

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity for York County

Appellate Case No. 2016-000451

William G. Tucker,

Respondent,

v.

Connie Lynn Batey,

Appellant.

RECORD ON APPEAL

John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
(803) 324-8100
Attorney for Appellants

Brian S. McCoy
McCoy Law Firm, LLC
378 East Main Street
Rock Hill, S.C. 29730
(803) 366-2280
Attorney for Respondent

RECEIVED

JUN 29 2017

SC Court of Appeals

INDEX

Order dated December 30, 2015 and filed January 4, 2016	1
Order of Foreclosure and Sale dated January 14, 2016 and filed January 15, 2016	9
Order denying Rule 59 Motion dated February 8, 2016 and filed February 9, 2016	16
Complaint dated March 26, 2015 and filed March 30, 2015, with attachments	18
Answer and Counterclaim dated May 1, 2015 and filed May 4, 2015, with attachments ...	32
Reply to Counterclaim dated May 20, 2015	49
Plaintiff's Trial Brief, dated December 15, 2015	52
Defendant's Trial Brief, dated December 16, 2015	59
Motion to Alter or Amend Judgment served January 15, 2015, filed January 19, 2016	62
Memorandum in Opposition to Motion to Alter or Amend	69
Deposition of William G. Tucker, dated July 14, 2015	72
Deposition of Connie Lynn Batey, dated August 25, 2015	122
Transcript of Hearing on December 16, 2015	169
Plaintiff's Exhibits 1-7	206
Defendant's Exhibit 1	216
Certificate of Counsel	381

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4600950

William G Tucker

Connie Lynn Batey

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☒ Remanded; ☐ Other: _____

RECEIVED
MAR 02 2016
SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/S. Jackson Kimball

Circuit Court Judge

3063

Judge Code

12/30/2015

Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

RECEIVED
MAR 09 2016
By _____

RECEIVED
JAN 05 2016
By _____

This judgment was entered on **January 4, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **January 4, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Scott McCoy 378 E. Main St. Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Martin Foster PO Box 106 Rock Hill, SC 29731-6106

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46- 950

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

ORDER

FILED-RECEIVED
2016 JAN -4 AM 10:23
DAVID R. HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter came before the Court on December 16, 2015, for a trial. Representing the parties at the trial were Brian S. McCoy for Plaintiff, and J. Martin Foster for Defendant. Also present were the parties. Both sides presented testimony and exhibits, and counsel for the parties presented briefs for the Court's consideration. Based on the testimony, exhibits, and arguments of counsel, I make the following findings of fact and conclusions of law.

BACKGROUND

This is an action for foreclosure of Plaintiff's mortgage on Defendant's residence. Plaintiff also asserts a claim for a declaratory judgment that the note, mortgage, and underlying debt have not been satisfied. Defendant asserts that the debt secured by the mortgage has been satisfied in full, and further asserts a counterclaim against Plaintiff pursuant to S.C. Code Ann. § 29-3-310 *et seq.* for damages for failure to satisfy the mortgage upon demand.

FINDINGS OF FACT

The following are findings of fact, recited in narrative format, which I find based on all the evidence, and after consideration of any applicable burden of proof. I have also considered the credibility of the witnesses in reaching these findings.

In March or April of 2009, Plaintiff, who was then approximately 75 years old and recently widowed, met the Defendant on an online dating website called "PlentyofFish.com." Plaintiff is legally blind, and lives in an independent living section of a retirement community in Charlotte. He is a retired school counselor from the Charlotte-Mecklenburg school system.

Defendant is approximately twenty-two years younger than Plaintiff, and was working as a flight attendant at the time she met Plaintiff online. She had been married six times prior to 'meeting' Plaintiff.


#1

In the Summer of 2009, Defendant travelled to Charlotte, and the parties met in person. Thereafter, the two began dating. During this time, Plaintiff purchased gifts for Defendant, including two cars. Defendant rented an apartment in Charlotte, but wanted to move from the apartment because she felt unsafe. As a result, she looked for a house, and Plaintiff assisted in that effort.

In April, 2011, Plaintiff purchased a home in Lake Wylie, South Carolina, for a price of \$235,000.00. Title to the house was taken in Defendant's name, and Defendant executed and delivered to Plaintiff a Note and Mortgage in the amount of \$225,000.00. Plaintiff thereby immediately conferred upon Defendant a gift of \$10,000 equity in the property. Defendant made approximately seven payments toward the Note and Mortgage, the last being in January, 2012. Plaintiff expressly allowed Defendant to miss payments.

On May 23, 2012, Plaintiff executed a document titled "Statement of Mortgage Paid in Full" ("Statement"). The document states that "the Mortgage on [the Property titled to Defendant] is hereby paid in full with no other monies due to satisfy this debt." A copy of the document was sent to Defendant by email. The original was never delivered to Defendant, and has never been recorded on the public record. Both parties acknowledged at trial that no consideration or promises were given by Defendant for the document. The debt secured by the note and mortgage remains unpaid.

The impetus for Plaintiff giving the Statement is better understood from two email "chains" between the parties. It is obvious that their relationship had deteriorated, and that the offer to satisfy the debt was gratuitous effort on Plaintiff's part to salvage the relationship. Defendant began seeing other men, and Plaintiff ended the relationship in September, 2013. As a result, the original Statement was never delivered or recorded.

