

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUTNY

Ferrell Cotheran Jr., Court of Common Pleas

RECEIVED

MAY 25 2017

Case No. 2017-001112

SC Court of Appeals

Robert Wazney,

Appellant,


v.

Sharon R. Wazney a/k/a Sharon R. Chabassole,

Respondent.

NOTICE OF MOTION

Date: May 23, 2017



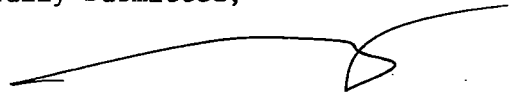
Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent, Pro se Appellant

NOTICE OF MOTION

TO WHOM IT MAY CONCERN or JAMES C. CAMPBELL, CLERK OF COURT:

You are notified that the INFORMAL BILL OF EXCEPTIONS in the above stated case will be presented to the presiding Justice of the South Carolina Court of Appeals on May 23, 2017 and this notice is given to you to afford you an opportunity to be heard on the question of whether or not the BILL OF EXCEPTIONS is correct and complete.

Respectfully Submitted,



Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent, Pro se Appellant

Date: May 23, 2017
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY

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MAY 25 2017
SC Court of Appeals

Case No. 2017-001112

Robert W. Wazney,

Appellant,

v.


Sharon R. Wazney, a/k/a Sharon R. Chabassole,

Respondent.

CERTIFICATE OF SERVICE

I, Robert W. Wazney, do hereby certify that I have served the
NOTICE OF MOTION

by depositing the same in the prison mail system, addressed to Land Parker & Welch, PA., PO Box 138, Manning SC 29102; James C. Campbell, Clerk of Court 215 North Harvin Street, Sumter SC 29150, postage prepaid on May 23, 2017.


Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent, Pro se Appellant

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY

Ferrel Cotheran Jr., Court of Common Pleas

RECEIVED

MAY 25 2017

SC Court of Appeals

Case No. 2017-01112

Robert W. Wazney,

Appellant,

v.

Sharon R. Wazney a/k/a Sharon R. Chabassole,

Respondent.

INFORMAL BILL OF EXCEPTIONS

Date: May 23, 2017

Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent, Pro se Appellant

MEMORANDUM

DECLARATION

COMES NOW, Robert Wazney, Appellant, who being duly sworn deposes and states:

"I, Robert Wazney, present this BILL OF EXCEPTIONS to bring into the record matters which otherwise would not appear in the record, Aetna Ins. Co. v. Boon, 95 U.S. 117, 24 L.Ed. 395, 1877 WL18585 (1877), so that I may obtain review of particular acts or rulings of the Court Rossi v. Superior Court, 7 Cal.App.2d 91, 46 P.2d 1019 (3d Dist. 1935) and as a devise for bringing certain matters within the scope of appellate review. Howard v. Howard, 234 Neb. 661, 452 N.W.2d 283 (1990).

Abstract Of Record

Complaint

February 7, 2017, I the Appellant, appeared in the action and moved to Summons, Complaint, Motion for Ex Parte Emergency Hearing, Notice of Motion and Motion for Emergency Relief, basing the Motions on the following grounds:

- Breach of fiduciary duty
- Unjust enrichment
- Negligence
- ~~Actual~~ **Actual** fraud
- Constructive fraud

I also moved to Motion For Leave To Proceed In Forma Pauperis, basing the Motion on the following grounds:

- Because of my poverty, I am unable to pay the cost of proceedings or give security thereof

Return of Motions

February 15, 2017, I the Appellant, received from James C. Campbell, Clerk of Court, all my original Motions dated February 7, 2017 and he sent a

blank Motion and Affidavit to Proceed In Forma Pauperis with instructions to fill out the supplied In Forma Pauperis.

Service of New In Forma Pauperis

February 16, 2017, I, The Appellant, served upon the Court a completed In Forma Pauperis which the Court had furnished, and all my original February 7, 2017 Motions to be filed, including my original Motion For Leave To Proceed In Forma Pauperis.

Letter to presiding Judge, Court of Common Pleas

March 3, 2017, I, the Appellant, served the presiding Judge for Court of Common Pleas notice of intent to submit proof of service of Summons and Complaint, and requested enlargement of time pursuant to Rule 6(b) SCRPC.

**Summons and Complaint
Proof of Service**

March 8, 2017, I, the Appellant, served upon the Court Summons And Complaint Proof Of Service pursuant to Rule 5(d)SCRPC.

**Return of all paperwork
to Appellant**

April, 19, 2017, Clerk of Court served upon me the originals of Motion to Alter Order, Summons, and Complaint and all other associated Motions.

