yacht club told me they sold their boat,
24 and I should call them.

25 I believe Mrs. Coffey knew that he had

1 purchased the boat through St. Barts Yachts -- no.

2 But he said, they were just good boat
3 dealers and the guy would sell the boat. Ron
4 Stoddard had sold his boat. So I called Ron
5 Stoddard. I had no clue that St. Barts Yachts was
6 involved in the first one.

7 Q. Okay. Before we jump into the 2005
8 sale --

9 A. Uh-huh.

10 Q. -- I want to go back for just a moment
11 to the 2001 sale. And I'm going to show you what's
12 been marked as Plaintiff's Exhibit 7, which I
13 represent to you are documents that we obtained
14 from Charles Laughlin at St. Barts Yachts.

15 A. Uh-huh.

16 Q. It's his sale file, basically.

17 A. Uh-huh.

18 Q. And your attorney's seen all this.

19 A. Uh-huh.

20 MR. ALFORD: Say yes.

21 THE WITNESS: Oh, I'm sorry, yes.

22 BY MR. PROFFITT:

23 Q. On Page 12, St. Barts Yachts 12,
24 there's a letter in here which shows that the loan
25 is coming from Wachovia.

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1 A. Uh-huh.

2 Q. And we all agree to that now. We all
3 know that the loan was from Wachovia for the boat,
4 correct?

5 A. I guess so, yeah.

6 Q. And on Page 14, there's some wire
7 transfer instructions where Wachovia transferred
8 money --

9 A. Yeah.

10 Q. -- to the account of St. Barts Yachts.

11 A. I believe you.

12 Q. Okay. Or actually, I'm sorry, the
13 money was transferred to Hilton Head Yachts, I
14 believe.

15 A. Whatever.

16 Q. All right. I'm going to show you
17 Plaintiff's Exhibit 8, which is an affidavit of
18 Marion Young. She is a Wachovia employee.

19 A. Uh-huh.

20 Q. And what this affidavit essentially
21 says is that the wire transfer occurred on July --

22 A. 30th.

23 Q. -- 30th, 2001.

24 A. Okay.

25 Q. From Wachovia to Hilton Head Yachts?

1 A. Okay.

2 Q. You agree with that?

3 A. I have to.

4 Q. In other words, at trial you're not
5 going to argue about the fact there was a wire
6 transfer?

7 A. No.

8 Q. Correct?

9 A. No.

10 Q. Good enough.

11 A. No, because it's there.

12 Q. Excellent. I'm show you what's been
13 marked as Plaintiff's Exhibit 9, which is
14 essentially the same thing -- it's documents from
15 Carolina First Bank, which was the bank for Hilton
16 Head Yachts. It also shows that \$125,000 was
17 transferred into the account of Hilton Head Yachts?

18 A. Okay.

19 Q. No debate about that, correct?

20 A. I guess not.

21 Q. I'll show you what's been marked as
22 Plaintiff's Exhibit 14.

23 A. Yes.

24 Q. Which I represent to you are documents
25 that by subpoena we obtained from -- by request, we

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1 obtained from the Delaware Secretary of State's
2 Office.

3 A. Uh-huh.

4 Q. These show that A & M Partners, Inc.,
5 was the entity that owned the sailboat that we're
6 taking about.

7 A. Uh-huh.

8 Q. And if you'll say yes.

9 A. Oh, I'm sorry, yes.

10 Q. And it is correct that A & M Partners
11 was -- held the title to the boat?

12 A. I guess so.

13 Q. All right. And if you'll look through
14 these documents, I believe it shows that you and
15 Dr. Coffey were the president or vice president --

16 A. Right.

17 Q. -- and officers of this corporation.

18 A. Right, because we did that before with
19 our other boats.

20 Q. Okay. And this corporation was owned
21 by you and Dr. Coffey?

22 A. Yeah.

23 Q. Is that correct?

24 A. Yeah, that's correct. Of course, he
25 wrote my name there. (Indicating). That's his

1 writing, not mine. But yeah, I guess it's correct.

2 Q. Okay. I'm going to show you what's
3 been marked as Plaintiff's Exhibit 15.

4 A. Wow.

5 Q. Which is a rather lengthy exhibit.
6 It's Pages 21 -- GLENN 21 through GLENN 126, I
7 believe.

8 A. Uh-huh.

9 Q. And it's --

10 A. All income tax?

11 Q. Yes, ma'am. I represent to you that
12 it's income tax returns.

13 A. Right. Uh-huh. I see that.

14 Q. And I've obtained these documents by
15 subpoena from --

16 A. Kirk Glenn.

17 Q. Kirk Glenn, who is Kirk Glenn?

18 A. The CPA.

19 Q. He's your CPA?

20 A. My husband's and my CPA.

21 Q. How long has he been your CPA?

22 A. Long time. I don't know how many
23 years. Pretty much -- a long time. Probably 12,
24 15 years. I mean, I can't tell you exactly.

25 Q. Okay.

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1 A. A long time.

2 Q. All right. And if I -- you're welcome
3 to look through this as much as you want to, but --

4 A. No. It's all right.

5 Q. -- but --

6 A. I don't need to. I've already probably
7 seen most of this.

8 Q. Pages 21 through 40 or so are documents
9 that show that A & M Partners was a holding company
10 for the yacht.

11 A. Right.

12 Q. Is that correct?

13 A. You know, I don't understand all that
14 so I'd have to say I don't know.

15 Q. All right. But you'll agree that the
16 documents show what they show?

17 MR. ALFORD: We -- yes, we agree that
18 the documents show what they show.

19 THE WITNESS: Okay.

20 BY MR. PROFFITT:

21 Q. All right. Now, if I could call your
22 attention to Page 55 of Exhibit 15.

23 A. Uh-huh.

24 Q. And I'll represent to you that this is
25 from your 2001 joint tax return.

1 A. Uh-huh.

2 Q. And you and your husband did file joint
3 tax returns, correct?

4 A. Right.

5 Q. All right. And on this page it shows,
6 Page 55 -- GLENN 55, it shows the Wachovia home
7 equity loan as a tax deduction.

8 A. Uh-huh.

9 Q. It's a scheduled deduction.

10 A. Uh-huh, uh-huh.

11 MR. ALFORD: Say yes.

12 THE WITNESS: I see that.

13 BY MR. PROFFITT:

14 Q. All right.

15 A. Do you think I ever looked at that?

16 Q. I don't know if you've looked at it.

17 A. Well, I mean --

18 Q. All right.

19 A. -- I see it there.

20 Q. All right. Would you agree with me
21 that it appears from this, as well as the
22 information obtained on the main tax forms, that
23 you and your husband took a tax deduction --

24 A. Well --

25 Q. -- for the home equity line interest?

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1 A. I guess they did -- I mean, I didn't.
2 I have to tell you we did joint returns, but I
3 didn't know this.

4 Q. I understand your husband and the
5 accountant prepared it.

6 A. Right, but I see it.

7 Q. Okay.

8 A. So I can't dispute it.

9 Q. All right. And then let's look at Page
10 84. And it's a similar schedule that shows in 2002
11 you and your husband did the same thing --

12 A. Uh-huh.

13 Q. You claimed the Wachovia home equity
14 line interest on your tax return in 2002 -- your
15 joint tax return.

16 A. I see that.

17 Q. All right. And then if I could point
18 you to Page 108, GLENN 108, of this same Exhibit
19 15.

20 A. He did it again probably.

21 Q. Yes, ma'am, only it appears to me, and
22 I'm not an accountant, but it appears that it may
23 have been taken and then backed out because you
24 were over the limit, but your accountant would
25 answer that question. But it appears that -- and

1 my question to you is:

2 Would you agree with me that it appears
3 you intended and tried to take the home equity line
4 tax deduction?

5 A. I personally? No, I would not agree
6 with that, because I don't really do this.

7 Q. Well, I understand you say you don't
8 prepare it, but --

9 A. I -- no, it was -- my husband worked
10 with him. I hate to plead crazy, but I am. I
11 mean -- so I can't agree, because I don't -- I
12 don't know.

13 Q. Okay.

14 A. I'm not lying to you.

15 Q. But you're not disputing that this --
16 these tax returns I've obtained --

17 A. No, I --

18 Q. -- Kirk Glenn --

19 A. No, it's right here.

20 Q. -- are yours and your husbands?

21 A. Yeah. Yeah, but, I mean, you're asking
22 me if I know this, no. But it is our tax return
23 but I don't know all that's on there.

24 Q. Okay.

25 A. That's what I'm saying.

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1 Q. Okay.

2 A. I pay no attention to it.

3 Q. All right.

4 A. Unfortunately.

5 Q. And then we'll look at one more page
6 that's a similar page for your 2005 return.

7 A. Uh-huh.

8 Q. And again, it shows -- I would assert
9 to you or ask you the same thing --

10 A. Yeah, it's on there.

11 Q. -- Wachovia home equity line is a --

12 A. It's on there.

13 Q. -- scheduled deduction?

14 A. Right.

15 Q. All right. I'm going to show you Page
16 -- GLENN 122 from this Exhibit 15.

17 A. Uh-huh.

18 Q. And it appears to be a letter on March
19 18th, 2002 in which Mr. Glenn wrote you and your
20 husband asking certain questions having to do with
21 your tax returns.

22 A. Uh-huh. And this is all my husband's
23 writing.

24 Q. It is? That was my question.

25 A. And I'm sure I never saw the letter.

1 Q. Right. But where it says on here --
2 there's a sentence on here, it says: I was unable
3 to trace the actual use of your increased home
4 mortgage proceeds. The limit on a home mortgage
5 loan is \$1,000,000 and \$100,000 for and equity
6 loan. And then, \$100,000 is circled and then above
7 that paragraph is written \$125,000 - Boat.

8 A. Yeah. Do you think I ever saw that?
9 This is the first time I've seen this.

10 Q. No. My only question to you is: This
11 is your husband's handwriting?

12 A. Yep.

13 Q. All right.

14 A. That's my husband's handwriting.

15 Q. Now, I'll show you Page GLENN 124,
16 which lists **Redacted** equity loan
17 \$6,563.28. Is that your husband's handwriting?

18 A. Uh-huh.

19 Q. All right. I'm going to show you
20 what's been marked as Plaintiff's Exhibit 13 --

21 A. Uh-huh.

22 Q. -- which consists of copies of --

23 A. Checks.

24 Q. -- checks.

25 A. Uh-huh. That's my husband's writing

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1 and mine over there; I can see it.

2 Q. If you'll flip through that and tell me
3 if all those appear to be checks written by your
4 husband. And I represent to you that my client,
5 Wachovia Bank, had these in their records.

6 A. So far so good. Uh-huh, yep. All of
7 them looks right to the end here.

8 Q. So all of the --

9 A. That's all his writing.

10 Q. -- checks contained in Exhibit 15,
11 which is Wachovia Page 1 through Wachovia Page 41,
12 are his handwriting and they are checks.

13 A. Uh-huh.

14 Q. Now, you flipped rather quickly but --

15 A. Uh-huh.

16 Q. And I represent to you that my client
17 has told me that these are checks paid on the home
18 equity line. Would you agree with me on that?

19 A. No, because I didn't know it was a home
20 equity line. I mean, I didn't pay attention. I
21 didn't know we had a home equity line. That's what
22 I'm telling you.

23 Q. Right, I understand that.

24 A. The boat was paid for. I didn't -- you
25 know, for -- he paid bills until I started paying

1 bills. He just paid bills. I didn't question it,
2 I'm sorry I didn't, but I didn't.

3 Q. Okay.

4 A. So I don't know what the -- what the --
5 I didn't know what it was for.

6 Q. Okay. So the only thing you can
7 testify to about this is that these --

8 A. These are checks to Wachovia.

9 Q. -- are indeed checks written by Dr.
10 Coffey?

11 A. Right.

12 Q. Okay.

13 A. Right.

14 Q. And I'll show you what we've marked as
15 Plaintiff's Exhibit 12.

16 A. Which is in my writing.

17 Q. And I represent to you that these are
18 checks --

19 A. That I wrote.

20 Q. -- that you wrote.

21 A. Right. What did I -- you know how much
22 confused I must have been in those days? Did you
23 see this? (Indicating).

24 Q. I did see that. And you're pointing
25 where you put the amount in the date line.

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1 A. Yeah, because, I mean, I was looking to
2 see what the date is. I mean, I just wrotely (sic)
3 paid bills for months. Whatever came in, I paid
4 until eventually I started waking up and saying,
5 what am I paying?

6 Q. Okay. Well, flip through those and
7 just --

8 A. Well, that's quite interesting.

9 Q. I want you to verify for me that these
10 are all checks written by you to Wachovia --

11 A. Uh-huh.

12 Q. -- on the home equity line that we're
13 here talking about today.

14 A. Right. And here when I wrote boat
15 payment is when I finally went through the end of
16 August, looked through a bunch of papers and said,
17 you know, we -- you know, I thought the boat was
18 paid for. (Indicating). There's a boat loan.

19 Q. Okay.

20 A. And I thought it was a mortgage that we
21 still owed them, what we've been paying on.

22 Q. Hold up right then. So we're looking
23 at Check Number 4253 on September 6, 2005?

24 A. Uh-huh.

25 Q. And it's in the amount of \$615.99?

1 A. Uh-huh.

2 Q. Paid on the home equity line?

3 A. Well, I don't know what it was paid on.
4 I put boat payment. I thought it was a mortgage.
5 Like a, you know, a regular mortgage.

6 Q. Well, tell me more about --

7 A. Yeah.

8 Q. -- how and when you discovered that
9 this particular account or debt was tied to the
10 boat?

11 A. Because I -- when I was going through
12 papers, just like those checks I -- you know, like
13 those notes, Wachovia boat loan, I found a piece of
14 paper that said Wachovia boat loan and it was for,
15 like, 400 and something which was --

16 Q. Were you going through papers at home?

17 A. Yeah, in his messy desk.

18 Q. Okay.

19 A. Uh-huh.

20 Q. And about what month --

21 A. And then in September --

22 Q. -- would this have been?

23 A. September. That's when I wrote boat
24 loan. Did you see boat loan on any of these others
25 that I was writing?

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1 Q. Well, when you wrote them from -- in
2 the months proceeding September, from March to
3 August --

4 A. I didn't have it -- I didn't have it on
5 there.

6 Q. Right.

7 A. Right.

8 Q. What did you think this debt was for?

9 A. I had no clue what it was for. I
10 figured it was a mortgage of something. Then I --
11 eventually I found the piece of paper and -- I
12 honestly never questioned my husband. He paid
13 bills. Could have been anything; he could have
14 borrowed money for anything.

15 Q. What made you think it was a mortgage?

16 A. Because the piece of paper I saw said
17 boat loan.

18 Q. I'm talking about before you saw the
19 piece of paper that said boat loan.

20 A. No, it was only -- the only time I saw
21 it, which was when I start writing it on these
22 checks.

23 Q. I know, but -- and after your husband
24 died in March --

25 A. Uh-huh.

1 Q. -- and you start making the payments --

2 A. Uh-huh.

3 Q. -- and you pay all the bills --

4 A. And I had no -- I did, and I had no
5 clue what it was for.

6 MS. COFFEY-EDRI: She was just writing
7 checks.

8 THE WITNESS: I just wrote checks,
9 that's all. I'm telling you the truth.

10 BY MR. PROFFITT:

11 Q. Right. No, I -- I know you are. I
12 believe you're telling me the truth.

13 But did you receive a statement from
14 the bank?

15 A. I received statements every month. I
16 just paid it. I just paid the amount. Didn't
17 question it, I should have.

18 Q. So from a period of March, April,
19 May --

20 A. I don't even remember -- did it say --

21 Q. -- June, July, and maybe August --

22 A. Right.

23 Q. -- six months or so --

24 A. I just paid the --

25 Q. -- you didn't know what you were

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1 paying; is that your testimony?

2 A. Right.

3 Q. And again, you're going through the
4 papers at home and you see something that says boat
5 loan?

6 A. Uh-huh.

7 Q. Was it a scrap?

8 A. Yeah, it was a --

9 Q. Was it a bank statement? What?

10 A. -- scrap or something. It was just
11 like the goofy writing that you saw stuff written
12 down and everything. It said boat loan, Wachovia.
13 So I said, huh, we got a loan on the boat, because
14 it was supposed to be paid for.

15 Q. And what did you do next to
16 investigate?

17 A. Nothing, because I was selling the
18 boat. And believe me, I've been trying to sell the
19 boat since he died.

20 Q. Okay.

21 A. So I didn't do anything because I
22 figured it'd be taken care of.

23 Q. Okay.

24 A. But I didn't know it was a home equity
25 loan.

1 Q. Well, if it had been taken care of, we
2 wouldn't be sitting here today.

3 A. I know. That's exactly -- if I could
4 have sold the damn boat faster, I would have. No,
5 that's the truth. I don't know what else to tell
6 you. I didn't investigate it, because I was told
7 that month I'd sell the boat, the next month I'd
8 sell the boat, and the next month, and I finally
9 did.

10 Q. Okay. Well, we'll get to that in a
11 moment. But -- all right. So in September --

12 A. But I really started -- then I really
13 started trying to -- that's probably when I called
14 what's his name -- I don't know -- Ron Stoddard,
15 because I said I got to get rid of this boat. I
16 don't want to be stuck with this boat.

17 Q. So by this point --

18 A. Uh-huh.

19 Q. Let me ask you this.

20 A. Uh-huh.

21 Q. By this point, you had seen a document
22 of some sort --

23 A. Not a document, a scrap.

24 Q. -- a scrap --

25 A. It wasn't a document.

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1 Q. -- of some sort, in Dr. Coffey's papers
2 that made you understand --

3 A. That he must of owed some money on the
4 boat because it said boat loan. Just like -- I
5 don't know.

6 MR. ALFORD: Let him finish his
7 question.

8 THE WITNESS: Go ahead.

9 MR. ALFORD: I'm sorry.

10 MR. PROFFITT: That's okay.

11 THE WITNESS: All right. I'm
12 listening.

13 BY MR. PROFFITT:

14 Q. By the time you wrote this check on
15 September 5th -- or September 6, 2005 where it says
16 boat payment on the memo --

17 A. Uh-huh, uh-huh.

18 Q. -- you understood, based on your --

19 A. That there was --

20 Q. -- viewing of documents Dr. Coffey's
21 records --

22 A. Not records. You wouldn't quite call
23 them records.

24 Q. -- that --

25 A. Paper.

1 Q. -- that this particular debt was tied
2 to the boat?

3 A. Yes, something led me to believe that,
4 right. And I -- you know, to tell you the truth I
5 can't exactly remember, but I wouldn't of put it
6 down there if I didn't think it was.

7 Q. All right.

8 A. And that's when I said get rid of the
9 boat.

10 Q. Okay.

11 A. Not that I wouldn't trust you --

12 Q. So that made you, it sounds like, want
13 to sell the boat even more because you --

14 A. Are you kidding? Yeah. I mean, the
15 boat was -- well, I was trying to sell it anyway.
16 I put it online one time, you know, but nobody
17 bought it.

18 Q. All right. And just to clarify, I'm
19 not sure we got this far, the following two checks
20 both in the memo lines state boat payment on GLENN
21 -- I'm sorry, on Page WACH, W-A-C-H, 06 --

22 A. And 07.

23 Q. -- and WACH 07?

24 A. Uh-huh, right.

25 Q. All right. I'm going to hand you

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1 what's been marked as Plaintiff's Exhibit 10.

2 A. Uh-huh.

3 Q. And I'll represent to you that this
4 again is from Wachovia's files on a prior mortgage
5 that you had with them. And it's an appraisal of
6 your house at **Redacted** here on Hilton Head.
7 Does that appear to be correct?

8 A. Yes, it does.

9 Q. Okay. Look at the pictures of it. Is
10 that your house in the pictures of the --

11 A. No. That's my house and that's my
12 house. (Indicating).

13 Q. Okay.

14 A. But the other isn't.

15 Q. I think the others are comparable --

16 A. Right, right, right.

17 Q. All right. And am I accurate in
18 stating that this appraisal shows that as of June
19 27th, 2001 your apparently very nice house is worth
20 2.1 million dollars?

21 A. The lots worth it; we just live in the
22 house.

23 Q. \$2,100,000, that's what this document
24 shows?

25 A. That's what it shows, yes.

1 Q. Would you agree that it's probably
2 worth more today?

3 A. Not in today's market.

4 Q. True.

5 A. I was wondering that, to tell you the
6 truth.

7 Q. Okay. And I'm going to show you what's
8 been marked Plaintiff's Exhibit Number 11, which is
9 a uniform residential loan application.

10 A. Uh-huh.

11 Q. In June of 2001 that, again, was in
12 Wachovia's files --

13 A. Uh-huh.

14 Q. -- on a prior mortgage that you had
15 with Wachovia.

16 A. Uh-huh.

17 Q. Does that appear to an application
18 signed by you and your husband?

19 A. Yep, that's my writing.

20 Q. Okay. And does it show back on the
21 middle page the net worth of one million -- read
22 that number right there. (Indicating).

23 A. \$1,239,791.

24 Q. That's shown as your net worth on this
25 particular application?

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1 A. Yeah, I guess.

2 Q. Okay.

3 A. Okay.

4 Q. All right.

5 A. I don't know where that figure came
6 from, but...

7 Q. I'm going to show you what's been
8 marked as Plaintiff's Exhibit 16.

9 A. Uh-huh.

10 Q. It's a -- I represent to you that this
11 is something, again, that we got from St. Barts
12 Yachts that is an advertisement they placed online
13 for your boat.

14 A. They could have, I didn't see it.

15 Q. Does that appear to be your boat?

16 A. Yeah, but they all look alike. Will
17 they do -- they're all...

18 Q. Okay.

19 MR. ALFORD: Could I see that?

20 THE WITNESS: Well, I mean, a
21 Beneteau's a Beneteau, it's not like it's a custom
22 boat. And I never did see that. He said they put
23 it on something, but...

24 BY MR. PROFFITT:

25 Q. All right. Okay. So I think that we

1 were to the point where as of September 5th or 6th,
2 2006 you had realized that it was a boat loan that
3 you had with Wachovia. And you had been trying to
4 sell the boat for some time.

5 A. Well, I mean, you know, I put it online
6 maybe in July or something.

7 Q. Had you put it --

8 A. My son actually give me that idea in
9 Chicago. He said, why don't you just put it online
10 and see what happens. We found out what really
11 happens is you get a bunch of hoops, who want to
12 cheat you or, you know, people who buy boats.

13 Q. Right.

14 A. So we didn't do that right. And then I
15 finally was -- I put a for sale sign, myself, in
16 the marina.

17 Q. Where was the boat at this time?

18 A. Still at Windmill Harbor paying on slip
19 fees.

20 Q. Okay.

21 A. You know there were a lot of things
22 making me want to sell the boat besides just not
23 needing a boat.

24 Q. Right.

25 A. One was renting a slip, which was like

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1 450 or 475 a month.

2 But I put a for sale sign in the
3 window, and then a guy next door says that Ron
4 Stoddard sold his boat, so I called him.

5 Q. Okay.

6 A. Because I wasn't good at showing boats
7 anyway.

8 Q. Had you put it with any boat dealers
9 before that?

10 A. No.

11 Q. And did you recall that Ron Stoddard
12 was involved -- involved -- or St. Barts Yachts was
13 involved in the prior sale?

14 A. No, it was only because the guy that
15 had the boat next to me said that he -- Ron --
16 because he knew my boat was for sale. And he said
17 if you're trying to sell it, I know somebody who
18 can sell the boat.

19 Q. Okay.

20 A. He sold one of my boats. So I called
21 Ron, specifically, Ron Stoddard with St. Barts
22 Yachts not having a clue -- because I thought Greg
23 Pittirizzi bought the boat from Beneteau, I guess.

24 Q. Okay.

25 A. What does that have to do with anything

1 anyway?

2 Q. Well, regardless, you went back -- you
3 went to St. Barts Yachts?

4 A. I went to St. Barts Yachts but it was
5 for -- it was because the guy next to me told me,
6 hey, you know, this guy was good and he sold my
7 boat.

8 Q. Okay. Fair enough. I'll show you
9 what's been marked as Plaintiff's Exhibit 17.

10 A. Uh-huh..

11 Q. And it's a yacht brokerage -- on Page,
12 ST. BARTS 25, it says Yacht Brokerage Central
13 Listing Agreement.

14 A. Yeah.

15 Q. Does that appear to be the agreement
16 you signed with St. Barts Yachts to sell your boat?

17 A. I don't -- my name's there.

18 Q. What's the date of that agreement?

19 A. On this date, 9/28/2005.

20 Q. All right. So on September 28, 2005
21 you go to St. Barts Yachts and agree for them to
22 sell the boat.

23 A. Right.

24 Q. All right. And I believe you've
25 already testified that Judge Coffey was involved at

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1 some points with this trying to sell the boat.

2 A. Uh-huh.

3 Q. And ST. BARTS 28 is a letter from her
4 to St. Barts Yachts. I believe it's discussing an
5 offer to sell it.

6 A. Uh-huh, right, uh-huh.

7 Q. And what's the date of that letter on
8 Page 28?

9 A. 11/30/05.

10 Q. Okay.

11 A. Took him awhile.

12 Q. I believe on page ST. BARTS 40 of this
13 Exhibit -- I'm sorry -- 17, this is a fax from Ron
14 Stoddard discussing -- well, it says something like
15 I believe you wanted me to talk to Michael. I need
16 his contact information, referring to Michael
17 Coffey?

18 A. Oh, he sent this to you. I never saw
19 this before. What are you asking me this for? I
20 never saw this.

21 Q. I'm just asking you if this document
22 confirms your prior testimony that Michael also was
23 involved somewhat in the sale of the yacht.

24 A. Michael who?

25 Q. Michael Coffey.

1 A. How could he be involved when he's
2 dead?

3 MS. COFFEY-EDRI: Michael Peter.

4 BY MR. PROFFITT:

5 Q. I'm sorry, your son.

6 A. Oh, my -- oh.

7 MS. COFFEY-EDRI: Sorry.

8 BY MR. PROFFITT:

9 Q. Sorry. Michael P. Coffey.

10 A. Michael P. Coffey -- yeah, I mean, he's
11 the one who told me to put it online. He wasn't --
12 and I guess you must of asked to help.

13 MS. COFFEY-EDRI: I'll deal with that.

14 MR. PROFFITT: Okay.

15 THE WITNESS: Okay.

16 BY MR. PROFFITT:

17 Q. All right. And then on Page 48, ST.
18 BARTS 48, in this Exhibit 17 --

19 A. Uh-huh.

20 Q. -- does that appear to be the bill of
21 sale on January 5th, 2006?

22 A. I guess.

23 Q. Did you sign that or did Maureen sign
24 that?

25 A. I'm sure I was out of town and she was

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1 my Power of Attorney, because that's usually when
2 I'm in Chicago for New Years.

3 Q. You always go to Chicago on New Years?

4 A. Yeah, that's where my son is. And I
5 stay here on Christmas with her kids. I go up
6 there for New Years. And then I stay because I
7 have other family there, so I stay there a week or
8 10 days.

9 Q. And then again on Page 49 is a document
10 called Yacht Purchase and Sale Agreement.

11 A. Purchase and Sale agreement, uh-huh.

12 Q. Dated December 7th, 2005; is the
13 correct?

14 A. Uh-huh.

15 Q. So that's when you reached the deal
16 with the buyer?

17 A. Must of been, I guess.

18 Q. All right. I'll show you what --
19 Exhibit 17 Page 55, which is, again, a document we
20 obtained from St. Barts Yachts from their sale file
21 on your boat.

22 A. Right, and that's right.

23 Q. And it's the disbursement sheet?

24 A. Uh-huh.

25 Q. And it appears to show you that you

1 received \$100,000 from the sale of the boat.

2 A. Uh-huh.

3 Q. Is that correct?

4 A. Right.

5 Q. Did you receive any more than that or
6 is this accurate?

7 A. You know -- any more? I -- I don't
8 remember the 75, but, hey, you know, it's a small
9 number compared to that.

10 Q. Right.

11 A. No, I didn't receive any more than
12 that.

13 Q. Okay. And when you received that
14 check, was the check made out to you?

15 A. A & M Partners. (Indicating).

16 Q. All right. Parentheses, Ann Coffey.

17 A. No, my name is not on the check.

18 Q. Okay.

19 A. Do you have a copy of the check?

20 Q. No, ma'am.

21 A. Oh. No, it was made out to A & M
22 Partners. So I banked at Bank of America, so I
23 took it over there.

24 Q. So you took the check to Bank of
25 America and did what with it?

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1 A. Uh-huh, and they deposited it. They
2 opened an account for me.

3 Q. What kind of account did you put it in?

4 A. Well, I think I -- you know what? I
5 thought it was in my personal account, but I can't
6 remember to tell you the truth. I just give it to
7 my personal banker.

8 Q. Okay. So you just took the \$100,000
9 and put it in your account at Bank of America?

10 A. Right, because Ron Stoddard told me
11 that there was no mortgage on it.

12 Q. Right.

13 A. Otherwise, he wouldn't have made the
14 check out to me. I did not tell him that he had to
15 make the check out to me.

16 Q. Okay. All right. Let's talk some more
17 about your dealings with Ron at St. Barts Yachts
18 and --

19 A. Uh-huh. Oh, God, you don't want to get
20 me in that one.

21 Q. I don't want to know all the ins and
22 outs of the sale itself --

23 A. No, no.

24 Q. -- except for the end result.

25 A. Just the booth.

1 Q. And what I really want to know is --

2 A. Uh-huh.

3 Q. -- when did you decide that it was not
4 necessary to pay off the Wachovia Home Equity Line
5 of Credit that's at issue in this case?

6 A. Because I never knew there was a Home
7 Equity Line of Credit. I mean, I knew there was
8 maybe a small mortgage -- of course, I was told the
9 boat was paid for four years before, you know. How
10 much mortgage could there be? And then when I told
11 Ron, I said, you know, there's something -- you
12 better hurry -- and you can ask her. She can
13 explain all that to you. She found out all the ins
14 and outs. But he called me back and I said, look,
15 I've got this bill, I think it's a boat loan, this
16 is the account number, he used that account number,
17 checked with Wachovia and they said, you know --

18 Q. He being Ron Stoddard?

19 A. Ron Stoddard.

20 Q. So Ron checked with Wachovia?

21 A. Right. I gave him the account number.
22 He said I need to know, you know -- because I said
23 there's got to be money owed on it. And he checked
24 with Wachovia. He said the boat's paid for.

25 Q. Okay.

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1 A. So we'll make the check out to the
2 corporation.

3 Q. All right. Did you ever call Wachovia
4 --

5 A. No.

6 Q. -- and ask about this loan?

7 A. No.

8 Q. And why not?

9 A. You know, an awful lot had gone on in
10 how many months now -- six months, seven months?
11 No. And I figured I'd sell the boat, so I didn't.
12 It wasn't like I was going to hold on to it and
13 keep making payments and just go like an idiot
14 forever. But finally when I woke up about the boat
15 thing, get rid of the boat, get rid of the slip,
16 and that's it.

17 Q. All right.

18 A. I never checked with Wachovia. I'm
19 sorry I'm ignorant about all that stuff, but I
20 didn't take care of a lot of this.

21 Q. Right. Did you ever ask any of your
22 family members including Maureen or Michael about
23 what you should do on the boat loan?

24 A. No.,

25 Q. Did you ever ask anyone else?

1 A. No. I just knew I had to sell the
2 boat.

3 Q. Did you know what the current balance
4 was on the boat loan at the time of the sale of the
5 boat?

6 A. No.

7 Q. Did you not get monthly statements from
8 the bank showing those amounts?

9 A. Well, Mike, obviously he got them for
10 years. He paid the bills. I paid the bills from
11 the time he died; you know, I just wrotely (sic) as
12 they came in and then I started asking questions.
13 That's -- that's my story, I'm sticking to it.
14 What do you want me to say?

15 Q. Well, why --

16 A. I didn't inquire; I was a little
17 stupid, I know. I'm agreeing to this. I mean, I
18 was very dumb from a lot of reasons, but -- a lot
19 of ways, but I just didn't.

20 Q. Did you receive monthly statements on
21 the Wachovia boat loan from Wachovia?

22 A. Yep.

23 Q. And did those statements have the total
24 amount due on them?

25 A. No.

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1 Q. They didn't?

2 A. I don't think so.

3 Q. Okay.

4 A. Those are like bills, it's says how
5 much you owe each month. And if it did, I didn't
6 look, because I just, you know, paid the bills.

7 Q. All right. At what point during this
8 boat sale were you talking to Ron about the
9 existence or non-existence of a loan that applied
10 --

11 A. Well, when he sold the boat -- I think,
12 I told him when I signed up that I -- that I just
13 found out that there's some mortgage on this boat,
14 so he knew that. So he called me and asked me who
15 it was and, you know, I gave him the number and he
16 checked and said there was no mortgage.

17 Q. You give him Wachovia's number or what?

18 A. Gave him the amount number.

19 Q. Okay. The account number.

20 A. And he called Wachovia and told me
21 there wasn't a mortgage.

22 Q. So Ron told you there was no mortgage?

23 A. Ron told me that.

24 Q. And you took Ron's word?

25 A. Yes, and I took his check. Why

1 wouldn't I? I mean, what am I supposed to do?

2 Q. And you didn't check with Maureen or
3 Michael?

4 A. No. I mean, she looked up some stuff
5 for me. I know she can't talk right now. Because
6 he said it was in a corporation, and she's going,
7 huh? Because she didn't even know about the
8 corporation. She didn't know if it was in South
9 Carolina or Georgia, and then she found out it was
10 in Virginia or somewhere. I don't know.

11 Q. All right. When did you learn the
12 total amount of the home equity loan that was owed?

13 A. When the lawsuit came up.

14 Q. And not before?

15 A. No. I wouldn't -- you know, and you
16 know how mad it made me? I don't know -- you don't
17 -- okay, I won't say anymore, but that's when I
18 found out.

19 Q. No, you can tell me why it made you
20 mad.

21 A. Well it made me furious.

22 Q. Why?

23 A. I would never -- with a dying husband,
24 supposedly dying, even though he lived, bought a
25 boat on a home equity loan, ever. You know, it

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1 wasn't like he was well, and he made some very poor
2 decisions. No, I wouldn't have done it and I was
3 furious. I thought at least maybe it was a small
4 mortgage and he was paying on a mortgage and just
5 told me it was paid for, you know. But not it's
6 the whole...