By letter dated January 20, 2015, Plaintiff sent Defendant a "Notice of Default" accelerating the balance due on the Note and Mortgage, and demanding payment of the balance due in the amount of \$220,573.13. Payment was not made, and Plaintiff commenced this action.

CONCLUSIONS OF LAW

Based on the findings of fact herein, I make the following conclusions of law.

I. Plaintiff's claim.

In this case, Defendant relies upon the Statement to extinguish her debt, and satisfy the note and mortgage securing the debt. It is undisputed that Plaintiff did not complete his promise by cancelling the note, and satisfying the mortgage.

nm
#2

Consideration is required to support a promise. A gratuitous promise or a donative promise is not enforceable. *See, e.g., Black v. Gettys*, 238 S.C. 167, 186, 119 S.E. 2d 660, 669 (1961). In *Black*, plaintiff signed a sealed instrument, for which she received no consideration, to transfer shares of stock to a trust for the benefit of her children. The court found the instrument to be a "mere gratuitous promise." It stated:

Generally, where a contract is entirely voluntary or without consideration, or is in effect and substance a mere gift, even though one for the conveyance of land, it will not be specifically enforced, for equity will not compel a party to be generous. *Id.*

"[A] gift to be operative must be executed and must take effect immediately and irrevocably, for the obvious reason that if anything remains to be done the title to the property does not pass" *Lynch v. Lynch*, 201 S.C. 130, 137, 21 S.E.2d 569, 572(1942). "Thus, mere intention to give without delivery is unavailing; the intention must be executed by a complete and unconditional delivery." *Id.*

The giving of an engagement ring is analogous to the present fact situation. Unless the facts of a particular case establish otherwise, an engagement ring is given as a gift with no consideration except the expectation of future marriage. If the marriage does not occur, the donor is entitled to a return of the ring. Giving an engagement ring is impliedly conditioned upon the marriage taking place. *See Campbell v. Lynch*, 398 S.C. 12, 726 S.E. 2d 221 (Ct. App. 2012). In *Campbell*, the Court held that "[u]ntil the condition [of marriage] underlying the gift is fulfilled, the attempted gift is unenforceable and must be returned to the donor upon the donor's request." 398 S.C. at 20, 726 S.E. 2d at 225. This holding controls irrespective of "fault" for the break-up. 398 S.C. at 21, 726 S.E. 2d at 226. In the present case, there are no facts that would alter the operation of this rule, and I so conclude.

To the extent it may be inferred from Defendant's Answer and Counterclaim that the payments made on the debt to Plaintiff support the promise to satisfy the debt, such assertion is unavailing. South Carolina recognizes the old English rule called the "Rule in Pinnel's case" ("Rule"), and that remains the law of this State. The Rule holds that payment of less than the full amount of a liquidated debt cannot satisfy the full debt, even if the parties agree that such lesser payment will satisfy the debt entirely. *See Ex Parte Zeigler*, 83 S.C. 78 (1909) (holding that the rule of Pinnel's case "is firmly established in this state"), *aff'd* 88 S.C. 168 (1911); and, *Riggs v. Home Mut. Fire Protection Ass'n*, 61 S.C. 448, 39 S.E. 2d 614 (1901) (regarding the Rule in Pinnel's case, Court held "in this state it has been expressly recognized in several cases . . . and


3

must still be recognized by us.”).

In both *Zeigler* and *Riggs*, the Court recognizes that the application of the Rule may be limited based on the facts of a particular case, or recognized exceptions to its application. However, in the present case, other than the Statement itself, Defendant has presented no evidence that would mitigate the application of the Rule, and I find no such facts. The debt is clearly a liquidated claim, and I conclude that the Rule applies.

In this case, Plaintiff's unilateral promise, unsupported by consideration from Defendant, required additional action before it would have been completed, namely cancellation of the note and filing a satisfaction of the mortgage. Based on the foregoing discussion of applicable law, Defendant cannot rely on Plaintiff's uncompleted and gratuitous promise.

II. Defendant's defenses and counterclaim.

A. Illegality of contract.

Defendant alleges illegality of contract as a complete defense to Plaintiff's claims. Even assuming that the Complaint may be construed to allege a contract that would be illegal as a matter of public policy, there was no evidence offered by either party at trial to support such allegations, and the defense fails as a matter of law.

B. Waiver.

Defendant asserts the equitable doctrine of waiver as a defense to Plaintiff's foreclosure claim. “A waiver is a voluntary and intentional abandonment or relinquishment of a known right.” *Janasik v. Fariway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992); *see, also, Parker v. Parker*, 313 S.C. 482, 443 S.E.2d 388 (1994). It is not necessary that a party asserting waiver be prejudiced in his position, as “. . . waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position.” *Janasik, supra*, 307 S.C. at 344, 415 S.E.2d at 388.

While it could be asserted that Plaintiff waived his right to collect the debt from Defendant by executing the Statement, any such waiver, like a gratuitous gift, was not completed, as he did not complete the actions necessary to complete the abandonment of his rights. Further, while Defendant need not necessarily have been prejudiced by Plaintiff's decision to enforce his note and mortgage, the presence or absence of prejudice is a proper consideration in the application the equitable doctrine of waiver. *See Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct.App. 2007).