Notice of Appeal

May 1, 2017, I served Notice of Appeal.

-Petition-

On March 25, 2017, the Court of Common Pleas of the State of South Carolina, in and for the county of Sumter, Hon. Ferrell Cotheran Jr., Judge of the Court, presiding, the following procedures were had:

- I, the Appellant, moved the Court to proceed In Forma Pauperis

After I moved the Court for the grounds stated in the Motion And Affidavit To Proceed In Forma Pauperis, the Court made the following order:

- Leave is denied to proceed In Forma Pauperis

**Description of Matter
Excluded from Court Records**

Subsequently on April 12, 2017, I, The Appellant, presented to the Court Motion To Alter Order and Motion And Declaration To Proceed In Forma Pauperis.

April 19, 2017, James C. Campbell, Clerk of Court, returned without Court clock stamps my originals of:

- Motion to Alter Order (dated April 12, 2017)
- Motion and Declaration to Proceed In Forma Pauperis (dated April 12, 2017)
- Certificate of Service (dated April 12, 2017)
- Clerk of Court Coversheet (dated April 12, 2017)

and my originals of:

- Summons (February 7, 2017)
- Complaint (February 7, 2017)
- Notice of Motion and Motion for Emergency Relief (February 7, 2017)
- Motion for Ex Parte Emergency Hearing (February 7, 2017)
- Motion for Leave to Proceed In Forma Pauperis (February 7, 2017)
- Certificate of Service (February 7, 2017)
- Court of Common Pleas Coversheet (February 7, 2017)

James C. Campbell claimed the case was closed, the Judge has denied the request for the filing fee, and that in order to go forward, a filing fee must be paid; which is attached marked exhibit **A**.

I, the Appellant, present the foregoing as my proposed INFORMAL BILL OF EXCEPTIONS in the above entitled matter, and request that the Matter excluded from Court records be settled and allowed"

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and understanding.



℥

Robert Wazney
990 Wilsacky Highway
Bishopville, SC 29010
Indigent, Pro se Appellant

Date: May 23, 2017
Bishopville, SC 29010

EXHIBIT A

(MATTER EXCLUDED FROM COURT RECORD)



SUMTER COUNTY CLERK OF COURT

JAMES C. CAMPBELL

Sumter County Judicial Center ■ 215 North Harvin Street ■ Sumter, South Carolina 29150

Clerk's Office
(803) 436-2227
Fax (803) 436-2223

Family Court
(803) 436-2366
Fax (803) 436-2396

Common Pleas
(803) 436-2228
(803) 436-2231

Jury Information
(803) 436-2233

Fines & Restitution
(803) 436-2230

General Sessions
(803) 436-2264
(803) 436-2265

April 19, 2017

Dear Mr. Wazney,

We received your paperwork. This case number can't be used. This case is closed. The Judge has denied your request to waive the filing fee. In order to go forward, the filing fee must be paid. If we can be of further assistance, let us know.

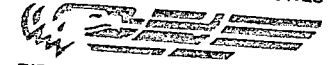
Common Pleas
Clerk of Court Office

JAMES C. CAMPBELL
CLERK OF COURT
215 N. Harvin Street, Room 303
Sumter, South Carolina 29150

A2-2132



U.S. POSTAGE >> PITNEY BOWES



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RECEIVED

APR 21 2017

LEE CI MAIL ROOM

Robert Wazney #363679
Lee Correctional Inst/F4B2247
990 Wisacky Hwy
Bishopville, SC 29010

Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010

April 12 , 2017

JAMES C. Campbell, Clerk of Court
215 North Harvin Street
Sumter, SC 29150


RE: 2017-Cp-43-569

Dear Clerk of Court:

Please find enclosed for filing:

- (1) MOTION TO ALTER ORDER
- (2) CERTIFICATE OF SERVICE
- (3) MOTION AND DECLARATION TO PROCEED IN FORMA PAUPERIS

Sincerely,



Robert Wazney

Encl
cc: fiæ
scca

R. F. Cothran Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS)
3rd Judicial Circuit)

Robert W. Wazney,)

PLAINTIFF,)

vs.)

MOTION TO ALTER ORDER)

Sharon R. Wazney a/k/a)
Sharon R. Chabassole)

DEFENDANT.)

2017-CP-43-569

COMES NOW, Robert Wazney, Plaintiff in the above entitled action with his MOTION TO ALTER ORDER seeking the Court to open the order, amend the findings, direct new entry, and would respectfully show the court the following.