7 Q. Right.

8 A. It made me mad.

9 Q. Okay.

10 A. So I didn't know until all this came
11 out that Wachovia was going to sue because he owed
12 this money.

13 Q. All right. Tell me why you believe you
14 do not owe Wachovia \$125,000.

15 A. Because they work -- they should --
16 they put it on my house.

17 Q. Pardon?

18 A. They -- they -- they used my house as
19 equity. And I don't think I owe that money. I
20 didn't know he bought the boat; I thought the boat
21 was paid for. Wachovia certainly didn't tell me
22 that he used it. Nobody notified me. I didn't
23 know that until this year, and I think they ought
24 to start shaping up their act.

25 Q. One thing I forgot to do, which I want

1 to bounce back and do now. Okay.

2 I'm going to show you what's been
3 marked as Plaintiff's Exhibit 21?

4 (PLF. EXH. 21, List of Mortgages and
5 Deeds recorded at the Beaufort County Register of
6 Deeds Office, were marked for identification.)

7 A. Uh-huh.

8 Q. And I'll represent to you that it's a
9 list of mortgages and deeds and --

10 A. Yeah, it looks like Greek to me.

11 Q. -- related documents --

12 A. Yeah.

13 Q. -- that are on file at the Beaufort
14 County Register of Deeds Office --

15 A. Uh-huh.

16 Q. -- which we've obtained in the course
17 of this lawsuit.

18 A. That's fine.

19 Q. And I have all the documents with me --

20 A. Uh-huh.

21 Q. -- if you'd like --

22 A. No.

23 Q. If it's necessary we can go through
24 them, but I don't think it will be.

25 MR. ALFORD: We'll stipulate that the

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1 records reflect what they reflect.

2 BY MR. PROFFITT:

3 Q. Excellent. So what I want to ask you
4 with regard to this four page exhibit is: By my
5 total, and you're again welcome to sit here and add
6 them up, but if you go down this list for the
7 various properties that you and your husband have
8 --

9 A. Owned and not owned and --

10 Q. Over the years.

11 A. Uh-huh.

12 Q. Owned and not owned over years.

13 A. Uh-huh.

14 Q. That -- since 1980 you've signed 29
15 mortgages. Would you agree with that?

16 A. 29 mortgages? I haven't a clue. It
17 says that here, so what am I going to argue? But,
18 I mean, that sounds like a lot to me. But then it
19 is 25 years.

20 Q. True. And let's also point out that
21 this exhibit shows that these mortgages and deeds
22 pertain to Lot 9 of South Beach Subdivision, which
23 is your home at **Redacted** correct?

24 A. Uh-huh, uh-huh.

25 Q. And they also -- this exhibit also

1 pertains to Unit No. I-143 in Windmill Harbor.

2 A. Oh, that was the boat slip.

3 Q. Which is the boat slip.

4 A. Uh-huh. That's the medical bills.

5 (Indicating).

6 Q. 9 Island Medical Plaza, your doctor --
7 your husband's office, correct?

8 A. Right. But it's in my name.

9 Q. Right. 59 Ashton Cove Drive.

10 A. Uh-huh, uh-huh.

11 Q. Which is that where you live Maureen?

12 A. Uh-huh.

13 Q. Is that where -- okay.

14 A. And then this lot.

15 Q. And then Lot 17-B which is --

16 A. Right, uh-huh.

17 Q. Is that an undeveloped lot still?

18 A. Uh-huh.

19 Q. Okay. So it's several parcels of
20 property?

21 A. Uh-huh.

22 Q. But as far as we've been able to
23 determine, you've signed 29 mortgages over the
24 years?

25 A. Probably.

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1 Q. Okay. And you've signed one deed and
2 you've signed one Power of Attorney?

3 A. Uh-huh -- I guess.

4 MR. PROFFITT: And if we can take one
5 quick break, I need to find one document.

6 (A recess transpired.)

7 BY MR. PROFFITT:

8 Q. I'm going to show you we've marked as
9 Plaintiff's Exhibit 22.

10 (PLF. EXH. 22, Limited Power of
11 Attorney, was marked for identification.)

12 A. Uh-huh.

13 Q. Which is Limited Power of Attorney.
14 It's a deed book 1352 page 1471. What's the date
15 of that document?

16 A. I don't know.

17 Q. Should be on it somewhere?

18 A. Oh, November 2000.

19 Q. Okay.

20 A. Uh-huh.

21 Q. And if -- you're welcome to read it,
22 but what I'll tell you is that it has to do with
23 the refinance of the second mortgage on your home
24 at **Redacted**

25 A. Uh-huh.

1 Q. And you've given Dr. Coffey a Power of
2 Attorney to sign documents related to a mortgage on
3 your home.

4 A. Well, you know what? I don't remember
5 doing it, but that's all right. It doesn't
6 pertain. I mean, I don't remember doing it. I
7 don't know why I would have done that.

8 Q. Now, we're not asserting that it's --

9 A. I mean, I honestly don't remember.

10 Q. -- that it directly applies in this
11 case, because it had a 30-day life on it.

12 A. I don't know why I would have done
13 that.

14 Q. But --

15 A. When was that -- November of 2000.

16 Q. This is your signature, correct --

17 A. Yeah.

18 Q. -- on the Power of Attorney?

19 A. That's my signature. I don't know why.
20 I mean, I have no clue.

21 Q. All right.

22 A. That was seven years ago -- six years
23 ago.

24 Q. All right. So again I can't -- and
25 then last year's certificate, but you have no

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1 objection and do not dispute the fact --

2 A. No.

3 Q. -- that at least, as the record show,
4 you've signed 29 mortgages, one deed, and one Power
5 of Attorney at least --

6 A. I guess.

7 Q. -- as shown in the public records?

8 A. Yeah, a few too many.

9 Q. Okay. Ms. Coffey, what is a mortgage?

10 A. You know, that's a good question. It's
11 a bill.

12 MR. ALFORD: I'll object to the form.

13 THE WITNESS: Yeah. What's a mortgage?

14 BY MR. PROFFITT:

15 Q. If you have a mortgage on your house,
16 what does it mean?

17 A. You have to pay for it.

18 Q. And if you don't pay for it, what
19 happens?

20 A. They'll come take your house away.

21 Q. All right.

22 A. Or you, if you needed too.

23 Q. Have you ever believed that this Home
24 Equity Line of Credit is a mortgage?

25 A. No.

1 Q. Sitting here today --

2 A. No, I didn't -- no, I didn't know it
3 was mortgage. Now I understand it's a mortgage,
4 but I didn't.

5 Q. Sitting here today, do you agree with
6 me that it's a mortgage?

7 A. No.

8 Q. Why not?

9 A. I don't think it's the same. A
10 mortgage you pay down something. You pay down on
11 your -- you buy a house, you pay a mortgage, you
12 know. You don't owe the same amount at the end.

13 Q. I don't understand what you're saying.

14 A. I'm saying if I understand a mortgage
15 -- if I have \$100,000 and I -- you know, if I paid
16 \$1,000 a month, the interest, you know, in a
17 certain amount of time, you're paying down -- that
18 -- I don't look at a -- I don't -- I don't know
19 what a home equity loan is.

20 Q. You don't know what a home equity loan
21 is?

22 A. I've never -- I don't do that stuff.
23 So, you know, don't ask me business stuff because I
24 can't answer it. I just don't know.

25 Q. But you would agree with me you've

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1 signed lots and lots of business documents over the
2 years?

3 A. And, you know, I did. Not very smart
4 maybe all the time.

5 Q. All right. One thing I'm still not
6 clear on -- before I let you go I want to get clear
7 on this, as clear as I can, is your dealing with
8 Ron Stoddard as far as him telling you what the
9 story is --

10 A. He called me back. That's exactly what
11 it is.

12 Q. -- on your boat loan.

13 A. A couple days later.

14 Q. What exactly did he tell you when he
15 called you back?

16 A. He said that there was no mortgage on
17 my boat. And I said, well, that's what I thought,
18 there wasn't, but I saw the note that said boat
19 loan. So he said, so we'll make out the check. I
20 said, well then make the check out to me. He said,
21 we can't make it out to you because it's in a
22 corporation. So then, I think, that's where you
23 have to talk to her about it because she had to
24 look up stuff. (Indicating).

25 Q. And her -- you're pointing to Maureen?

1 A. Right.

2 Q. Did Ron Stoddard tell you who he talked
3 to at Wachovia?

4 A. No.

5 Q. Did he suggest that you call
6 Wachovia --

7 A. No.

8 Q. -- and investigate further?

9 A. No. He made a statement -- he made
10 statement to me. Ms. Coffey, there is no boat
11 loan.

12 Q. And as I've asked you before, and I
13 believe I understand this -- you didn't ask advice
14 of anyone else?

15 A. No, I don't think so. Not to my
16 recollection, I don't think so.

17 Q. You took Ron Stoddard's word for it?

18 A. Why wouldn't I? He's the boat
19 salesman. He's like a relator, I mean, isn't he?
20 They do all that stuff. Yeah, I took his word for
21 it.

22 Q. Okay.

23 A. I gave him information, he came back
24 with his information.

25 MR. ALFORD: Can we take like a

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1 five-minute break?

2 MR. PROFFITT: Sure.

3 MR. ALFORD: Okay.

4 (A recess transpired.)

5 BY MR. PROFFITT:

6 Q. All right. Ms. Coffey you mentioned a
7 couple of times that you didn't start paying bills
8 until after your husband --

9 A. No, I'm not saying I never paid a bill,
10 but basically -- to take on all the bills, yeah,
11 after he died. I mean, I might have paid a bill --

12 Q. So in your marriage Dr. Coffey did most
13 of the bills?

14 A. Paid the bills. He took care of the
15 finances. Robbed Peter to pay Paul, worked magic.

16 Q. Okay.

17 A. You know, I let him.

18 Q. Did you have your own checking account?

19 A. No.

20 Q. Did you just have the one joint
21 checking account?

22 A. No, actually, you know you won't
23 believe --

24 THE WITNESS: Should I show him this,
25 what I found yesterday? Actually --

1 MR. ALFORD: First answer his question,
2 and then if you want to tell him --

3 THE WITNESS: Did I have my own
4 checking account, no. Is that what you asked me?

5 BY MR. PROFFITT:

6 Q. Right. And during the marriage and --

7 A. Never.

8 Q. -- the time we're talking about --

9 A. Never, never, never, no. It was always
10 a joint account.

11 Q. Always a joint checking account --

12 A. I think so; I don't know.

13 Q. -- for household bills?

14 A. Yeah.

15 Q. All right. And just to clarify on the
16 \$100,000 in proceeds that was paid to A & M
17 Partners, Inc., or A & M, Inc., whatever the
18 records show, you put that in your account at Bank
19 of America?

20 A. Well, they -- I think -- you know what?
21 I don't remember if they opened up an account or
22 put it in my -- I can't remember anymore because
23 it's been, what, how many months?

24 Q. Okay. You deposited it in an account
25 at Bank of America?

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1 A. At Bank of America, right.

2 Q. Where it remains today?

3 A. Well, not really.

4 Q. What's happened to it?

5 A. Some of it got invested in stuff. I'm
6 not going to leave it sit in a bank account.

7 Q. All right. But it's still under your
8 control today?

9 A. Yes.

10 Q. You haven't given it away?

11 A. No.

12 Q. Kirk Glenn provided tax returns and
13 other records pursuant to our subpoena on other
14 businesses, and I just want to briefly ask you so I
15 understand --

16 A. Go ahead.

17 Q. -- make sure I understand what they
18 are.

19 A. Uh-huh.

20 Q. Diehl & Associates -- D-I-E-H-L &
21 Associates.

22 A. That's -- well, we had a restaurant and
23 he was the manager, but, I mean, it was this -- it
24 was a corporation that ended.

25 Q. Diehl was the manager?

1 A. Well, the corporation was Diehl &
2 Associates. It was my husband and I don't know if
3 it was me or not, but it was Mike and Mike Diehl
4 that had a restaurant on Tybee.

5 Q. On Tybee Island in Georgia?

6 A. Uh-huh.

7 Q. What kind of restaurant was it?

8 A. Seafood restaurant.

9 Q. And do you still have that?

10 A. No.

11 Q. What happened to that?

12 A. Sold it after Mike died.

13 Q. What's the name of the restaurant?

14 A. Now? You know to tell you truth, I
15 don't know.

16 Q. What was the name of the restaurant
17 then?

18 A. McElwees Seafood.

19 Q. How do you spell that?

20 A. M-C-E-L-W-E-E-S.

21 Q. Okay. So you no longer have any
22 interest in that restaurant?

23 A. No.

24 Q. Okay. What is Anna Bananas Republic,
25 Incorporated?

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1 A. Another mistake.

2 Q. Can you elaborate?

3 A. Yes. It was --

4 THE WITNESS: Is that the t-shirt shop?

5 MS. COFFEY-EDRI: No, that's Coconut

6 Republic.

7 THE WITNESS: Is that what he just
8 said?

9 MS. COFFEY-EDRI: Anna Bananas Coconut,
10 what is it? What did you say again?

11 MR. PROFFITT: What was on the records
12 is Anna Bananas Republic, Inc.

13 MS. COFFEY-EDRI: No, Anna Bananas --
14 maybe it Anna -- is Coconut Republic, is doing
15 business as Coconut Republic.

16 THE WITNESS: Yeah, it was a business
17 that her husband had, a t-shirt shop that closed.

18 MR. PROFFITT: That Maureen's husband
19 had -- a t-shirt shop here on the island?

20 MS. COFFEY-EDRI: Uh-huh.

21 BY MR. PROFFITT:

22 Q. Do you have an ownership interest in
23 that business?

24 A. No.

25 Q. Is it still in business?

1 MS. COFFEY-EDRI: No.

2 BY MR. PROFFITT:

3 Q. At the time it was in business, did you
4 have an ownership interest in it?

5 A. Did I? I don't want to comment on
6 that. I don't know the answer, so I don't know.

7 Q. Do you know if Dr. Coffey had an
8 ownership interest in it?

9 A. I don't know if he did or didn't.

10 Q. Okay.

11 MS. COFFEY-EDRI: He'll have to ask me.

12 THE WITNESS: Well, I don't know.

13 BY MR. PROFFITT:

14 Q. Okay. What is Fiesta Grill, Inc.?

15 A. That's another mistake; their all
16 mistakes that you're going to list, but I'll tell
17 you what they are. That was another restaurant.

18 Q. Where was it?

19 A. In Coligny.

20 Q. Where?

21 A. On the Island.

22 Q. Coligny Plaza here on the island?

23 A. Uh-huh. And we sold that when my
24 husband got sick.

25 Q. Okay.

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1 A. That was in 2001.

2 Q. Did you and your husband own that
3 outright or did you have partnership?

4 A. No, just the two of us.

5 Q. What kind of restaurant was it?

6 A. Mexican. It started out as Mexican.
7 We changed -- we changed it. Changed the food,
8 but, I mean --

9 MS. COFFEY-EDRI: To Mediterranean.

10 THE WITNESS: -- to Mediterranean.

11 BY MR. PROFFITT:

12 Q. Are there any other businesses within
13 the past ten years that you and your husband were
14 involved in --

15 A. No, just --

16 Q. -- other than the ones I've listed?

17 A. -- the restaurants, no.

18 Q. Okay.

19 A. And his work.

20 Q. Right. Were you involved at all in
21 your husband's medical practice?

22 A. No.

23 Q. Never were a bookkeeper?

24 A. Never. He didn't want me in the
25 office.

1 Q. Okay.

2 A. I talk too much. No, I mean, he told
3 me that one time.

4 Q. Okay.

5 A. Okay. I'm sorry, go ahead.

6 Q. Were you involved at all in helping run
7 any of these other businesses we've talked about?

8 A. Yeah --

9 Q. How?

10 A. -- I guess I could. Cooking, doing
11 stuff, not bookkeeping, we always had somebody do
12 that stuff.

13 Q. All right.

14 A. Mike didn't have time and I didn't know
15 how. So, you know, Kirk Glenn or we had an
16 accountant that did it.

17 Q. Did you act as manager at any of them?

18 A. That's using that term loosely. There
19 was no manager.

20 Q. Well, let's talk a minute about the
21 restaurant, McElwees.

22 A. Uh-huh.

23 Q. What did you do at the restaurant?

24 A. Nothing. It was on Tybee.

25 Q. Okay. So you didn't work there at all?

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1 A. No, never.

2 Q. What did you do at Anna Bananas
3 Republic or Coconut Republic?

4 A. I didn't do anything at Coconut
5 Republic. Anna's, you know, we had a manager;
6 Michael Diehl, was the manager with Diehl &
7 Associates.

8 Q. So he was involved in both the
9 restaurant and the t-shirt store?

10 A. No, we're not talking about the t-shirt
11 shop. We're talking about McElwees -- you asked
12 what Diehl & Associates was?

13 Q. Okay. Well, let's go back to McElwees.

14 A. Yeah.

15 Q. You told me you didn't have anything to
16 do with that one.

17 A. I, personally, didn't have anything to
18 do with it. I didn't work there. He was the
19 manager. He worked at the restaurant here, he
20 worked there.

21 Q. So he also worked at Fiesta Grill?

22 A. He managed both of them.

23 Q. Okay.

24 A. No, it wasn't Fiesta Grill, it was
25 Anna's Beachside; we changed the name.

1 Q. So it became Anna's Beachside?

2 A. That's it. Michael Diehl was involved
3 with both and he managed.

4 Q. All right. What did you do at Fiesta
5 Grill or Anna's Beachside?

6 A. Being there mostly just talking to
7 people. I mean, I didn't do much. I wasn't there
8 all the time.

9 Q. Now, did you help run it?

10 A. No.

11 Q. Did you hire people?

12 A. No, Michael Diehl did.

13 Q. Did you cook?

14 A. Well, once I did -- twice, maybe.

15 Q. Did you wait tables?

16 A. No.

17 Q. All right.

18 A. I really -- you know, I wasn't involved
19 in the restaurants, per se. I wasn't there all the
20 time.

21 Q. Okay.

22 A. And then when Mike got sick we just
23 said sell it because I had to be home.

24 Q. Right.

25 A. We didn't have it that long.

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1 Q. All right. During the marriage when
2 Dr. Coffey had his medical practice and you had
3 these other businesses, did you work outside the
4 home at all?

5 A. Twice. You want to know what I did?

6 Q. I do.

7 A. Want to know what he said after I did
8 it?

9 Q. Tell me what you did --

10 A. I worked in two different thrift shops
11 and when we made enough friends, we'd all quit and
12 went out to lunch, that was his story. You know, I
13 find friends -- I worked at SM Bradford and I
14 worked for Fines that used to be on Main Street.

15 Q. With what?

16 A. Fines, it was a thrift shop.

17 Q. Okay.

18 A. And, you know, I worked part time
19 and...

20 Q. Just selling clothes?

21 A. Yes, just selling clothes like three
22 days a week when my kids were in high school.

23 Q. Okay.

24 A. But that's all -- the only time I ever
25 worked outside of the home.

1 Q. Did you ever serve in any kind of
2 manager capacity in either of those stores?

3 A. No, because as he said, we made friends
4 and then we went out to lunch.

5 Q. Okay.

6 A. That's what he always said about my
7 job. No, I just did it for entertainment and to
8 buy clothes --

9 Q. Okay.

10 A. -- at a discount. Well, it's the
11 truth.

12 Q. All right. I'm going to show you
13 what's been marked as Plaintiff's Exhibit 18, which
14 are your responses to our requests to admit.

15 A. Uh-huh.

16 Q. Your attorney helped you put these
17 together, I would imagine. And I have some
18 questions about some of them.

19 A. Uh-huh.

20 MS. COFFEY-EDRI: Could you go off the
21 record for a second?

22 MR. PROFFITT: Sure.

23 (Off-the-record conference.)

24 BY MR. PROFFITT:

25 Q. All right. Did Dr. Coffey ever talk to

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1 you about the boat or the loan before his death?

2 A. No. Talked about the boat.

3 Q. Okay. So he talked about the boat --

4 A. Talked about the boat.

5 Q. -- but not --

6 A. Never.

7 Q. -- the mortgage that we're talking
8 about here today?

9 A. No.

10 Q. Or the boat loan?

11 A. Are you kidding? He knew better.

12 Q. Was he -- why do you say that?

13 A. Because I don't -- you know what? He
14 knew it wasn't a good idea to buy a boat having
15 cancer. You have to understand his mindset.

16 Q. So was he afraid you were going to be
17 upset?

18 A. He just -- you'd have to know my
19 husband, I guess. No, he just wouldn't mention it,
20 lets put it that way. He wouldn't mention it. I
21 don't know what he -- he thought, he just wouldn't
22 mention it.

23 Q. Did Dr. Coffey ever talk to you about
24 going to Wachovia and sitting down with the bank
25 officers there and arranging this Home Equity Line

1 of Credit at all?

2 A. What do you think my answer is? No,
3 I'm sorry.

4 Q. Okay.

5 A. Well, I'm getting tired to be honest
6 with you.

7 Q. We're nearly done.

8 A. Okay. No, he never did.

9 Q. I'm going to read you Request Number 8.
10 I asked you and the other Coffey family dependants
11 to admit that Michael Coffey, Dr. Coffey, at the
12 time he obtained the Home Equity Line of Credit on
13 or about July 23rd, 2001 did not intend to defraud
14 or cheat Wachovia Bank out of the mortgage loan
15 proceeds.

16 A. I don't know what he thought. I mean,
17 what am I going to say to that?

18 Q. How many years were you married to Dr.
19 Coffey?

20 A. 40.

21 Q. Well, do you feel like you knew Dr.
22 Coffey fairly well?

23 A. Yep.

24 Q. Well, if Dr. Coffey were sitting here
25 today, what do you think he would tell you about

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1 the home equity line?

2 A. I don't know. I don't know. He didn't
3 tell me about the boat until it was purchased. I
4 can't tell you. I always trusted my husband, but,
5 hey. No, he never talked about it.

6 Q. Do you believe that Dr. Coffey would
7 intend that the loan be repaid or not be repaid?

8 MR. ALFORD: I'm going to --

9 THE WITNESS: I'm not going to answer
10 that.

11 MR. ALFORD: I'm going to object to the
12 form.

13 THE WITNESS: I was just going to say,
14 I'm not going to answer that.

15 MR. ALFORD: But, no, you do have to
16 answer it. Either -- if you can't, you can't. But
17 you have to -- I cannot --

18 MS. COFFEY-EDRI: You have to give a
19 response. If you don't know, you don't know.

20 THE WITNESS: I'd have to say I don't
21 know because of what he was going through. I don't
22 know; I have no clue. I mean, chemotherapy, let me
23 tell you, effected him for a year after.

24 BY MR. PROFFITT:

25 Q. Well, let me ask you this. And I

1 understand that and -- I understand that.

2 Was Dr. Coffey generally an honest
3 person?

4 A. Honest with me, he was. I can't -- I
5 guess so. What do you want me to say?

6 Q. What was Dr. Coffey's reputation for
7 honesty in the community?

8 A. Decent reputation, I guess.

9 Q. What was he --

10 A. You know, I --

11 Q. I didn't know Dr. Coffey so that's why
12 I'm asking this. And I'm not trying to be --

13 A. I know.

14 Q. -- irritating, but --

15 A. Well, you are.

16 Q. Was he known as an honest person in the
17 community or was he known as a dishonest person?

18 MR. ALFORD: I'm going to object to the
19 form.

20 THE WITNESS: It's a ridiculous
21 question.

22 MR. PROFFITT: You can object.

23 MR. ALFORD: But -- but -- but you
24 still you have to -- even if I object to the form,
25 you have to just give your best answer.

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1 MS. COFFEY-EDRI: It you don't know,
2 you don't know.

3 THE WITNESS: I'd have to say I don't
4 know. I'll say I don't know, because I mean, you
5 know -- I mean, it's getting ridiculous.

6 BY MR. PROFFITT:

7 Q. All right. And I'm not talking about a
8 period after he was diagnosed with the lung cancer,
9 I'm talking about before that. In the years
10 proceeding that -- in all the 40 years you were
11 married, is what I'm asking.

12 A. Well, let's just say that 36 of them he
13 was okay.

14 Q. And during that 36-year period, would
15 you say or would you say that not -- that he was
16 not an honest person or he was?

17 A. I would have to guess he was.

18 Q. Okay.

19 A. I mean, that's what I'd guess.

20 Q. All right.

21 A. He wasn't honest with me, however,
22 about that.

23 Q. With regard to the boat loan?

24 A. Yeah.

25 Q. Do you believe that Dr. Coffey knew

1 what he was doing when he went to Wachovia and got
2 the Home Equity Line of Credit?

3 A. I don't know what he was thinking. I
4 really don't -- I don't.

5 Q. All right. On Number 10, I've asked
6 you to admit that the proceeds of the Home Equity
7 Line of Credit from Wachovia in the amount of
8 \$125,000 were deposited into Dr. Coffey's account
9 on or about July 30th, 2001.

10 A. I didn't even know he had an account.

11 Q. Right. But based on what we've looked
12 at here today --

13 A. Yeah, he did.

14 Q. -- it appears that -- we're not arguing
15 about that anymore?

16 A. Well, he did because I found a
17 checkbook from Wachovia with his name on it and my
18 name's not on it.

19 Q. Okay. But as far as where I'm asking
20 you to admit these proceeds were actually deposited
21 into the -- from the home equity line --

22 A. I guess I'd have to admit it, because
23 we saw that, right? Didn't we see it in all these
24 papers?

25 Q. Well, that's what -- that's my point.

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1 I'm just trying to clarify Request Number 10. And
2 I believe we've done that so we're good.

3 A. Okay.

4 MR. ALFORD: You all right?

5 MR. PROFFITT: If you need to take
6 another break we can.

7 THE WITNESS: No, I'm fine.

8 BY MR. PROFFITT:

9 Q. All right. On Request Number 20, I'm
10 not clear on your answer here.

11 A. What is it?

12 Q. I only have one copy of this, but I
13 basically ask you to admit that in addition to all
14 the checks that we looked at earlier --

15 A. Uh-huh.

16 Q. -- in one of the exhibits that Dr.
17 Coffey wrote to Wachovia bank, that he also wrote
18 others. And that he regularly made monthly
19 payments.

20 A. Well, he probably did.

21 Q. Well, you denied it, and that's my
22 question.

23 A. I denied it, that he made other
24 payments? Before he died he did. He must have,
25 right? I mean, I don't know. I mean, you know,

1 I'm guessing. I -- can I guess?

2 MR. ALFORD: No. Well, you have to
3 answer any question he asks you.

4 If from what we've learned here today
5 we need to clear up these answers, we'll follow up
6 and clear up the answers.

7 MR. PROFFITT: All right.

8 MR. ALFORD: And you'll have whatever
9 rights you have under the rules of procedure.

10 MR. PROFFITT: Right.

11 BY MR. PROFFITT:

12 Q. Well, let me ask you this way.

13 A. Uh-huh.

14 Q. When you began paying the bills in
15 March or April of 2005 after he died --

16 A. Right.

17 Q. -- the account was current, correct?

18 The boat loan account was current?

19 A. As far as I know it was.

20 Q. Okay.

21 A. Uh-huh.

22 Q. And would that not indicate that he has
23 made monthly payments all along?

24 A. Yeah.

25 Q. Okay.

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1 A. I would guess so.

2 Q. I was just confused by your denial, but
3 I think you've cleared it up.

4 A. He made a payment -- I don't know --
5 you know, I didn't know at the time it was for the
6 boat.

7 Q. No, I understand. I understand that.
8 You've testified to that.

9 Now, sort of the same question with
10 Number 22 where I ask you essentially the same
11 question after he died --

12 A. Uh-huh.

13 Q. -- you made monthly payments --

14 A. I continued to make -- when the bills
15 came in, I paid them.

16 Q. Okay.

17 A. All the bills.

18 Q. And I believe the record --

19 A. I didn't even look at them, I just paid
20 them.

21 Q. Do you remember what month you stopped
22 making payments on the Home Equity Line of Credit?

23 A. Probably right before I sold the boat.

24 Q. I think our records show that --

25 Wachovia's records show that it was in December of

1 2005?

2 A. And when did we sell it? We sold it in
3 January.

4 MS. COFFEY-EDRI: January 5th.

5 BY MR. PROFFITT:

6 Q. Right. And what led you to stop making
7 any payments whatsoever on that particular account,
8 the home equity line account?

9 A. When I sold the boat because I thought
10 the boat was paid for when he said there was no
11 mortgage. And then -- you'd have to talk to her.
12 (Indicating).

13 Q. You're, again, taking about Ron
14 Stoddard?

15 A. Right.

16 MR. ALFORD: And then -- finish your
17 answer.

18 THE WITNESS: Oh, no, then Maureen
19 looked up some stuff and said, you know, there's a
20 home equity loan out there, but, you know I don't
21 know what it was for. We didn't know -- I don't --
22 he could have paid taxes, he could have done
23 anything with it. So I don't know -- I didn't know
24 what it was for, so I quit paying it.

25 BY MR. PROFFITT:

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1 Q. Well, now you're confusing me because
2 you testified earlier that as of September 2005,
3 you knew that the boat loan --

4 A. Right.

5 Q. -- was tied to the boat?

6 A. No, I didn't say -- a boat loan, yes.
7 But then Ron Stoddard said the boat was paid for,
8 which I had assumed before for four years that the
9 boat was paid for.

10 Q. Okay.

11 A. I'm confusing myself.

12 Q. When you stopped making payments --

13 A. Uh-huh.

14 Q. I'm still not clear. Why did you stop
15 making payments exactly? In your mind, what did
16 you say in your mind --

17 A. Because I thought it was a mortgage
18 that I owed, and he said I didn't owe it so I
19 thought that was my money. Put the money in the
20 bank and then, I think it was you that said it was
21 a home loan -- equity loan or something.

22 (Indicating).

23 Q. Okay. And you're pointing to Maureen?

24 A. Yeah, because she looked it up. So I
25 said, you know, we've got to figure this out, what

1 it's for, and what -- what he used it for. I
2 didn't know what he used it for.

3 Q. All right.

4 A. I hadn't a clue. All I knew --

5 Q. And what kind of conversation did you
6 have with Maureen about --

7 A. You know, to tell you the truth --

8 Q. Well, let me finish my question.

9 A. Okay.

10 Q. What kind of conversation did you have
11 with Maureen --

12 A. Uh-huh.

13 Q. -- in or about December 2005 that lead
14 you to stop making payments on a home equity line?

15 A. You want to know something, I can't
16 even remember. My brain is fried right now. I
17 can't remember. All I remember is thinking I'm not
18 going to pay this anymore and I remember I was mad.
19 That's all I can tell you.

20 Q. Did Maureen tell you not to make the
21 payments anymore?

22 A. No, no, I make my own decisions.

23 Q. Did Michael P. Coffey tell you not to
24 make the payments anymore?

25 A. No.

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1 Q. Did anyone tell you not to make the
2 payments anymore?

3 A. No, it was my decision. I was mad;
4 that was it, I was mad at the bank. I guess that's
5 being honest.

6 Q. All right. We'll have to go through
7 these because you didn't answer the sentence, so
8 we've covered all this, but we'll make sure.

9 A. Okay.

10 Q. On Number 23 I've asked you to admit
11 that --

12 A. Well, yeah, I mean --

13 Q. -- that you claim --

14 A. -- you've got the paper.

15 Q. Let me finish -- that you claimed the
16 Home Equity Line of Credit on your tax returns that
17 you took an interest deduction.

18 A. Not that I knew that, but it's on
19 there, so, you know.

20 Q. Okay. So that's admitted -- Number 23
21 is admitted?

22 A. Is that what -- are you saying I was
23 aware of this? I know I should have been aware of
24 it.

25 Q. I'm saying as we sit here today, is

1 that a fact or not a fact?

2 A. Well, it's a fact.

3 Q. Okay.

4 A. It's a fact because it's on there.

5 Q. All right.

6 A. Not that I was aware of it, but it was
7 on there.

8 Q. All right. And I believe we've covered
9 Number 24, which asked that --

10 A. Yeah, I agree. We decided to sell.

11 Q. So you sold the boat through St. Barts
12 Yachts?

13 A. Yeah.

14 MR. ALFORD: I think a lot of this was
15 already asked and answered. I mean, in terms of --

16 MR. PROFFITT: Yeah, I'm trying to.

17 MR. ALFORD: Yeah.

18 BY MR. PROFFITT:

19 Q. All right. Look at Number 25 and read
20 that while I --

21 A. That's because I gave Maureen the
22 account number thinking we had a mortgage. I mean,
23 I don't understand the whole thing, but I gave her
24 the number --

25 MS. COFFEY-EDRI: I can clarify that

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1 question.

2 BY MR. PROFFITT:

3 Q. Right. Let me go ahead and ask Ms.
4 Coffey about it also. Here's the email I'm
5 referring to from Request to Admit Number 25. It's
6 in Plaintiff's Exhibit Number 17 and it's page
7 number ST. BARTS 41.

8 A. Okay.

9 Q. And in this email, which as you can see
10 is dated December 22nd, 2005 --

11 A. Uh-huh.

12 Q. -- it's from Maureen Coffey --

13 A. Uh-huh.

14 Q. -- to --

15 MR. ALFORD: Ron Stoddard.

16 BY MR. PROFFITT:

17 Q. Yeah, Ron Stoddard. And in it it
18 states the boat loan information is Wachovia bank
19 account **Redacted**

20 A. Uh-huh.

21 Q. I'm sorry, **Redacted** --

22 A. Whatever it is.

23 Q. **Redacted** 1495, pay off \$125,643.30.

24 A. Uh-huh.

25 Q. So we all agree that this email was

1 sent by Maureen --

2 A. I didn't -- I didn't --

3 Q. -- as far as you know?

4 A. Well, that's the first I've seen it.

5 Q. Okay. All right. If you'll read
6 Number 26. I need to know the answer to that
7 question.

8 A. Well, for one thing I never knew there
9 was a home equity -- I just -- right there, that's
10 not right. (Indicating). Would be paid off with
11 the proceeds -- no -- admit that Ann and Mike --
12 instructed -- I told him that there -- gave him the
13 amount number, which I guess is up here, and he
14 said there was no money -- did you ever check with
15 him? You never checked with him, did you? Wow.

16 Q. Well, my question --

17 A. And he told me there was nothing owed.
18 Michael -- no, I didn't instruct them that Wachovia
19 Home Equity Line of Credit. I didn't use those
20 words. Do you want me to take that out of there?