In view of the facts of this case, I conclude that the absence of prejudice to Defendant is a

AM
4

proper consideration in determining whether Plaintiff has abandoned his right to collect on the note and mortgage. At trial, Defendant presented no evidence of prejudice or hardship imposed on her by remaining liable for a debt to Plaintiff that she voluntarily incurred. Thus, I conclude that under the facts of this case, the doctrine of waiver is not available as a defense to the debt.

C. Duty of good faith.

Even assuming that a breach of the implied duty of good faith and fair dealing is available to Defendant as a separate defense, the testimony and exhibits contain no evidence of the breach of any such duty, and none could be reasonably inferred. Thus, any such defense fails as a matter of law.

D. Counterclaim for satisfaction of mortgage.

The findings of fact and conclusions of law already set forth herein sustain the viability of the note and mortgage given by Defendant. Thus, Plaintiff retains the right to maintain his cause of action for foreclosure of the mortgage on Defendant's property. It follows that Defendant is not entitled to the relief sought in her counterclaim for satisfaction of the mortgage, and damages pursuant to S.C. Code Ann. § 29-3-310, *et seq.*

Therefore, Defendant's counterclaim must be denied.

E. Equity.

Plaintiff's action is one in equity, and Defendant asserts an equitable defense. The facts of this case present a situation where finding an equitable resolution of the underlying dispute is particularly appropriate. Viewing the entire record, I find and conclude that it would be inequitable to extinguish Defendant's obligation to pay the debt secured by the note and mortgage held by Plaintiff.

It is apparent from the entire record that there was never any original intent by either party that Defendant not pay the debt secured by the note and mortgage. It is also apparent that the Statement given by Plaintiff was the result of stress generated by the deterioration in the parties' relationship, and Defendant's threat to end it and see other men.

While Defendant's imposition upon Plaintiff may not rise to the legal standard of undue influence or duress, it is clear from all the circumstances that Plaintiff's execution of the Statement was the culmination of his attempts to preserve his relationship with Defendant. Plaintiff's attempts proved to be futile, and Defendant has presented no evidence to explain or mitigate these inferences drawn from the facts and circumstances of the case.

It has long been the rule in this state that "[c]ourts have the inherent power to do all



things reasonably necessary to insure that just results are reached to the fullest extent possible.” *Jones v. Leagan*, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct.App.2009); and, *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct.App. 1983). “The decision to grant equitable relief is in the discretion of the trial judge.” *First Union National Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App. 1998). This includes the ability to apply or fashion an equitable remedy where circumstances make such action appropriate. See, e.g., *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (Ct.App. 2009); *Laughon v. O'Braitis*, 360 S.C. 520, 602 S.E.2d 108 (Ct.App. 2004); *Ex parte Dibble*, *supra*.

In my judgment, the facts of this case support the exercise of the court's inherent power. Even if the execution and delivery of the Statement would, as a matter of law, operate to satisfy Defendant's debt to Plaintiff, it would be manifestly inequitable to impose such a result under the facts of this case. Thus, Plaintiff should, in equity, be granted the right to complete foreclosure of his note and mortgage.

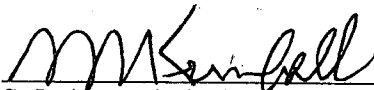
ORDER OF THE COURT

Based on the findings of fact and conclusions of law herein, it is ordered as follows:

1. Plaintiff is granted judgment against the Defendant for foreclosure of the mortgage on Defendant's property.
2. The amount of the mortgage debt, and any attorney fees and costs, shall be determined by a supplemental hearing to be held at the earliest practicable date.
3. The subject property will be sold at the earliest available sale date in accordance with applicable statutes and practice.
4. The Court will issue such further orders as are necessary to complete the foreclosure process.
5. Defendant's counterclaim is dismissed with prejudice.

AND IT IS SO ORDERED.

December 30, 2015


S. Jackson Kimball
Master in Equity for York County

#6

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4600950

William G Tucker

Connie Lynn Batey

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

RECEIVED

MAR 02 2016

SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/S. Jackson Kimball

Circuit Court Judge

3063

Judge Code

For Clerk of Court Office Use Only

1/14/2016

Date

RECEIVED
MAR 09 2016
By _____

This judgment was entered on **January 15, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **January 15, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Scott McCoy 378 E. Main St. Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Martin Foster PO Box 106 Rock Hill, SC 29731-6106

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

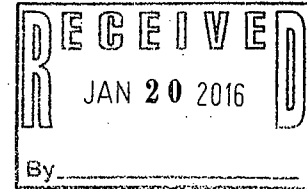
Defendant.

FILED-RECEIVED

2016 JAN 15 PM 2:43

DAVID HAMILTON
C.C.C.P. & GS,
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46-950



ORDER OF FORECLOSURE AND SALE

Pursuant to the South Carolina Rules of Civil Procedure and the S.C. Code, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to said Order of Reference, a hearing was held on December 16, 2015 in the Courtroom of the Master in Equity for York County in York, South Carolina. I made findings of fact and conclusions of law in an Order dated December 30, 2015 and filed January 4, 2016. The Order granted Plaintiff judgment against the Defendant for foreclosure of a mortgage on Defendant's property, and ordered the amount of the mortgage debt to be determined by supplemental hearing.