DECLARATION

COMES NOW, Robert Wazney, who after being duly sworn deposes and states:


"I served Motion For Leave to proceed in forma Pauperis, Motion for Ex Parte / Emergency Hearing, Notice of Motion and Motion for Emergency Relief, summons, Complaint, and Certificate of Service on the Court of common pleas (originals attached). The Clerk of Court sent everything back to me with a blank SCCA405Cp form (in forma pauperis) to fill out. I completed the form and resubmitted everything to the Court. Judge Cotheran denied my Motion and Affidavit to Proceed In Forma Pauperis (copy attached).

I am a poor person, I do not have the money to pay for Court proceedings. The Court has frozen my assets and property over three(3) years ago, and has denied monetary relief ever since. Sharon R. Wazney a/k/a Sharon R. Chabassole has control of my assets and property and she has not and will not give me any money and her misconduct has injured me which is why I am bringing suit in this case.

I request the Court to grant ~~MOTION AND DECLARATION~~ TO PROCEED IN FORMA PAUPERIS and file my Motions. I should be permitted to Access the Court even if I do not have money to pay for filing and service Ex Parte Rice, 307 S.C. 469 (1992)."

I declare under penalty of perjury that the following is true and correct to the best of my knowledge and understanding.

Date: April 12, 2017
Bishopville, SC 29010



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC. 29010

MEMORANDUM


This Motion comes pursuant to Rule 59(e) SCRPC, and is timely made less than 10 days after the receipt of written notice of the filing of the order, disposing of the Action, on April 4, 2017.

The cause of this action concerns a fundamental right of the Complainant, Robert Wazney, whereas denying Robert Wazney access to the court because of his indigency. Ex Parte Rice, 307 S.C. 469 (1992).

PRAYER

WHEREFORE, Plaintiff requests that Plaintiff be permitted to prosecute the suit In Forma Pauperis, and have the necessary writs and processes without payment of fees or charges, and that plaintiff be granted for other and further relief as the Court deems proper.

Date: April 12, 2017
Bishopville, SC 29010



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Robert W. Wazney,

Plaintiff,

vs.

Sharon R. Wazney a/k/a

Sharon R. Chabassole,

Defendant.

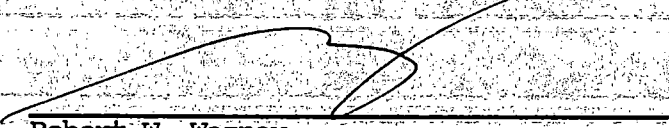
IN THE COURT OF COMMON PLEAS

3RD JUDICIAL CIRCUIT

MOTION AND DECLARATION TO
PROCEED IN FORMA PAUPERIS

FILE NO. 2017-CP-43-569

I, Robert Wazney, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs to proceed in this action. In support of my claim, I declare under penalty of perjury that because of my poverty, I am unable to pay the cost of the above titled proceeding or give security thereof. I request that the Complaint be filed without costs.



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010
Plaintiff

Date: April 12, 2017
Bishopville, SC 29010

ORDER

- Leave is granted to proceed in forma pauperis.
- Leave is denied to proceed in forma pauperis.

Dated:

, South Carolina

JUDGE/CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF SUMTER)
)
Robert W. Wazney,)
)
) Plaintiff)
)
) vs.)
)
Sharon R. Wazncy a/k/a)
Sharon R. Chabassole,)
) Defendant.)

IN THE COURT OF COMMON PLEAS
CERTIFIED TRUE COPY
OF ORIGINAL FILE
3RD JUDICIAL CIRCUIT
Barbara Harper
REPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

2017-CP-43-569
FILE NO.

RECORDED
2017 MAR 27 PM 4:03
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

I, ^{WAZNEY} ROBERT, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the costs of filing and service be made without costs.

Sworn to and Subscribed before me)
this 14 day of Feb, 2017.)
)
)
)
)
Debra Eastwood)
Notary Public for South Carolina)
)
My Commission expires)
3/3/2024)

Signature of Plaintiff or
Person Filing Complaint on Behalf of
Plaintiff

ORDER

Leave is *granted* to proceed in forma pauperis.

Leave is *denied* to proceed in forma pauperis.