21 Q. No, I just want you to tell me -- so
22 you did not do this? That's my question. I'm just
23 asking.

24 A. I told him there might be a -- there
25 probably is a mortgage, I'm paying on something.

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1 That the little slip of paper I said had a boat
2 loan.

3 Q. And then he checked --

4 A. He checked and told me wasn't.

5 Q. Okay.

6 A. So I don't know what the answer to that
7 question is, but...

8 Q. All right. Read Number 27.

9 A. No, that's not true.

10 Q. What's not true about that?

11 A. It's not true that I -- that we
12 instructed him to pay me -- directly to Ann T.
13 Coffey -- no. He's the one that told me that I
14 didn't owe anything. And he was going to pay me --
15 to the corporation. So where did you get this?

16 Q. Well, don't -- I'm asking the questions
17 is all I'm doing. I'm just asking.

18 A. Oh.

19 Q. So --

20 A. Now, this says that I instructed St.
21 Barts Yachts that Wachovia Home Equity Line of
22 Credit would not be paid off -- that's not true.

23 Q. Okay. So you're telling me that as you
24 said before --

25 A. Right, that Ron Stoddard.

1 Q. -- that you asked Ron --

2 A. Right.

3 Q. Ron calls the bank?

4 A. Uh-huh.

5 Q. And tells you --

6 A. Ron said -- Ron said that there was no
7 mortgage.

8 Q. All right.

9 A. And gave me the check. I didn't tell
10 him to give me the check.

11 Q. All right. And Number 29 I asked you
12 to admit that you have accepted the benefits of the
13 acts of your husband, Dr. Coffey, in connection
14 with the proceeds of the Home Equity Line of
15 Credit.

16 A. I don't know what benefits. It's been
17 a headache, so I don't think I've gotten any
18 benefits out of this. So I'd almost have to deny
19 it to tell you the truth.

20 Q. All right. Would you call the \$100,000
21 a benefit?

22 A. After all this aggravation? No, I'd
23 like to sue Wachovia.

24 Q. Okay. All right.

25 MR. ALFORD: You have.

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1 THE WITNESS: I have? Oh, good. I'm
2 very mad at them. Well, I'm sorry. I've also got
3 a headache.

4 BY MR. PROFFITT:

5 Q. All right. And Number 30 I'm asking
6 you when you had full knowledge of the facts
7 relating to the Home Equity Line of Credit and the
8 fact that it was for the boat, which I think we've
9 covered. I believe it was --

10 A. I think it was when -- whenever we had
11 --

12 Q. -- September 2005.

13 A. No, not the home equity. When I knew
14 it was for the boat was when they sued us -- when
15 Wachovia did all this. That's when I knew what the
16 line of equity was. I didn't know before that what
17 it was for. I had no clue what it was for. He
18 could have done anything with it in four years.

19 Q. Well, I thought you testified earlier
20 though that the reason you wrote boat payment on
21 the checks was because you knew there was --

22 A. There was a mortgage. I didn't know it
23 was a line of equity for \$125,000.

24 Q. Well, are you distinguishing between --

25 A. A mortgage and a line of equity, yeah.

1 Q. And why is that?

2 A. I don't know, because in my head
3 they're different. I'm sorry. I mean, I don't
4 know what else to tell you.

5 Q. Okay.

6 MS. COFFEY-EDRI: I can clarify all
7 that.

8 THE WITNESS: Yeah, maybe she can
9 clarify it. You've got my head spinning. I forgot
10 the question.

11 MS. COFFEY-EDRI: When did you realize
12 the --

13 BY MR. PROFFITT:

14 Q. And I think I know the answer to this,
15 but I'll ask. At no time did you go back to
16 Wachovia --

17 A. No.

18 Q. -- after -- at any point after Dr.
19 Coffey obtained the Home Equity Line of Credit and
20 the mortgage on your home --

21 A. And ask about it.

22 Q. -- and ask about it --

23 A. Because I didn't know about it.

24 Q. -- or in any way repudiate it?

25 A. I didn't know about it, no.

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1 Q. Right.

2 A. So I didn't go.

3 Q. Okay. All right. I'm going to show
4 you what's been marked as Plaintiff's Exhibit 20.
5 And it's dated March 15th, 2007 --

6 A. Uh-huh.

7 Q. -- and these are responses to our
8 questions -- to our first set of interrogatories --

9 A. Uh-huh.

10 Q. -- to you.

11 A. Uh-huh.

12 Q. So these -- in other words, I've sent
13 written questions to your attorney, he's sent me
14 written answers.

15 And I want to refer you to question
16 Number 13 which says: Set for the following
17 information with regard to the \$125,000 in loan
18 proceeds obtained from Wachovia by Michael D.
19 Coffey in connection with the Home Equity Line of
20 Credit mortgage and note signed by Michael D.
21 Coffey on July 23rd, 2001.

22 And what is your answer?

23 A. Let's see.

24 Q. If you would read that into the record,
25 please.

1 A. Well, let me read it first.

2 Q. Okay. Well, if you would --

3 A. You want me to read it out loud?

4 Q. I'll read it into the record.

5 A. I mean, I can read it. I mean, I'm
6 just not processing it in my head.

7 Q. Okay.

8 A. Do you want me to read it out loud?

9 Q. Correct, just your answer.

10 A. My answer?

11 MR. ALFORD: He wants you to read that.

12 (Indicating).

13 THE WITNESS: This right here?

14 (Indicating).

15 MR. ALFORD: Yep.

16 BY MR. ALFORD:

17 Q. Read it out loud.

18 A. To Defendants' knowledge -- I'm the
19 defendant?

20 Q. Yes, ma'am.

21 A. None of the parties have any idea what
22 became of the loan proceeds. The proceeds were
23 disbursed solely to Michael D. Coffey, deceased,
24 without the knowledge of any of the Defendants.

25 I would have to say that's true. If

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1 you're saying that he got the money and I didn't
2 know. I mean, I don't know. I can't think
3 straight anymore. All I know is -- to my
4 knowledge, you're saying, yeah. He could have done
5 anything with it.

6 Is that what this is saying?

7 Q. Well, I asking you --

8 A. That's what this is saying.

9 Q. Then why --

10 A. I don't -- I don't -- I didn't know
11 what he did with the money. I didn't know it was
12 out there. I didn't know what he did with the
13 money.

14 Q. I understand you didn't know to start
15 with.

16 A. Uh-huh.

17 Q. But my question to you is: In light of
18 all the documents we've looked at today and your
19 testimony here today --

20 A. Uh-huh.

21 Q. -- is that an honest and truthful
22 response to an interrogatory?

23 A. To my -- yeah, it is.

24 MS. COFFEY-EDRI: Actually, I can clear
25 that up.

1 BY MR. PROFFITT:

2 Q. Well, let Ms. Coffey --

3 A. Well, I don't know. I mean -- the
4 proceeds were disbursed solely -- the proceeds from
5 what? The home equity?

6 MS. COFFEY-EDRI: Uh-huh.

7 THE WITNESS: Were disbursed solely to
8 him -- I didn't know that. That's what that's
9 saying? Am I interpreting that right?

10 BY MR. PROFFITT:

11 Q. This is what's confusing me. We've
12 talked at length today, about how -- by
13 September --

14 A. 2005.

15 Q. -- 2005, and certainly by December
16 2005, you knew what was going on.

17 A. No.

18 Q. And you thought there was --

19 A. No.

20 Q. Well, let me finish my question.

21 A. I didn't know there was a boat loan.

22 Q. Let me finish my question.

23 A. Uh-huh.

24 Q. You thought there may be a boat
25 mortgage, a boat loan of some sort?

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1 A. Not of some sort. He paid down the
2 little bit mortgage that might be left since I
3 thought the boat was paid for to begin with. I did
4 not know this was out there. That's what I'm
5 telling you.

6 Q. You did not know the Home Equity Line
7 of Credit was out there?

8 A. No, until she found it out.
9 (Indicating).

10 Q. But Ms. Coffey, we just looked at a
11 email from Maureen dated December 22nd, 2005 --

12 A. Uh-huh.

13 Q. -- that mentions the amount by account
14 number.

15 A. She will have to explain that to you.
16 Yes, because I gave her the account number from the
17 bill.

18 Q. Well, with that in mind, if in December
19 2005 you or Maureen or other family members knew
20 about the Home Equity Line of Credit --

21 A. No, I didn't know it was a Home Equity
22 Line of Credit. You've got to quit saying that. I
23 did not know it was a Home Equity Line of Credit.

24 Q. Okay.

25 A. I thought it was a mortgage. I

1 figured, you know, for three months I thought I had
2 a mortgage out there. It's not like I knew for
3 five years I had a mortgage out there.

4 MS. COFFEY-EDRI: If you take my
5 deposition --

6 MR. PROFFITT: We will.

7 THE WITNESS: She can explain it
8 because I haven't a clue. You're -- I can't -- I'm
9 not going to answer any more of your questions.

10 MR. ALFORD: Don't -- woa, woa, woa.
11 Let's just take a short break.

12 THE WITNESS: I need to because my head
13 is spinning.

14 MR. ALFORD: Why don't we take a short
15 break.

16 (A recess transpired.)

17 BY MR. PROFFITT:

18 Q. All right. So we're back on the record
19 again. And I'll try one more time to get you to
20 clarify this for me because I'm lost.

21 A. All right. So am I. That makes two of
22 us.

23 Q. My question is: It's my understanding
24 that in Fall of 2005 --

25 A. In when?

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1 Q. In Fall of 2005 -- September to
2 December 2005 --

3 A. Uh-huh.

4 Q. -- in that time period --

5 A. Uh-huh, something lead me to believe
6 that there was a boat loan. Is that what you're
7 saying?

8 Q. Right. A boat loan. You have
9 identified the account --

10 A. Well, I call it a mortgage, though. I
11 mean, that's my word for it.

12 Q. Okay. And you have identified the
13 account number?

14 A. Uh-huh.

15 Q. And you had initially told, shown in
16 Maureen's email December 22nd, 2005, that this
17 would have to be paid off during the course of the
18 sale of the boat?

19 A. Right. And then I started --

20 Q. Wait a minute. Let me finish my
21 question.

22 A. Okay.

23 Q. To me that indicates some in-depth
24 knowledge of what was going on --

25 A. No.

1 Q. Wait a minute.

2 A. Okay.

3 Q. And that you had put the pieces
4 together?

5 A. No, I hadn't put --

6 Q. Wait a minute. You can correct me if
7 I'm wrong.

8 A. I am as we go along.

9 Q. Because what you're saying in March of
10 2007 in your responses here is that you didn't know
11 nothing about nothing and that's where I'm
12 confused.

13 A. Well, pretty much -- pretty much I
14 didn't know nothing about nothing.

15 Q. Okay.

16 A. I mean, really. I'm being honest with
17 you.

18 Q. All right. So despite all your
19 testimony here today, that's -- you're going to --
20 that's your testimony?

21 A. You know I have to play stupid on this,
22 because this is legalese and confusing. I'm just
23 saying, I did not know there was a home equity out
24 there. I might have owed a little money, maybe
25 10,000 bucks, maybe 25,000 bucks -- I didn't know.

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1 Q. Well, are you testifying that Maureen
2 never told you that it was an \$125,000 balance in
3 December 2005?

4 A. You know, I don't -- I don't remember.
5 I -- honest to God, I don't remember.

6 Q. Okay.

7 A. All I know is I wanted to sell the damn
8 boat. That's all I can tell you.

9 Q. All right.

10 A. I just don't know.

11 Q. Now, just a couple last questions. In
12 Exhibit 19 -- Plaintiff's Exhibit 19, which is your
13 responses to my written questions, a second set of
14 interrogatories. In Number 4, we asked you --
15 Wachovia asked you several specific questions about
16 the 36-foot Beneteau sailboat.

17 A. What am I supposed to say about this?

18 Q. Well, have you looked at it enough?

19 Essentially what I'm doing, and you can
20 see, is I'm asking several specific questions about
21 the sailboat. And if you'll notice down there at
22 the bottom --

23 A. It says Defendants object to this
24 interrogatory as it is unduly burdensome due to the
25 fact that this interrogatory was asked and answered

1 by Defendants' counsel in the Probate Case --

2 Q. So as I understood your response, you
3 basically referred me to the Probate Court file and
4 did not answer any of the questions; is that
5 correct?

6 A. Sounds like that's what this says.

7 Q. Okay. So again in that answer to an
8 interrogatory you're not being forthcoming?

9 MR. ALFORD: I'm going to object to the
10 form of the question. You know what --

11 MR. PROFFITT: You can object and --

12 MR. ALFORD: I'm going to object to the
13 form of the question. You go ahead and answer.

14 THE WITNESS: I don't understand the
15 question.

16 MR. ALFORD: I'll have my time with
17 Wachovia.

18 THE WITNESS: I don't -- I don't
19 understand this. I don't -- you see, I'm not
20 legally --

21 BY MR. PROFFITT:

22 Q. I'm not --

23 A. Besides the fact I have two kids that
24 are lawyers, against their fathers wishes by the
25 way.

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1 Q. I guess this is and I'm -- you know,
2 I'm not trying to upset you or your attorney, but
3 what I'm not clear on is that I asked specific
4 questions in the interrogatories and I didn't get
5 any specific answers.

6 MR. ALFORD: You already --

7 THE WITNESS: You know what, I don't
8 have -- I can say I don't know half these things.
9 I mean, what am I supposed to say to this?

10 BY MR. PROFFITT:

11 Q. Okay.

12 A. Say I don't know? Well, I can say -- I
13 can say I don't know. Describe how you determined
14 Decedent's ownership interest in this property as
15 of the date of death?

16 Q. And I'm not suggesting, Ms. Coffey,
17 that you're supposed to know how to answer of all
18 that --

19 A. I don't.

20 Q. -- alone. But I'm surprised, that's
21 the word I'm looking for, I guess. And a little
22 bamboozled --

23 A. About what?

24 Q. About that lack of response. But
25 that's neither here nor there for the --

1. A. Honest to God --

2. Q. Lets -- I think we're about done.

3. A. Oh, good.

4. Q. Let me think for a second.

5. A. Okay. I'll sit here. I know I've had
6. it. I can't think straight.

7. MR. PROFFITT: Okay. Let's go
8. off-the-record.

9. (The deposition was concluded at 12:03
10. PM.)

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SIGNATURE OF DEPONENT

I, the undersigned, ANN T. COFFEY, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

ANN T. COFFEY

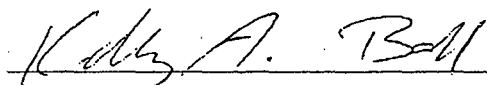
Date

CERTIFICATE OF REPORTER

I, Kelly A. Ball, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 19th day of
September, 2007 at Bluffton, Beaufort County, South
Carolina.



Kelly A. Ball

My Commission expires

April 2008

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2

Page/Line

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STIPULATION

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21

4

WITNESS/EXAMINATION

5

ANN T. COFFEY

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6

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EXAMINATION

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7

BY MR. PROFFITT:

8

SIGNATURE OF DEPONENT

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1

9

CERTIFICATE OF REPORTER

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11

12

REQUESTED INFORMATION INDEX

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(No Information Requested)

15

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Estate

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to Real Estate,

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PLF. EXH. 3, Equity BankLine

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Agreement and Initial

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT
3 WACHOVIA BANK, N.A.,
4 Plaintiff,
5 vs. CASE NO. 2006-CP-07-1655
6 ESTATE OF MICHAEL D. COFFEY, ANN
7 T. COFFEY, BOTH INDIVIDUALLY AND
8 AS PERSONAL REPRESENTATIVE OF THE
9 ESTATE OF MICHAEL D. COFFEY,
10 MAUREEN COFFEY EDRI, MICHAEL P.
11 COFFEY, CHRISTOPHER COFFEY, BANK
12 OF AMERICA, N.A., FRANK KONCUL, AND
13 JOHN DOE AND RICHARD ROE AS
14 REPRESENTATIVES OF ALL HEIRS AND
15 DEVISEES OF MICHAEL D. COFFEY,
16 DECEASED, AS REPRESENTATIVES OF ALL
17 PERSONS ENTITLED TO CLAIM UNDER OR
18 THROUGH ANY OR ALL OF THE HEIRS AND
19 DEVISEES, AND AS REPRESENTATIVES OF
20 OTHER UNKNOWN PERSONS OR CORPORATIONS
21 CLAIMING ANY RIGHT, TITLE, INTEREST
22 IN OR LIEN UPON THE REAL ESTATE
23 DESCRIBED HEREIN, ANY UNKNOWN ADULTS
24 OR CORPORATIONS BEING AS A CLASS
25 DESIGNATED AS JOE DOE, AND ANY UNKNOWN
INFANTS OR PERSONS IN MILITARY SERVICE
DESIGNATED AS A CLASS RICHARD ROE,
Defendants.

DEPOSITION OF: MAUREEN T. COFFEY-EDRI

Computer-Aided Transcription By:

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Charleston, SC
(843) 722-8414

Myrtle Beach, SC
(843) 839-3376

Greenville, SC
(864) 234-7030

Columbia, SC
(803) 731-5224

Charlotte, NC
(704) 573-3919

Page 2

(TITLE PAGE CONTINUED)

DATE: August 22, 2007

TIME: 12:17 PM

LOCATION: Law Offices of
Alford, Wilkins & Strickroth, P.C.
18 Pope Avenue Executive Park Road
Hilton Head Island, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: KELLY A. BALL, Court Reporter

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

WACHOVIA BANK, N.A.:

3 HAYNSWORTH, SINKLER & BOYD

4 BY: R. DAVID PROFFITT

1201 Main Street, 22nd Floor (29201)

5 Columbia, SC 29201

(803) 779-3080

6 dproffitt@hsblawfirm.com

7 ATTORNEYS FOR THE DEFENDANT

8 ESTATE OF MICHAEL D. COFFEY, et al:

9 ALFORD, WILKINS & STRICKROTH, P.C.

BY: GREGORY M. ALFORD

10 18 Pope Avenue Executive Park Road

Hilton Head Island, SC 29938

11 (843) 842-5500

Gregg@awslawfirm.com

12
13
14 (INDEX AT REAR OF TRANSCRIPT)
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16
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24
25

Page 4

1 (PLF. EXH. 1, Title to Real Estate, was
2 marked for identification.)

3 (PLF. EXH. 2, Form 14 - Title to Real
4 Estate, was marked for identification.)

5 (PLF. EXH. 3, Equity BankLine Agreement
6 and Initial Truth-In-Lending Disclosure, was marked
7 for identification.)

8 (PLF. EXH. 4, Inventory and
9 Appraisement of the Estate of Michael D. Coffey,
10 was marked for identification.)

11 (PLF. EXH. 5, Affidavit of Yannick
12 Madiot, was marked for identification.)

13 (PLF. EXH. 6, Affidavit of Charles C.
14 Laughlin, was marked for identification.)

15 (PLF. EXH. 7, St. Barts Yachts, Inc.
16 Documents, were marked for identification.)

17 (PLF. EXH. 8, Affidavit of Marion L.
18 Young, was marked for identification.)

19 (PLF. EXH. 9, Carolina First Bank
20 Documents, were marked for identification.)

21 (PLF. EXH. 10, Wachovia Appraisal
22 Documents, were marked for identification.)

23 (PLF. EXH. 11, Wachovia Uniform
24 Residential Loan Application, was marked for
25 identification.)

1 (PLF. EXH. 12, Copies of Checks Written
2 to Wachovia, were marked for identification.)

3 (PLF. EXH. 13, Copies of Checks Written
4 to Wachovia, were marked for identification.)

5 (PLF. EXH. 14, State of Delaware, 2001
6 Annual Franchise Tax Report, was marked for
7 identification.)

8 (PLF. EXH. 15, Income Tax Documents,
9 were marked for identification.)

10 (PLF. EXH. 16, St. Barts Yachts
11 Documents, were marked for identification.)

12 (PLF. EXH. 17, St. Barts Yachts
13 Documents, were marked for identification.)

14 (PLF. EXH. 18, Answers to Plaintiff's
15 First Set of Requests for Admission Dated June 11,
16 2007, were marked for identification.)

17 (PLF. EXH. 19, General Objections, was
18 marked for identification.)

19 (PLF. EXH. 20, General Objections, was
20 marked for identification.)

21 (PLF. EXH. 21, List of Mortgages and
22 Deeds recorded at the Beaufort County Register of
23 Deeds Office, were marked for identification.)

24 (PLF. EXH. 22, Limited Power of
25 Attorney, was marked for identification.)

Page 6

1 STIPULATION

2 It is stipulated by and between Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.

10 * * * * *

11 MAUREEN T. COFFEY-EDRI

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. PROFFITT:

15 Q. All right. Judge Coffey, if you would,
16 state your full name for the record.

17 A. My full name is Maureen T. Coffey-Edri.

18 Q. And spell that for the court reporter
19 in case she needs it.

20 A. Maureen is M-A-U-R-E-E-N, T as in
21 Thomas, and it's Coffey, C-O-F-F-E-Y dash E-D-R-I.

22 Q. And what's your position here in Hilton
23 Head?

24 A. My current employment is that I am the
25 Municipal Court Judge.

1 Q. For the Town of Hilton Head?

2 A. For the Town of Hilton Head.

3 Q. And are you also a lawyer?

4 A. I am, yes.

5 Q. And when were you admitted?

6 A. 1994.

7 Q. And you're the daughter of Ann T.

8 Coffey who we've just deposed a few minutes ago?

9 A. Yes, I am.

10 Q. All right. Do you have any relatives
11 here in Beaufort County? If this case goes to
12 trial, I need to know the last names of any
13 relatives you have in Beaufort County.

14 A. The last names of any relatives?

15 MR. ALFORD: Over 18.

16 THE WITNESS: Over 18.

17 BY MR. PROFFITT:

18 Q. Who might be on a jury.

19 A. Like my brothers and sisters.

20 Q. Well, only if they live in Beaufort
21 County.

22 A. Christopher Coffey lives in Beaufort
23 County. Caty Coffey lives in Beaufort County.

24 Q. That's Cathleen?

25 A. Cathleen.

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1 I'm separated from my spouse. Do you
2 want to know his name?

3 Q. Yes.

4 A. It's Abraham Edri, E-D-R-I. The first
5 name is Abraham, A-B-R-A-H-A-M. And what he does
6 -- I -- we separated in March and he doesn't have a
7 permanent residence. And he's foreign national. I
8 suspect he's going to Israel, but I'm not sure.

9 Q. Okay. Any other cousins, aunts,
10 uncles?

11 A. No.

12 Q. Okay. And you heard the instructions I
13 gave your mother a couple of hours ago about saying
14 yes or no?

15 A. Correct.

16 Q. If I ask you any confusing questions,
17 tell me and I'll clarify.

18 A. Yes.

19 Q. Okay. I think we can dispense with
20 some questions rather easily. If you'll look at
21 Plaintiff's Exhibits 1 through 3, do you have any
22 objections or any dispute with the fact that these
23 are what they purport to be?

24 A. No, they are what they purport to be.

25 Q. All right. Plaintiff's Exhibit 4 is

1 the Probate Court Inventory and Appraisement that
2 was filed September 5th, 2006.

3 A. Right.

4 Q. What role did you play in preparation
5 of this document?

6 A. In the preparation of this document, I
7 facilitated information gathered from my mother to
8 Mr. Jordan's office.

9 Q. Okay. And if you'll look on the page
10 where it has Schedule E.

11 A. Uh-huh.

12 Q. Am I reading that document correctly to
13 say that with regard to the 36-foot Beneteau
14 sailboat that --

15 A. When was this -- when was this
16 prepared?

17 Q. Well, it was filed September 5th 2006.

18 A. Right. Okay. In September 5th, 2006
19 it was my understanding that my mother and my
20 father owned the 36-foot Beneteau sailboat.

21 Q. Okay.

22 A. That's -- if -- do you want me to tell
23 you the whole thing?

24 Q. Whatever you can tell me about what
25 lead to that inventory.

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1 A. What lead to this inventory was that it
2 was my understanding that they owned the boat
3 themselves and that it was paid for. That
4 somewhere about -- when this closing was getting
5 ready to take place, and you can get to the
6 document later, that email --

7 MR. ALFORD: What closing? Tell him
8 what closing.

9 THE WITNESS: Oh, the closing -- the
10 boat closing.

11 BY MR. PROFFITT:

12 Q. The boat closing, okay.

13 A. The boat closing on or about on
14 somewhere between -- I guess -- which I don't -- I
15 don't even remember sending that email, but
16 somewhere about December 22nd and the closing of
17 the sailboat in January 5th. And it closed on the
18 5th then I'm guessing it was a short time -- on the
19 22nd, Stoddard must have asked my mother about
20 account information. She doesn't email. She gave
21 me a bill or something that had this information, I
22 emailed it to Ron -- Ron Stoddard.

23 The reason why it said, the other one
24 said, something like I'm supposed to be dealing
25 with your brother, it's because I found Ron

1 Stoddard to be completely offensive, absolutely not
2 truthful.

3 What had happened was there was an
4 alleged boat sale -- alleged buyer for our boat.
5 He was working both sides. That didn't work. I
6 told him I thought it was unethical. The guy that
7 actually bought the boat was supposed to buy
8 another boat in North Carolina. The wife walked on
9 the boat with the husband; it smelled like a
10 latrine. And they had decided -- whatever dollar
11 amount the boat was -- sale of the boat was; our
12 boat -- whatever dollar amount that is, that's what
13 that guy was going to pay for that Beneteau boat in
14 North Carolina.

15 What happened was that sale fell though
16 because all the -- they were about to sign and the
17 wife walked on the boat and said this boat stinks,
18 I won't buy it. So Stoddard wanted his commission.
19 Stoddard came by and brought them to see our boat,
20 apparently, no stink, she liked it. The boat that
21 he was giving that dollar value to was -- had many
22 more hours on it, was an older boat, it was used.
23 He just wanted his money.

24 Q. Okay.

25 A. I found him completely offensive and I

Page 12

1 said I'm too busy, don't even deal with me.
2 Basically, I think I -- I really had it out with
3 him. So my brother was -- so that's how my brother
4 got involved. I said, you email him because I'm
5 afraid I'm going to say something and I'm really
6 going to go after this guy. I found him completely
7 unethical.

8 But at any point, you know, my mom gave
9 me the information. I didn't even pay attention to
10 it, shift it out, emailed it to Ron Stoddard.
11 Stoddard called my mom back and said there is no
12 boat mortgage, you own the boat outright, but you
13 own it as A & M Partners, Inc. That was in
14 sometime after December 22nd, 2005 because it was
15 after that email that he contacted my mother and
16 said there was a corporation. So in December of
17 '05 was the first time I knew there was a
18 corporation. As matter of fact, I didn't even know
19 if my mother had the right to even sell the boat.
20 So I had to find where A & M Partners was. It was
21 -- my first guess was it was a South Carolina
22 corporation, it wasn't. He had corporations in
23 Georgia, so I thought well, maybe it's a Georgia
24 corporation, it wasn't. I congenitally remember
25 something about him saying for tax purposes,

1 Delaware. So I tried Delaware. Two days before
2 the sale, the Delaware -- they gave -- they
3 confirmed it. They gave me -- and they sent me the
4 papers that showed my mom and my dad were 50
5 percent owners.

6 But at the time that this was done, my
7 understanding was that this group owned it
8 together, 50/50, and they owned it outright; and
9 they owned it as Ann T. Coffey and Michael D.
10 Coffey. So that's what happened.

11 Q. Okay. So you did -- you're telling me
12 that when you -- did the Probate Court Inventory --
13 you believe mom and dad owned it 50/50, and you
14 found out later there was a corporation?

15 A. Right. At the time of this, I did not
16 know there was an A & M Corporation.

17 Q. But the end result is essentially the
18 same as far as her ownership interest --

19 A. Right.

20 Q. -- since she's a shareholder and
21 officer in the A & M Partners.

22 A. I think if I looked at the documents,
23 yeah.

24 Q. Okay. I'm also reading this Probate
25 Court Inventory correctly to show that there is --

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1 well, the way I read it, it's negative value as far
2 as the Probate estate?

3 A. I thought there was like \$40,000 in it,
4 but I don't know.

5 Q. Well, we -- we need Michael Jordan, I
6 guess. But as I understand it --

7 A. I mean, I gave them the information and
8 they put it in the right categories. I don't know.

9 Q. As I understand it there's a column
10 here on Page 1 of Exhibit 4, the Probate Court
11 Inventory, which lists the probate assets, the
12 assets that your mother as personal representative
13 has asserted or in the probate estate -- and these
14 assets are non-probate -- they're not in the
15 estate.

16 A. I think so.

17 Q. So there's only -- those 8,500 --

18 A. \$40,000.

19 Q. And \$31,000?

20 A. 39,500, that's what I thought was in
21 there.

22 Q. Okay. But if you turn over here to
23 Schedule F.

24 A. That's the 31,000. That's a summary of
25 that, so they're the same. (Indicating). There's

1 about \$40,000 in this case.

2 Q. Right. But if you turn over to
3 incumbrances on Page 6 of Exhibit 4, it lists
4 incumbrances, mostly on the two vehicles, of
5 \$49,439. So as I read it, there's nothing in the
6 probate estate. Am I reading that correctly?

7 A. I don't even know if I passed this part
8 on the bar. I have no idea. I don't know. This
9 isn't my area. I thought there was -- you know, I
10 was relying on them. I just gave them the
11 information.

12 MR. ALFORD: Maureen, it's math.

13 THE WITNESS: I know it's math.

14 BY MR. PROFFITT:

15 Q. It's just math. It says what it says.
16 Would you agree with me that that there is --

17 A. The incumbrances are 49,000. Yeah, I
18 agree with you though that the incumbrance is
19 right.

20 Q. Okay.

21 A. What's Schedule F? I mean, how stupid
22 is that? In '05, in January, because they always
23 have done it that way, the BMW was titled in my
24 father's name. I mean, the man was way over -- he
25 was very, very ill. They should have just filed it

Page 16

1 in my mother's name.

2 Q. Okay.

3 A. I mean, that's what I'm saying. I
4 think -- what title -- what's Schedule F?

5 Q. I believe Schedule F just lists the
6 vehicles as assets.

7 A. Right.

8 Q. And then you have debts on the
9 vehicles. So my point is --

10 A. Yeah, there's not much in the estate.

11 Q. Okay. There's either little or nothing
12 in the estate --

13 A. Right.

14 Q. -- to pay any debts of Dr. Coffey --

15 A. Correct.

16 Q. -- your father?

17 A. Yeah, as far as I understand. I hate
18 that type of law.

19 Q. All right. I'm going to show you
20 Plaintiff's Exhibit 5 which is Yannick Madiot's
21 affidavit. I know you don't know Mr. Madiot.
22 Essentially what that says is that they sold the
23 boat to St. Barts Yachts. We've went through this
24 with your mother.

25 Do you have anything else to add to

1 what she said?

2 A. No. All I -- I understand now the
3 chain of funds and the -- this thing, but prior to
4 seeing this, no, I had no idea about this.

5 Q. All right.

6 A. But I don't dispute it.

7 Q. And the same thing with Charles
8 Laughlin's affidavit, Exhibit Number 6 --
9 Plaintiff's Exhibit 6?

10 A. I probably have the same objection that
11 she had. Like, one's okay.

12 Q. Really all I want to know is: Can you
13 point me to any gross inaccuracies in that
14 affidavit that I need to be aware of?

15 A. Okay, let me see.

16 Q. From your point of view.

17 A. I would -- I would guess that my dad
18 didn't know Pittirizzi wasn't a dealer, but I have
19 no idea.

20 Q. Okay.

21 A. I would guess my father thought
22 Pittirizzi was a dealer, but I don't know about
23 that. Apparently -- I didn't -- I mean, I don't --
24 I saw the chain of documents. It went from
25 somebody to St. Barts to Pittirizzi to my dad, and

Page 18

1 I don't know what Mr. Laughlin understands. If he
2 understood there was a loan or if my dad
3 categorized it as a loan.

4 Q. Okay.

5 A. She did -- she signed it as her because
6 she didn't know about the corporation. She did not
7 know that Pittirizzi --

8 Q. Don't -- don't mark on it.

9 A. Oh, sorry. Stoddard was the broker
10 that handled the second sale, not -- I don't -- the
11 first sale was Pittirizzi, I guess.

12 Q. Right.

13 A. I would have the same issues with
14 Number 11 that my mother would have, although I
15 did --

16 Q. What is Number 11 talking about?

17 A. Ron Stoddard was the broker
18 representative who primarily handled the sale,
19 that's correct. He says it's my understanding,
20 from talking to Ron and reviewing our file on the
21 sale, that we were initially told that a Wachovia
22 Bank loan would be paid off from the sale of the
23 sailboat.

24 Q. Okay.

25 A. My mom might have told him that.

1 Q. Okay.

2 A. The email I sent was generated -- the
3 information was just given and I didn't even
4 question it.

5 Q. Okay. Well, we'll talk about that in
6 minute.

7 A. Right. Yeah, Stoddard did talk to both
8 of us and that's -- and I guess that was the guy
9 that bought the boat. I don't remember.
10 (Indicating).

11 I don't know about 14. I don't know if
12 I saw initials, Seller's Disbursement Summary or
13 anything else, I never saw that.

14 Q. Okay.

15 A. It may exist, I don't know.

16 And with 15, neither my mother nor I
17 instructed St. Barts to deliver the net sale
18 proceeds to Ann Coffey. And as she told you, Ron
19 Stoddard instructed her and I wasn't even part in
20 parcel of that discussion except for when she told
21 me there was no mortgage on the boat and I went to
22 investigate what the heck that was.

23 Q. Okay. I'm going to talk to you more
24 about that later.

25 A. Right. I found out that it was a

Page 20

1 Delaware corporation right around two days before
2 the sale. I have no idea what the net proceeds
3 were, but -- I didn't pay attention, but I guess
4 they were delivered to my mother. And there's a
5 few discrepancies, but that may very well be his
6 understanding.

7 Q. All right.

8 A. I wouldn't doubt that Ron Stoddard
9 would have lied to him too.

10 Q. And just as far as the net proceeds go,
11 you were here and you heard your mother testify
12 that she got the \$100,000 or the \$100,075 and
13 deposited it in an account at her -- at Bank of
14 America. That's true and correct as far as you
15 know?