Subsequent to the Order referred above, the parties stipulated to the amount of the mortgage debt, with Defendant preserving her arguments made at the hearing. Accordingly, I find, conclude, and order as follows:

FINDINGS OF FACT

1. The Lis Pendens, Summons and Complaint in this action were filed on March 30, 2015, with service of same being effected on the Defendant by acceptance of service, according to Affidavit of Service on file with the Court.
2. The Defendant timely filed an Answer.
3. This is an action brought for the foreclosure of a real estate mortgage. Defendant has been properly served. The Court has jurisdiction of the parties and the real estate, which is located entirely in York County, South Carolina. Plaintiff is entitled to foreclosure, as set forth herein.
4. For value received, the Defendant Connie Lynn Batey ("Defendant") made,

A handwritten signature, possibly "DM", with the number "1" written below it.

executed and delivered one Promissory Note ("Note"), promising thereby to pay to William G. Tucker ("Plaintiff") the sum of \$225,000.00 with interest. Other terms and conditions are stated in the Note, which was attached to the Complaint and was admitted as an exhibit at the hearing.

5. To further secure the payment of the Note, the Defendant made, executed and delivered to Plaintiff a Mortgage of Real Estate ("Mortgage") in writing dated April 14, 2011 covering real property in York County, South Carolina which is the same as that described in the Complaint. The Mortgage was recorded on April 18, 2011 and is of record with the York County Clerk of Court in Book Vol. 11948 at Page 80.

6. This Mortgage constitutes a first mortgage lien on the subject property.

7. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Connie Lynn Batey.

8. Payments due on the Note have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

9. The amount of the debt as stipulated by the parties is \$220,573.13. No attorney's fees were sought, and none are included in the debt amount. Interest from the date of judgment until the sale and costs and fees shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Mortgage of Plaintiff recorded with the York County Clerk of Court in Book Vol. 11948 at Page 80 constitutes a first lien on the Property. Plaintiff should have judgment on the Note and foreclosure of the Mortgage.

3. The Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED:

1. There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$220,573.13. This amount represents the "Total Debt" due Plaintiff as set forth in the Findings of Fact.

2. The Total Debt shall constitute the total judgment debt due the Plaintiff and shall

AM
2

bear interest hereafter at the interest rate set forth in the Note.

3. That the Defendant liable for the Total Debts shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master-in-Equity, or by his agent, at public auction, in the Master-in-Equity courtroom, York, South Carolina, on some convenient sales day hereafter, on the following terms:

- (a) FOR CASH: The Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days following the sale, same to be forfeited and applied to the costs and Plaintiff's debt.
- (b) Interest on the balance of said bid shall be paid to the day of compliance at the legal rate.
- (c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.
- (d) The Mortgage constitutes a first lien on the subject property.
- (e) Purchaser to pay for papers and costs of recording the Deed.

5. If Plaintiff be the successful bidder at the sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs, disbursements and expenses crediting the balance of the bid to the indebtedness.

6. That the Master-in-Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within twenty (20) days after the date of sale, then the Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. That should the Plaintiff, Plaintiff's attorney or agent fail to appear on sales day,

AM
83

the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the property shall be re-advertised and sold at some convenient sales day thereafter when the Plaintiff or his attorney or agent is present.

8. That the Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of the mortgage;

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of the Plaintiff's debt and interest of the first mortgage, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus will be held pending further order of the Court.

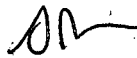
9. IT IS FURTHER ORDERED that in the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of York County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. IT IS FURTHER ORDERED that in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under him, her, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof. The judgment liens set forth herein are extinguished as liens upon the subject property.

11. IT IS FURTHER ORDERED that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the Lis Pendens of the within action, and the name of the Grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

12. The Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 et seq., South Carolina Code of Laws (1976) as amended,

13. The Master-in-Equity shall direct the Clerk of Court to release of record the Mortgage lien being foreclosed, after the Order Confirming Sale and Disbursements has been


#4

executed and filed, which Mortgage lien is described as follows:

That certain "Mortgage" executed, made and delivered by Connie Lynn Batey to William G. Tucker recorded on April 18, 2011 in the York County Clerk of Court in Book Vol. 11948 at Page 80.

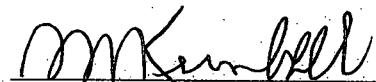
14. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plat Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

DERIVATION: This being the same property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A. Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

T.M.S. No.: 565-01-01-031

York, South Carolina
January 14, 2016



Hon. S. Jackson Kimball
Master-in-Equity, York County

85

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4600950

William G Tucker

Connie Lynn Batey

FILED-RECEIVED
2016 FEB -9 PM 2:27
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** **SC Court of Appeals**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

RECEIVED

MAR 02 2016

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on February 8, 2016, upon Defendant's motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed January 4, 2016. Representing the parties were: Brian S. McCoy for Plaintiff; and, John Martin Foster for Defendant.