Dated: March 25, 2017
South Carolina

JUDGE/CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010

FEBRUARY 7, 2017

Court of Common Pleas
215 North Harvin Street
Sumter SC 29150

Attn: Clerk of Court

Re: Complaint

To whom it may concern:

Please find enclosed for filing with the Probate Court:

- (1) MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
- (2) MOTION FOR EX PARTE / EMERGENCY HEARING
- (3) NOTICE OF MOTION AND MOTION FOR EMERGENCY RELIEF
- (4) SUMMONS
- (5) COMPLAINT
- (6) CERTIFICATE OF SERVICE

Sincerely,



Robert W. Wazney

THE STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
 Robert W. Wazney,)
)
 PLAINTIFF,)
)
 v.)
)
 Sharon R. Wazney a/k/a)
 Sharon R. Chabassole,)
)
 DEFENDANT.)
 -----)

COURT OF COMMON PLEAS

NOTICE OF MOTION
 AND MOTION FOR
 EMERGENCY RELIEF

PRIORITY MATTER

TO: ABOVE TITLED DEFENDANT

PLEASE TAKE NOTICE that the Plaintiff has requested an emergency hearing regarding the above titled Plaintiffs Complaint attached herewith, for an order granting the following relief:

- (1) For an order to grant an emergency hearing;
- (2) For an order to assign a conservator to the Plaintiff;
- (3) For an order authorizing discovery;
- (4) For an injunctive relief order for the Defendant to remedy Default and Foreclosure for 2040 Hideaway Drive or damages in the amount of \$ 885,347.50;
- (5) For an order the Defendant pay Plaintiff damages in the amount of \$ 46,800.00 for UNJUST ENRICHMENT;
- (6) For such other equitable or remedial relief as the Court deems Appropriate.

Respectfully submitted,



Robert W. Wazney
 990 Wisacky Highway
 Bishopville, SC 29010

Date: FEBRUARY 7, 2017
 Bishopville, SC. 29010

THE STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Robert W. Wazney,

Plaintiff,

v.

Sharon R. Wazney a/k/a
Sharon R. Chabassole,

Defendant.

COURT OF COMMON PLEAS

SUMMONS

TO: ABOVE ENTITLED DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A copy of which is herewith served upon you, and to serve a copy of your answer to said complaint on the above titled Plaintiff at 990 Wisacky Highway, Bishopville, SC 29010. You have 30 days after service hereof to appear in this action, in your failure to do so, judgment by default will be rendered against you for the relief demanded in the complaint.



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010

Date: FEBRUARY 7, 2017
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
COUNTY OF SUMTER)	
Robert W. Wazney,)	
)	
PLAINTIFF,)	
)	
V.)	COMPLAINT
)	
Shaaron R. Wazney a/k/a)	
Sharon R. Chabassole,)	
)	PRIORITY MATTER
DEFENDANT.)	
-----)	

COMES NOW, Robert W. Wazney, Plaintiff in the aboved entitled form of action complaining of Sharon R. Wazney a/k/a Sharon R Chabassole, Defendant and would respectfully show the Court the following:

PARTIES

1. Robert W. Wazney, plaintiff, is an individual and can be served with process at 990 Wisacky Highway, Bishopville, SC 29010.
2. Sharon R. Wazney a/k/a Sharon R. Chabassole, Defendant, is an individual and may be served with process and citation at 2015 Hideaway Drive, Sumter South Carolina, 29154.

JURISDICTION AND VENUE

This Court has jurisdiction over this matter, because the subject matter of this suit is in part for the recovery of real property. Venue for this matter is exclusively in Sumter County, South Carolina pursuant to Rule 82 (b) SCRPC, because all actions subject to this suit lies in Sumter County, South Carolina.

DISCOVERY

Plaintiff, as needed, intends to conduct discovery pursuant to and as prescribed by Rules 26, 33, 34, and 37 SCRPC.

DECLARATION

COMES NOW, Robert W. Wazney, who after being duly sworn, deposes and states:

"I, Robert W. Wazney, am currently in Divorce with my wife Sharon R. Wazney a/k/a Sharon R. Chabassole. She filed for Divorce on January 10, 2014. During our marriage, we purchased real estate parcel numbers 1801301015, 1801302039, 1801301014, and 1801301016. There are Homes on each of these parcels and all the homes have been upgraded and maintained.

One parcel is our marital home, the other three are rental duplexes which collect rents and pay for all of the properties mortgages, thier taxes, and insurance. There is normally profit after all those bills are paid. Also, one of the homes, 2020 Hideaway Drive, has a 480 square foot shop/steel building made by US Buildings and a steel shed.

Since the filing of the divorce, Sharon has been collecting the rent, tax benefits, and profits from all of our real estate. Family Court has given Sharon complete control of the estate and all of its assets. Sharon has stopped making payment on the one property that is soley in my name, parcel 1801301015 or 2040 Hideaway Drive, Sumter, SC 29154, forcing it into foreclosure. 2040 Hideaway Drive is a Duplex and is used to 'rent out' in order to profit. I have complained in the Family Court and the Court of Common Pleas, But have not recieved any relief. The property is scheduled for public Sale February 6, 2017. There is substantial equity in the property and if it is sold it will cause irreparable loss and injury to me. I do not want to lose the property, I put alot of time and effort into it keeping it up to date and nice.