16 A. As far as I know. I don't think it was
17 into her amount, but -- I mean, I don't think it
18 was into her current, like, everyday checking
19 account. I think she opened up a separate account.

20 Q. Yeah, I believe she said she did open
21 an account, probably a CD or something.

22 And as far as you know the proceeds of
23 the boat sale are still in an account controlled by
24 your mother?

25 A. As far as I know, but as far as my

1 mother's accounting I'm really not that privy to.

2 Q. Okay. Plaintiff's Exhibit 7 consists
3 of exhibits and documents we obtained from St.
4 Barts Yachts. It has to do with the July 2001 sale
5 of the boat. You may not have seen those before,
6 but is there anything you want to tell me about
7 them in flipping through that you've noticed?

8 A. I know -- I've seen them in the
9 lawsuit.

10 Q. Right.

11 A. I think you sent these with the -- but
12 prior to that, no, that was the first time I saw
13 the direct correlation of everything.

14 Q. Do you dispute that there was \$125,000
15 transferred from Wachovia into your father's
16 account and then transferred by wire on or about
17 July 30th, 2001 to Hilton Head Yachts to buy this
18 boat?

19 A. No, I don't dispute that.

20 Q. Okay.

21 A. I would dispute that my mother didn't
22 know about it, but --

23 Q. Right.

24 A. -- but I wouldn't dispute the
25 documents.

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1 Q. Well, we don't really need to discuss
2 Plaintiff's Exhibits 8 or 9. Plaintiff's Exhibit 8
3 is the affidavit from Wachovia's group with regard
4 to the wire transfer which you don't dispute.

5 Plaintiff's Exhibit 9 are Carolina
6 First documents with regard to the wire transfer
7 which you do not dispute.

8 Okay. Plaintiff's Exhibit 13 is the
9 checks that your father wrote, according to your
10 mother's testimony --

11 A. Uh-huh.

12 Q. -- on the account -- home equity loan
13 account.

14 A. I mean, he wrote the checks to
15 Wachovia. I don't know what it was for, but, yeah,
16 I don't dispute that he wrote these checks to
17 Wachovia.

18 Q. All right. So you can verify that that
19 appears to be your father's signature?

20 A. Correct.

21 Q. Those are checks written by dad?

22 A. Yes.

23 Q. All right. And sort of the same
24 question with regard to Exhibit Number 12,
25 Plaintiff's Exhibit 12, those are the checks that

1 your mother wrote?

2 A. Yep.

3 Q. On the account in question that we're
4 here today about?

5 A. Uh-huh. Yeah, she wrote the checks.
6 I'm certain she didn't know what she was writing
7 them for, but she did write the checks.

8 Q. Okay. Let's talk about that for a few
9 minutes. I know your mom has testified that dad
10 paid all the bills -- Dr. Coffey paid all the bills
11 --

12 A. Yes.

13 Q. -- until his death and then she began
14 paying them.

15 When did Ms. Coffey, your mother, come
16 to you and start asking questions, if ever, about
17 this account and this Home Equity Line of Credit?

18 A. She didn't even come to me about this
19 account or -- how this account came to my knowledge
20 which I -- it so briefly came to my knowledge that
21 I didn't even remember sending an email; but the
22 only reason I even looked into this account was
23 after she must have given me the information. I
24 mean, I think somewhere in September she probably
25 told me, I think your dad took out some money on

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1 the boat. But that wouldn't have been unusual,
2 because we were uncovering all this kind of stuff.

3 I said -- but you have to remember, I
4 was really busy. I have three children. I'm not
5 -- I'm doing the best I can to hold my mother's
6 hand, but obviously the fact that I separated in
7 March, I wasn't in the best of situations
8 domestically going on.

9 Q. In March of when?

10 A. March of '07. I recently separated,
11 but it was only after -- I mean, essentially, my
12 husband hasn't worked for three-and-a-half years.

13 Q. Okay.

14 A. Okay. So there was a lot going on.
15 Okay, my father had just died, there was a lot
16 going on. And I have a very, you know, stressful
17 job. I couldn't look into everything. Somewhere
18 she said -- you know, basically the financial stuff
19 she discussed with my brother. My brother has an
20 MBA and a JD.

21 Q. Your brother is Michael P. Coffey?

22 A. Michael Peter -- Michael Peter Coffey
23 has an MBA and a JD. Okay. All financial stuff
24 and investment stuff and all that kind of stuff she
25 runs by him. Probably a lot of the estate stuff

1 she ran by him.

2 Q. And he's the one in Illinois?

3 A. He's the one in Illinois. That
4 everyday hands-on, hold my hand kind of thing,
5 she'll -- she'll deal with me. She probably told
6 me she thinks that there's -- if -- she was going
7 to sell the boat anyway. It was a beautiful boat,
8 but nobody can sail it. As you can see, we haven't
9 been on it because it takes somebody that knows how
10 to sail a boat, seriously sail a boat, to sail it,
11 so....

12 Q. Were you ever on the boat?

13 A. This particular boat, I don't think I
14 was ever on this particular boat.

15 Q. Do you recall if your siblings, any of
16 your siblings were on the boat?

17 A. If anyone was on the boat it would have
18 been perhaps my brother Michael if he came down to
19 visit; but I don't even know if he was on the boat.

20 On my dad's previous boat, it would
21 historically have been Mike -- my brother Michael
22 or me. We were like the only two that really
23 sailed. I mean, my three younger siblings didn't
24 sail and for whatever reasons they had been arguing
25 with my dad anyway, so they're not going to go on

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1 the boat.

2 Q. Okay.

3 A. But on this particular boat, I really
4 don't think I was on it. It doesn't matter. I
5 mean, I really don't think I was on it, but maybe
6 my son was on it -- I don't know.

7 Q. All right.

8 A. But the point being that she may have
9 said there was a loan out, it didn't even register
10 to me. I facilitated the information to Stoddard.
11 When Stoddard came back to her and said there's no
12 mortgage on the boat, at that point I said, well,
13 what the heck is this? And I did some research and
14 I said, I think it's a line of equity. I said,
15 apparently in July dad took out a line of equity
16 and that's what this payment was for.

17 Q. How did you figure that out?

18 A. I went on the RMC documents. I went on
19 Beaufort Government.

20 Q. And saw the note in the mortgage?

21 A. Uh-huh. And the Power of Attorney.

22 Q. And that would have been in when?

23 A. January of '06.

24 Q. Okay. After the sale of the boat or
25 before the sale of boat on January 5th?

1 A. After the sale of the boat. After --
2 it wasn't until Stoddard told my mother there
3 wasn't a mortgage on the boat. I mean, I didn't
4 even pay attention to this account number. I mean,
5 I may have emailed that account stuff to Stoddard,
6 but she gave it to me. I mean, I didn't focus on
7 it. She didn't know how to email, I just emailed
8 it to him.

9 Q. Since you've mentioned that several
10 times, we might as well take a look at it.

11 A. I know there was an email, but they
12 must have had a conversation that generated it.

13 Q. Plaintiff's Exhibit 17 --

14 A. Uh-huh.

15 Q. -- which are documents that we've
16 obtained from St. Barts Yachts. On Page 41 there's
17 a December 22nd, 2005 email in which you state
18 several things. But that final sentence says the
19 boat loan information is Wachovia Bank account, it
20 has an account number **Redacted** -1495 pay off
21 \$125,643.30.

22 A. Uh-huh. She came to my office and --

23 Q. She being?

24 A. My mother, with a bill. That
25 information was on there.

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1 Q. A bill --

2 A. It looked like a bill. I don't know.

3 Q. Like a bank statement or what?

4 A. Like a bank statement or something like
5 that. And that information was on it. I faxed it
6 to Stoddard and that was the last I thought of it.

7 And then it was only when Stoddard came
8 back and said there's no mortgage on this boat,
9 which kind of made sense to us, because we were all
10 under the impression that the boat was paid for
11 anyway. Then I said, well, what is this?

12 Q. Okay. Well, slow down a minute.
13 You're under the impression that the boat is paid
14 for because that's what Dr. Coffey told your
15 mother?

16 A. That's what Dr. Coffey told my mother.
17 I'm mean, I'm sure I didn't ask him how did you pay
18 for the boat, dad.

19 Q. Right. And then at some point in the
20 Fall of 2005, do you think it would have been
21 September 2005 when your mom is asking --

22 A. My mom didn't --

23 Q. -- about this account?

24 A. She didn't ask me. Mom didn't ask any
25 questions. What I'm saying is, she, I guess, on

1 her own in September of '06 came across something
2 and --

3 Q. September of 2005.

4 A. September of 2005, came across
5 something that said boat loan. I don't what -- my
6 dad has all kinds of notes in his desk.

7 Q. Right.

8 A. So she was paying on this. She came to
9 me and said, Stoddard needs the account
10 information, will you email it? And it was on some
11 sort of a bill thing that I didn't even pay that
12 much attention to. I think at this point, wasn't I
13 already mad at him?

14 Q. I don't know.

15 A. I did give my brother your contact
16 information. His telephone number at work is blah
17 -- I thought he would have been in touch with you
18 today. You might want to give him a call. Please
19 email me later. I have a very heavy docket
20 tomorrow but will assist in closing if absolutely
21 necessary -- yeah, I was already pissed at the guy.
22 You know, so...

23 Q. Well, what I'm trying to get clear
24 on --

25 A. Yeah, but what I'm -- what I'm trying

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

THE HONORABLE MARVIN H. DUKES, III, MASTER-IN-EQUITY

CASE NO. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

RECORD ON APPEAL
Volume II of II

James Y. Becker
R. David Proffitt
HAYNSWORTH SINKLER BOYD, P.A.
1201 Main Street, 22nd Floor
P.O. Box 11889 (29211-1889)
Columbia, SC 29201
Telephone: (803) 779-3080
Email: jbecker@hsblawfirm.com
Email: dproffitt@hsblawfirm.com
*Attorneys for Appellant Wachovia Bank,
N.A.*

Gregory M. Alford, Esq.
Alford & Wilkins, P.C.
P.O. Drawer 8008
Hilton Head Island, S.C. 29938
(843) 842-5500
Fax: (843) 842-8400
Email: gregg@awslawfirm.com
Attorney for Respondent Ann T. Coffey

Steven R. Anderson
P.O. Box 12188
2008 Marion St., Ste. J
Columbia, SC 29211-2188
(803) 252-2828
Fax: (803) 254-1935
Email: sraatlaw@bellsouth.net
*Attorney for Respondent Bank of
America, N.A.*

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1 to tell you is, I wasn't at this point really
2 communicating with Stoddard. He had already, like,
3 totally pissed me off. She came by my office, I
4 was busy, she said, Stoddard -- and she was like
5 trying to talk to him too; she said, Stoddard needs
6 this information. So I was like, you know, deal
7 with my brother, I'm busy and I don't believe you
8 anyway. You know, I already basically called him a
9 liar. And here's the information.

10 Couple of days later after that my
11 mother came to me and said Stoddard said there is
12 no mortgage on the boat, blah, blah, blah. I'm
13 like, okay, but --

14 Q. Couple of days later in September?

15 A. No, in December.

16 Q. In December, okay.

17 A. It was only after -- I never looked
18 into this loan thingamajig until after this email
19 was sent.

20 Q. So you're telling me your mom just
21 brings this by and you just faxed it and emailed it
22 or whatever?

23 A. I emailed it. I emailed the
24 information up to Stoddard. Then a couple of days
25 later, she comes back -- and he must have called

1 her. She comes back to me and says there's no
2 mortgage on the boat. And I said, well, you know,
3 dad said it was paid for. I didn't think there was
4 a mortgage. But then I said, well, what was that
5 piece of paper? I went on -- I think it was the
6 RMC and I saw there was a line of credit. I said,
7 mom, this is a line of credit.

8 Q. So you went online and saw the
9 documents?

10 A. Uh-huh.

11 Q. The mortgage and the note and a --

12 A. What I saw was a Power of Attorney and
13 what I saw was a line of credit or something. It
14 seemed to me it was just a line of credit.

15 Q. You're talking about the Register of
16 Deeds Office, correct?

17 A. Online -- online.

18 MR. ALFORD: ROD website.

19 MR. PROFFITT: Right.

20 THE WITNESS: Right.

21 BY MR. PROFFITT:

22 Q. But, you're not talking about
23 Wachovia's online system?

24 A. No, no, no.

25 Q. You're talking about the Register of

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1 Deeds Office?

2 A. Right. That's what I'm pretty sure I
3 looked at.

4 Q. Well, did you see the mortgage that's
5 in part of Plaintiff's Exhibit 3? Is that what you
6 saw online?

7 A. I mean, I don't know if I read the
8 whole thing. I just -- you know how you get those
9 screens? I think I matched up the account number
10 with -- there was other stuff I had to look up.

11 All right. What is this?

12 Q. Well, the first part of that document
13 is the note, the Home Equity Line of Credit
14 agreement. And the second part is the mortgage.

15 A. Yeah, I mean, I think this is -- yeah,
16 this is -- this would be the document that I saw
17 sometime in early January.

18 Q. Plaintiff's Exhibit 3?

19 A. Uh-huh.

20 Q. All right.

21 A. I said, apparently dad took out a line
22 of credit on your house.

23 Q. And you would have seen that, you're
24 telling me --

25 A. Through --

1 Q. -- after the boat sale had closed, and
2 after your mom had deposited the proceeds?

3 A. Well, I don't know what she
4 deposited -- the proceeds. What I'm saying is, it
5 was a couple of days after Stoddard called her to
6 say there was no mortgage on this blah, blah, blah.

7 Because you have to remember in
8 addition to this stuff coming down, it's holiday
9 time; I have my own children; I've got my own stuff
10 going on, and I'm also just learning that -- in --
11 the boat's not actually owned by my mother, but
12 it's owned by some phantom corporation which I don't
13 even know when it exists, who incorporated it or
14 who's in it.

15 Q. Okay.

16 A. So, I mean, there's a lot of stuff
17 going on while I'm also working full time. And in
18 2005 my youngest child wasn't even one. So, you
19 know, was I looking into this stuff heavily? Not
20 too much. But I didn't look into that account
21 until after Stoddard -- if I sent that on December
22 22nd, it was sometime between December 23rd and
23 January 23rd. And that's what I'm saying. I gave
24 her that information and she repudiated by stop
25 paying, if you really want to know.

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1 Q. All right. So after the boat had
2 closed --

3 A. Uh-huh.

4 Q. -- you figure out that there's a Home
5 Equity Line of Credit with a mortgage on the
6 house --

7 A. Taken out by the father on a property
8 he didn't own, yes.

9 Q. **Redacted**

10 A. Uh-huh.

11 Q. -- and what did you tell you your
12 mother, Ms. Coffey, about what you found?

13 A. I told my mother this account pertains
14 to a line of credit taken out by dad on your house.
15 That's what I told her. That's what I discovered.

16 Q. Did you print the documents and show
17 them to her?

18 A. No.

19 Q. Did you describe it as a line of credit
20 or did you describe it as a mortgage or what?

21 A. I described it as a line of credit.

22 Q. And did you understand that it was a
23 mortgage on the house?

24 A. I understood it to be a line of credit,
25 that's how I described it to her. That's when she

1 got mad. That's when she repudiated. That's when
2 she found out.

3 Q. Wait a minute. In saying that, are you
4 -- do you mean that you thought it was an unsecured
5 line of credit?

6 A. No. The line -- I was reading it -- it
7 looked like it was a line of credit secured by her
8 house. It was a line of credit to him, for which
9 she was not -- I mean, Wachovia held their mortgage
10 before.

11 When did they get their first mortgage,
12 in 1980?

13 Q. I don't remember.

14 A. Whenever those 29 documents or
15 whatever. At some point between 1980 and 2000 --
16 or let's go 1980 and, yeah, 2001, Wachovia maybe on
17 more than one occasion, certainly on one occasion,
18 Wachovia held the mortgage on their house. So
19 Wachovia knew full well that the house was titled
20 solely in my mother's name.

21 Q. Well --

22 A. And on all other documents, both my
23 mother and my father had to sign.

24 Q. I understand that.

25 A. So Wachovia was in a very good position

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1 to know who owned the property. I mean, do they
2 routinely allow people that don't own the property
3 it get lines of credit?

4 Q. I understand the comments you're
5 making, but I'm here to ask you questions about
6 what you can tell me.

7 A. Sorry. Well, I mean that's what -- all
8 I said to her was, that's what this is. But prior
9 to that time -- you're asking me when did I know
10 about it? I'm saying I didn't know about it.

11 At that time I said, there's a line of
12 credit and if you're asking me if in January I knew
13 that that line of credit went directly to pay for
14 this boat, I did not know, I did not know the
15 specificity until I saw these documents. I really
16 didn't. Did I dispute them? Am I disputing that
17 he got the \$125,000? No, I'm not.

18 Q. Wait a minute, I'm not sure I
19 understand you. You knew in January 2006 shortly
20 after the boat sale that he had the line of credit
21 secured by the house, but you did not know what the
22 \$125,000 went for?

23 A. With specificity, no.

24 Q. And when did you learn that the
25 \$125,000 went to buy a boat, a 36-foot boat?

1 A. With complete accuracy? When I saw
2 these documents.

3 Q. What documents are you referring to?

4 A. The ones that you sent that show the
5 transfer, the time frame, and all that stuff.

6 Q. All right. Now, you said with complete
7 accuracy, did you have a suspicion before that,
8 that the --

9 A. I had a ton of suspicions. At one
10 point I was beginning to doubt that he didn't put
11 the money down on my house. Here I'm thinking it
12 was on my house and I'm like, well, he told me that
13 was from his retirement account, but I wasn't sure.
14 That's the point.

15 Q. And your house is **Redacted**?

16 A. Ashton Cove. Which was also bought in
17 July of 2001.

18 Q. Okay.

19 A. And there was some taxes, my mother
20 thought it was taxes. But I said, well, what do
21 you think he did with the money? But there was all
22 -- you'd have -- you'd have to go to the finances.
23 There was all kinds of ridiculous shell game going
24 on between the restaurants and stuff. None of
25 which we knew until we looked into it.

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1 Q. All right. And looking through the
2 documents in Plaintiff's Exhibit 17, your name
3 appears quite a few times so there's no dispute on
4 your part that you were involved with the sale of
5 the boat?

6 A. Yeah, at some point.

7 Q. Okay. And if you look at Page 48, I
8 believe you signed the bill of sale --

9 A. I think, because my mother was out of
10 town.

11 Q. Page 48 of Exhibit 17.

12 A. Uh-huh; that's my signature.

13 Q. And Page 49 of Exhibit 17, it's the
14 Yacht Purchase and Sale Agreement, and I believe
15 you also signed that; is that correct?

16 A. I don't know. Was this at the same
17 time -- oh, no. Uh-huh, I guess I did. She must
18 have been out of town, but by this time my brother
19 was negotiating stuff and he told me to sign it.

20 Q. All right. So the sale agreement's
21 dated December 7th, 2005 and then it actually
22 closed on January 5th 2006?

23 A. Uh-huh. But by that time, like I said,
24 because the terms and all that went down I was
25 already, like, not really talking to Ron Stoddard.

1 Q. All right. Tell me what you think or
2 why you believe that Ms. Coffey is not liable on
3 the mortgage and note -- the Home Equity Line of
4 Credit.

5 A. I'm not disputing that that is a valid
6 debt of my father. I'm disputing that it's a valid
7 debt of my mother.

8 Q. Why?

9 A. There's a reason why something -- when
10 you own a property you need to sign off on it
11 before it's incumbered. She should have been put
12 on notice. And she never would have -- if -- if --
13 if Wachovia followed the proper procedures, she
14 would -- this would not have taken place.

15 Q. Okay. So your position is based
16 entirely on the fact that the deed referenced in
17 the mortgage was the 1980 Socienski deed, not the
18 1984 deed, I believe, that transferred the house to
19 Ann Coffey?

20 A. In 1980, it was a piece of land. In
21 1984 or 1983 it was a house. The house and the
22 land has been solely in my mother's name and
23 Wachovia knows that. That -- the house prior to
24 that, the ~~22 Cedar Road~~ house, my mother's name
25 solely.

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1 Q. Right.

2 A. My father has never owned a house.

3 Q. But in 1980 it was in both their names,
4 correct?

5 A. The lot --

6 Q. The lot.

7 A. -- not the house.

8 Q. And in 1984 --

9 A. Which is the deed that controls.

10 Q. Right. Dr. Coffey transfers it to Ann
11 Coffey?

12 A. Yeah, I'm not saying that Russell
13 Socienski can take out a -- equity line on my
14 mother's house either.

15 Q. I understand.

16 A. Just because their name was on a prior
17 deed, doesn't really give you any right.

18 Q. I understand.

19 A. She didn't know about it.

20 Q. Other than that defect where the wrong
21 deed was listed in the mortgage or what you say is
22 a defect, is there anything else wrong with that
23 mortgage and note, in its form, in its contents
24 that you'll be arguing ~~in this~~

25 A. I have no idea. I don't know much

1 about that type of law.

2 Q. Okay. Well, do you know of any
3 theories, I guess is what I'm asking, that you'll
4 be presenting at trial as far as defects in that
5 note or mortgage?

6 MR. ALFORD: I'm going to object as far
7 as that's attorney-client privilege. I mean, if
8 we've got a local theory that we attend to assert
9 at trial that we've discussed --

10 BY MR. PROFFITT:

11 Q. Well, I don't want you to talk about
12 what you've discussed with your attorney or tell me
13 what you've discussed. What I want to know is if
14 there's anything else wrong with the mortgage and
15 note to your knowledge as we sit here today?

16 A. As it pertains to my father having a
17 valid debt, yes. I don't believe you can put a
18 note or notes on a property you don't own. I think
19 it's void from the inception.

20 Q. Okay.

21 A. And had she known about it, she
22 wouldn't have agreed to it.

23 Q. All right. I understand what you're
24 saying.

25 We looked at one document -- it was

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1 Plaintiff's Exhibit 21, it was the long list of
2 mortgages and deeds. Any dispute or anything to
3 tell me about that as far as the fact that your mom
4 has signed a lot of mortgages over the years?

5 A. Yeah, I'm not disputing that my
6 mother's signed a lot of mortgages over the years;
7 but I can tell you that, and you can ask one of her
8 closing attorneys, you know, she just signs.

9 There's a reason why he didn't ask her
10 to sign. And there's a reason why it was
11 incorporated in Delaware and didn't incorporate it,
12 he didn't want us to know. A lot of those
13 incorporations, Fiesta Grill and -- I incorporated.
14 I knew about them, I knew about their existence.
15 This he didn't want us to know.

16 Q. Okay. All right. What else? In
17 January 2006 did you tell mom -- your -- Ms.
18 Coffey, about the Home Equity Line of Credit other
19 than that there was a line of credit that was
20 secured by the house?

21 A. That's all I told her.

22 Q. And what was her reaction?

23 A. She was mad.

24 Q. And why was she mad?

25 A. She was mad that Wachovia allowed

1 somebody that didn't own property to put a lien on
2 her house. She was really mad. She told you she
3 was mad. That's the truth. She was pissed off.

4 Q. All right.

5 A. She said, I'm not paying it.

6 Q. Okay. So it's your understanding she
7 didn't pay it because she's mad at the bank for
8 letting it happen.

9 A. Mad, didn't agree with it, was
10 repudiating it, and thought it was wrong. Beyond
11 that, you're going to have to ask her, I don't --
12 that's my understanding.

13 Q. Okay.

14 A. You're asking if my mother listens to
15 me? Most parents don't listen to their kids.

16 Q. Let me skim through these requests to
17 admit and see if there's anything else I need to
18 ask you about it them. We've covered them already
19 with your mother.

20 A. All right.

21 Q. All right. If you'll look at Number
22 15 --

23 A. I know, I looked at it.

24 MR. ALFORD: Let him ask his question.

25 THE WITNESS: All right.

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1 MR. ALFORD: You're as bad as your mom.

2 THE WITNESS: I think that's a trait we
3 share, sorry.

4 BY MR. PROFFITT:

5 Q. You've admitted --

6 A. Uh-huh, I need to amend my answer.

7 Q. Well, how would you wish to amend your
8 answer? I mean, not that I'm admitting you're --

9 A. Right.

10 Q. -- allowed to amend your answer, but
11 what are you telling me?

12 A. That on January 5th, I did know and
13 understand that he had used the Wachovia home line
14 of credit to purchase the sailboat. What I knew is
15 that on January 5th that there was a line of
16 credit, but it wasn't until much later that I knew
17 what he'd -- what he'd actually, for sure, spent it
18 on.

19 Q. You did review these before they were
20 sent out, correct?

21 A. Sort of -- actually, not so much. I'm
22 telling you -- all I can say is I was up doing work
23 last night, search warrants, normally I have huge
24 case dockets with Court. I've got my kids. I'm
25 just telling you that's not true. I already told

1 him I needed to amend it, when I actually reviewed
2 it. Sorry.

3 Q. All right. But anyway, what you're
4 telling me here today is you didn't know until a
5 day or two after the closing when you checked the
6 Register of Deeds records and that's when you put
7 it all together?

8 A. No, that's when I put together what
9 that account number -- she was apparently paying on
10 some account number. That's when I actually looked
11 at the account number, I said, this isn't a
12 mortgage to a boat, it's a line of equity on your
13 house. I related that information to my mother.
14 When I saw this stuff, I knew with certainty.

15 Q. Did you call the bank?

16 A. No.

17 Q. Wachovia Bank?

18 A. No.

19 Q. Why is it that you and your mother both
20 appear to listen a great deal to Ron Stoddard,
21 especially since you didn't like him?

22 A. I didn't listen to Ron Stoddard. When
23 Ron told her there was no mortgage, I didn't trust
24 him, I looked. I told you, I looked.

25 Q. Why did you mother believe that? I

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1 guess I should have asked her, but --

2 A. Ask her. Why did she believe them?

3 Because first of all, we thought there was not a
4 mortgage on the boat. Our entire understanding of
5 the boat prior to even seeing anything was that the
6 boat was owned by my mom and dad, and my dad owned
7 the boat outright. There was never an inkling from
8 the time he bought the boat until he died that he
9 owed money on that boat. There would have been a
10 sore point.

11 Q. All right.

12 A. So we already -- we believed for a long
13 time there was no mortgage on the boat.

14 Q. And when did you know or learn that the
15 Home Equity Line of Credit had been used to pay for
16 the 36-foot boat?

17 A. For sure? When I saw those documents.
18 I wasn't privy to that he bought that boat from St.
19 Barts Yachts the first time. St. Barts Yachts,
20 when we used them the second time, never told us
21 that they sold the boat the first time.

22 Q. So you're telling me you only learned
23 that when I sent your attorney the various records
24 we've talked about here today?

25 A. The specificity that showed it going

1 from one line of credit to a wiring, blah, blah,
2 blah. You know, I'm not disputing that trial. But
3 prior to seeing that, which I had no way of finding
4 that stuff -- I didn't know that it went for the
5 boat. I still think it's irrelevant what it went
6 for.

7 Q. Thank you, Judge, but I disagree.

8 A. I don't know.

9 Q. Another union, but we'll argue about
10 that later.

11 A. You can't argue about that.

12 Didn't you originally think my house?
13 You were trying to take my house? Wasn't that your
14 line of thinking? The dates are close, they're
15 very close.

16 MR. ALFORD: He doesn't have to answer
17 questions. And I would ask you to please stop
18 asking them.

19 THE WITNESS: I'm sorry.

20 BY MR. PROFFITT:

21 Q. All right. On Number 22 or on Number
22 22 on Plaintiff's Exhibit 18 the request to
23 admit --

24 A. Uh-huh.

25 Q. -- it's one of the ones you didn't

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1 answer, so I need to make sure I know what your
2 answer is. That Ms. Coffey wrote checks in
3 addition to those that we have listed in one of the
4 other exhibits.

5 Do you dispute that? In other words,
6 your mom wrote checks from the date of your dad's
7 death until December when she stopped paying.
8 There's no dispute about that, correct?

9 A. No, I have no idea if she did or not.
10 If I'm --

11 Q. And on Request to Admit Number 26, it
12 asks you to admit that you or your mom initially
13 instructed St. Barts to pay off the Home Equity
14 Line of Credit.

15 What's your answer to that?

16 A. We initially, I certainly didn't
17 initiate it. I never had that discussion. I don't
18 know if my mother did, but I didn't.

19 Q. All right. Did you ever talk with Ron
20 Stoddard at all about what should be paid off or
21 what should not be paid off?

22 A. Other than that email, not that I'm
23 aware of. Because at the time this deal was
24 getting finalized where you would discuss that sort
25 of thing, like I said, I was really not talking to

1 the guy. I left him to talk to my mother and my
2 brother, because I found him really shady.

3 Q. Did you ever ask him why he believed
4 there was or was not a mortgage or loan connected
5 to the boat?

6 A. No, I never asked him that.

7 Q. All right. I'm going to show you Page
8 ST. BARTS 54 in Plaintiff's Exhibit 17. Have you
9 ever seen that document? It's a Seller's
10 Disbursement Summary.

11 A. No.

12 Q. And I believe down there toward the
13 bottom it shows pay off with Wachovia Bank
14 \$125,600?

15 A. I've never seen it, but my guess would
16 be that it was prepared sometime after he got the
17 email.

18 Q. Is there a date on it?

19 A. Nope.

20 Q. So you believe the figure \$125,600 is
21 based on your email to Mr. Stoddard?

22 A. I'd have to look at the email, but I
23 would think so. There's no date on this one
24 either.

25 Q. The email's on Page 41 of that exhibit.

Page 50.

1 A. Well, this says \$125,643.30, so I don't
2 know here he --

3 Q. Okay.

4 A. As far as I tell, Stoddard was only
5 after his commission, didn't care about anything
6 else. But no, the one that said that -- I didn't
7 see it.

8 Q. Well, I guess what I'm not clear on is
9 -- you're telling me that Ron Stoddard told your
10 mom that there was no pay off or loan or mortgage
11 associated with the boat, and yet there's a
12 Seller's Disbursement Summary that shows a pay off
13 to Wachovia Bank.

14 MR. ALFORD: I object to the form of
15 that question, and I happy --

16 MR. PROFFITT: Well, I'm just asking
17 her if she can explain it. I don't know if she
18 can.

19 THE WITNESS: I can't explain it,
20 except that this one is not on letterhead. I think
21 it was probably some sort of worksheet. It's got
22 some handwritten stuff. I think that when -- I
23 think this is something he prepared and maybe he,
24 because I don't even know if he's smart enough or
25 someone in his office, was checking up this figure.

1 And then this must have been probably the final
2 one, the official one.

3 Q. All right.

4 A. Because they would have to know how to
5 legally categorize -- I don't do that kind of law,
6 but I think that when you do these kind of sheets,
7 I don't -- don't they have to properly pay off the
8 right entity? And don't they have a duty?

9 Q. All right. In Plaintiff's Exhibit 18,
10 the request to admit. If you'll look at Number 27,
11 it's one that you objected to.

12 What's your answer to Number 27?

13 A. My answer is that certainly I did not
14 direct St. Barts Yachts not to pay off the proceeds
15 of the sailboat. And I can't speak for my mother,
16 but certainly that if St. Barts Yachts had a legal
17 duty to pay off Wachovia, it doesn't matter what I
18 would instruct. They would do what they had a
19 legal duty to do, but I didn't instruct then.

20 Q. Well, you agree it's your boat -- well,
21 it's you parents boat?

22 A. It's my parents boat.

23 MR. ALFORD: Correction, it's A & M
24 Partners.

25 THE WITNESS: A & M Partners.

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1 BY MR. PROFFITT:

2 Q. And A & M Partners was owned by who?
3 Or was owned by who -- by whom?

4 A. I believe my mother and father, but I'd
5 have to look at those papers again.

6 Q. Okay. Now, this is Plaintiff's Exhibit
7 20 which are Wachovia's first set of
8 interrogatories to the Coffey Defendants and these
9 are your responses.

10 And I'll call your attention to Number
11 13. If you would just explain your answer to me.

12 A. To Defendant's knowledge, none of the
13 parties have any idea what became of the load
14 proceeds. The proceeds were disbursed solely to
15 Michael D. Coffey, deceased, without the knowledge
16 of any of the Defendants; that's true. Until this
17 -- I didn't know about the proceeds. Apparently he
18 received \$125,000.

19 Q. Okay. What role has Michael Coffey
20 played in this --

21 MR. ALFORD: P.

22 BY MR. PROFFITT:

23 Q. -- Michael P. Coffey played in the sale
24 of the boat and the handling of your father's
25 estate? Just generally, first of all.

1 A. Generally, I asked him to deal with Ron
2 Stoddard because I found the guy despicable.
3 That's the role he had in the sale of the boat.

4 And what else?

5 Q. And the probate estate, has he helped
6 out at all with that to your knowledge?

7 A. He may have helped my mother gather
8 some information. I don't think -- I took the
9 information for my mom over to Jordan's office.
10 Oh, Michael was in call, I think with Jordan.

11 Q. What do you think Michael P. Coffey
12 knows about the boat sale and the Home Equity Line
13 of Credit that was used to purchase it?

14 A. Very little. About the boat sale, he
15 dealt towards the end with Ron Stoddard, when I
16 wasn't dealing with him.

17 Q. Do you know if Michael P. Coffey ever
18 called Wachovia and asked about this line of
19 credit?

20 A. You'd have to ask Michael P. Coffey,
21 but I'm -- I'm fairly certain that he never did,
22 because he got the information about it being a
23 line of credit from me.

24 Q. So as far as you know, Michael P.
25 Coffey didn't go online and look at the documents?

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1 A. No.

2 Q. And what is his job again?

3 A. General Counsel for an insurance
4 company.

5 Q. So he's an lawyer?

6 A. He has a JD and an MBA.

7 Q. Okay.

8 A. He's a lawyer, but he has a lot of free
9 time. He doesn't do litigation. Plus, you could
10 ask him. You could telephone him.

11 Q. All right. I don't think I need to ask
12 you about Plaintiff's Exhibit 19. I think I
13 understand what the confusion was with regard to
14 question five.

15 MR. ALFORD: I'll clear that up.

16 BY MR. PROFFITT:

17 Q. So can you think of anything else to
18 tell me about this transaction or this lawsuit that
19 I haven't asked you and that you'd like to tell me?

20 A. Well, I'm sure my lawyer's going to
21 tell me don't say anything. Keep your mouth shut,
22 so I won't.

23 No, I can't think of anything at this
24 time. If I do think of something I will tell Mr.
25 Alford and he can tell you.