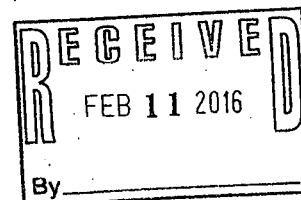
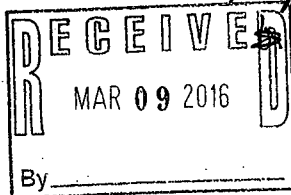
The purpose of Rule 59(e), SCRPC, to alter or amend the judgment, is to request the trial judge to "... reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

In her motion, Defendant seeks to have the court correct a factual error in the prior order, as well as reconsider the ultimate ruling in the order. As to the factual correction, it appears that Plaintiff was not "recently widowed" when he "met" Defendant online as stated in the order, and I misunderstood Plaintiff's testimony in this regard. The order should be corrected to reflect that Plaintiff's wife did not die until about a year after he "met" Defendant. Rather, she was confined to institutional care for advanced Alzheimer's disease at the time, which led to her death.

Secondly, Defendant challenges the analysis of the court undergirding the granting of Plaintiff's relief of foreclosure. As to that objection, upon reviewing the record presented, and considering the arguments of counsel, I find no matter presented that was not addressed expressly, or by clear implication, in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

Therefore, it is ordered that Plaintiff's/Defendant's Motion pursuant to Rule 59(e), SCRPC, be granted in part, as indicated above, and denied in part.

AND IT IS SO ORDERED.

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Master-in-Equity

3063

2/8/2016

Judge Code

Date

For Clerk of Court Office Use Only

2/9/16

2/9/16

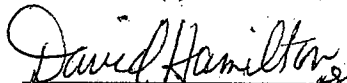
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Brian Scott McCoy 378 E. Main St. Rock Hill, SC 29730

John Martin Foster PO Box 106 Rock Hill, SC 29731-6106

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

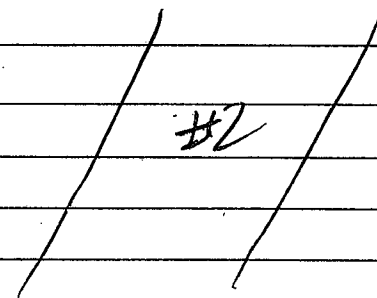


Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46-950

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

COMPLAINT

FILED - RECEIVED
2015 MAR 30 PM 3:31
DAVID H. MILTON
C.C. CP. & GS
YORK COUNTY, SC

The plaintiff, William G. Tucker, through its undersigned attorney, hereby submits this Complaint against the defendant above named, and alleges:

1. The plaintiff is a citizen and resident of North Carolina. The Defendant is, upon information and belief, a citizen and resident of York County, South Carolina.

2. Upon information and belief, the Defendant is not in the military service of the United States of America, as contemplated under the soldier's and sailors Civil Relief Act of 1940, as amended.

FOR A FIRST CAUSE OF ACTION
(Mortgage Foreclosure)

3. The mortgage loan herein is not owned, securitized or guaranteed by FNMA or FHLMC and the servicing agent has not executed an agreement under the Home Affordable Modification Program.

4. The real property that is the subject of this action, is situated and located in York County, South Carolina, and is herein described below.

5. On or about April 14, 2011, for value received, the Connie Lynn Batey executed and delivered to Plaintiff a certain Promissory Note (the "Note") in writing according to the

terms and conditions set out therein, wherein and whereby said borrower promised to pay the sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00), together with interest thereon at a fixed rate of 4%, as set forth therein. A true and correct copy of the Note is attached hereto as Exhibit "A".

6. As security for the payment of the note and debt, in accordance with the terms and conditions thereof, the Defendants did execute and deliver on April 14, 2011 to Plaintiff, his successors and assigns, a mortgage covering the following described property:

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plate Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Number: 565-01-01-031
Property Address: 2271 Iron Works Drive
Lake Wylie, SC 29710

7. No dower renunciation was required on said mortgage.

8. The Mortgage was recorded in Book Volume 11948 at Page 80 on April 14, 2011, in the office of the Clerk of Court of York County (the "Mortgage"). A true and correct copy of the Mortgage is attached hereto as Exhibit "B".

9. According to the terms and conditions of Plaintiff's Mortgage, it was agreed that the mortgagor would pay all taxes, insurance, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if she

failed to do so, the mortgagee might pay same, with amount, together with interest thereon, to be secured by Plaintiff's Mortgage.

10. The monthly payments due on said Note and Mortgage are in default, and the conditions of said Note and Mortgage have been broken and the Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on said Note and Mortgage as of March 9, 2015 the principal sum \$220,573.13, plus accrued interest that continues to accrue, plus late fees and insurance fees, plus the costs and disbursements of this action, including attorneys' fees.

11. The plaintiff waives a deficiency judgment against the Defendant, but reserves his right to seek a deficiency prior to the sale of the property herein.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

12. The preceding allegations of the Complaint are incorporated herein by reference.

13. Plaintiff is 80 years old. In March or April of 2009, Plaintiff met the Defendant on the online dating site called "Plenty of Fish.com." Prior to and since that time, Plaintiff is legally blind, unable to drive, and was vulnerable to manipulation. He lives in an independent living section of a retirement community in Charlotte.

14. Defendant is approximately 22 years younger than Plaintiff, and was working as a flight attendant at the time she met Plaintiff online.

15. In the summer of 2009, the Defendant travelled to Charlotte and the parties met in person. Defendant stayed with the Plaintiff, and the two began a romantic and sexual relationship.