The 2040 property is going to public sale at no fault of my own, I do not have nor can I afford an attorney because the Family Court has frozen my

assets. I trusted Sharon to make the payments and collect the rents, but she stopped paying the mortgage for 2040 Hideaway Drive during October 2015, since then, she claimed she tried to make a payment during March 2016, five months after the initial missed payment, and claimed she tried to make a payment over the phone during the month of April 2016.

I did not know about the account being delinquent until I received a statement which I requested from Chase in December of 2015, and I did not know Sharon was going to stop making payments for fourteen (14) months. I complained many times to the Court and to her after receiving the delinquency notice. Sharon really needs to do something to remedy the delinquency of the account before the public sale of the property. Instead of trying to pay, she is just letting the payments fall behind and keeps the rents. I feel she is doing this on purpose to either harm me, acquire monetary gain, or for conversion. The Family Court ordered her to maintain the property, not harm me by forcing default and foreclosure. Sharon could have contacted me but she didn't, she could have offered money to me but she didn't, she could have done something to resolve the Default and foreclosure issue, but she didn't. Since January 10, 2014 Sharon Wazney a/k/a/ Sharon Chabassole has been retaining all of our assets and she has not offered to me any compensation of those assets.

I do not feel it is fair or just the 2040 Hideaway Drive property, titled in my name, goes into default and foreclosure at no fault of my own while Sharon has been and continues to collect rents and tax benefits from that property and all our properties, especially considering I have not been permitted to remedy the non payment.

I am seeking Court of Common Pleas to order Sharon to pay the Default and foreclosure to save the property or pay me damages, and to grant me immediate access to the money from which my rights to principal income have been trampled upon collected in the form or fents by Sharon Wazney a/k/a Sharon Chabassole since January 10, 2014 for the property address 2040 Hideaway Drive, Sumter, South Carolina 29154."

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010

Date: February 7, 2017
Bishopville, SC 29010

STATEMENT OF FACTS

1. Sharon Wazney collects rents and pays the mortgage for 2020, 2040, 2060, and 2015 Hideaway Drive, Sumter, SC. 29154 because Robert and Sharon Wazney are Divorcing and Robert's assets are frozen by the Family Court.

2. Sharon Wazney stopped paying 2040 mortgage in October 2015 and has not made a payment as of the date of this complaint.

3. It is important to Robert Wazney 2040 mortgage is paid because the property is valuable and non payment leads to poor credit and significant loss, harm, and injury such as foreclosure and especially the consequences of foreclosure.

4. Sharon Wazney knows that continued non payment of the mortgage for property causes foreclosure and will cause significant loss, harm, and injury to the owner of such property. In this case, Robert Wazney is the property owner.

5. Sharon Wazney stopped paying the mortgage payment for fourteen (14) months for 2040 Hideaway Drive. Sharon Wazney claims one time in March 2015 she attempted to pay the mortgage which is five (5) months after the initial non payment date. Sharon Wazney claims one time in April 2016 she called the Lienholder to make payment over the phone which is six (6) months after the initial non payment date.

6. Robert Wazney did not know about Sharon Wazney's actions of not paying the mortgage until he received notice upon his request, and Robert Wazney did not know Sharon Wazney intended to cease payments of the 2040 Hideaway Drive property completely.

7. Robert Wazney relied upon Sharon Wazney to pay all the mortgages.

8. Because Robert Wazney's assets are frozen by the court, he trusts and depends upon Sharon Wazney to perform the upkeep of the mortgages which is rightly due to Robert Wazney.

9. Sharon Wazney's unreasonable conduct has brought substantial loss, harm, injury, Irreparable loss, irreparable harm, irreparable injury, proximate irreparable harm, proximate irreparable loss, and proximate irreparable injury to Robert Wazney.

CAUSES OF ACTION

First Cause of Action: BREACH OF FIDUCIARY DUTY

Plaintiff hereby alleges and incorporates paragraphs 1 Through 9 herein by reference.

The elements for an action for Breach of Fiduciary Duty are the following:

- (1) The existance of a fiduciary duty;
- (2) A breach of that duty; and
- (3) Damages proximately resulting fromt he wrongful conduct of the Defendant.

Circumstances of Marriage and Divorce creates a fiduciary relationship between the Plaintiff and Defendant, Plaintiff relies upon the Defendant to pay mortgages and collect rents from ~~property which~~ creates a fiduciary duty upon the Defendant.