1 MR. PROFFITT: All right. I think
2 that's it.

3 (The deposition was concluded at 1:20
4 PM.)
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SIGNATURE OF DEPONENT

I, the undersigned, MAUREEN T. COFFEY-EDRI, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

MAUREEN T. COFFEY-EDRI

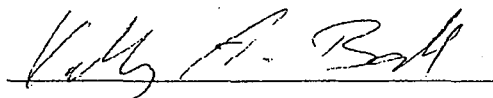
Date

CERTIFICATE OF REPORTER

I, Kelly A. Ball, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of September, 2007 at Bluffton, Beaufort County, South Carolina.



Kelly A. Ball

My Commission expires
April 2008

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I N D E X

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(No Information Requested)

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Plaintiff,

v.

Estate of Michael D. Coffey, Ann T. Coffey, both individually and as Personal Representative of the Estate of Michael D. Coffey, Maureen Coffey Edri, Michael P. Coffey, Christopher Coffey, Bank of America, N.A., Frank Koncul, and John Doe and Richard Roe as representatives of all heirs and devisees of Michael D. Coffey, deceased, as representatives of all persons entitled to claim under or through any or all of the heirs and devisees, and as representatives of other unknown persons or corporations claiming any right, title, interest in or lien upon the real estate described herein, any unknown adults or corporations being as a class designated as Joe Doe, and any unknown infants or persons in military service designated as a class Richard Roe,

Defendants.

AFFIDAVIT

I, the undersigned James Thibodeau, being duly sworn, state under oath as follows:

1. I am James Thibodeau, Assistant Vice President at Wachovia Bank, and am over the age of eighteen years.

2. I have personal knowledge of the facts set forth in this affidavit and, if called as a witness, I could competently testify to these facts.

3. I have reviewed the relevant business records of Wachovia on the home equity line of credit obtained by Michael D. Coffey (account number **Redacted** 1495).

4. Wachovia's records show that the last payment made on this home equity line of credit was on December 1, 2005. The records show that the home equity loan became delinquent on January 3, 2006, when the regular monthly payment was not made. The balance due and owing on the loan on that date was \$126,256.58. No payments have been made on this home equity loan since that date.

5. Using the statutory prejudgment, annual interest rate of 8.75 percent, the balance of \$126,256.58 has accrued interest in the amount of \$21,756.94 from January 3, 2006, to December 24, 2007. Therefore, the total amount owed to Wachovia as of December 24, 2007 is \$148,013.52.

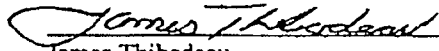
6. Based on an annual interest rate of 8.75 percent and the information contained in paragraphs 4 through 6, an additional \$30.26 in interest will accrue each day that this loan remains unpaid after December 24, 2007.

7. As an alternative calculation, I am informed that the Ann T. Coffey received \$112,000 on January 5, 2006, when she sold the sailboat purchased with the proceeds of the home equity loan. Using the statutory prejudgment, annual interest rate of 8.75 percent, the balance of \$112,000 has accrued interest in the amount of \$19,244.28 from January 5, 2006, to December 24, 2007. Therefore, the total amount owed to Wachovia as of December 24, 2007 is \$131,244.28.

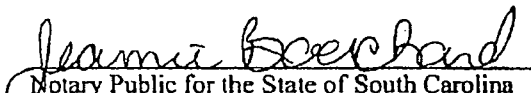
8. Based on an annual interest rate of 8.75 percent and the information contained in paragraph 8, an additional \$26.84 in interest will accrue each day that this loan remains unpaid after December 24, 2007.

Further, affiant sayeth not.

WITNESS my hand this 24th day of December 2007, at Jacksonville, FL.


James Thibodeau
Assistant Vice President

SWORN TO and subscribed before me
this 24th day of December, 2007.


Notary Public for the State of South Carolina
My commission expires _____

JEANNIE BOUCHARD
Notary Public, State of Florida
My comm. exp. July 22, 2011
Comm. No. DD 697397

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

THE HONORABLE MARVIN H. DUKES, III, MASTER-IN-EQUITY

CASE NO. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

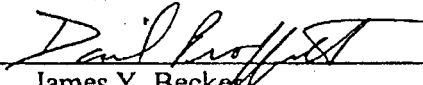
CERTIFICATE OF COMPLIANCE

We certify that the Record on Appeal complies with Rule 210(g), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court relating to personal data identifiers.

November 25, 2008

HAYNSWORTH SINKLER BOYD, P.A.

By:


James Y. Becker

R. David Proffitt

1201 Main St., 22nd Floor (29201-3226)

P.O. Box 11889 (29211-1889)

Columbia, South Carolina

Firm: (803) 779-3080

Fax: (803) 765-1243

Email: jbecker@hsblawfirm.com

Email: dproffitt@hsblawfirm.com

Attorneys for Appellant Wachovia Bank, N.A.

RECEIVED

DEC 05 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

BRIEF OF APPELLANT

James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Firm: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com
Email: dproffitt@hsblawfirm.com

Attorneys for Appellant Wachovia Bank,
N.A.

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STATEMENT OF ISSUES

- I. Did the trial court err in granting summary judgment to Ann T. Coffey ("Mrs. Coffey") on Appellant Wachovia Bank's ("Wachovia") unjust enrichment / quasi-contract cause of action when it should have granted summary judgment to Wachovia?
- II. Did the trial court err in granting summary judgment to Mrs. Coffey on Wachovia's equitable lien cause of action when it should have granted summary judgment to Wachovia?
- III. Did the trial court err in granting summary judgment to Mrs. Coffey on Wachovia's prejudgment interest cause of action when it should have granted summary judgment to Wachovia?
- IV. Did the trial court err in granting summary judgment to Mrs. Coffey on Wachovia's mortgage ratification and foreclosure causes of action because genuine issues of material fact exist on these claims?

STATEMENT OF THE CASE

Wachovia Bank filed a Summons and Complaint in this matter against Ann T. Coffey and other Defendants on June 30, 2006, which Mrs. Coffey timely answered.¹ (R. pp. 15-26.) Wachovia moved to amend its Complaint on April 24, 2008, which was allowed by order filed May 9, 2008. (R. pp. 4, 55-72.)

In its First Amended Complaint, Wachovia asserted six causes of action against Mrs. Coffey: (1) mortgage foreclosure; (2) ratification of a mortgage; (3) unjust enrichment / quantum meruit / quasi-contract implied by law / restitution (hereinafter, “unjust enrichment / quasi-contract cause of action”); (4) equitable lien; (5) equitable mortgage; and (6) prejudgment interest. (R. pp. 62-72.)

Wachovia moved for summary judgment on January 3, 2008, on its unjust enrichment / quasi-contract cause of action, with a supporting memorandum and exhibits. (R. pp. 31-45, 159-61.) Mrs. Coffey served her cross-motion for summary judgment on all of Wachovia’s causes of action on February 27, 2008. Wachovia amended its motion on April 24, 2008, to move for summary judgment on its equitable lien cause of action, with a supporting memorandum. (R. pp. 46-54.) Wachovia also filed a memorandum in opposition to Mrs. Coffey’s motions for summary judgment on the same date. (R. pp. 73-96.)

A hearing was held on the parties’ motions for summary judgment before the Honorable Marvin H. Dukes, III, on May 5, 2008. The parties submitted proposed orders

¹ Wachovia originally sued the Estate of Michael D. Coffey, Ann T. Coffey, both individually and as Personal Representative of the Estate of Michael D. Coffey, Maureen Coffey Edri, Michael P. Coffey and Christopher Coffey. After discovery, Wachovia amended its Complaint to name as Defendants only Ann T. Coffey and Bank of America, N.A.

to the Court. (R. pp. 139-58.) The Court by order filed June 24, 2008, granted summary judgment to Mrs. Coffey on all of Wachovia's causes of action, and denied Wachovia's motions for summary judgment. (R. pp. 5-14.) Wachovia timely served and filed its Notice of Appeal.

STATEMENT OF FACTS

The relevant, material facts outlined in the following account of this case are *undisputed* by the parties.

Ann T. Coffey was married to Michael D. Coffey. Dr. Coffey, an obstetrician-gynecologist on Hilton Head Island since the mid-1980s, was diagnosed with end-stage lung cancer in early 2001. Dr. Coffey had owned sailboats over the years and decided to buy another one after his diagnosis. Dr. Coffey contacted a friend at Hilton Head Yachts, who helped Dr. Coffey locate and purchase a sailboat through St. Barts Yachts in Charleston. (R. pp. 359-63, 194-217.)

Dr. Coffey purchased the sailboat, a thirty-six foot Beneteau Oceanis 361, on July 30, 2001, from Hilton Head Yachts for \$125,000. (R. pp. 189-221.) Dr. Coffey borrowed the money to purchase the yacht by taking out a \$125,000 home equity line of credit on his residence on Hilton Head Island on July 23, 2001. (R. pp. 171-78.) Wachovia transferred \$125,000, the entire proceeds of the home equity line of credit, at Dr. Coffey's request to the account of Hilton Head Yachts at Carolina First Bank on Hilton Head Island on July 30, 2001. (R. pp. 218-29, 377-78, 492-93.) Mrs. Coffey testified at her deposition that she knew about the purchase of the sailboat several weeks before it occurred, although at the time she did not know the details of how Dr. Coffey paid for the sailboat. Dr. Coffey handled the household finances, although Mrs. Coffey

signed twenty-nine mortgages, one deed and a power of attorney from 1984 to 2005 relating to properties owned by her and Dr. Coffey. (R. pp. 363, 415-19, 423, 334-40.)

Dr. Coffey was a respected and long-time customer of Wachovia, and when he requested the home equity line of credit, he did not explain to Wachovia's bank officers that he had previously deeded his share of the residence to Mrs. Coffey in 1984. As a result, Wachovia did not verify the legal title of Dr. Coffey's residence before approving and closing the home equity loan to Dr. Coffey, and did not require Mrs. Coffey to sign the mortgage. (R. pp. 162-78.)

The sailboat was titled to A & M Partners, Inc., a Delaware corporation established by Dr. Coffey whose only asset was the sailboat. Dr. Coffey and Mrs. Coffey were the only officers and stockholders of the corporation. (R. pp. 267-72, 378-80, 483-84, 490-91.) Mrs. Coffey testified the boat was available for her and her husband or other family members to use and enjoy. (R. pp. 364-68.)

Dr. Coffey made regular payments on the Wachovia home equity loan from July 2001 until he died on March 21, 2005. Dr. Coffey made the payments with funds drawn on a personal checking account jointly held by himself and Mrs. Coffey. (R. pp. 249-66, 386-88, 493-94.) Dr. Coffey and Mrs. Coffey claimed a deduction for interest paid on the Wachovia home equity loan on their joint federal tax returns in 2001, 2002, 2004 and 2005. (R. pp. 273-77, 380-86.)

Mrs. Coffey made regular payments on the home equity loan from the date of Dr. Coffey's death until December 2005, about nine months, using the couple's joint checking account. (R. pp. 243-48.) Mrs. Coffey testified that she originally believed Dr. Coffey purchased the boat with cash or retirement funds. She testified that Dr. Coffey

told her when he purchased the sailboat, "don't worry about it . . . it's paid for." (R. pp. 361, 387-88, 493-94.) Mrs. Coffey testified that, in the months following her husband's death, she received statements on the home equity loan, but "whatever came in, I paid until eventually I started waking up and saying, what am I paying?" (R. pp. 389, 388-96, 410-11.)

In or about September 2005, Mrs. Coffey found a "scrap of paper" while going through Dr. Coffey's records that said "Wachovia boat loan." She then realized there must be a loan or mortgage on the sailboat, although she thought it must be a "small mortgage." Mrs. Coffey wrote "boat loan" or "boat" on the memo line of her payment checks to Wachovia on three occasions from September to November 2005. (R. pp. 243-48, 372-73, 388-396, 408-11.)

Mrs. Coffey, acting as the personal representative of her husband's estate, listed the sailboat as a jointly owned asset to which she obtained sole title in the estate inventory filed in Beaufort County Probate Court. Dr. Coffey left nearly all his assets in a marital credit shelter trust to Mrs. Coffey and his estate has no assets to pay any debts, including the subject loan to Wachovia. (R. pp. 180-88, 356-59, 484-87.)

In the fall of 2005, Mrs. Coffey decided to intensify her ongoing effort to sell the sailboat and, based on a friend's recommendation, contacted St. Barts Yachts to act as a broker in the sale. (R. pp. 400-02.) On September 28, 2005, Mrs. Coffey signed a "Yacht Brokerage Central Listing Agreement" with St. Barts Yachts to sell the sailboat. The sailboat was listed for sale at \$119,000. (R. pp. 278-87, 402.)

Mrs. Coffey's daughter, Maureen Coffey-Edri, helped her mother sell the yacht. Ms. Coffey-Edri, who is a lawyer and municipal court judge on Hilton Head Island,

informed St. Barts Yachts by email on December 22, 2005, that “[t]he boat loan information is: Wachovia Bank Acct. [xxxx-xxxx-xxxx]-1495 pay off \$125,643.30.” (R. p. 302, 480-84, 498-501.) Ms. Coffey-Edri testified she simply forwarded loan information provided by her mother to St. Barts Yachts, and did not investigate the matter further or discover that the “boat loan” actually was the Wachovia home equity line of credit until shortly after the yacht was sold on January 5, 2006. (R. pp. 494-501.) Ron Stoddard, the St. Barts Yachts salesman, in turn, passed the boat loan information from Ms. Coffey-Edri on to the buyer’s lender. St. Barts Yachts also prepared a draft “Seller’s Disbursement Summary” showing a “Payoff with Wachovia Bank” of \$125,600, with a balance due from Mrs. Coffey of \$25,525. (R. pp. 304, 315.)

Mrs. Coffey testified she asked Mr. Stoddard of St. Barts Yachts to check on the status of the loan and gave him the Wachovia home equity loan account number. Mr. Stoddard told her there was no lien or mortgage on the sailboat. Mrs. Coffey testified she took Mr. Stoddard’s word for it; she never called Wachovia herself to ask about the home equity loan or the status of any boat loan. Mrs. Coffey testified she did not confer with Ms. Coffey-Edri or her son who is a lawyer in Illinois, Michael P. Coffey, about the issue, although both had been helping her with various matters related to Dr. Coffey’s estate and financial affairs. (R. pp. 407-13, 495-97.) Mrs. Coffey and Ms. Coffey-Edri testified they did not fully realize and understand that the entire proceeds of the loan to buy the sailboat came from the Wachovia home equity loan until they received affidavits and other documents in June 2007 gathered by Wachovia’s counsel in this case, which conclusively prove that Dr. Coffey used the entire loan proceeds to buy the sailboat. Mrs.

Coffey and her daughter now fully admit this fact. (R. pp. 440-41, 455-63, 507-08, 515-18.)

Mrs. Coffey ultimately sold the sailboat to a Virginia couple for \$112,000, receiving \$100,075 after sale expenses were paid. The "Seller's Disbursement Summary" did not mention the loan to Wachovia. (R. pp. 310-13, 316.) The sale closed on January 5, 2006. (R. pp. 309, 404-05.) Mrs. Coffey deposited the entire amount of the sale proceeds in her personal bank account, and that amount remains on deposit or otherwise invested in her personal accounts. (R. pp. 405-07, 424-25, 491-92.)

The net worth of Dr. Coffey and Mrs. Coffey in 2001, when they obtained an unrelated home mortgage loan on their residence, was more than \$1.2 million. (R. pp. 241, 397-98.) Their home at the time had an appraised value of \$2.1 million. (R. pp. 230-39, 242, 397-98.)

As of January 3, 2006, the due date of the first payment that Mrs. Coffey refused to pay on the Wachovia home equity loan, the balance due on the loan was \$126,256.58. (R. pp. 523-34.)

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to

the non-moving party. Law v. S.C. Dept. of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 354, 650 S.E.2d 68, 69 (2007).

“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). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Regl. Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

A mortgage foreclosure is an action in equity. Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997); Eastern Sav. Bank v. Sanders, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (Ct. App. 2007). A claim grounded in unjust enrichment or quasi-contract implied by law is an action in equity. Columbia Wholesale Co. v. Scudder-May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). An action to establish an equitable lien is an action in equity. Doe v. Roe, 323 S.C. 445, 448, 475 S.E.2d 783, 784 (Ct. App. 1996). In a case heard by a master who enters a final judgment on equitable causes of action, the appellate court may determine facts in accordance with its own view of the preponderance of the evidence. Hayne Fed. Credit Union, 327 S.C. at 248, 489 S.E.2d at 475; Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976); Eastern Sav. Bank, 373 S.C. at 354, 644 S.E.2d at 805; Peoples Fed.

Sav. & Loan Assn. v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 139, 425 S.E.2d 764, 769 (Ct. App. 1992).

ARGUMENT

The foundation of the trial court's rulings and Mrs. Coffey's arguments is that Wachovia is not entitled to any equitable or legal remedy due to its failure to determine, before approving the mortgage loan, that the real property was legally titled solely in the name of Mrs. Coffey instead of her husband, Dr. Coffey, a respected customer who obtained a \$125,000 home equity line of credit to buy a yacht. Wachovia made an honest mistake and, even though Mrs. Coffey has been unjustly and unfairly enriched at Wachovia's expense in an amount exceeding \$148,000, pursuant to the trial court's ruling, nothing can be done in equity to remedy that mistake. The trial court's rulings are not supported by the law of South Carolina or the facts of this case.

I. The trial court erred in granting summary judgment to Mrs. Coffey on Wachovia's unjust enrichment / quasi-contract cause of action, but instead should have granted summary judgment to Wachovia on this claim.

a. The undisputed facts show that Wachovia has proven the required elements in its unjust enrichment / quasi-contract cause of action.

Wachovia asserted a cause of action for unjust enrichment / quantum meruit / quasi-contract implied by law / restitution (hereinafter, "unjust enrichment / quasi-contract cause of action") and moved for summary judgment on that claim. (R. pp. 65-66, 31-41.) The trial court denied Wachovia's motion and granted summary judgment to Mrs. Coffey on this cause of action. (R. pp. 8-9.)

The trial court ruled that Wachovia had failed to prove that the benefit conferred was nongratuitous by showing "[t]hat the defendant's conduct induced the plaintiff to

confer the benefit on the defendant.” (R. p. 8) (emphasis in original). The trial court misinterpreted the state of the law on this claim, applying an inducement element that the South Carolina Supreme Court has rejected. The trial court erred because the law no longer defines “nongratuitous” in the manner specified by the trial court, and a plaintiff no longer is required to prove an inducement element in an unjust enrichment / quasi-contract cause of action. Even if that were still the law, the case relied on by Mrs. Coffey is easily distinguished from the present one.

In Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000), the Supreme Court resolved confusion about the law on unjust enrichment / quasi-contract causes of action. The Supreme Court explained that “[i]n a law action, the measure of damages is determined by the parties’ agreement, while in equity, the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff.” Id. at 8, 532 S.E.2d at 872. The Supreme Court adopted this test as the sole test for a “quantum meruit / quasi-contract / implied by law” claim:

- (1) benefit conferred by plaintiff upon the defendant;
- (2) realization of that benefit by the defendant; and
- (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.”

Id. at 8-9, 532 S.E.2d at 872; see also Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167-68 (2003) (discussing elements of unjust enrichment and not including any inducement element); Columbia Wholesale Co. v. Scudder-May N.V., 312

S.C. 259, 261, 440 S.E.2d 129, 130 (1994) (same); Landbank Fund, LLC v. Dickerson, 369 S.C. 621, 630-31, 632 S.E.2d 882, 887-88 (Ct. App. 2006) (applying analysis set forth in Myrtle Beach Hospital and not including any inducement element); QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) (same); Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C., 353 S.C. 327, 334-35, 577 S.E.2d 468, 472-73 (Ct. App. 2003) (same); Pitts v. Jackson Natl. Life Ins. Co., 352 S.C. 319, 339, 574 S.E.2d 502, 512 (Ct. App. 2002) (same).

Under the more streamlined test in Myrtle Beach Hospital, the term “nongratuitous benefit” is not used. The focus obviously is on, as it should be, whether a benefit was conferred, realized and retained under circumstances indicating that the recipient should not get to keep the money, goods or services for free.²

In this case, Mrs. Coffey has been unjustly enriched at the expense of Wachovia in the amount of \$126,256.58, the balance due on the home equity loan when it became delinquent on January 3, 2006, plus prejudgment interest at the statutory rate of 8¾ percent for a total amount due as of December 24, 2007, of \$148,013.52. (R. pp. 39-44, 533.) In truth, the facts and circumstances of this case could be contained in a first-year law school textbook to illustrate the classic example of a case of unjust enrichment and quasi-contract implied by law.

² The Supreme Court explicitly rejected this test, set forth in some Court of Appeals’ opinions which were overruled: “(1) valuable services or materials were furnished; (2) to the defendant; (3) who accepted, used and enjoyed them; (4) under such circumstances as reasonably notified the defendant that the plaintiff was expecting to be paid by the defendant.” Myrtle Beach Hosp., 341 S.C. at 9, 532 S.E.2d at 872-73. The fourth element of this rejected test implicitly contains an inducement element, again illustrating the Supreme Court has rejected such an element.

First, a benefit has been conferred on Mrs. Coffey. Her late husband obtained a home equity line of credit of \$125,000 from Wachovia, purportedly without Mrs. Coffey's knowledge, and used the proceeds to buy a sailboat. Mrs. Coffey sold the sailboat on January 5, 2006, for \$112,000, and deposited the sale proceeds in her personal bank accounts, where it remains today. (R. pp. 171-78, 309, 316, 405-07, 424-25, 491-92.) Mrs. Coffey has not repaid the loan that admittedly was used to obtain the sailboat. (R. pp. 440-41, 455-63, 507-08, 515-17, 532-34.) It is undisputed that Wachovia did not intend to bestow a nongratuitous benefit of loan proceeds to either Dr. Coffey or Mrs. Coffey; Wachovia did not intend to give the money away "for free."

Second, Mrs. Coffey has realized some value from the loan proceeds, according to her own testimony and the record. The sailboat was titled to a corporation in which Dr. Coffey and Mrs. Coffey were the sole officers and stockholders. (R. pp. 267-72, 309, 378-80, 483-84, 490-91.) Dr. Coffey and Mrs. Coffey claimed a deduction for interest paid on the home equity line of credit on their joint federal tax returns in 2001, 2002, 2004 and 2005. (R. pp. 273-77, 380-86.) Mrs. Coffey and her family and friends used and enjoyed, or had the opportunity to use and enjoy, the sailboat while she and Dr. Coffey owned it. (R. pp. 364-68.) Most importantly, upon selling the boat, Mrs. Coffey kept the sale proceeds for herself and did not repay the Wachovia loan. Mrs. Coffey has earned and is continuing to earn interest on the sale proceeds she deposited in her personal bank accounts. (R. pp. 405-07, 424-25, 491-92.)

Finally, it would be highly unjust for Mrs. Coffey to retain the benefit without paying Wachovia for its value. There can be little argument or debate on this point. The bottom line is that the loaned funds found their way into Mrs. Coffey's hands, regardless

of exactly how or why it happened and regardless of any party's knowledge, or lack thereof, of the circumstances surrounding the obtaining of the loan. The value of Dr. Coffey's assets at his death, which passed entirely to Mrs. Coffey, included the sailboat purchased with Wachovia funds. The sailboat substantially increased the value of the inherited assets. Mrs. Coffey, for whatever reason, has refused to repay the loaned funds that benefited her handsomely, even though, according to the testimony of both Mrs. Coffey and her daughter, Mrs. Coffey has had full knowledge of all facts and circumstances of the loan since at least June 2007. (R. pp. 440-41, 455-63, 507-08, 515-17.)

This Court, upon its own review of the facts based on a preponderance of the evidence, should hold that Mrs. Coffey has been unjustly enriched at Wachovia's expense and order her to pay \$126,256.58 to Wachovia, plus prejudgment interest at the statutory rate since January 3, 2006. This Court should reverse the trial court and remand for entry of summary judgment in Wachovia's favor on its unjust enrichment / quasi-contract cause of action, with total damages to be calculated by the trial court.

b. The Niggel case is neither applicable nor controlling under the facts and circumstances of this case.

Given the Supreme Court's analysis in Myrtle Beach Hospital, 341 S.C. 1, 532 S.E.2d 868, and its move away from a narrow definition of "nongratuitous benefit" and an inducement element, the trial court's reliance on Niggel Associates, Inc. v. Polo's of N. Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988) constitutes error and should be rejected by this Court. In any event, Niggel is easily distinguished from the present case.

As implicitly recognized in Myrtle Beach Hospital, the concept of a nongratuitous benefit must be considered in the broader sense of the term, i.e., that the benefit was not a gift in which the party granting it expected nothing in return. "Gratuitous" simply means "given or granted without valuable or legal consideration." Black's Law Dictionary 700 (1990); see also Shayne of Miami, Inc. v. Greybow, Inc., 232 S.C. 161, 167, 101 S.E.2d 486, 489 (1957) (explaining that a promise is not gratuitous in the contract setting when it is bargained for in an exchange). In light of Myrtle Beach Hospital and its progeny, the outcome and reasoning in Niggel should be limited to the facts of that case if not expressly overruled.

Wachovia certainly did not intend to gratuitously hand over \$125,000 to Dr. Coffey or Mrs. Coffey with no expectation of repayment. Wachovia submits that one reason the Supreme Court endorsed a broader and more comprehensible analysis of unjust enrichment cases is to avoid getting mired in the minutiae of a given element. Instead, the focus properly is on whether the benefit was conferred, realized and retained under circumstances indicating that the recipient should not get to keep the money, goods, or services for free.

In Niggel, the Court of Appeals held that tile and heating and air contractors who provided labor and materials in a building they believed was owned by the sublessor could look only to the sublessor for payment, not the landlord. The Court of Appeals reasoned that the contractors had failed to show a nongratuitous benefit and, furthermore, the contractors had failed to prove that the landlord had benefited from an increase in the value of the building. The Court of Appeals noted that "whether restitution should be

required is a question to be decided on the facts of each case.” Id. at 532, 374 S.E.2d at 509.

The Court of Appeals explained its reasoning as follows:

For restitution to be warranted, the plaintiff must confer the benefit nongratuitously: that is, it must either be (1) at the defendant’s request or (2) in circumstances where the plaintiff reasonably relies on the defendant to pay for the benefit and the defendant understands or ought to understand that the plaintiff expects compensation and looks to him for payment. It is not enough that the defendant has knowledge of the plaintiff’s conduct; he must have induced the plaintiff to confer the benefit.

In this case, the Contractors did the work under contracts with [sublessor]. They expected to be paid by [sublessor]. They had no dealings whatever with [Landlord]. Indeed, they did not know [Landlord] had an interest in the property when they agreed to perform the work. [Landlord] did not request the work. It did nothing to cause the Contractors to rely on it for payment. It had no reason to suppose the Contractors looked to it for payment. The Contractors were not induced to furnish their labor and materials by any expectation that [Landlord] would pay for them. In these circumstances, [Landlord] had no duty to make restitution to the Contractors. Any benefit it received was an incidental result of dealings between others in which it did not participate and over which it assumed no control.

Id. at 533, 374 S.E.2d at 509.

The present case is nothing like Niggel and that fact-specific case should not control the outcome in this case, particularly when it is well established that each case must be examined and decided on its own facts and circumstances. Wachovia granted the mortgage loan in circumstances where it reasonably expected to rely on the owner of the property to pay for the benefit bestowed, i.e., repay the loan. Wachovia fully expected to have a secured interest in the property and took formal steps to protect its interest, obtaining the signature of the person it believed to be the property owner on the mortgage and note and properly recording the mortgage. Wachovia absolutely was induced to approve the loan by the expectation that the owner would repay the loan.

Finally, Wachovia has offered compelling and undisputed evidence that the benefit received by Dr. Coffey and now retained by Mrs. Coffey was not incidental, but resulted in the unjust enrichment of Mrs. Coffey at the expense of Wachovia in an amount exceeding \$148,000.

c. The equitable doctrine of unclean hands has no application under the facts and circumstances of this case and does not prevent the award of equitable relief to Wachovia.

In granting summary judgment to Mrs. Coffey, the trial court erroneously ruled that Wachovia had so sullied its hands by failing to hire an attorney to oversee the mortgage loan closing that it was prohibited from seeking equitable relief. (R. pp. 12-13.)

Initially, Wachovia notes that the trial court should have ruled that Mrs. Coffey is barred from raising the affirmative defense of unclean hands because she failed to raise it in her Answer, Counterclaims and Affirmative Defenses. See Rock Hill Natl. Bank v. Honeycutt, 289 S.C. 98, 104-05, 344 S.E.2d 875 (Ct. App. 1986); Rule 8(c), SCRPC. Regardless, this defense is without merit because the doctrine has no application in this case.

“The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. The decision to grant equitable relief is in the discretion of the trial judge.”

First Union Natl. Bank v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998); accord Norton v. Matthews, 249 S.C. 71, 80, 152 S.E.2d 680, 684 (1967).

“[P]rejudice to the defendant is a necessary element of the ‘unclean hands’ defense.”

Wilson v. Landstrom, 281 S.C. 260, 267, 315 S.E.2d 130, 134 (Ct. App. 1984).

“The expression ‘clean hands’ means a clean record with respect to the transaction with the defendants themselves and not with respect to others. . . [T]he rule must be understood to refer to some misconduct in regard to the matter in litigation of which the opposite party can, in good conscience, complain in a Court of equity. . . . [T]he party to a suit complaining of a wrong must have been injured thereby in order to justify the application of the principle of ‘unclean hands’ to the case of his opponent.” Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943) (where plaintiff bar owners had sued city to stop enforcement of allegedly unconstitutional ordinance mandating Sunday closures, Court concluded bar owners’ hands were clean and thus the owners were entitled to temporary injunctive relief despite any rowdy conduct by their patrons) (citations omitted).

Wachovia has not acted unfairly in this case and its actions have not prejudiced Mrs. Coffey. Wachovia has not in acted with unclean hands at any time – from the granting of the line of credit throughout the course of this litigation. Wachovia made an honest mistake in failing to accurately determine the legal title of the real property, but that mistake only benefited Dr. Coffey, his estate, his family and Mrs. Coffey. Mrs. Coffey presently is the one acting with unclean hands, given her continued refusal to acknowledge the import of undisputed facts about the sailboat loan admittedly known to her by June 2007, if not earlier.

Wachovia’s actions have not prejudiced Mrs. Coffey at all. Defendants, in fact, have *benefited greatly* from Wachovia’s actions. Through the home equity loan, Dr. Coffey and Mrs. Coffey obtained the use and enjoyment of an expensive sailboat for more than four years. Since January 2006, after Mrs. Coffey stopped making payments

on the sailboat loan and kept the entire proceeds of the boat sale for herself, Mrs. Coffey has benefited by earning interest on the funds she invested in personal accounts. Mrs. Coffey simply has not been injured by Wachovia's actions. See Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 63-64, 644 S.E.2d 675, 679 (2006) (observing that county's retention of proceeds from tax sale and earning interest on those proceeds "clearly constitutes a non-gratuitous benefit for which the County received some value" and finding it inequitable for the County to retain that benefit without compensating the property buyers for it) (Toal, C.J., dissenting).³

A defendant bears the burden of proving the affirmative defense of unclean hands by showing that a party's actions were both unfair and prejudicial to the defendant. Hands are made unclean in equity by knowing actions that are intended to treat another party in an unfair or prejudicial manner. Hands are not made unclean by honest or unintentional mistakes. See e.g. Buckley v. Shealy, 370 S.C. 317, 325, 635 S.E.2d 76, 80 (2006) (holding that husband had unclean hands and was not entitled to equitable setoff for alleged overpayment of child support due to his repeated disobedience of court orders and constant lack of effort to cooperate with wife); Ingram v. Kasey's Associates, 340 S.C. 98, 105-08, 531 S.E.2d 287, 290-92 (2000) (holding that tenant had unclean hands and was not entitled to equitable remedy of specific performance of option-to-buy contract, where tenant misled landlord about his intention to buy and never had money to buy, but landlord had spent funds to buy adjacent property and could have lost right to

³ The majority in Key Corporate Capital indicates no disagreement with the idea that earning interest from retained funds is a benefit, although the majority concluded the outcome was controlled by a prior statute that required only the refund of the purchase price without a refund of interest.

operate restaurant at the site due to tenant's actions); First Union Natl. Bank, 333 S.C. at 568-69, 511 S.E.2d at 379-80 (holding that master-in-equity properly reduced daughter's share of trust distribution where evidence showed that daughter, despite her denials, knew her father had remarried, knew he was not supposed to receive trust payments after remarriage, and her silence resulted in diminution of trust assets).

A particularly instructive case is Allendale County Bank v. Cadle, 348 S.C. 367, 559 S.E.2d 342 (Ct. App. 2001). In that case, the bank brought an action in equity to reinstate its first mortgage, recorded in 1993, on a property after a satisfaction of mortgage mistakenly was recorded in 1996. The bank re-recorded the 1993 mortgage in 1997, but two contractors who had performed work earlier on the property (a sanitary landfill) argued their mechanic's liens were superior to the bank's mortgage. Id. at 370-72, 559 S.E.2d 343-45.

The Court of Appeals affirmed the special referee's ruling that the 1993 mortgage had been satisfied by mistake, and held that the contractors had failed to show any detrimental reliance or prejudice resulting from the mistaken filing of the satisfaction. Id. at 374-75, 559 S.E.2d at 346. The Court of Appeals rejected the contractors' argument that the bank's own negligence prevented the reinstatement of the 1993 mortgage for the same reason. Id. at 376-77, 559 S.E.2d at 347. Finally, the Court of Appeals held that, even if the contractors' "unclean hands" defense were preserved for appellate review, the defense was inapplicable because the evidence showed that the contractors did not rely on the presence or absence of mortgages in deciding whether to render services that were the basis of the mechanic's liens. Id. at 377-79, 559 S.E.2d at 347-48.

In analyzing cases involving the mistaken satisfaction of mortgages, the Court of Appeals observed:

The principle which underlies all of the reported decisions in this class of cases is, when the legal rights of the parties have been changed by mistake, equity restores them to their former condition, when it can be done without interfering with any new rights acquired on the faith and strength of the altered condition of the legal rights and without doing injustice to other parties.

Id. at 373, 559 S.E.2d at 345.