16. At the insistence of Defendant and due to her manipulation, Plaintiff purchased numerous gifts for Defendant including two cars, furniture, airplane tickets, clothing, and cosmetic surgery.

17. As set forth above, in April 2011, Plaintiff paid \$235,000.00 for a house in Lake Wylie, South Carolina and allowed title to be in Defendant's name. Defendant executed and delivered the above-referenced Note and Mortgage in the amount of \$225,000.00 to Plaintiff. Defendant made approximately seven payments toward the Note and Mortgage, then stopped in approximately March of 2012. Because of continued manipulation by the Defendant and the promises of an on-going relationship, the Plaintiff agreed to allow her to miss payments.

18. In May 2012, as a result of undue influence and pressure from Defendant, Plaintiff executed a document titled "Statement of Mortgage Paid in Full." The document states that the Mortgage on the Property titled to Defendant is "hereby paid in full with no other monies due to satisfy this debt."

19. The document referenced above and the purported promise contained therein was not supported by consideration and has no legal effect.

20. Moreover, the purported promise is not enforceable under the doctrines of duress, undue influence, mistake, misrepresentation, and unconscionability.

21. When the parties' relationship ended in late 2014, Plaintiff withdrew his permission to allow Plaintiff to miss payments on the Note and Mortgage.

22. On or about January 20, 2015, Plaintiff sent Defendant a Notice of Default and accelerating the balance due on the Note and Mortgage.

23. In response thereto, on January 29, 2015, counsel for Defendant responded to the Notice of Default, and demanded that a satisfaction of the mortgage be filed based on the "Statement of Mortgage Paid in Full" referenced above. An actual controversy exists.

24. Pursuant to S.C. Code section 15-53-10 et seq., the Plaintiff requests a declaratory judgment from this Court that the document purporting to gratuitously forgive the debt of over \$220,000 is not enforceable or of any binding effect.

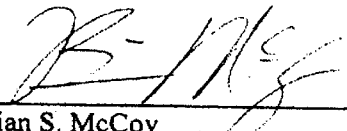
WHEREFORE, having set forth its Complaint, the plaintiff prays that the Court inquire into the matters set forth herein and:

1. Issue a declaratory judgment that the Note and Mortgage have not been satisfied because the statement of forgiveness is not enforceable;
2. That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys' fees and costs of this action.
3. That the plaintiff's mortgage be declared a first lien against the mortgaged premises and that the plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorneys' fees and for the costs of this action.
4. That the mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:
First, to the costs and expenses of the within action and sale;
Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorneys' fees, and
Third, the surplus, if any, be distributed according to law.
5. For an order directing and empowering the Sheriff of York County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property herein described should the same become necessary.
6. For an order granting the Plaintiff recovery of any amounts of rents and profits after the date of default.

7. For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency, if any.
8. For an order satisfying any prior liens that may be of record, but have been paid in full.
9. For such other and further relief as this Court deems just and proper.

Respectfully submitted this 26th day of March, 2015.

McCOY LAW FIRM, LLC



Brian S. McCoy
378 East Main Street
Rock Hill, South Carolina 29730
TEL: (803) 366-2280
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF YORK

PROMISSORY NOTE

FOR VALUE RECEIVED Connie Lynn Batey, hereinafter referred to herein as "Maker", promises to pay to the order of William G. Tucker, hereinafter referred to herein as "Payee", a principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) payable on the basis of 180 equal monthly installments of principal and interest, at the interest rate of 4%, of \$ 1,664.30. The first such payment shall be due on May 14, 2011, and each payment thereafter shall be due on or before the 14th day of each succeeding month until the unpaid balance is paid in full. Payments are considered late and delinquent after the 30th day of each month and a \$50.00 late fee will be due Payee for each late payment.

This Promissory Note is secured by a Mortgage of even date herewith (on property located on 2271 Iron Works Drive, Lake Wylie, SC 29710). If any deficiency in payment of any installment under this Note is not made good prior to the date of the next such installment, then the entire principal and accrued interest shall become due and payable, at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

This Promissory Note may be prepaid in whole or in part at any time without penalty. Purchaser shall have the right during the term of the Promissory Note to make prepayments on the unpaid balance without penalty, provided, however, that such payments shall not act as a release from any obligation to make scheduled payments provided in the Promissory Note. Only the unpaid principal shall bear interest and all payments shall first be applied upon accrued interest and the balance upon principal.

On the happening of any of the following events, each of which will constitute a default under this note, all liabilities of Maker to Payee shall become immediately due and payable at the option of Payee: (1) failure of Maker to make a payment within 30 days of the date when due; (2) application for appointment of a receiver or insolvency of Maker; or (3) filing of any petition in bankruptcy by or against Maker. Payee may waive any default before or after the default has been declared without impairing his right to declare a subsequent default under this note, this right being a continuing one. Maker waives protest of this Note. If this Note is not paid when due, Maker agrees to pay all costs and expenses of collection, including reasonable attorney fees.

MAKER:

By: Connie L Batey
Connie Lynn Batey

EXHIBIT

A

201100132538
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
04-18-2011 At 11:54 am.
MORTGAGE 10.00
OR Vol 11948 Page 80 82

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, is made by and between Connie Lynn Batey, to herein as "Mortgagor", and William G. Tucker, of 3800 Shamrock Dr., Charlotte, NC 28215, referred to herein as "Mortgagee".