The Defendant failed to pay the mortgage for Fourteen (14) months for one of the properties breaching her fiduciary duty consequently causing loss, harm, injury, proximate loss, proximate harm, and proximate injury to the Plaintiff due to the Defendants wrongful conduct.

CAUSATION IN FACT:

If the Defendant would have acted reasonably by responding to Plaintiffs complaints, forwarding money to pay the mortgage, or performed some other meaningful attempt to fulfill her obligation to satisfy the duty, Loss and harm to the Plaintiff would have been avoided.

Justifying BREECH OF FIDUCIARY DUTY.

Plaintiff requests recovery of damages in the amount for the following:

DAMAGES:

-	Value of property at time of trespass	<u>\$ 110,000.00</u>
-	Actual Loss Sustained	<u>\$ 110,000.00</u>
-	Incedental Damages Proximately caused by Trespass	<u>\$ 825,600.00</u>
-	Exemplary Damages Due to Breach	<u>\$ 100,000.00</u>
-	Taxes / Tax Benefits	<u>\$ 0.00</u>
-	Interest	<u>\$ 147.50</u>
-	Subtotal	<u>\$ 1,035,747.50</u>
-	Disbursments / Distributions	<u>- \$ 124,800.00</u>
-	Insurance	<u>- \$ 25,600.00</u>
	TOTAL	<u>\$ 885,347.50</u>

Second Cause of Action: UNJUST ENRICHMENT

Plaintiff hereby alleges and incorporates Paragraphs 1 through 9 herein by reference, inclusive, of the First Cause of Action as if fully set forth.

The elements for an action for Unjust Enrichment are the following:

- (1) Plaintiff confers a non-gratuitous benefit on the Defendant;
- (2) The Defendant realizes some value from the benefit; and
- (3) It would be inequitable for the Defendant to retain the benefit without paying the plaintiff for its value.

Because of the Plaintiff's circumstances, he relied upon the Defendant to pay the mortgages for the properties and collect the rents. The Defendant failed to pay the mortgage on 2040 Hideaway Drive for fourteen (14) months, continued to collect and retain all the rents, and Defendant has not offered the Plaintiff any compensation where in these circumstances compensation is reasonably expected.

Justifying UNJUST ENRICHMENT.

Consequently, the Plaintiff has suffered harm, loss, injury, Proximate loss, proximate harm, and proximate injury from the Defendants actions.

Plaintiff requests recovery of damages in the amount of the UNJUST ENRICHMENT.

DAMAGES:

-	Amount of Unjust Enrichment	<u>\$ 46,800.00</u>
TOTAL		<u>\$ 46,800.00</u>

Third Cause of Action: NEGLIGENCE

Plaintiff hereby alleges and incorporates paragraphs 1 through 9 herein by reference, inclusive, of the First Cause of Action, and Second Cause of Action as if fully set forth.

The elements for an action for Negligence are the following:

- (1) Defendant owes a duty of care to the Plaintiff;
- (2) Defendant breached the duty by a Negligent act or omission;
- (3) Defendants breach was the actual or proximate cause of the Plaintiff's injury; and
- (4) Plaintiff suffered an injury or damages.

Roe v. Bibby 410 S.C. 287, 763 S.E.2d 645

The Defendant has an obligation and/or a duty to maintain the 2040 Hideaway Drive property. The Defendant breached that obligation and/or duty and has resulted in the Plaintiffs harm, loss, injury, proximate loss, proximate harm, and proximate injury.

Plaintiff requests recovery of damages in the amount for the following:

DAMAGES:

-	Value of property at time of trespass	<u>\$ 110,000.00</u>
-	Actual Loss Sustained	<u>\$ 110,000.00</u>
-	Incidental Damages Proximately caused by Trespass	<u>\$ 825,600.00</u>
-	Exemplary Damages Due to Neglect	<u>\$ 100,000.00</u>
-	Taxes / Tax Benefits	<u>\$ 0.00</u>
-	Interest	<u>\$ 147.50</u>
-	Subtotal	<u>\$ 1,035,747.50</u>
-	Disbursements / Distributions	<u>- \$ 124,800.00</u>
-	Insurance	<u>- \$ 25,600.00</u>
	TOTAL	<u>\$ 885,347.50</u>

Fourth Cause of Action: ACTUAL FRAUD

Plaintiff hereby alleges and incorporates paragraphs 1 through 9 herein by reference, inclusive, of the First Cause of Action, and Second Cause of Action and Third Cause of Action as if fully set forth.