Wachovia is similarly entitled to equitable relief. Mrs. Coffey has not suffered any prejudice but, in fact, has greatly benefited from the mortgage loan obtained by her late husband. Mrs. Coffey benefited both through the use and enjoyment of the sailboat while the family owned it and by retaining and earning interest on the proceeds from the sale of the boat, which she has personally invested. Neither Mrs. Coffey nor any third party has detrimentally relied or been prejudiced in any way by Wachovia's failure to accurately determine the status of legal title in the property before approving the loan to Dr. Coffey. No injustice would occur by granting equitable relief to Wachovia and requiring Mrs. Coffey to repay the loan pursuant to the terms of the mortgage.

As for the allegation that Wachovia engaged in the "unauthorized practice of law" in connection with the home equity loan, this reasoning is an obvious red herring offered up by Mrs. Coffey and mistakenly endorsed by the trial court. "To protect the public from unsound legal advice and incompetent representation, South Carolina, like other jurisdictions, limits the practice of law to licensed attorneys." Doe v. Condon, 341 S.C. 22, 25, 532 S.E.2d 879, 881 (2000); accord In re: Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992) (observing that state Constitution and statutes commit to Supreme Court the duty of regulating the practice of law, and goal of

preventing unauthorized practice of law is to protect public from harm). In this case, the only entity harmed by the lack of an attorney is Wachovia. Mrs. Coffey has benefited greatly from Wachovia's mistake, which occurred because Wachovia trusted a long-time, respected customer instead of following usual procedures.

In any event, the Supreme Court and Court of Appeals have held that there is no private right of action for the unauthorized practice of law. The proper and exclusive remedy for any claims arising out of the alleged unauthorized practice of law is a declaratory judgment action in the original jurisdiction of the Supreme Court. See Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2001); Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006). The trial court, at Mrs. Coffey's urging, erroneously inserted into this case a concept that has no application.

II. The trial court erred in granting summary judgment to Mrs. Coffey on Wachovia's equitable lien cause of action, but instead should have granted summary judgment to Wachovia on this claim because Wachovia proved all elements of the claim.

Wachovia asserted a cause of action for equitable lien and moved for summary judgment on this claim. (R. pp. 66-67, 46-54.) The trial court denied Wachovia's motion and granted summary judgment to Mrs. Coffey on this cause of action. (R. pp. 11-12.) The trial court erred because Wachovia proved all elements of its claim.

"An equitable lien is neither an estate nor property in the thing itself, but is simply a right of a special nature over the thing, which constitutes a charge or encumbrance upon it, so that the very thing itself may be proceeded against in equity for payment of a claim or debt." Doe v. Roe, 323 S.C. 445, 475 S.E.2d 783 (Ct. App. 1996). For an equitable lien to arise, there must be:

- (1) a debt, duty or obligation owing from one person to another;
- (2) specific property to which the debt attaches; and
- (3) an intent, expressed or implied, that the property will serve as security for the payment of the debt.

First Federal Sav. & Loan Assn. v. Finn, 300 S.C. 228, 231, 387 S.E.2d 253, 254 (1989)

(any equitable lien that may have existed was extinguished by merger of equitable and legal titles when property was conveyed back to homeowners claiming equitable lien);

Doe, 323 S.C. at 453, 475 S.E.2d at 787 (no equitable lien created when unmarried gay partners placed property in both their names); Perpetual Federal Sav. and Loan Assn. v. Willingham, 296 S.C. 24, 26, 370 S.E.2d 286, 287 (Ct. App. 1988) (instrument creating contract rights is not a mortgage and could not be enforced as equitable lien because it did not create a secured interest in real property).

An equitable lien is a “mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered, but even though not judicially recognized until a judgment declaring its existence, it relates back to the time it was created by the conduct of the parties.” Fibkins v. Fibkins, 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct. App. 1990) (affirming the establishment of an equitable lien on real property, and establishing lender’s priority, where borrower diverted lender’s funds to buy the property). A mere breach of contract does not give rise to an equitable lien; instead there must be evidence that specific property would serve as security for a loan. Carolina Attractions, Inc. v. Courtney, 287 S.C. 140, 145-46, 337 S.E.2d 244, 247 (Ct. App. 1985) (no equitable lien created due to mere breach of contract that did not create secured interest in property). A lender has an equitable lien on insurance proceeds from a

fire loss when the mortgagor is bound by the mortgage to insure the mortgaged property. Knapp v. Victory Corp., 279 S.C. 80, 302 S.E.2d 330 (1983); Blackwell v. State Farm Mut. Auto. Ins. Co., 237 S.C. 649, 118 S.E.2d 701 (1961) (same).

An equitable lien may arise regardless of whether the person asserting the lien has any ownership or possessory interest in the property. S.C. Federal Bank v. San-Abel Corp., 307 S.C. 76, 413 S.E.2d 852 (Ct. App. 1992) (holding that purchasers who had paid deposits on condominium units under construction, but did not yet own or possess the property, had equitable lien against project which took priority over bank's later construction loan mortgage because bank was aware of the purchasers' deposits).

In this case, Dr. Coffey signed a mortgage and note on July 23, 2001, on the residence on Hilton Head Island. Wachovia approved a \$125,000 home equity line of credit, which Dr. Coffey used to purchase a yacht. (R. pp. 171-78.) After Dr. Coffey died, Mrs. Coffey sold the yacht for \$112,000 in January 2006, kept the proceeds, and refused to repay the outstanding balance of the loan of \$126,258.26 to Wachovia.

The elements of an equitable lien are established by the undisputed facts in this case. There is a debt, duty or obligation originally owed by Dr. Coffey to Wachovia. After his death, the debt and duty are owed by the Estate of Dr. Coffey, to the extent it has any assets to pay it, which it does not. Nearly all of Dr. Coffey's assets passed by a marital trust to Mrs. Coffey and the Estate has no money to pay any debts. (R. pp. 180-88, 356-59, 484-87.) The debt and duty also are owed by Mrs. Coffey because she owns the property to which the debt attached by virtue of the mortgage (the residence) and she owned the property which was purchased with Wachovia funds (the sailboat). Mrs.

Coffey benefited from the use and enjoyment of the sailboat, as well as keeping the sale proceeds for herself and earning interest on the proceeds since January 2006.

There are two specific properties to which the debt attached – the house that was the subject of the mortgage signed by Dr. Coffey and the sailboat that was purchased with Wachovia's funds. The sailboat has now been converted into cash, but the equitable lien follows the sale proceeds.

There was an express intent by Dr. Coffey that the house would serve as security for payment of the debt, as shown in the mortgage and note. There was an implied intent by Dr. Coffey that the sailboat would serve as security for the loan because he used the entire proceeds of the line of credit to purchase it. Given the circumstances of this case, the use of the loaned funds and the marital relationship between Dr. Coffey and Mrs. Coffey, Dr. Coffey's intent is all that is necessary to establish this element. Mrs. Coffey's intent, or alleged lack thereof, is irrelevant.

The trial court apparently ruled in favor of Mrs. Coffey on this claim because Dr. Coffey did not own the house at the time, Mrs. Coffey's name was not on the mortgage and note to Wachovia, and because Mrs. Coffey purportedly did not know about the home equity line of credit when Dr. Coffey obtained it. (R. pp. 11-13.)

However, an equitable lien may arise regardless of whether the person asserting the lien has any ownership or possessory interest in the property. See S.C. Federal Bank, 307 S.C. 76, 413 S.E.2d 852; Fibkins, 303 S.C. at 115, 399 S.E.2d at 160. It also is irrelevant under these circumstances that Dr. Coffey did not hold legal title to the house or that Wachovia did not establish a lien on the sailboat in the usual fashion. Wachovia has a right of a special nature over the mortgaged house, the sailboat, and the proceeds

from the sale of the sailboat, which constitute a charge or encumbrance upon that property, so that the house, sailboat and sale proceeds may be proceeded against in equity for payment of the debt owed to Wachovia.

The Alabama Supreme Court imposed an equitable lien on real property in a case similar to the present one. In Title Insurance Company v. Ward, 181 So.2d 93 (Ala. 1965), the wife, lying and posing as a widow, obtained a mortgage loan from an individual (Lender 1) without her husband's knowledge or consent. Both husband and wife legally owned the real property and the law then required both to sign a mortgage. Lender 1 transferred the mortgage to Title Insurance Company. The husband and wife later transferred a portion of the property to another individual. After the wife's death, the husband, as executor, challenged the validity of the mortgage fraudulently signed by his wife when Title Insurance Company attempted to foreclose on it. Id. at 94-95.

The Alabama Supreme Court declined to find an equitable mortgage because the husband did not do any act for which an equity court could hold him liable, such as benefiting from the mortgage or participating in the wife's deceptive acts. Id. at 96-97. However, the court imposed an equitable lien on the real property in favor of the lender to prevent unjust enrichment of the deceased wife's estate. The court explained:

Would this court be justified under the facts in declaring that [Lender 1] acquired an equitable lien against the realty that was not conveyed to [a later grantee]? *To hold otherwise would permit the estate of decedent to be unjustly enriched at the expense of [Lender 1], who acted in good faith in advancing the money on a void mortgage made so by the false representation of [the deceased wife] that she was a widow. . . .*

We hold that equity and justice are on the side of [Lender 1] and her transferee, Title Insurance. It is our opinion that the real property described in the mortgage, excluding that part which was conveyed to [a later grantee], should be impressed with an equitable lien. *It is not equitable and fair for the estate of [the deceased wife] to be enriched and enhanced at the expense of [Lender 1] or her transferee*

through the false representations of [the deceased wife] as to her marital status, thereby inducing [Lender 1] to part with her money on a spurious instrument of pretended security. Certainly the heirs of [the deceased wife] should not be allowed to reap an inheritance that is augmented through machination of the deceased as here presented. The heirs are not innocent purchasers and would inherit property that rightfully was offered as security for money borrowed. To let them reap such a windfall would be equitably wrong and unfair.

Title Ins. Co., 181 So.2d at 97 (emphasis added).

Wachovia submits that it is in the same position as Lender 1 and the transferee lender in Title Insurance Company. Wachovia loaned funds to Dr. Coffey in the mistaken belief that he owned the property. Those funds were used to purchase an expensive sailboat, which Dr. Coffey, Mrs. Coffey and the family used and enjoyed for several years. After selling the sailboat, Mrs. Coffey placed the proceeds in her personal investment account, earning interest on them since January 2006, and has refused to repay the loan to Wachovia. It is not equitable or fair for Mrs. Coffey to be enriched and enhanced at the expense of Wachovia. Mrs. Coffey is not an innocent purchaser and she has inherited property that rightfully was offered as security for money borrowed. To let Mrs. Coffey reap such a windfall would be equitably wrong and unfair. Consequently, this Court should reverse the trial court's ruling, remand for entry of summary judgment in Wachovia's favor, and impose an equitable lien on the house offered as security for the mortgage and on the proceeds from the sale of the sailboat.

III. The trial court erred in granting summary judgment to Mrs. Coffey on Wachovia's prejudgment interest cause of action, but instead should have granted summary judgment to Wachovia on this claim.

Wachovia asserted a claim for prejudgment interest and moved for summary judgment on the claim. (R. pp. 68-72, 41-44, 53.) The trial court denied Wachovia's motion and granted Mrs. Coffey's summary judgment motion on this claim. (R. pp. 13-

14.) The trial court erred because the amount owed to Wachovia was certain or capable of being reduced to certainty as of January 3, 2006, when Mrs. Coffey stopped paying on the loan.⁴

As the South Carolina Supreme Court recently explained:

The law has long allowed prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. . . . Stated another way, prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute. . . .

The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. . . . The right of a party to prejudgment interest is not affected by rights of discount or offset claimed by the opposing party. It is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable. . . .

A judgment debtor is required to pay interest on his debt as compensation for his continued retention and use of the creditor's money beyond the date payment was due. . . . In South Carolina, prejudgment interest is set by statute at annual rate of [8¾] percent, although parties are free to agree, within legal limits, on a higher rate of interest. S.C. Code Ann. § 34-31-20(A) [Supp. 2006].

Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 133-34, 631 S.E.2d 252, 259 (2006) (citations omitted); see also Vaughn Dev., Inc. v. Westvaco Dev. Corp., 372 S.C. 576, 642 S.E.2d 757 (Ct. App. 2007) (discussing history of prejudgment interest and noting the trend nationally and in South Carolina toward awarding such interest from the

⁴ The trial court also erred by ruling that Wachovia had failed to plead prejudgment interest. (R. p. 13.) The First Amended Complaint, which Wachovia was allowed to file pursuant to the Court's order filed May 9, 2008, includes a cause of action for prejudgment interest. (R. pp. 4, 68-72.)

time a claim becomes “ascertainable” instead of focusing on the whether the damages claim is liquidated or unliquidated). Prejudgment interest may be awarded in an unjust enrichment / quasi-contract cause of action seeking damages based on quantum meruit or restitution. QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 206, 600 S.E.2d 105, 110 (Ct. App. 2004).

Wachovia is entitled to prejudgment interest on the amount of \$126,256.58, which was the outstanding balance of the home equity loan on January 3, 2006, the date the loan became delinquent because Mrs. Coffey refused to make any further payments. This amount is the proper starting point for the measure of damages and the calculation of prejudgment interest because it is the amount of money which, to that point, had enabled Mrs. Coffey to keep and ultimately sell the sailboat that had been purchased with the loan proceeds. The loan resulted in the sailboat, which resulted in cash in Mrs. Coffey’s pocket. Without the loan, no sailboat. Without the sailboat, no cash for Mrs. Coffey. On that date, when either the payment was due or the loan could have been paid off in full, the amount owed to Wachovia was certain or capable of being reduced to certainty. Mrs. Coffey owes that amount to Wachovia, plus prejudgment interest as compensation for her continued retention and use of Wachovia’s money beyond the date payment was due.⁵

⁵ Wachovia in its motion asserted it was owed about \$148,013, including prejudgment interest, as of December 24, 2007. Prejudgment interest continues to accrue on the original amount. Wachovia also presented an alternative amount due, including prejudgment interest, based on the sale proceeds received by Mrs. Coffey. (R. pp. 41-44.)

IV. The trial court erred in granting summary judgment to Mrs. Coffey on Wachovia's mortgage ratification and foreclosure causes of action because genuine issues of material fact exist on these claims.

Wachovia asserted claims for mortgage ratification and foreclosure, but did not move for summary judgment on those claims due to the existence of genuine issues of material fact. (R. pp. 62-65, 31-54.) The trial court granted Mrs. Coffey's motion for summary judgment on these claims. (R. pp. 9-11.) The trial court erred because genuine issues of material fact exist on these claims.

"While it has been said that ratification cannot be accurately defined, generically the word always expresses the same idea; and, it is variously defined as the act of giving sanction and validity to something done by another; the adoption by a person as binding upon himself of an act done in such relations that he may claim it as done for his benefit although, done under such circumstances as would not bind him but for his subsequent assent." First Carolinas Joint Stock Land Bank v. Stuyvesant Ins. Co., 168 S.C. 37, 44, 166 S.E. 883, 886 (1932). Ratification, as it relates to the law of agency, means the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent. Ratification exists upon the concurrence of three elements, and usually is a question of fact for the jury and not one of law for the court:

- (1) acceptance by the principal of the benefits of the agent's acts;
- (2) full knowledge of the facts; and
- (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements.

Lincoln v. Aetna Cas. & Surety Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989); Barber v. Carolina Auto Sales, 236 S.C. 594, 599, 115 S.E.2d 291, 294 (1960).

A husband and wife are not agents for one another simply by virtue of the marital relationship. However, a spouse may authorize his or her spouse to act as an actual or apparent agent in a contractual setting, and may grant narrow or broad authority to him or her. The relationship of this agency is governed by the same rules which apply to other agencies. Johnson v. Arabi, 355 S.C. 64, 70-71, 584 S.E.2d 113, 116-17 (2003); Barber, 236 S.C. at 597-98, 115 S.E.2d at 293; Builders Lumber & Supply Co. v. Cheek, 139 S.C. 299, 307-12, 137 S.E. 734, 737-38 (1927); Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 242-43, 597 S.E.2d 165, 168 (Ct. App. 2004).

A spouse may ratify the other spouse's acts just as any principal may ratify his agent's acts. Moreover, a wife who knows that her husband has acted for her, but fails to repudiate her husband's acts within a reasonable time, ratifies the husband's acts. The wife is estopped from repudiating the husband's acts, but is bound by them. The presumption of ratification arising from a spouse's silence is stronger due to the marital relationship. Such issues usually are questions of fact and not of law. Boykin v. Smith, 188 S.C. 53, 198 S.E. 171 (1938); Bethea v. Beaufort County Lumber Co., 111 S.C. 97, 96 S.E. 717 (1918); Hinson v. Roof, 128 S.C. 470, 122 S.E. 488 (1923).

The trial court ruled that Wachovia may not prevail on its ratification cause of action because no writing signed by Mrs. Coffey exists, as required by the Statute of Frauds, and Mrs. Coffey did not have full knowledge of the facts. (R. pp. 9-11.) The error of this ruling is shown by the record. A writing does exist – the mortgage and note signed by Dr. Coffey. The issue is not the existence of a writing; the issue is whether

Mrs. Coffey later ratified and endorsed that writing, such that the mortgage and note are enforceable against her by the usual means of foreclosure.

The trial court erroneously relied on Paramount Fund, Inc. v. Cusaac, 282 S.C. 497, 319 S.E.2d 345 (Ct. App. 1984), for the proposition that a failure to prove the mortgagor's signature is fatal to a lender's foreclosure claim. In that case, the lender failed to prove ratification of a mortgage because it was unable to show an agency relationship between the alleged mortgagor and an unknown person who apparently forged her name. The present case has nothing to do with unknown agents or forgery; the issue is whether Mrs. Coffey ratified the act of her husband.

As for answers to the central questions – “What did Mrs. Coffey know and when did she know it?” – a trial is necessary because the inferences to be drawn from the facts are in dispute. Wachovia contends that certain facts and circumstances show Mrs. Coffey ratified the mortgage and note after her husband signed them. On the other hand, Mrs. Coffey insists she did not know the full story about the sailboat loan until June 2007 and never ratified anything. Thus, while certain facts are undisputed, the meaning ascribed to those facts and the inferences to be drawn from them with regard to ratification are in dispute. Those facts and circumstances include:

- Mrs. Coffey admits she knew about the purchase of the sailboat several weeks before Dr. Coffey purchased it and, despite her denial, may also have known the source of financing much earlier than she admits. (R. pp. 363, 386-96, 440-41, 455-63.)
- Although Dr. Coffey may have handled the household finances, Mrs. Coffey signed twenty-nine mortgages, one deed and a power of attorney

from 1984 to 2005 relating to properties owned by her and Dr. Coffey.

(R. pp. 415-19, 334-39.) Mrs. Coffey is knowledgeable about such matters and, in the power of attorney, she granted authority to Dr. Coffey to execute a mortgage on her behalf.

- The couple deducted interest paid on the Wachovia loan for several years on their joint tax returns and Mrs. Coffey signed those returns. (R. pp. 273-77, 380-86.) Mrs. Coffey is charged with knowledge of the tax returns.
- Mrs. Coffey made regular payments on the home equity loan from the date of Dr. Coffey's death until December 2005, or about nine months, using the couple's joint checking account. Mrs. Coffey wrote "boat loan" or "boat" on the memo line of her payment checks to Wachovia on three occasions from September to November 2005, indicating full knowledge and ratification of the mortgage loan. (R. pp. 243-48, 388-91.)
- In or about September 2005, Mrs. Coffey found a "scrap of paper" while going through Dr. Coffey's records that said "Wachovia boat loan." She then realized there must be a loan or mortgage on the sailboat, although she thought it must be a "small mortgage." (R. pp. 372-73, 388-96.)
- While trying to sell the sailboat, Mrs. Coffey and her daughter informed St. Barts Yachts by email on December 22, 2005, that "[t]he boat loan information is: Wachovia Bank Acct. [xxxx-xxxx-xxxx]-1495 pay off \$125,643.30." (R. pp. 302, 480-84, 490-98.)

- Mrs. Coffey, acting as the personal representative of her husband's estate, listed the sailboat as a jointly owned asset to which she obtained sole title in the estate inventory filed in Beaufort County Probate Court. (R. pp. 180-88, 356-59, 484-87.)

All these facts indicate full knowledge of circumstances surrounding the purchase of the sailboat and the mortgage loan, and ratification of that loan by Mrs. Coffey.

In sum, the trial court erred in granting summary judgment to Mrs. Coffey on Wachovia's mortgage ratification and foreclosure causes of action because, viewing the facts and inferences that may be drawn from them in the light most favorable to Wachovia, the ratification issue must be resolved by the finder of fact.

CONCLUSION

For all the foregoing reasons, this Court should reverse the trial court's grant of summary judgment to Mrs. Coffey on all causes of action. This Court, based on its review of facts proven by Wachovia by a preponderance of the evidence, should remand the case for entry of summary judgment in Wachovia's favor on its causes of action for unjust enrichment / quasi contract, equitable lien and prejudgment interest. This Court should direct the trial court to calculate damages based on the balance due of \$126,256.28 as of January 3, 2006, the due date of the first payment that Mrs. Coffey refused to pay on the Wachovia home equity loan, with prejudgment interest accruing at the statutory rate from that date to the entry of judgment by the trial court. This Court should further hold that Wachovia is entitled to a jury trial on its causes of action for mortgage ratification and foreclosure based on the existence of genuine issues of material fact.

Respectfully submitted,



James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Firm: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com
Email: dproffitt@hsblawfirm.com

Attorneys for Appellant Wachovia Bank,
N.A.

December 5, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this final brief complies with Rule 211(b), SCACR, with the following caveat. The initial brief inadvertently contained items (home address and account numbers) prohibited by the Supreme Court's order dated August 13, 2007, "RE: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings." The prohibited items were removed from this final brief.



James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Firm: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com
Email: dproffitt@hsblawfirm.com
Attorneys for Appellant Wachovia Bank,
N.A.

December 5, 2008

Columbia: 1138468 v.1

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FINAL BRIEF OF RESPONDENT, ANN T. COFFEY

Gregory M. Alford
Alford & Wilkins, P.C.
P.O. Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500
Attorneys for Respondent, Ann T. Coffey

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STATEMENT OF ISSUES

- I. Did the trial court err in granting summary judgment to Ann T. Coffey ("Mrs. Coffey") and denying summary judgment to Appellant Wachovia Bank ("Wachovia") on Wachovia's unjust enrichment / quasi-contract cause of action?
- II. Did the trial court err in granting summary judgment to Mrs. Coffey and denying summary judgment to Wachovia on Wachovia's equitable lien cause of action?
- III. Did the trial court err in granting summary judgment to Mrs. Coffey and denying summary judgment to Wachovia on Wachovia's prejudgment interest cause of action?
- IV. Did the trial court err in granting summary judgment to Mrs. Coffey on Wachovia's mortgage ratification and foreclosure causes of action because genuine issues of material fact exist on these claims?

STATEMENT OF THE CASE

Respondent, Mrs. Coffey, adopts the Statement of the Case incorporated in Appellant's Wachovia's, Initial Brief, with the addition that Mrs. Coffey also filed a Motion for Summary Judgment and a Memorandum in Opposition to Wachovia's Motion for Summary Judgment, a Memorandum in Opposition to Wachovia's Amended Motion for Summary Judgment; and a Reply to Wachovia's Memorandum in Opposition to her Motion for Summary Judgment, all on May 5, 2008 (ROA I pp.97, 111, 114).

STATEMENT OF FACTS

By deed dated May 9, 1984, and recorded on May 10, 1984 in the official records of Beaufort County, South Carolina, Mrs. Coffey has been and continues to be the sole titled owner of property (the "Property") located at Lot No. 9 South Beach Subdivision of Sea Pines Plantation, otherwise known as ~~Madwall Road~~, Hilton Head Island, South Carolina 29928. (ROA I p. 167).

On July 23, 2001, Dr. Michael D. Coffey, ("Dr. Coffey") husband of Mrs. Coffey, obtained a \$125,000.00 loan from Wachovia and solely signed a document entitled "Equity BankLine Agreement and Initial Truth-in-Lending Disclosure," ("Note") in which he alone and without a co-signor promised to pay Wachovia. (ROA I p. 171). At the same time he also signed, without co-signor, another Wachovia document entitled "Open End Mortgage" ("Mortgage") in which, by the document's language, he purports to "mortgage, grant, and convey" the Property to Wachovia as security for the loan. (ROA I p. 175). The Mortgage was duly recorded in the official records of Beaufort County, South Carolina. (ROA I p. 175). Dr. Coffey was diagnosed with terminal lung cancer in the period before his application for the loan and purchase of the sailboat.

Dr. Coffey used the proceeds to purchase a 35 foot Benneatau sailboat which was titled in the name of A & M Partners, Inc., a corporation of which Dr. Coffey and Mrs. Coffey each owned 50%

of the stock. (Dep. of Ann T. Coffey, ROA I p. 379 l. 13-22). Mrs. Coffey testified that had she known that her husband was attempting to mortgage the house to buy a boat, she would not have consented based on Dr. Coffey's then existing health problems. (Dep. of Ann T. Coffey, ROA I p. 412 l. 23-25, p. 413 l. 1-5) Mrs. Coffey, at the time the loan was made, had no knowledge of the Note or Mortgage. (Dep. of Ann T. Coffey, ROA I p. 373 l. 12-15, p. 387 l. 19-22, p. 393 l. 24-25, p. 453 l. 13-18). Mrs. Coffey was never told by Dr. Coffey or Wachovia that there was a loan, home equity line of credit and/or attempted mortgage on her property with respect to the loan on July 23, 2001. (Dep. of Mrs. Coffey, ROA I p. 72 l. 18-24, p. 435 l. 1-25, p. 436 l. 1-8, p. 439 l. 21-23, p. 453 l. 5-18, p. 454 l. 14-25). Mrs. Coffey was told by Dr. Coffey that the boat was paid for. (Dep. of Mrs. Coffey, ROA I p. 361 l. 6-12, p. 363 l. 19-23).

Dr. Coffey did not own the property at the time he signed the mortgage on the property. (ROA I p. 167) nor was he authorized by Mrs. Coffey to sign such a mortgage. Mrs. Coffey was not present at the time Dr. Coffey executed the Mortgage and other bank loan documents. nor was she asked to be by Wachovia, and did not participate in the loan transaction. Wachovia did not perform a title search to determine the ownership of the property at the time it asked Dr. Coffey to sign a Mortgage of the property (ROA I p. 29 # 5). Mrs. Coffey had no knowledge of the above transactions.

Mrs. Coffey's daughter, Maureen T. Coffey-Edri, has knowledge of the affairs of her parents and testified on deposition that Mrs. Coffey had no knowledge of the loan from Wachovia when it was made. (Dep. Of Ms. Coffey-Edri, ROA I p. 494 l. 3-7, ROA II p. 511 l. 16-19, p. 512 l. 16-22, p. 513 l. 9-23, p. 517 l. 2-10). She states that Dr. Coffey would not have wanted Mrs. Coffey to know about such a loan and that is no doubt why he established a Delaware corporation to hold title to the boat. (Dep. of Ms. Coffey-Edri, ROA II p. 513 l. 5-15). She testified that Mrs. Coffey, even when she made payments to Wachovia after Dr. Coffey's death, did not know what the payments were for.

(Dep. of Ms. Coffey-Edri, ROA I p. 494 l. 3-7). She also testified that Wachovia knew or should have known that Dr. Coffey did not hold title to the Property which was the subject of the mortgage and that Wachovia should have notified Mrs. Coffey. (Dep. of Ms. Coffey-Edri, ROA II p. 506 l. 14-25, ROA II p. 507 l. 1-3).

Wachovia prepared the loan documents without an attorney and closed the loan transaction with Dr. Coffey without the advice and participation of an attorney (ROA I p. 30 #7). Dr. Coffey passed away on March 21, 2005. Wachovia made a claim against Dr. Coffey's estate which had insufficient assets to satisfy any of his debt to Wachovia.

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Law v. S.C. Dept. of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 354, 650 S.E.2d 68, 69 (2007).

"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). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly

supported motion sets forth facts that remain undisputed or are contested in a deficient manner."

David v. McLeod Regl. Med. Ctr., 367 S.C. 242, 259, 626 S.E.2d 1,5 (2006).

ARGUMENT

I. The trial court did not err in granting summary judgment to Mrs. Coffey, and against Wachovia, on Wachovia's unjust enrichment/quasi-contract cause of action.

a. The undisputed facts show that Wachovia failed to establish the required elements in its unjust enrichment/quasi-contract cause of action.

Wachovia's third cause of action sought judgment based on the doctrine of unjust enrichment, quantum meruit, quasi-contract, and restitution. The trial court properly denied Wachovia's Motion for Summary Judgment on this cause of action and properly granted Mrs. Coffey's Motion for Summary Judgment on this claim. The court correctly determined that Wachovia did not establish the essential element of an unjust enrichment claim, i.e., a "nongratuitous benefit" as defined in Niggel Associates, Inc. v. Polo's of North Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507 (S.C.App.,1988).

In Niggel, the Court considered a case of unjust enrichment and restitution. Two contractors sued a sublessor for restitution and unjust enrichment in connection with renovations performed by the contractors to a building on the land. The contractors had contracts with the third-party sublessee, Beach Investments, not the sublessor, and all of their dealings were with Beach. The Court held that the contractors did not establish an unjust enrichment and restitution claim and held:

For restitution to be warranted, the plaintiff must confer the benefit nongratuitously; that is, it must either be (1) at the defendant's request or (2) in circumstances where the plaintiff reasonably relies on the defendant to pay for the benefit and the defendant understands or ought to understand that the plaintiff expects compensation and looks to him for payment. It is not enough that the defendant has knowledge of the plaintiff's conduct; he must have induced the plaintiff to confer the benefit.

In that case, the contractors did the work under contracts with Beach. They expected to be paid by Beach. They had no dealings whatsoever with the sublessor. Indeed, they did not know that the sublessor had an interest in the property when they agreed to perform the work. The sublessor did not request the work nor did it cause the contractors to rely on it for payment. It had no reason to suppose the contractors looked to it for payment and the contractors were not induced to furnish their labor and materials by any expectation that the sublessor would pay for them. The Court held that the sublessor had no duty to make restitution to the contractors. Any benefit it received was an incidental result of dealings between others in which it did not participate and over which it assumed no control.

Likewise, in this case, Wachovia dealt solely with Dr. Coffey on the loan in question and had no dealings with Mrs. Coffey. The documentation for the loan was signed solely by Dr. Coffey and not Mrs. Coffey. Mrs. Coffey did not "request" the loan nor did Mrs. Coffey "induce" Wachovia to make the loan. Wachovia did not "rely" on Mrs. Coffey to pay the loan at the time it was executed. Since Mrs. Coffey did not participate in the loan, she did not "understand" nor should she have, that Wachovia "expected" payment from her.

Accordingly, the element of bestowing a "nongratuitous benefit" upon Mrs. Coffey, as set forth in the Niggel case, is simply not established by the facts in this case, and thus Mrs. Coffey had no duty to make restitution to Wachovia.

Further, it was held in Mason v. M.F. Smith & Associates, Inc., 158 F.Supp.2d 673 (D.S.C. 2001), that:

To recover under theory of unjust enrichment, party must show: (1) it had reasonable expectation of payment, (2) opposing party should have reasonably expected to pay, or (3) that society's reasonable expectations of person and property would be defeated by nonpayment.

At the time the loan was executed, Wachovia had no "reasonable expectation of payment" from Mrs. Coffey nor did Mrs. Coffey have a reasonable expectation that she was expected to pay.

There has been no showing of "society's reasonable expectations" in this case. So, the elements of unjust enrichment as set forth in the Mason case have, likewise, not been established by Wachovia.

In Turner v. Rams Head Company, 2007 WL 2579386 (D.S.C.), a decision rendered by the United States District Court, District of South Carolina, on September 4, 2007, the Court considered an unjust enrichment and restitution claim made by the Plaintiff, Turner, who had made improvements to a building on land owned by Rams Head Company. Turner dealt with other parties and not the owner of the land (Rams Head), and in fact did not know that Rams Head owned the land until after the improvements had already been made. Rams Head conceded that a "benefit" may have been conferred. However, the Court had to consider whether a "nongratuitous" benefit had been conferred, under the holding in Niggel. The Court recited the Niggel elements of a "nongratuitous benefit" as cited above, and stated that the plaintiffs had offered no evidence which would satisfy that standard:

There is, for example, no evidence that Rams Head requested that the improvements be made. Neither is there any evidence that Rams Head took any other action which might have caused Plaintiffs to rely on the expectation of repayment from Rams Head. There is, in fact, no evidence that Rams Head was even aware that improvements were being made which as noted in Niggel would not be enough. Thus, there is no evidence to suggest that any benefit was nongratuitous, especially as to Rams Head. In this regard, the relationship between Plaintiffs and Rams Head is similar to those between the plaintiff-contractors and a defendant-lessee addressed in Niggel where the court held that the lessee had not been unjustly enriched by work done for a sublessee. As the court explained: the Contractors did the work under contracts with [the sublessee]. They expected to be paid by [the sublessee]. They had no dealings whatever with the [lessee]. Indeed, they did not know [the lessee] had an interest in the property when they agreed to perform the work. [The lessee] did not request the work. It did nothing to cause the Contractors to rely on it for payment. It had no reason to suppose the Contractors looked to it for payment. The Contractors were not induced to furnish their labors and materials by any expectation that [the lessee] would pay for them. In these circumstances, [the lessee] had no duty to make restitution to the Contractors. Niggel, 374 S.E.2d at 533. There is, of course, evidence that Latendresse was aware that the improvements were being made. Plaintiffs have, however, failed to offer any evidence which would allow them to impute

Latendresse's knowledge to Rams Head. Thus, Plaintiffs have failed to establish that any benefit was non-gratuitous as to Rams Head.

In this case, the elements for nongratuitous benefit were not established and the trial court agreed.

Wachovia also cites Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000) and claims that the term "nongratuitous benefit" is not used by the court in its decision and somehow concludes that it is not a necessary element in such a cause of action. To the contrary, the benefit still must be "nongratuitous" and the Myrtle Beach Hospital decision does nothing to obviate that requirement. Plaintiff cannot deny that the benefit conferred must be "nongratuitous." Otherwise, it's a gift. Niggel was not overruled by Myrtle Beach Hospital and it remains good law. In Myrtle Beach Hospital, the hospital sued the City of Myrtle Beach for the cost of medical care exceeding \$300,000 for pretrial detainees of the city. Detainees were taken to the hospital for medical care and the city declined to pay the bills. Even though it would seem unjust and unfair (an allegation Wachovia also makes in this case), the Court in Myrtle Beach Hospital determined that the city was not liable on a quantum meruit theory or on a public policy theory, finding that it was the detainee that received the benefit and not the city. Similarly, Wachovia provided the benefit to Dr. Coffey, who received the benefit, and not Mrs. Coffey.

Myrtle Beach Hospital overruled a number of cases, but not Niggel. For claims in *quantum meruit*/quasi-contract/and implied by law, it adopted the test set forth in Columbia Wholesale Company, Inc., v. Scudder May N.V., 312 S.C. 259, 440 S.E.2d 129 (1994), which requires: "(1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Such a "benefit" cannot be gratuitous; otherwise it would be a gift. It must be "non-gratuitous" and although that particular term was not defined in the Scudder May case,

it was defined in the Niggel case. Also, the "benefit" must be bestowed upon the Defendant. Here, the benefit was bestowed upon Dr. Coffey, there being no contact or dealings with Mrs. Coffey. Therefore, this element fails as the Defendant, Mrs. Coffey, did not receive the benefit. In the Scudder May case, there were communications between the Plaintiff and Defendant, yet the Court determined that was no claim for unjust enrichment and therefore no claim for quantum meruit recovery.

Wachovia claims that Myrtle Beach Hospital case "streamlined" the test, however, it fails to recognize that there still must be a non-gratuitous benefit and the pivotal case defining that element is Niggel. "...It is not enough that the defendant has knowledge of the plaintiff's conduct; he must have induced the plaintiff to confer the benefit." Niggel, supra.

In 2003, Niggel, was cited by the S.C. Supreme Court in Sauner v. Public Service Authority of South Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003), when it again addressed unjust enrichment claims. The requirement of a "nongratuitous" benefit and the elements required to constitute such a benefit, remain a necessary showing in claims for unjust enrichment and restitution and related causes of action.

The essential elements of unjust enrichment and restitution, i.e., the bestowing of a "nongratuitous benefit," is not established in this case and the trial court agreed in granting Summary Judgment in favor of Mrs. Coffey and against Wachovia on this cause of action.

b. The trial court did not err by holding that Wachovia was prohibited from seeking equitable relief because of the doctrine of Unclean Hands.

The trial court found that Wachovia had unclean hands by preparing and executing the loan and accompanying loan documents with Dr. Coffey without an attorney, and accordingly, could not seek the equitable relief that it sought.

Wachovia's complaint sets forth four causes of action all of which are equitable in nature. The doctrine is simply stated: "One who comes into Court seeking equity must come with clean hands." Emery v. Smith, 361 S.C. 207, 603 S.E. 2d 598 (Ct.App. 2004). The doctrine of "unclean hands" will preclude a litigant from recovering in equity if that litigant acted unfairly to the detriment of the Plaintiff. First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568-69, 511 S.E.2d 372, 379 (Ct.App.1998).

Wachovia admitted in its answers to Mrs. Coffey's Requests for Admission that its employee prepared the Note and Mortgage, was present at the execution of the documents and that no attorney supervised the closing of the Home Equity Line of Credit Mortgage and Note which Dr. Coffey signed July 23, 2001. (ROA 1 p. 30 #6 and #7). "The preparation of deeds, mortgages, notes, and other legal instruments related to mortgage loans and transfers of property is the practice of law and a non-lawyer who performs such services is conducting the unauthorized practice of law, prohibited by statute." State v. Buyers Service Company, Inc., 292 S.C. 426, 357 S.E.2d 15 (1987).

Accordingly, Wachovia committed the unauthorized practice of law and has "unclean hands" in this transaction. Mrs. Coffey does not seek a "private right of action" based on Wachovia's unauthorized practice of law, but asserts that such actions do form the basis for the assertion of the doctrine of "unclean hands." Wachovia cannot recover on its equitable claims and the trial court agreed.

Wachovia argues that Mrs. Coffey should have been barred from raising this defense as it was not plead as an affirmative defense pursuant to Rule 8(c) SCRPC and pursuant to the holding in Rock Hill Natl. Bank v. Honeycutt, 289 S.C. 98, 104-05, 344 S.E. 2d 875 (Ct. App. 1986). First, Rule 8(c) does not list "unclean hands" as an affirmative defense. Second, Mrs. Coffey's counterclaim filed with her Answer sets forth the factual basis of negligence and gross negligence

against Wachovia for not having an attorney supervise the closing of the Home Equity Line of Credit and provided notice to Wachovia of these allegations. Third, Wachovia is incorrect in citing the Rock Hill case for support on its position. All that the Rock Hill case stands for is that the "unclean hands doctrine" should not be raised for the first time on appeal. The Court said:

We agree with the trial judge that because the 'clean hands doctrine' was not raised in the pleadings, it should have at least been presented to and considered by the referee and should not be raised in an appeal from the referee's decision to the circuit court.

Had Wachovia retained an attorney to prepare the loan documents and perform a title search, which should have been done, it would have known that Dr. Coffey did not own the subject Property to be mortgaged. Wachovia's mistake would have been caught and this case would not have been filed. It now attempts to seek equitable relief from Mrs. Coffey to her prejudice for its own mistake, which mistake constitutes the "unauthorized practice of law," and as such, constitutes "unclean hands."

"In order to recover on a count for money had and received....the plaintiff must show he has equity and conscience on his side, and that he could recover in a court of equity." Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C., 353 S.C. 327, 577 S.E.2d 468 (Ct.App. 2003).

Wachovia's claims of unjust enrichment, foreclosure, and equitable lien are claims in equity, and the doctrine of "unclean hands" precludes Wachovia from succeeding on these causes of action and the trial court agreed.

II. The trial court did not err in granting summary judgment to Mrs. Coffey and against Wachovia on its equitable lien cause of action.

Wachovia argues that it proved all the elements of its equitable lien cause of action and should have been granted summary judgment on this cause of action.

Wachovia in its brief cites cases involving parties who seemingly were participants in the initial transaction. That is not the case here. In this case, Mrs. Coffey did not participate in the loan transaction and no knowledge of the same. An equitable mortgage against property owned solely by Mrs. Coffey when she neither participated in the original loan transaction nor had knowledge of the same cannot apply.

"For an equitable lien to arise, there must be a debt owing from one person to another, specific property to which the debt attaches, and an intent, expressed or implied; that the property serve as security for the payment of the debt." Perpetual Federal Sav. and Loan Ass'n v. Willingham, 296 S.C. 24, 370 S.E.2d 286 (Ct. App. 1988). As shown by the Note and Mortgage and the testimony of Mrs. Coffey, there was no debt owing from Mrs. Coffey to Wachovia and therefore that element of establishing an equitable lien must fail and the trial court agreed.

III. The trial court did not err in granting summary judgment to Mrs. Coffey and against Wachovia on its prejudgment interest cause of action.

Wachovia argues that the trial court erred in granting summary judgment to Mrs. Coffey and against it on its prejudgment interest claim. In support of its argument, Wachovia cites Butler Contracting Inc. v. Court Street, LLC, 369 S.C. 121; 631 S.E. 2d 252 (2006). There the Court said:

"Stated another way, prejudgment interest is allowed on a claim of liquidated damages, i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute...."

Here, Mrs. Coffey does not agree with Wachovia as to any mathematical calculation and the amount of the claim is uncertain. It is "unliquidated" and no claim for prejudgment interest is valid. The trial court was correct in its ruling in favor of Mrs. Coffey and against Wachovia on this claim.

IV. The trial court did not err in granting summary judgment in favor of Mrs. Coffey and against Wachovia on its mortgage ratification and foreclosure cause of action.

The trial Court was correct in granting Summary Judgment to Mrs. Coffey on Wachovia's causes of action for mortgage ratification and foreclosure. There were no issues of material fact and Mrs. Coffey was entitled to judgment as a matter of law on these causes of action.

Wachovia's cause of action for foreclosure alleges that Dr. Coffey executed a mortgage to Wachovia to secure the payments under the Note. (ROA I p. 62-63 and ROA I p. 175). The allegations recite that a loan was made to Dr. Coffey, that Dr. Coffey signed a mortgage constituting a first lien on the Property, that it was duly recorded, that by the terms of the mortgage they have the right to foreclose upon default in payments, that pursuant to the terms of the mortgage they have the right to costs and attorney fees, that others may have an interest in the Property, and that they demand no personal or deficiency judgment and the same is waived.

The problem with those allegations is that they fail to state how it is that Wachovia acquired any rights in the Property from one who did not own any interest in it at the time the Mortgage was executed. As shown by the Deed, Mrs. Coffey was the sole owner of the subject Property on July 23, 2001, the date that Dr. Coffey executed the Mortgage. (ROA I p. 167) It is axiomatic that Dr. Coffey, who did not own any interest in the Property, could not transfer or convey any interest therein. That being the case, no mortgage foreclosure action against the Property can be maintained. Wachovia simply failed to obtain a mortgage on the Property and has nothing to foreclose against.

Wachovia also alleges that it obtained a mortgage from Mrs. Coffey on the Property by the doctrine of ratification. First, the mortgage or conveyance of an interest in the Property to Wachovia from Mrs. Coffey would have to be in writing to be enforceable, and no such writing exists. South Carolina's Statute of Frauds, S.C. Code Ann. § 32-3-10, states:

Agreements required to be in writing and signed.

No action shall be brought whereby:

- (1) To charge any executor or administrator upon any special promise to answer damages out of his own estate;
- (2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person;
- (3) To charge any person upon any agreement made upon consideration of marriage;
- (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or
- (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof:

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

The doctrine of ratification cannot create a conveyance of interest in real property since, as here, the party to be charged, Mrs. Coffey, signed nothing. "Failure to prove signature of mortgagor is fatal to mortgagee's foreclosure claim." Paramount Fund Inc. v. Cusaac, 282 S.C. 497, 319 S.E. 2d 354 (Ct. App. 1984). A "mortgage cannot be established by conjecture or presumption." Paramount, supra.

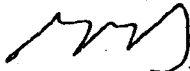
One essential element of ratification is "full knowledge of the facts." Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E. 2d 745 (Ct. App. 1995). As shown by the deposition testimony of Mrs. Coffey she did not know about the loan or the mortgage and even after Dr. Coffey died, was unaware of the full nature of that indebtedness.

The trial court was correct in granting summary judgment to Mrs. Coffey on these causes of action.

CONCLUSION

For all the foregoing reasons, this court should affirm the trial court's grant of summary judgment to Mrs. Coffey on all of Wachovia's causes of action.

Respectfully submitted.



Gregory M. Alford
Alford & Wilkins, P.C.
P.O. Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500
Attorneys for Respondent, Ann T. Coffey

December 9th, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant.

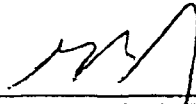
v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

CERTIFICATE OF COUNSEL

Counsel for Respondent hereby certifies that the foregoing Final Brief of the Respondent, Ann T. Coffey, complies in all respects with Rule 211(b), *Appellate Court Rules*.



Gregory M. Alford, Esquire
Alford & Wilkins, P.C.
P.O. Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500

Attorneys for Respondent, Ann T. Coffey

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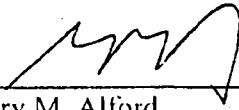
PROOF OF SERVICE

I, Gregory M. Alford, Attorney for Respondent Ann T. Coffey, do hereby certify that on December 22, 2008, I served the Final Brief of Respondent by depositing a copy of the document in the United States mail, with postage prepaid, at Hilton Head Island, South Carolina, addressed as follows:

James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211-1889

Steven R. Anderson
P.O. Box 12188
Columbia, SC 29211-2188

December 22 2008



Gregory M. Alford
Alford and Wilkins, PC
Post Office Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500
Attorney for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

REPLY BRIEF OF APPELLANT

James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Firm: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com
Email: dproffitt@hsblawfirm.com

Attorneys for Appellant Wachovia Bank,
N.A.

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Appellant Wachovia Bank, N.A. ("Wachovia") offers the following reply to Respondent Ann T. Coffey's ("Mrs. Coffey") arguments.

ARGUMENT

"South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice" Drury Dev. Corp. v. Foundation Ins. Co., Op. No. 26559 (S.C. Sup. Ct. filed Nov. 3, 2008) (Shearouse Adv. Sh. No. 41 at 15, 19).

- I. Mrs. Coffey's reliance on a contractor-tenant-landlord case is unavailing and unpersuasive in the context of a written mortgage granted by a purported owner of real property, and Mrs. Coffey certainly was unjustly enriched in this case.**

Mrs. Coffey argues Wachovia failed to establish that she received a "nongratuitous benefit" because she did not seek the home equity loan or induce Wachovia to make it. She relies on the description of nongratuitous benefit set forth in Niggel Associates, Inc. v. Polo's of N. Myrtle Beach, 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988), and two federal court opinions, including one unpublished decision. Mrs. Coffey further contends that the Supreme Court's post-Niggel decisions have not affected the analysis of an unjust enrichment / quasi-contract cause of action. (Resp. Br. pp. 4-8.)

Mrs. Coffey is wrong for several reasons.

First, as explained in detail at pages 13 through 20 of Wachovia's main brief, the trial court should have granted Wachovia's motion for summary judgment on this cause of action because the court erroneously applied an inducement element that the South Carolina Supreme Court has rejected. The law no longer defines "nongratuitous" in the manner specified by the trial court, and a plaintiff no longer is required to prove an inducement element in an unjust enrichment / quasi-contract cause of action. In light of Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000),

and its progeny, the outcome and reasoning in Niggel should be limited to the facts of that case if not expressly overruled.¹

Second, the Niggel case and the unpublished federal district court opinion relied on by Mrs. Coffey, Turner v. Rams Head Co., C.A. No. 3:05-2893-CMC, 2007 WL 2579386, 2007 U.S. Dist. LEXIS 65230 (D.S.C. Sept. 4, 2007),² stand for the simple proposition that a contractor or tenant cannot, by virtue of an unjust enrichment / quasi-contract cause of action, hold the owner or landlord of a rented building liable for renovation costs sought and approved by the tenant without the knowledge or consent of the owner or landlord.

The present situation is absolutely nothing like cases addressing who must pay for the renovation of rented property done without the owner or landlord's consent or knowledge. Wachovia granted the mortgage loan in circumstances where it reasonably expected to rely on the owner of the property to pay for the benefit bestowed, i.e., repay the loan. Wachovia fully expected to have a secured interest in the property and took formal steps to protect its interest, obtaining the signature of the person it believed to be the property owner on the mortgage and note and properly recording the mortgage. Wachovia absolutely was induced to approve the loan by the expectation that the owner would repay the loan. Moreover, Wachovia has offered compelling and undisputed evidence that the benefit initially received by Dr. Michael Coffey, received later and now

¹ Wachovia intends to submit a motion pursuant to Rule 217, SCACR, for leave of this Court to argue against precedent, to the extent the Court may conclude Niggel should be overruled or expressly limited to its factual pattern on the inducement element.

² Unpublished opinions "have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 239(d)(2), SCACR.

retained by Mrs. Coffey, was not incidental, but resulted in the unjust enrichment of Mrs. Coffey at the expense of Wachovia in an amount exceeding \$148,000.

Third, Mrs. Coffey misapprehends Wachovia's position to the extent she wrongly asserts that Wachovia contends the benefit conferred and realized does not have to be "nongratuitous." (Resp. Br. p. 7.) Wachovia agrees the benefit must be nongratuitous, but that merely means the benefit must *not be given for free without expectation of payment*, as shown in Myrtle Beach Hospital and subsequent cases. It does *not* mean that the recipient who ultimately obtains the benefit must somehow request or induce the benefit, particularly under the facts and circumstances of the present case. See e.g. Drury Dev. Corp. v. Foundation Ins. Co., Op. No. 26559 (S.C. Sup. Ct. filed Nov. 3, 2008) (Shearouse Adv. Sh. No. 41 at 15, 19) (in "all forms of equitable relief, the equities of both sides are to be considered, and each case must be decided on its own particular facts").

Fourth, the case of Mason v. M.F. Smith & Associates, Inc., 158 F. Supp. 2d 673 (D.S.C. 2001), which addressed the viability of a disability claim brought under ERISA law, offers no support for Mrs. Coffey's position. (Resp. Br. p. 5.) The federal district court described federal common law on unjust enrichment and restitution, not South Carolina law. In any event, Wachovia's claim would be proper under the Mason analysis because Wachovia has shown it had a reasonable expectation of payment; Mrs. Coffey should reasonably be expected to pay for a sailboat she personally owned, enjoyed, sold, and invested the sale proceeds; and society's reasonable expectations of person and property would be defeated by her nonpayment.

The Court of Appeals should reverse the trial court and remand for entry of summary judgment in Wachovia's favor on its unjust enrichment / quasi-contract cause of action, with total damages to be calculated by the trial court.

II. Hands are not made unclean by an honest or unintentional mistake.

Mrs. Coffey contends that Wachovia's failure to retain an attorney and perform a title search caused it to have "unclean hands," such that it cannot recover in equity.

(Resp. Br. pp. 8-10.)

Mrs. Coffey is wrong for the reasons set forth in detail at pages 20 through 25 of Wachovia's main brief. But the plain and simple truth is that Wachovia has not acted unfairly in this case and its actions have not prejudiced Mrs. Coffey. Wachovia has not in acted with unclean hands at any time – from the granting of the line of credit throughout the course of this litigation. Wachovia made an honest mistake in failing to accurately determine the legal title of the real property, but that mistake only benefited Dr. Coffey, a respected customer, and Dr. Coffey's estate, family and wife. Equity would not be done if Mrs. Coffey is allowed to keep \$112,000 in proceeds from selling the sailboat, while steadfastly refusing to pay off the outstanding balance of the \$126,258.26 loan used to buy the sailboat. Wachovia absolutely has equity and conscience on its side.

III. Equity and justice on are Wachovia's side in its equitable lien cause of action.

Mrs. Coffey tries to summarily rebut Wachovia's equitable lien claim by asserting she was not a participant in the mortgage transaction. (Resp. Br. pp. 10-11.)

As explained in detail at pages 25 through 30 of Wachovia's main brief, an equitable lien may arise regardless of whether the person asserting the lien has any ownership or possessory interest in the property. See S.C. Federal Bank v. San-Abel

Corp., 307 S.C. 76, 413 S.E.2d 852 (Ct. App. 1992). Furthermore, the facts set forth in Title Insurance Company v. Ward, 181 So.2d 93 (Ala. 1965), are very similar to the instant case. Where the deceptive wife obtained a mortgage without her co-owner husband's knowledge or consent, and then died, the Alabama Supreme Court imposed an equitable lien on the real property in favor of the lender to prevent unjust enrichment of the deceased wife's estate and family. The husband was never involved in the initial loan transaction.

As in Title Insurance, equity and justice are on Wachovia's side. "It is not equitable and fair for the estate of [Dr. Coffey] to be enriched and enhanced at the expense of [Wachovia] . . . through the false representations of [Dr. Coffey] . . . , thereby inducing [Wachovia] to part with [its] money on a spurious instrument of pretended security. Certainly the heirs of [Dr. Coffey] should not be allowed to reap an inheritance that is augmented through machination of the deceased as here presented. The heirs are not innocent purchasers and would inherit property that rightfully was offered as security for money borrowed. To let them reap such a windfall would be equitably wrong and unfair." Title Ins. Co., 181 So.2d at 97.

IV. Prejudgment interest is proper despite Mrs. Coffey's dispute about the amount due.

Mrs. Coffey asserts that Wachovia is not entitled to prejudgment interest because she and Wachovia do not agree on the amount of the claim or the method of calculating it. (Resp. Br. p. 11.)

Contrary to Mrs. Coffey's assertion, a disagreement over the amount or method of calculating interest does not make such a claim unliquidated. A claim is liquidated and prejudgment interest is due when a reasonable person or court can review an agreement

or method of calculation and run the numbers. As explained in detail at pages 30 through 32 of Wachovia's main brief, "prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. . . . The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest." Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 133-34, 631 S.E.2d 252, 259 (2006).

In this case, the loan balance due was set forth pursuant to the terms of the mortgage and note, and was either a sum certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Wachovia is entitled to prejudgment interest on the amount of \$126,256.58, which was the outstanding balance of the home equity loan on January 3, 2006, the date the loan became delinquent because Mrs. Coffey refused to make any further payments.

V. Summary judgment is not proper on Wachovia's mortgage ratification and foreclosure action because there are numerous genuine issues of material fact that must be resolved by a factfinder.

Mrs. Coffey, citing the Statute of Frauds, contends that she is entitled to summary judgment on Wachovia's mortgage ratification and foreclosure causes of action because there was no enforceable writing and no disputed issues of material fact. (Resp. Br. pp. 11-13.)

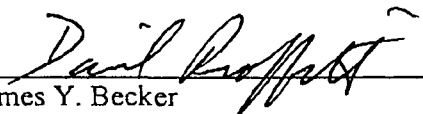
Mrs. Coffey's reliance on the Statute of Frauds is misplaced. The issue is not whether there was a writing. There absolutely was a writing – the mortgage and note signed by Dr. Coffey. The issue is whether Mrs. Coffey ratified those writings, such that they are enforceable against her and Wachovia may foreclose on the loan in the usual

fashion. Furthermore, as set forth in detail at pages 33 through 37 of Wachovia's main brief, there are numerous disputed issues of fact on whether Mrs. Coffey ratified the mortgage and note. Such factual disputes may be resolved only by the factfinder at trial.

CONCLUSION

For all the foregoing reasons, as well as the reasons set forth in Wachovia's main brief, this Court should reverse the trial court's grant of summary judgment to Mrs. Coffey on all causes of action. This Court, based on its review of facts proven by Wachovia by a preponderance of the evidence, should remand the case for entry of summary judgment in Wachovia's favor on its causes of action for unjust enrichment / quasi contract, equitable lien and prejudgment interest. This Court should direct the trial court to calculate damages based on the balance due of \$126,256.28 as of January 3, 2006, the due date of the first payment that Mrs. Coffey refused to pay on the Wachovia home equity loan, with prejudgment interest accruing at the statutory rate from that date to the entry of judgment by the trial court. This Court should further hold that Wachovia is entitled to a jury trial on its causes of action for mortgage ratification and foreclosure based on the existence of genuine issues of material fact.

Respectfully submitted,


James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Firm: (803) 779-3080
Fax: (803) 765-1243
Attorneys for Appellant Wachovia Bank,
N.A.

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Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

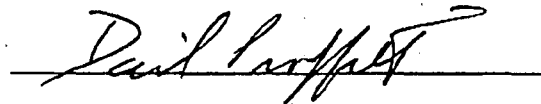
v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this final brief complies with Rule 211(b), SCACR.



James Y. Becker
R. David Proffitt
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Firm: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com
Email: dproffitt@hsblawfirm.com
Attorneys for Appellant Wachovia Bank,
N.A.

December 5, 2008

Columbia: 1138817 v.1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Wachovia Bank, N.A., Appellant,

v.

Ann T. Coffey and
Bank of America, N.A., Respondents.

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 4685
Heard February 9, 2010 – Filed May 6, 2010

AFFIRMED

James Y. Becker and R. David Proffitt, of Columbia,
for Appellant.

Gregory M. Alford, of Hilton Head Island, for
Respondent Ann. T. Coffey.

Steven R. Anderson, of Columbia, for Respondent

Bank of America, N.A.

GEATHERS, J.: Appellant Wachovia Bank, N.A. (Wachovia), brought this mortgage foreclosure action against Respondents Ann T. Coffey (Mrs. Coffey) and Bank of America, N.A., seeking relief from Mrs. Coffey's default on a home equity loan made to her late husband for the purchase of a sailboat. The master-in-equity granted Mrs. Coffey's summary judgment motion and denied Wachovia's summary judgment motion. Wachovia challenges both the grant of summary judgment to Mrs. Coffey and the denial of its summary judgment motion on its unjust enrichment, equitable lien, and prejudgment interest causes of action on the ground that it proved the required elements of these causes of action. Wachovia also challenges the grant of summary judgment to Mrs. Coffey on its ratification and foreclosure causes of action on the ground that there were material factual issues preventing summary judgment. We affirm.

FACTS/PROCEDURAL HISTORY

On January 27, 2001, Dr. Michael D. Coffey (Dr. Coffey), a Hilton Head obstetrician, was diagnosed with terminal lung cancer and was told that he had six months to live. On July 23, 2001, Dr. Coffey took out a \$125,000 home equity line of credit with Wachovia. Mrs. Coffey was not aware of the transaction, and Wachovia's employees failed to verify Dr. Coffey's authority to mortgage the couple's home. Dr. Coffey signed a mortgage document purporting to secure the loan with the couple's home, which was titled in Mrs. Coffey's name only. On July 30, 2001, at Dr. Coffey's request, Wachovia wired the loan proceeds to the Hilton Head branch of Carolina First Bank to be deposited in the account of Hilton Head Yachts, Ltd., a business that had sold to Dr. Coffey a thirty-six-foot Beneteau sailboat (the boat). The boat was then titled in the name of A&M Partners, Inc., a Delaware corporation in which Dr. Coffey and Mrs. Coffey were the only shareholders. Dr. Coffey told Mrs. Coffey that the boat was "paid for." Dr. Coffey, who handled virtually all of the couple's financial transactions, used the couple's joint checking account to make payments on the loan until his death in March

2005.

Soon after Dr. Coffey's death, Mrs. Coffey began a months-long effort to sell the boat. She continued the payments on the loan from Wachovia, but for several months she was unaware that the loan was for the boat purchase. She testified that by the fall of 2005, she realized that these payments related to Dr. Coffey's boat purchase but that she was under the impression that the loan was secured by a lien on the boat, rather than a mortgage on their home, and that the amount of the loan was much smaller than it actually was.

In September 2005, Mrs. Coffey hired a broker to locate a buyer for the boat. By late November 2005, the broker located a buyer, and on January 5, 2006, the broker prepared an initial seller's disbursement summary showing the balance of Wachovia's boat loan to Dr. Coffey. However, the final seller's disbursement summary did not reflect the debt owed to Wachovia. According to Mrs. Coffey, she had given the boat loan information to the broker, but the broker contacted Wachovia and learned that there was "no lien" on the boat and that the sale proceeds could be transferred to A&M Partners, Inc., the corporation in which she and Dr. Coffey held stock. Ultimately, Mrs. Coffey received the net proceeds of the sale, and she deposited them into one of her bank accounts.

Mrs. Coffey also stated that shortly after the closing of the boat sale in January 2006, she realized that Dr. Coffey had purchased the boat with loan proceeds from a home equity line of credit and that he had signed a mortgage purportedly securing the debt with their home. Mrs. Coffey indicated that she became angry at Wachovia's employees about the transaction taking place without her knowledge and refused to make any further payments on the loan.

Wachovia later filed this mortgage foreclosure action against Mrs. Coffey. In its initial complaint filed on June 30, 2006, Wachovia originally named as defendants Dr. Coffey's estate, Mrs. Coffey, both individually and as personal representative of Dr. Coffey's estate, and three of the couple's five

children. Wachovia filed an amended complaint on May 9, 2008, to name as defendants only Mrs. Coffey and Bank of America, N.A. In the meantime, Mrs. Coffey had filed with the Beaufort County Probate Court an inventory and appraisal of Dr. Coffey's estate in September 2006. The inventory and appraisal acknowledged Dr. Coffey's and Mrs. Coffey's joint ownership of the boat. The inventory and appraisal also indicated that Dr. Coffey's probate estate had a negative value. Mrs. Coffey admitted that most of Dr. Coffey's assets had been transferred to her and other family members outside the probate estate through a marital trust.

In its amended complaint, Wachovia sought to foreclose on the mortgage signed by Dr. Coffey and asserted additional causes of action for ratification, prejudgment interest, unjust enrichment, equitable lien, and equitable mortgage. Wachovia filed a motion for summary judgment on the unjust enrichment, equitable lien, and prejudgment interest causes of action, and Mrs. Coffey filed a cross-motion for summary judgment on all of Wachovia's causes of action. The master granted Mrs. Coffey's summary judgment motion and denied Wachovia's summary judgment motion. This appeal followed.

ISSUE ON APPEAL

Is Wachovia barred from seeking relief in the courts due to its unauthorized practice of law in the loan transaction with Dr. Coffey ?

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, this Court applies the same standard as that required for the circuit court under Rule 56(c), SCRPC. Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Adamson v. Richland County Sch. Dist. One,

332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1998) (quoting Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997)).

LAW/ANALYSIS

Wachovia assigns error to the master's granting of summary judgment to Mrs. Coffey on the claim that she ratified the note and mortgage signed by Dr. Coffey. Wachovia argues that there was a genuine dispute about the inferences to be drawn from the evidence pertaining to this claim. Wachovia also assigns error to the master's grant of Mrs. Coffey's summary judgment motion and denial of its summary judgment motion on its causes of action for unjust enrichment, equitable lien, and prejudgment interest.

However, Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts.¹ She argues that Wachovia committed the unauthorized practice of law, and, therefore,

¹ One of Wachovia's grounds for challenging the master's reliance on the unclean hands doctrine is that Coffey was barred from raising this affirmative defense because she failed to raise it in her answer. The master did not address this procedural issue when he ruled that Wachovia had unclean hands, and Wachovia failed to file a motion to alter or amend pursuant to Rule 59(e), SCRCR. Therefore, the issue is not preserved for our review. See Hancock v. Wal-Mart Stores, Inc., 355 S.C. 168, 171, 584 S.E.2d 398, 399 (Ct. App. 2003) (holding that an argument raised to the trial judge but not addressed in the final order is not preserved for appellate review when the appellant fails to file a motion to alter or amend). Further, Wachovia did not include Coffey's answer in the Record on Appeal. Because we are unable to review the answer to determine whether the defense of unclean hands was adequately pled, we will not consider this procedural challenge to the master's order. See Rule 210(h), SCACR (the appellate court will not consider any fact which does not appear in the Record on Appeal); Germain v. Nichol, 278 S.C. 508, 509, 299 S.E.2d 335 (1983) ("Appellant has the burden of providing this Court with a sufficient record upon which this Court can make its decision.").

Wachovia came into court with unclean hands. We agree.²

"The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. Id.

As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that the loan closing had to be supervised by an attorney. See State v. Buyers Serv. Co., 292 S.C. 426, 431-434, 357 S.E.2d 15, 18-19 (1987) (holding that a commercial title company's employment of attorneys to review mortgage loan closing documents did not save the company's preparation of those documents from constituting the unauthorized practice of law and that the closings should be conducted only under an attorney's supervision), modified by Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003); see also Doe Law Firm v. Richardson, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (citing

² In no way do we purport to regulate the practice of law by addressing the unauthorized practice of law in this opinion. The regulation of the practice of law is within the exclusive province of our supreme court. See S.C. Const. art. V, § 4 ("The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."); S.C. Code Ann. § 40-5-10 (2001) ("The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbaring attorneys at law is hereby recognized and declared."). Rather, we address Wachovia's unauthorized practice of law as it affects the merits of this action against Mrs. Coffey.

Buyers and McMaster) (clarifying that a lender may prepare legal documents for use in financing or refinancing a real property loan as long as an independent attorney reviews them and makes any corrections necessary to ensure their compliance with the law and reaffirming that mortgage loan closings should be conducted only under an attorney's supervision).³

Here, on July 23, 2001, Wachovia's employees processed the home equity loan to Dr. Coffey without the supervision of an attorney. Their unauthorized practice of law resulted in prejudice to Mrs. Coffey when the mortgage signed by Dr. Coffey was recorded and when Wachovia filed this foreclosure action against Mrs. Coffey. While Mrs. Coffey could have applied the proceeds from the sale of the boat to the balance due on the boat loan, we cannot allow her failure to do so to obscure the misconduct of Wachovia's employees. The unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also to the public at large for the reason so cogently stated in Buyers:

The reason preparation of instruments by lay persons must be held to constitute the unauthorized practice of law is not for the economic protection of the legal profession. Rather, it is for the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law.

Buyers, 292 S.C. at 431, 357 S.E.2d at 18. We therefore reach the inescapable conclusion that Wachovia has come to court with unclean hands and is barred from seeking equitable relief.

Wachovia's legal causes of action are barred as well. In Linder v. Ins.

³ The attorney supervising the loan closing may represent both the lender and the borrower after full disclosure and with each party's consent. Richardson, 371 S.C. at 17, 636 S.E.2d at 868.

Claims Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2002), our supreme court refused to allow a public insurance-adjusting business to be compensated for the value of its performance attributable to the unauthorized practice of law. Linder, 348 S.C. at 496, 560 S.E.2d at 622. This is consistent with South Carolina precedent asserting that no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act. See Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). "This rule applies at both law and in equity and whether the cause of action is in contract or in tort." Jackson, 313 S.C. at 276, 437 S.E.2d at 170.

Based on the foregoing, Mrs. Coffey was entitled to judgment as a matter of law. Therefore, the master properly granted her summary judgment motion. In no way do we condone the actions of either Dr. Coffey or Mrs. Coffey in relation to this loan. However, we are bound by precedent and must therefore deny Wachovia's request for relief. In view of our disposition of this issue, we need not address Wachovia's remaining arguments. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that the appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Accordingly, the order of the master-in-equity is

AFFIRMED.

PIEPER, J., and CURETON, A.J., concur.

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Ann T. Coffey and Bank of America, N.A., ... Respondents.

PETITION FOR REHEARING

Appellant Wachovia Bank, N.A. ("Wachovia") petitions the Court for a rehearing of its Opinion No. 4685, filed May 6, 2010 (the "Opinion"), holding that Wachovia is barred from seeking equitable relief from Respondent Ann T. Coffey ("Mrs. Coffey") as a consequence of its unauthorized practice of law in a loan transaction with Mrs. Coffey's late husband, Michael D. Coffey ("Dr. Coffey"), that occurred in 2001. For the reasons hereinafter explained, Wachovia submits that the Opinion conflicts with the decision of this Court in *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006), and the decision of the Supreme Court in *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 560 S.E.2d 612 (2002), on which the decision in *Hambrick* is based.

Wachovia cited and relied on both *Hambrick* and *Linder* in its brief, and Mrs. Coffey did not attempt to distinguish either case. This Court cited *Linder* but did not consider *Hambrick*, and its opinion is inconsistent with *Hambrick*.

ARGUMENT

I. THE CIRCUIT COURT LACKED JURISDICTION TO DETERMINE WHETHER WACHOVIA HAD ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.