The elements for an action for actual fraud are the following:

- (1) A representation;
- (2) Its falsity
- (3) Its materiality
- (4) Either knowledge or its falsity or a reckless disregard of its truth of falsity;
- * (5) Intent that the representation be acted upon;
- (6) The hearers ignorance of its falsity;
- (7) The hearers reliance on its truth;
- (8) The hearers right to rely thereon;
- (9) The hearers consequent and proximate injury.

King v. oxford 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984)

Defendant is required by the court to maintain the mortgages for the properties.

Defendant intentionally failed to do a required act by not paying the mortgage for fourteen (14) months on the 2040 Hideaway Drive property.

Defendant knew or has reason to know of facts that would lead a reasonable person to realize that defendants conduct of not paying mortgage payments both creates an unreasonable risk of harm to the Plaintiff and involves a high degree of probability that substantial harm to the Plaintiff will result.

Defendants deceitful conduct regarding maintenance of the action justifies a false representation.

DAMAGES:

-	Value of property at time of trespass	<u>\$ 110,000.00</u>
-	Actual Loss Sustained	<u>\$ 110,000.00</u>
-	Incidental Damages Proximately caused by Trespass	<u>\$ 825,600.00</u>
-	Exemplary Damages Actual Fraud	<u>\$ 100,000.00</u>
-	Taxes / Tax Benefits	<u>\$ 0.00</u>
-	Interest	<u>\$ 147.50</u>
-	Subtotal	<u>\$ 1,035,747.50</u>
-	Disbursements / Distributions	<u>- \$ 124,800.00</u>
-	Insurance	<u>- \$ 25,600.00</u>
	TOTAL	<u>\$ 885,347.50</u>

Fifth Cause of Action: CONSTRUCTIVE FRAUD

Plaintiff hereby alleges and incorporates paragraphs 1 through 9 herein by reference, inclusive, of the First Cause of Action, Second Cause of Action, Third Cause of Action, and Fourth Cause of Action as if fully set forth.

The elements for an action for constructive fraud are the following:

To establish constructive fraud, all elements of actual fraud except the element of intent must be established. O'Quinn v. Beach Associates, 272 S.C. 95, 249 S.E.2d 734 (1978)

The Defendant failed to pay the Mortgage for the 2040 Hideaway Drive property for fourteen (14) months and did not make reasonable attempts to fulfill obediential obligation to satisfy the duty of keeping the payments current.

In the event the defendants claims of delayed effort to remedy non payment of the mortgage are construed as unintentional, even though they were only frivolous attempts to perpetuate the illusion of propriety, Defendants actions justify CONSTRUCTIVE FRAUD.

Plaintiff requests damages in the amount of the following:

DAMAGES:

-	Value of property at time of trespass	<u>\$ 110,000.00</u>
-	Actual Loss Sustained	<u>\$ 110,000.00</u>
-	Incidental Damages Proximately caused by Trespass	<u>\$ 825,600.00</u>
-	Exemplary Damages Constructive Fraud	<u>\$ 100,000.00</u>
-	Taxes / Tax Benefits	<u>\$ 0.00</u>
-	Interest	<u>\$ 147.50</u>
-	Subtotal	<u>\$ 1,035,747.50</u>
-	Disbursements / Distributions	<u>- \$ 124,800.00</u>
-	Insurance	<u>- \$ 25,600.00</u>
	TOTAL	<u>\$ 885,347.50</u>

PRAYER

The Plaintiff Prays for the following relief:

- (1) For the Court to hold an emergency Hearing;
- (2) For the Plaintiff to be assigned a conservator to handle finances and dealing regarding Plaintiffs interest;
- (3) For the Court to authorize the parties to engage in reasonable discovery during the pendency of this action;
- (4) For the Court to either order an injunction directing Defendant to Remedy the Default and Foreclosure for the 2040 Hideaway Drive property address, or pay the Plaintiff damages in the amount of \$ 885,347.50.
- (5) For the Court to order the Defendant to pay the Plaintiff damages for UNJUST ENRICHMENT in the amount of \$ 46,800.00.
- (6) For such other further equitable or remedial relief as this Court deems appropriate.

Respectfully Submitted,



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010

Date: FEBRUARY 7, 2017
Bishopville, SC 29010

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Robert W. Wazney,

PLAINTIFF,

V.

Sharon R. Wazney a/k/a Sharon R.
Chabassole,

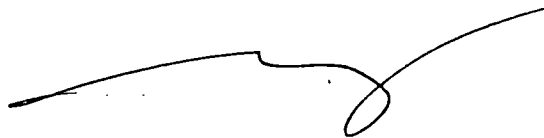
DEFENDANT.

COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

I, Robert W. Wazney, hereby certify that I have served the
MOTION FOR LEAVE TO PROCEED INFORMA BAUPERIS, SUMMONS, COMPLAINT, NOTICE OF
MOTION AND MOTION FOR EMERGENCY RELIEF, MOTION FOR EX PARTY/EMERGENCY HEARING
by depositing the same in the prison mail system, addressed to the following
addresses, Postage prepaid on February 7, 2017 by registered
or certified mail, return receipt requested and delivery restricted to the
addressee.

Sharon R. Wazney
2015 Hideaway Drive
Sumter, S.C. 29154-8990



Robert W. Wazney
990 Wisacky Highway
Bishopville, SC 29010

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Robert W. Wazney,

PLAINTIFF,

vs.

Sharon R. Wazney a/k/a
Sharon R. Chobassole,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
Third Judicial Circuit

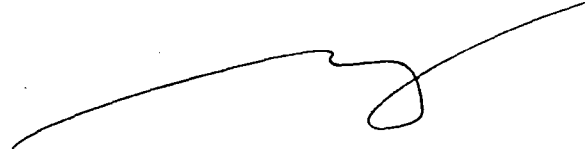
CERTIFICATE OF SERVICE

2017-CP-43-569

I, Robert W. Wazney, Plaintiff, do hereby certify that I have served the
MOTION TO ALTER ORDER, MOTION AND DECLARATION TO PROCEED IN FORMA PAUPERIS
by depositing the same in the prison mail system, addressed to the following
addresses, postage prepaid on April 12, 2017 .

Land, Parker, Welch, PA.
PO Box 138
Manning, SC 29102

HON. R. Ferrell Cothran Jr.
16 North Brooks Street
Manning, SC 29102



Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUTNY
Ferrell Cotheran Jr., Court of Common Pleas

RECEIVED
MAY 25 2017
SC Court of Appeals

Case No. 2017-001112

Robert W. Wazney,

Appellant,

v.

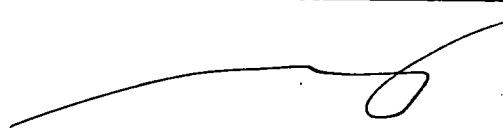
Sharon R. Wazney a/k/a Sharon R. Chabassole,

Respondent.

CERTIFICATE OF SERVICE

I, Robert W. Wazney, do hereby certify that I have served the
INFORMAL BILL OF EXCEPTIONS

by depositing the same in the prison mail system, addressed to Land Parker &
Welch, PA., PO Box 138, Manning SC 29102; James C. Campbell, Clerk of Court
215 North Harvin Stgeet, Sumter SC 29150, postage prepaid on May 23, 2017.


Robert Wazney
990 Wisacky Highway
Bishopville, SC 29010
Indigent, Pro se Appellant



Robert Wazney
990 Wisacky Highway
Bishopville, S.C. 29010

May 23, 2017

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: 2017-001112


Dear Ms. Kitchings:

Please find enclosed for filing with the Court of Appeals:

- (1) NOTICE OF MOTION
- (2) CERTIFICATE OF SERVICE
- (3) INFORMAL BILL OF EXCEPTIONS
- (4) CERTIFICATE OF SERVICE

Totaling 40 pages.

Very truly yours,



Robert Wazney

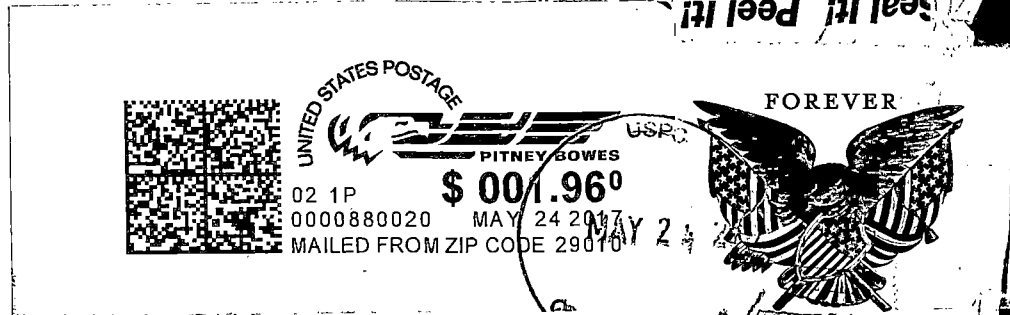
RECEIVED

MAY 25 2017

SC Court of Appeals

Encls.
cc: file

Robert Wazney 363679 F2A2132
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010



RECEIVED

MAY 25 2017

SC Court of Appeals

S.C. COURT OF APPEALS

1220 SENATE STREET

COLUMBIA

SC

29201