In this case, the Master-in-Equity held that Wachovia had unclean hands because it had engaged in the unauthorized practice of law by preparing the documents, including a mortgage, for a loan that it made to Dr. Coffey in 2001. (R. pp. 12-13.) As this Court stated in *Hambrick*, however, “Only our supreme court has the constitutional duty to determine what acts constitute the unauthorized practice of law.” *Hambrick*, 370 S.C. at 124-125, 634 S.E.2d at 8-9. Consequently, as this Court then proceeded to hold in *Hambrick*, a circuit court lacks jurisdiction to determine whether a party engaged in the unauthorized practice of law. *Id.* at 125, 634 S.E.2d at 9.

Furthermore, the fact that “actions attributed to [a party] have already been deemed the unauthorized practice of law by prior case law” is of no consequence. *Id.* at 124, 634 S.E.2d at 8. The circuit court still lacks jurisdiction to determine whether the conduct in question constitutes the unauthorized practice of law.

In his order, the Master stated, “While this Court recognizes that no private cause of action exists from the unauthorized practice of law, it can, however, be the basis for ‘unclean hands,’ and I so find.” (R. p. 13.) The conclusion that Wachovia had unclean hands thus rests squarely on the Master’s determination that Wachovia had engaged in

the unauthorized practice of law, and the Master did not have jurisdiction to make such a determination.

“The question of lack of subject matter jurisdiction may be raised at any time during the action and cannot be waived or conferred by consent.” *Gnoc Corp. v. Estate of Rhyne*, 312 S.C. 86, 88, 439 S.E.2d 274, 275 (1994) (citing *Petroleum Transp., Inc. v. Public Service Comm'n*, 255 S.C. 419, 179 S.E.2d 326 (1971)); see also *Normandy Corp. v. South Carolina Dep't of Transp.*, 386 S.C. 393, 403, 688 S.E.2d 136, 141 (Ct. App. 2009) (“Issues involving subject matter jurisdiction may be raised at any time, including on appeal.”) (citing *Arnal v. Fraser*, 371 S.C. 512, 517 n.2, 641 S.E.2d 419, 421 n.2 (2007)). In this case, *Hambrick* compels this Court to reconsider its Opinion and to reverse the ruling of the Master for lack of subject matter jurisdiction.

II. THE UNAUTHORIZED PRACTICE OF LAW DOES NOT CREATE PRIVATE RIGHTS OR REMEDIES, AND IT DOES NOT RENDER CONTRACTS OR CONVEYANCES INVALID.

Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2002), held that there is no private right of action for the unauthorized practice of law, regardless of the theory on which a claim for unauthorized practice might be based. This Court acknowledged and followed the holding of *Linder* in *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006). Implicit in the holdings of *Linder* and *Hambrick* is the proposition that the unauthorized practice of law does not give rise to any private rights or remedies, regardless of the form in which the rights or remedies might be asserted.

In addition, cases decided in other jurisdictions have held that contracts and conveyances prepared by persons not licensed to practice law are not void. *See, e.g., Estates of Kalwitz v. Kalwitz*, 717 N.E.2d 904 (Ind. Ct. App. 1999) (holding that deeds that were the products of the unauthorized practice of law were not void); *Frank v. Moore*, 198 N.E.2d 82 (Ohio. Ct. App. 1963) (holding that the fact that a contract to purchase real property had been prepared by a person not licensed to practice law did not make the contract void); *Wyche v. Works*, 373 S.W.2d 558 (Tex. Ct. App. 1963) (holding that even if a contract for the purchase of land was prepared by a person not licensed to practice law, the validity of the contract would not be affected); *Gaylor v. Gaylor*, 275 S.W.2d 644 (Ark. 1955) (holding that deeds prepared by a title abstract company were not void). The ruling of the Master in this case that Mrs. Coffey was entitled to assert the unauthorized practice of law as an affirmative defense to Wachovia's claims was thus at odds with *Linder* and with cases decided in other jurisdictions.

Contrary to the Opinion of this Court, *Linder* does not support the conclusion that Wachovia should be barred from collecting a loan merely because someone other than a lawyer prepared a mortgage that was intended to secure the loan. *Linder* held only that a public insurance-adjusting business was not entitled to compensation for rendering services that constituted the unauthorized practice of law. *Linder* did not hold that the unauthorized practice of law precluded the business from collecting compensation for other services rendered or that the unauthorized practice invalidated the contract between the business and its client.

In this case, Wachovia did not seek compensation for any conduct constituting the unauthorized practice of law. Instead, Wachovia sought only to recover the money that it

had lent to Dr. Coffey. The holding of *Linder* to the effect that a person who renders services constituting the unauthorized practice of law is not entitled to compensation for the services thus does not apply to this case.

III. WACHOVIA WAS NOT ON NOTICE WHEN IT MADE THE LOAN TO DR. COFFEY THAT PREPARING A MORTGAGE TO SECURE THE LOAN CONSTITUTED THE UNAUTHORIZED PRACTICE OF LAW.

In its Opinion in this case, this Court stated, "As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that the loan closing had to be supervised by an attorney." (Opinion p. 6.) This statement is not accurate.

To support the foregoing statement, this Court cited, among other cases, *State v. Buyers Serv. Co.*, 292 S.C. 426, 357 S.E.2d 15 (1987). *Buyers Service* however, held only that a commercial title company had engaged in the unauthorized practice of law by performing various functions constituting the practice of law in the course of closing real estate transactions to which the title company was not itself a party. The issue of whether a lender has a *pro se* right to prepare documents relating to a transaction to which the lender is a party was not addressed or decided until our Supreme Court issued its opinion in *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003), and the opinion in *Doe* was published more than two years after Wachovia made the loan to Dr. Coffey. It is thus unfair to apply the holding in *Doe* retroactively to Wachovia for purposes of this case, especially when the issue to be decided is whether Wachovia engaged in conduct that it

should have known was improper. *See Doe Law Firm v. Richardson*, 371 S.C. 14, 636 S.E.2d 866 (2006) (delaying for three months the effective date of a decision establishing a new rule defining conduct that constitutes the practice of law).

IV. MRS. COFFEY WAS NOT ENTITLED TO ASSERT UNCLEAN HANDS AS A DEFENSE TO WACHOVIA'S CLAIMS.

“Unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 n.2 (2000) (citing *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998)). “[P]rejudice to the defendant is a necessary element of the ‘unclean hands’ defense” *Wilson v. Landstrom*, 281 S.C. 260, 267, 315 S.E.2d 130, 134 (Ct. App. 1984). A defendant asserting the defense of unclean hands must thus prove (1) that the plaintiff acted unfairly in a matter that is the subject of the litigation (2) to the prejudice of the defendant. In this case, both elements of the defense are missing, and the Master erred in concluding that Wachovia was guilty of unclean hands.

Wachovia did not act unfairly in making the loan to Dr. Coffey. If anyone acted unfairly, it was Dr. Coffey, who represented that he could give Wachovia a mortgage lien on his home to secure the loan when in fact he had previously conveyed the home to his wife. After the loan was made, Dr. Coffey had what he wanted and expected to receive, which was the money to purchase a sailboat, but Wachovia did not have what it wanted and expected to receive, which was a valid mortgage lien on Dr. Coffey's home.

Furthermore, before a party to litigation can be found guilty of unclean hands, it must be proved that the party had actual notice, and not just constructive notice, that its

conduct was improper. *See Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005) (holding that where parties had only constructive notice rather than actual notice of restrictive covenants, their violation of the restrictive covenants did not constitute unclean hands). As previously discussed, Wachovia was not on notice when it made the loan to Dr. Coffey that preparing a mortgage to secure the loan constituted the unauthorized practice of law. Wachovia thus did not act unfairly merely by preparing the mortgage that Dr. Coffey signed.

Contrary to the Opinion of this Court, Mrs. Coffey was not prejudiced by Wachovia's preparation of the mortgage her husband signed. The recording of the mortgage had no effect on Mrs. Coffey's title to the property described in the mortgage because Mrs. Coffey, rather than Dr. Coffey, was the record owner of the property when Dr. Coffey executed the mortgage. Consequently, the mortgage was not in the chain of title and did not affect Mrs. Coffey's title to the property. *See Liberty Loan Corp. v. Mumford*, 283 S.C. 134, 322 S.E.2d 17 (Ct. App. 1984) (holding that a mortgage from a former owner that was not properly recorded until after the former owner no longer owned the mortgaged property was not in the chain of title and did not constitute a lien against the property).

Mrs. Coffey was also not prejudiced by having to defend Wachovia's claims against her. Being required to defend claims does not constitute legal prejudice. For example, "[a] party opposing [a] motion for voluntary nonsuit without prejudice must show prejudice (i.e., 'legal' prejudice) to successfully defeat the motion. That prejudice is not merely the possibility of defending another suit." *Walker v. Jones*, 269 S.C. 19, 21, 235 S.E.2d 810, 810-811 (1977) (internal citations omitted). Similarly, a defendant does

not suffer legal prejudice as the result of an amendment to a complaint even though the amendment will require the defendant to file additional pleadings, engage in additional discovery, and incur additional costs. *Forrester v. Smith & Steele Bldrs., Inc.*, 295 S.C. 504, 509, 369 S.E.2d 156, 159 (Ct. App. 1988).

Mrs. Coffey was not entitled to assert the defense of unclean hands because she was not a party to the loan transaction on which she based the defense. "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). To avoid this limitation, this Court asserted, "The unauthorized practice of law is inherently prejudicial not only to the parties involved in the instant transaction but also to the public at large" (Opinion p. 7), and cited *State v. Buyers Serv. Co.*, 292 S.C. 426, 357 S.E.2d 15 (1987), to support the assertion.

In so stating, this Court misconstrued *Buyers Service*. *Buyers Service* did not address or decide the issue of who is prejudiced by the unauthorized practice of law. Instead, *Buyers Service* merely explained that the prohibition on the unauthorized practice of law exists not to protect the legal profession but instead to protect the public. A similar statement could be made with respect to most licensing and regulatory schemes. *Buyers Service* thus does not support the conclusion that each and every member of the public is a person prejudiced by unauthorized practice of law occurring in a private transaction involving only two parties. Indeed, to extend the right to assert remedies beyond the parties to a transaction would raise serious issues of standing.

Mrs. Coffey was not entitled to assert the doctrine of unclean hands for the additional reason that she did not plead the doctrine as an affirmative defense. Rule 8(c),

SCRCP, requires party pleading defenses to set forth affirmatively any “matter constituting an avoidance or affirmative defense,” and Mrs. Coffey implicitly admitted in the brief she filed with this Court that she did not plead “unclean hands” in her Answer. (Final Brief of Respondent pp. 9-10.) Consequently, it was not necessary for Wachovia to include the Answer in the Record on Appeal.

This Court held that the issue of whether Mrs. Coffey had waived the defense of unclean hands was not preserved for appeal because the Master did not address the issue when he ruled that Wachovia had unclean hands and Wachovia failed to file a motion to alter or amend pursuant to Rule 59(e), SCRCP. In a memorandum filed with the circuit court, however, Wachovia expressly asserted that “Defendants are barred from raising the affirmative defense of unclean hands because they failed to raise it in their Answer, Counterclaims and Affirmative Defenses dated August 15, 2006.” (R. p. 77.) Although the Master did not specifically address Mrs. Coffey’s failure to plead the unclean hands defense in his order, the Master did grant judgment for Mrs. Coffey on this defense, thus implicitly ruling on the issue. A Rule 59(e) motion is not necessary to preserve an issue for appeal when the trial court has implicitly ruled on the issue. *Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006) (holding that an appellant did not need to file a Rule 59(e) motion where the trial court “implicitly denied” the appellant’s claims by adopting a particular analysis proposed by the other side); *Pryor v. Northwest Apts., Ltd.*, 321 S.C. 524, 528 n.2, 469 S.E.2d 630, 633 n.2 (Ct. App. 1996) (holding that where a tenant’s pleadings clearly asserted that the Residential Landlord Tenant Act (the “RLTA”) was applicable to a case and imposed on a landlord a particular duty to warn of dangerous conditions, and where the trial court found that a landlord had no duty to warn

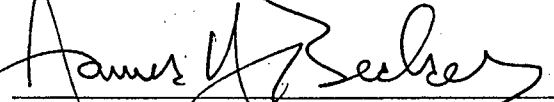
of such conditions on the property, there was no need for a tenant to file a Rule 59(e) motion as to whether the RLTA applied because the court had “implicitly ruled on and rejected [the tenant’s] argument”).

Finally, the rulings of the Master and of this Court had the effect of imposing a forfeiture on Wachovia, which is contrary to principles of equity. “Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice.” *Lane v. New York Life Ins. Co.*, 147 S.C. 333, 374, 145 S.E. 196, 209 (1928) (quoting *Bangert v. Lumber Co.*, 169 N.C. 628, 630, 86 S.E. 516, 517 (1915)). In this case, both this Court and the Master expressed reservations about the conduct of Mrs. Coffey, and the Master acknowledged that “there is some perception of unfairness to Wachovia.” (R. p. 12.) Despite these reservations, both this Court and the Master permitted Mrs. Coffey to invoke an equitable principle—the clean hands doctrine—to achieve a clearly inequitable result—a forfeiture imposed on Wachovia. This Court and the Master should not have permitted such a gross misuse of an equitable doctrine.

CONCLUSION

For the foregoing reasons, Wachovia respectfully submits that this Court erred in holding that Wachovia is barred from seeking equitable relief from Mrs. Coffey and that the Opinion of this Court should be withdrawn.

Respectfully submitted,



James Y. Becker
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, S.C.
Tel: (803) 779-3080
Fax: (803) 765-1243
Email: jbecker@hsblawfirm.com

Attorney for Appellant Wachovia Bank,
N.A.

June 4, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., certify that I caused the foregoing Petition to be served on Respondents on the date set forth below by mailing copies by first-class mail, postage prepaid, to their respective attorneys, whose names and addresses are as follows:

Gregory M. Alford, Esquire
Alford & Wilkins, P.C.
P.O. Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500
Fax: (843) 842-8400
Email: gregg@alfordandwilkins.com

Steven R. Anderson, Esquire
Attorney at Law
P.O. Box 12188
Columbia, SC 29211-2188
(803) 252-2828
Fax: (803) 254-1935
Email: sraatlaw@bellsouth.net

Attorney for Mrs. Coffey Ann T. Coffey

Attorney for Bank of America, N.A.


Heather Weiser Bailey

Date mailed: June 4, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2006-CP-07-1655

Wachovia Bank, N.A.,

Appellant,

v.

Ann T. Coffey and Bank of America, N.A.

Respondents.

**RESPONDENT'S MOTION TO DISMISS APPELLANT'S
PETITION FOR REHEARING**

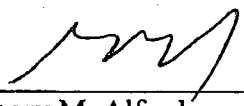
COMES NOW Respondent, Ann T. Coffey, moving to Dismiss Appellant's Petition for Rehearing based on a recent South Carolina Supreme Court ruling in *Matrix Financial Services Corp. v. Louis M. Fraser et al*, filed August 16, 2010, copy attached as Exhibit "A".

On May 6, 2010, the Court of Appeals issued an opinion in the within action concluding that Appellant Wachovia Bank, N.A. was barred from seeking equitable relief in the courts from Respondent Ann T. Coffey due to Wachovia's unauthorized practice of law in the loan transaction. Appellant filed a Petition Rehearing dated June 4, 2010 seeking a withdrawal of the Order arguing the Court erred in holding that Wachovia was barred from seeking equitable relief on several grounds. Appellant then notified the Court that the Supreme Court had accepted into its original jurisdiction a case entitled *Kidder et al v. Jim Walter Homes* wherein the "petitioners asked the court to declare whether a mortgage

procured through the unauthorized practice of law is void, voidable, wholly enforceable, or partially enforceable.” This Court issued an Order dated June 28, 2010 holding the petition for rehearing in abeyance until a decision was rendered in *Kidder* as the outcome may affect any future ruling in the within action.¹

On August 16, 2010, the South Carolina Supreme Court issued an opinion in the case of *Matrix Financial Services Corp. v. Louis M. Fraser et al.* in which it directly addressed the theory of unclean hands and the unauthorized practice of law in loan closings. It cited *Wachovia Bank v. Coffey* as controlling law stating that **“The court of appeals held that Wachovia, having committed the unauthorized practice of law in closing the loan without attorney supervision, came to the court with unclean hands and thus was barred from seeking equitable relief”** (emphasis added) The *Matrix* decision has adopted the sound and appropriate reasoning of the Court of Appeals in the within action. Respondent argues that because *Coffey* has already been cited by the Supreme Court as good law, the Court of Appeals is bound by the Supreme Court’s opinion and need not entertain a Petition for Rehearing.

Respondent respectfully requests that the Court dismiss the Appellant’s Petition for Rehearing based on the Supreme Court’s citing of *Coffey* as controlling law with regards to unclean hands and the unauthorized practice of law in loan transactions.



Gregory M. Alford
Alford and Wilkins, PC
Post Office Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500
Attorney for Respondent

August 17, 2010
Hilton Head Island, South Carolina.

¹ Respondent has simultaneously filed herewith a Motion to Lift the Order holding this action in abeyance.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Matrix Financial Services Corporation,
Respondent,

v.

Louis M. Frazer, Linda S. Frazer, Matthew
Kundinger, and Parks Grove Homeowners
Association, Inc., Defendants,

of whom Matthew Kundinger is the Appellant.

Appeal from Greenville County
Charles B. Simmons, Jr., Circuit Court Judge

Opinion No. 26859
Heard April 21, 2009 – Filed August 16, 2010

REVERSED

David Alan Wilson, of Horton Drawdy Ward &
Jenkins, PA, and Edward Scott Sanders,
both of Greenville, for Appellant.

Earle G. Prevost, and Michael J. Giese, both
of Leatherwood, Walker, Todd & Mann, of
Greenville, for Respondent.

CHIEF JUSTICE TOAL: In this case, Matthew Kundinger (Appellant) enrolled a default judgment against Louis and Linda Frazer (the Frazers) before the Frazers closed a refinance mortgage with Matrix Financial Services Corporation (Matrix). In Matrix's foreclosure action, the master-in-equity granted Matrix equitable subrogation, giving the refinance mortgage priority over Appellant's judgment lien. We certified this case pursuant

to Rule 204(b), SCACR. We reverse.

FACTS/PROCEDURAL BACKGROUND

In 1998, Appellant brought suit against the Frazers in California. In 2000, the Frazers moved to South Carolina, and defaulted in Appellant's California lawsuit.

In January 2001, the Frazers purchased a home in Greenville County. The original mortgage was assigned to Matrix in June 2001. In September 2001, Matrix and the Frazers entered into a loan commitment for a refinance mortgage. A title search was conducted on September 18, 2001. The refinance loan was closed on November 26, 2001, but was not recorded until April 3, 2002.

Meanwhile, on September 4, 2001, Appellant obtained a default judgment against the Frazers in California, and enrolled that judgment in Greenville County on October 31, 2001.

The Frazers filed bankruptcy, and Matrix sought to foreclose its November 2001 mortgage. Appellant counterclaimed, alleging his judgment had priority over Matrix's mortgage because it had been recorded first. Matrix then sought to be equitably subrogated over Appellant's judgment lien. The master-in-equity granted Matrix's request, and Appellant appeals that order.

ISSUES

- I. Did the master-in-equity err in equitably subrogating Matrix's refinance mortgage to the primary priority position of the original mortgage over Appellant's judgment lien?
- II. Does the doctrine of unclean hands prevent Matrix from receiving the remedy of equitable subrogation?

ANALYSIS

Equitable Subrogation

Appellant argues the master-in-equity erred in holding Matrix was entitled to equitable subrogation. We agree.

In *Dedes v. Strickland*, 307 S.C. 155, 158, 414 S.E.2d 134, 136 (1992), this Court listed the requirements a mortgagee must meet to qualify for equitable subrogation: (1) the party claiming subrogation has paid the debt; (2) the party was not a volunteer, but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; (4) no injustice will be done to the other party by the allowance of equitable subrogation; and (5) the party asserting the doctrine did not have actual notice of the prior mortgage.

In *Dedes*, a bank refinanced its initial mortgage and sought to be equitably subrogated over the rights of an intervening mortgagee. This Court held that the bank could not meet

the elements of equitable subrogation merely by paying "itself [the] outstanding debt by refinancing the balance owed" because the bank had no "direct interest necessitating discharge of the debt" *Dedes*, 307 S.C. at 159, 414 S.E.2d at 136. To meet the criteria for equitable subrogation, a party must have liability for the debt other than a voluntary agreement to refinance its own earlier mortgage. Otherwise, a lender can simply refinance the debt at any time to prevail over an intervening lien holder, rendering the requirement of secondary liability meaningless.

Here, we are faced with the same situation presented to the court in *Dedes*. Matrix seeks to be equitably subrogated over Appellant's judgment lien based solely on its voluntary refinancing of its own debt. Matrix had no liability for the original mortgage before it voluntarily refinanced the balance owed. Thus, Matrix had no obligation to pay off its existing mortgage. Matrix admits that it would not have obligated itself unless it could obtain a first lien, and that if it knew about Appellant's lien it would not have authorized disbursement. Because Matrix cannot prove that it was secondarily liable on the initial mortgage, Matrix was a mere volunteer when it disbursed the funds and is not entitled to equitable subrogation.

Unclean Hands

Appellant also argues Matrix is not entitled to an equitable remedy because it closed the refinance loan unlawfully, and thus has unclean hands. We agree.

Real estate and mortgage loan closings, including refinance loans, must be supervised by an attorney. See *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003). Performing a title search, preparing title and loan documents, and closing a loan without the supervision of an attorney constitutes the unauthorized practice of law. *Id.* The court grants equity at its discretion and can refuse to provide a remedy when the party has failed to act equitably in the transaction at issue. See *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 531 S.E.2d 287 (2000).

In *Wachovia Bank v. Coffey*, Op. No. 4685, 2010 WL 1904876 (S.C. Ct. App. May 6, 2010), Wachovia closed a home equity loan without the supervision of an attorney and later instituted foreclosure proceedings. The court of appeals held that Wachovia, having committed the unauthorized practice of law in closing the loan without attorney supervision, came to the court with unclean hands and thus was barred from seeking equitable relief. In so holding, the court of appeals said:

The unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also to the public at large for the reason so cogently stated in *Buyers*:

The reason preparation of instruments by lay persons must be held to constitute the unauthorized practice of law is not for the economic protection of the legal profession. Rather, it is for the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law.

Coffey, at * 3 (citing *State v. Buyers Serv. Co.*, 292 S.C. 426, 431, 357 S.E.2d 15, 18 (1987)).

Similarly, in this case Matrix comes to the court with unclean hands, and is thus barred from seeking equitable relief. Matrix hired LandAmerica OneStop to perform the title search, prepare the documents, and close the refinance loan—all admittedly without the supervision of a licensed attorney. Thus, Matrix has committed the unauthorized practice of law in closing the refinance mortgage, clearly violating South Carolina law. The dissent's protestations aside, a party cannot violate the law and expect not to bear the consequences of its actions. This Court will not grant a discretionary, equitable remedy to a party who refused to follow the laws of this state. Therefore, even if Matrix were able to satisfy the requirements for equitable subrogation, Matrix would not be entitled to that equitable remedy because it has unclean hands.

CONCLUSION

For the above reasons, we hold Matrix is not entitled to equitable subrogation, and also has unclean hands barring it from receiving an equitable remedy. The master-in-equity's order is reversed.

WALLER, and BEATTY, JJ., concur. KITTREDGE, J., concurring in a separate opinion. PLEICONES, J., dissenting in a separate opinion.

JUSTICE KITTREDGE: I concur in result. I would reverse on the issue of unclean hands and not reach the merits of the equitable subrogation issue. Concerning the matter of unclean hands, I would reverse the judgment of the trial court only because Matrix, as a result of its unlawful conduct, is not entitled to the benefit of having its lien equitably subrogated over Appellant's judgment lien. To resolve this appeal, I see no need to reach the broader question of the underlying efficacy of a real estate mortgage secured through the unauthorized practice of law and the general availability of foreclosure relief in such circumstances. I would go no further than to hold that the benefit of equitable subrogation is not available where, as here, the mortgage was secured through the unauthorized practice of law.

JUSTICE PLEICONES: I respectfully dissent. First, I believe the majority misapprehends the requirement in equitable subrogation that the party asserting the doctrine be "secondarily liable." Second, in dicta, the majority creates a new rule that equity will not aid a party that violated South Carolina law in closing a mortgage because that party has unclean hands, a rule I believe may have chaotic unintended consequences.

A. Equitable Subrogation

Equitable subrogation is a remedy favored by the courts, and it is to be liberally and expansively applied. So. Bank and Trust Co. v. Harrison Sales Co., Inc., 285 S.C. 50, 328 S.E.2d 60 (1985). The doctrine:

is founded on the fictional premise that an obligation extinguished by a payment made by a third person is to be treated as still subsisting for the benefit of such third person, whereby he is substituted to the rights of the creditor when he has made such payment.

St. Paul – Mercury Indem. Co. v. Donaldson, 225 S.C. 476, 83 S.E.2d 159 (1954) citing Aetna Life Ins. Co. of Hartford v. Town of Middleport, 124 U.S. 534 (1888).

"The purpose of subrogation is to prevent a junior lien holder from converting the mistake of the lender into a magical gift for himself." U.S. v. Baron, 996 F.2d. 25 (2nd Cir. 1993) (internal citation omitted). Thus, the proper focus is whether equity should elevate appellant's judgment lien over Matrix's mortgage, not whether Matrix should be punished for its participation in an unlawful closing.

A mortgagee seeking to be equitably subrogated to an earlier mortgage must establish:

- 1) that the mortgagee has paid the earlier debt;
- 2) that the mortgagee was not a volunteer but had a direct interest in the discharge of the earlier mortgage;
- 3) that the mortgagee was secondarily liable for the debt or for the discharge of the mortgage;
- 4) that no injustice will be done to another creditor if subrogation is permitted; and

- 5) the mortgagee asserting the doctrine did not have actual knowledge of the other lien.

Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992).

The majority holds Matrix is not entitled to equitable subrogation because it cannot satisfy the second and third requirements in that it voluntarily paid off the original mortgage, upon which it was not secondarily liable. In making this argument the majority relies on Dedes, while the master and Matrix rely upon Dodge City of Spartanburg, Inc. v. Jones, 317 S.C. 491, 454 S.E.2d 918 (Ct. App. 1995) *cert. denied* Feb. 8, 1996. I believe that the majority misreads Dedes, but if they are correct, I would overrule that case to the extent it holds a lender refinancing its own mortgage can never invoke equitable subrogation.

In Dedes, as here, the mortgagee (Bank) of the original mortgage entered a new agreement with the debtors, who executed a new note and mortgage. When Dedes, an intervening mortgagee, sought to foreclose its mortgage, the Bank pled equitable subrogation seeking to have its new mortgage assume the priority its original mortgage held over Dedes' intervening mortgage. In upholding the master's order finding the Bank was not entitled to invoke the doctrine, this Court held:

[Bank] paid itself [Debtor's] outstanding debt by refinancing the balance owed. **There is no showing of any direct interest necessitating discharge of the [first mortgage].** The record is silent as to what secondary liability [Bank] could have for [Debtor's] debt secured by its own first mortgage lien.

Dedes, 307 S.C. at 159, 414 S.E.2d at 136 (emphasis supplied).

I read Dedes as a failure of proof case, not as the majority does, as a decision holding that one who satisfies a preexisting mortgage as a condition of giving a new mortgage is never entitled to equitable subrogation. In 1927, this Court held that a lender who pays the original mortgage itself, or furnishes money to the mortgager to pay off an existing mortgage, pursuant to an agreement by which the lender will give a new mortgage, has the equitable right to be subrogated to the paid-off mortgage. Enterprise Bank v. Fed. Land Bank, 139 S.C. 397, 138 S.E. 146 (1927). In this situation, the lender furnishing the money is not a volunteer, and becomes secondarily liable for the discharge of the first mortgage under the instruments creating the new mortgage which require the satisfaction of the first mortgage as a condition of the giving of the second. Id.; see also James v. Martin, 150 S.C. 75, 147 S.E. 752 (1929) (applying Enterprise Bank and quoting: "One satisfying a lien note at the request of the property owner, upon the understanding that he is to have new security upon the property released, acting in ignorance of a second mortgage lien upon the property, although it is on record, is entitled to subrogation to the rights of the first lien holder"). In Dedes, it appears the Bank failed to present evidence that its second loan was conditioned on the satisfaction of its first loan. I do not view Dedes as overruling Enterprise Bank or James.

Matrix was not a volunteer^[1] but was directly interested in the discharge of the original mortgage, and was secondarily liable for its discharge by virtue of its agreement to make a new loan to the Frazers conditioned on the payoff of the first mortgage. See Enterprise

Bank, supra; James, supra; Dodge City, supra. Matrix has established its entitlement to equitable subrogation under existing South Carolina law. Moreover, as explained below, the majority's decision to deny a refinancer equitable subrogation does not comport with the current Restatement of Property.

Under the Restatement (Third) of Property § 7.3 (1996), a refinanced mortgage retains the same priority as the mortgage it replaces, except to the extent this priority would materially prejudice a junior lienholder. Material prejudice may exist where the principal amount is increased, or where the intervening lien is acquired after the release of record of the first mortgage and before the recordation of the replacement mortgage. In general, under the Restatement (Third), whether the refinancer is the original mortgagee or not, and regardless whether the refinancer has actual or constructive knowledge of any junior lienholder, it is entitled to be equitably subrogated to the first mortgage. As the Washington Supreme Court explained, the theory underlying the doctrine and the following policy considerations support a rule that, absent material prejudice to a junior lienholder, equitable subrogation should be automatically available to a mortgage refinancer who can show it expected to have first priority:

- 1) Equitable subrogation preserves priorities by keeping mortgages and other liens in their proper recordation order;
- 2) Equitable subrogation accomplishes substantial justice and rests on the maxim that no one (here, the junior lienholder) should be enriched by another's loss;
- 3) Facilitating refinancing helps prevent foreclosures; and
- 4) A liberal equitable subrogation policy reduces title insurance premiums.[2]

Bank of America v. Prestance Corp., 160 Wash.2d 560, 160 P.3d 17 (2007).

Of course, we need not adopt the Restatement (Third) in order to affirm the master's ruling that Matrix is entitled to equitable subrogation here. Enterprise Bank, supra; James, supra; Dodge City, supra.

B. Unclean Hands

The majority also holds that appellant may assert that Matrix has "unclean hands" because it "unlawfully" closed the refinancing mortgage, and thereby defeat Matrix's right to equitable subrogation. It is unclear to me how appellant, a stranger to the mortgage transaction, is in a position to assert "unclean hands" with respect to the closing. See Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943) ("clean hands" means a clean record with respect to the transaction with the defendants themselves and not with respect to others"). The majority does not explain why appellant may assert "unclean hands" with respect to the mortgage between Matrix and the Frazers, leaving the reader to assume the Court is altering the requirement that only a party to the transaction may assert the bar. I am not comfortable altering the principles of equity in the absence of a persuasive policy reason.

Perhaps more disturbingly, the impact of a decision holding that equity will not aid a

mortgagee when the closing was unlawful will be devastating, undermining lender confidence in an already unstable market, and making title insurance virtually unavailable in South Carolina.[3] Even if we were to adopt such a harsh rule, the Court should acknowledge in fairness and equity, that the law has been evolving in the area of residential real estate closings, and thus many mortgagees may hold mortgages that were closed "unlawfully." See State v. Buyers Serv. Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987); Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003); Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.E.2d 866 (2006). In fact, it was not until McMaster, decided twenty-one months after the Matrix loan was closed, that we rejected the contention that refinance closings were subject to a different set of rules than original loans. To suggest that a mortgage given in an unlawful closing will not be protected in equity leads to uncertainty and increased costs.[4]

While I strongly disapprove of Matrix's failure to abide by South Carolina law in the processing of this mortgage, appellant's "unclean hands" claim is insufficient to defeat Matrix's entitlement to equitable subrogation of its November 2001 mortgage.

CONCLUSION

I would affirm the master's order.

[1] The majority holds that Matrix was a 'volunteer' for purposes of equitable subrogation because it voluntarily refinanced the original mortgage. A rule that only lenders forced to refinance an existing mortgage are not volunteers would effectively eliminate the availability of the equitable subrogation remedy.

[2] Citing Nelson & Whitman, *Adopting Restatement Mortgage Subrogation Principles: Saving Billions of Dollars for Refinancing Homeowners*, 2006 BYU L.Rev. 305.

[3] One need only review this Court's attorney disciplinary cases to see that many closings are conducted unlawfully, often without the knowledge of the lender. To hold that equity will not aid the lender in such a situation, will deny it the right to foreclosure. See Wachovia Bank, N.A. v. Coffrey, 2010 WL 19048786 (S.C.Ct. App. May 6, 2010).

[4] For example, will a financial institution be willing to purchase a mortgage without ensuring that the loan was closed lawfully?

The South Carolina Court of Appeals

Wachovia Bank, N.A.,

Appellant,

v.

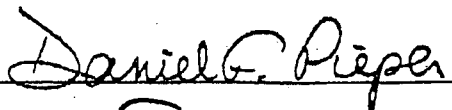
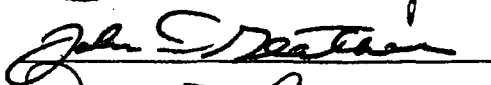
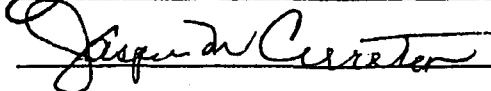
Ann T. Coffey and Bank of America,
N.A.,

Respondents.

Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2006-CP-07-01655

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: On June 28, 2010, this Court issued an order in the above-captioned case holding Appellant's Petition for Rehearing in abeyance pending the South Carolina Supreme Court's issuance of an opinion in the case of Kidder v. Jim Walter Homes, Inc. On August 6, 2010, the Supreme Court dismissed the Petition for Original Jurisdiction in the Kidder case as improvidently granted and remanded the matter to the circuit court. Therefore, we lift our previous order holding Appellant's Petition for Rehearing in abeyance. Further, after a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and, hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Pieper
 J. Geathers
 A.J. Cureton

Columbia, South Carolina

September 20, 2010

cc: James Y. Becker
R. David Proffitt
Gregory M. Alford
Steven R. Anderson