Mortgagor owes Mortgagee the principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00). This debt is evidenced by Mortgagor's Promissory Note dated April 14, 2011, hereinafter referred to as the Note. This Mortgage secures to Mortgagee: a.) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, and modifications; b.) the payment of all other sums, with interest, advanced by Mortgagee to protect the security of this Mortgage; and c.) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note.

For this purpose, Mortgagor does hereby mortgage, grant, and convey to Mortgagee all of that certain real property located in the County of York, State of South Carolina, described as follows:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plat Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

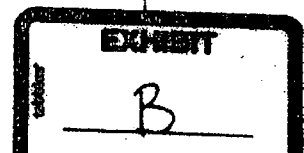
TAX MAP NUMBER: 565-01-01-031

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A. Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

To have and to hold such property unto Mortgagee and Mortgagee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, water rights and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property".

Mortgagor covenants that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

OK 11948 P00080



And Mortgagor covenants with Mortgagee as follows:

1. Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note. Unless applicable law provides otherwise, all payments received by Mortgagee shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under Section Two hereof; fourth, to interest due; and last, to principal due.
2. That this Mortgage shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.
3. That if all or any part of the Property or any interest in it is sold or transferred without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage.
4. On any default under this Mortgage, or the Note secured by this Mortgage, at the option of Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby.
5. That Mortgagor will pay all taxes, assessments, or water rates, and in default thereof, Mortgagee may pay the same. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term extended coverage and any other hazards for which Mortgagee requires insurance. This insurance shall be maintained in the amounts and for the periods that Mortgagee requires. The insurance carrier shall be chosen by Mortgagor subject to Mortgagee's approval which shall not be withheld unreasonably.
6. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, on notice to Mortgagor, may make such appearances, disburse such sums as a service, and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursements or reasonable attorney fees and entry on the property to make repairs. Any amounts disbursed by Mortgagee pursuant to this section, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amount shall be payable on notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the note from which this Mortgage is given as security, unless payment of interest at such rate would be contrary to applicable law, in which event the amount shall bear interest at the highest rate permissible under applicable law. Nothing contained in this section shall require Mortgagee to incur any expense or take any action hereunder.
7. That notice and demand or request may be in writing and may be served in person or by mail.

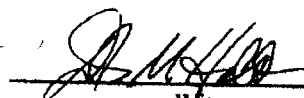
OK 11948 P80081

8. Mortgagor hereby relinquishes all rights of homestead. Mortgagor warrants and covenants that mortgagor is the owner in fee simple of the property and that the same is free from all liens and encumbrances. Mortgagor agrees to protect the title to the property. On failure to do so, the holder of this Mortgage may protect and add the cost thereof to the amount due under the Mortgage.

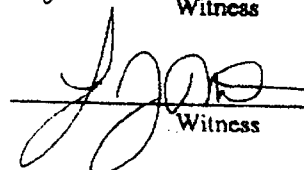
IN WITNESS WHEREOF, this mortgage has been duly executed by the Mortgagor on this the 14 day of April, 2011.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF:

MORTGAGOR:


Witness

By: Connie L Batey (Seal)
Connie Lynn Batey

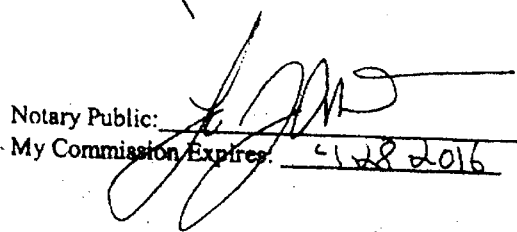

Witness

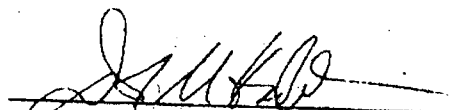
By: _____ (Seal)

THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me, the undersigned witness, and made oath that she/he saw the within named Connie Lynn Batey, sign, seal and, as the Grantor's act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this the 14
day of April, 2011.

Notary Public:  (L.S.)
My Commission Expires: 12/28/2016


Witness

Prepared by and mail to:
David M. Hedder, Atty at Law, PA
1516 Village Harbor Drive, Lake Wylie, SC 29710

11948³ 00082

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

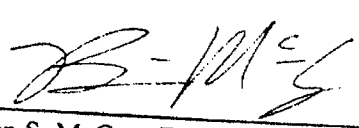
- The amount of the debt is stated in the Complaint attached hereto.
- The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
- The debt is described in the complaint attached hereto and evidenced by the copy of the Note attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
- If the debtor notifies the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
- If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original written requests should be addressed to McCoy Law Firm, LLC, 378 East Main Street, Rock Hill, SC 29730.
- This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

*****THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS*****

**CERTIFICATION OF EXEMPTION OR
WITHDRAWAL FROM MEDIATION**

I CERTIFY THAT THIS ACTION IS EXEMPT FROM MEDIATION BECAUSE:

- ☐ this is a class action;
☐ there is a substantial claim for injunction or declaratory relief requested in this case;
☐ title to real estate;
☐ wills, trusts, and decedents' estates;
☒ mortgage foreclosure;
☐ partition
☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
☐ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
☐ this action is appellate in nature;
☐ this is a post-conviction relief matter;
☐ this is forfeiture proceeding brought by the State; or
☐ this is a contempt of court proceeding;



Brian S. McCoy, Esq.
McCOY LAW FIRM, LLC
378 East Main Street
Rock Hill, SC 29730
Telephone: 803/366-2280
Facsimile: 803/366-0643
ATTORNEYS FOR PLAINTIFF

Dated: March 26, 2015

FILED - RECEIVED
2015 MAR 30 PM 3:31
DAVID STAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46-950

2015CP4600249

LIS PENDENS

FILED - RECEIVED
2015 MAR 30 PM 3:30
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

TO: CLERK OF COURT FOR ENTRY OF RECORDS AND TO THE RECORD
OWNER ABOVE NAMED:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for York County, South Carolina, between the above named Plaintiff and the above named Defendant for the foreclosure of a mortgage recorded in the office of the York County Clerk of Court in Book Volume 11948 at Page 80. The property which is subject to the lien is more particularly described as follows:

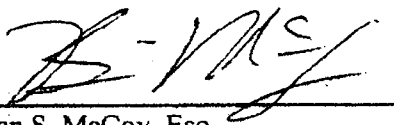
All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plate Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

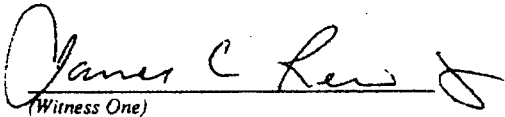
Tax Map Number: 565-01-01-031

Property Address: 2271 Iron Works Drive
Lake Wylie, SC 29710

Filed this 26th day of March, 2014.


Brian S. McCoy, Esq.
ATTORNEY FOR PLAINTIFF

Witness(es):

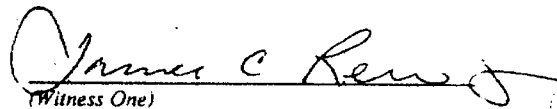

(Witness One)


(Witness Two)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Personally appeared before me the undersigned who, being duly sworn, deposes and says that he/she saw the within named Brian McCoy, Attorney for Plaintiff, Sharonview Federal Credit Union sign, seal, and as its act and deed, deliver the within Lis Pendens and that he/she with the other witness witnessed the execution thereof.


(Witness One)

Sworn to before me this the
26 day of March, 2015.


Notary Public for South Carolina
My Commission expires: 1-30-23

STATE OF SOUTH CAROLINA

COUNTY OF YORK

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

ANSWER AND COUNTERCLAIM

C.A. No. 2015-CP-46-00950

FILED RECEIVED
2015 MAY 24 PM 12:01
CLERK OF COURT
YORK COUNTY, SC

Comes now the Defendant CONNIE LYNN BATEY, and for her Answer herein would allege as follows (all references to paragraphs, unless otherwise identified, are to the Paragraphs of the said Complaint):

FOR A FIRST DEFENSE:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.
2. The Defendant admits the allegations of the parties' residency set out in Paragraph 1.
3. The Defendant admits that she is not in the military service of this country, as set out in Paragraph 2.
4. The Defendant admits that the mortgage loan referenced in Paragraph 3. is not subject to the Home Affordable Modification Program (HMP), as referenced in Paragraph 3.
5. The Defendant admits the identification of the subject real property and its location, as set out in Paragraphs 5. and 6.
6. As to the allegations of Paragraphs 5. and 6., the Defendant admits that she is the signatory, and the person designated as the promisor and mortgagor, on the promissory note and mortgage referencing the subject real property.
7. On knowledge and information, the allegations of Paragraphs 7., 8., 11. and 12. are conclusory and legal in nature, and as such require no response.
8. As to the remaining allegations of the Complaint herein as to:

the terms and legal effect of the mortgage and note sought to be foreclosed herein,
the existence of any default on the part of the Defendant,
the expenditure of monies by the Plaintiff in order to preserve his rights, or

the rights of Plaintiff as to recovery of any monies expended or the liability of the Defendant for such monies,

the said Defendant:

admits all matters herein which are of public record, and alleges that she is without sufficient information, knowledge or belief as to the remaining factual allegations to respond and therefore denies the same and demands strict proof thereof.

9. In response to Paragraphs 13. and 14., the Defendant admits so much of the same as allege the parties' personal information. On knowledge and information, she denies the Plaintiff to suffer from any greater vulnerability to manipulation than the general population, and affirmatively denies any action or attempt to manipulate him.

10. In response to Paragraph 15, the Defendant admits the approximate date and location of the parties' first meeting, and affirmatively denies any sexual contact between them.

11. In response to Paragraph 16., the Defendant acknowledges the receipt of gifts from the Plaintiff.

12. In response to Paragraph 17., the Defendant:

- a) admits the Plaintiff's advance of funds for a house in Lake Wylie, South Carolina;
- b) admits the placing of title thereto in the Defendant;
- c) admits her execution of a note and mortgage on the said real property in the amount alleged;
- d) admits that her payments on the said note and mortgage ceased in or about March, 2012 and alleges that such cessation was by agreement of the parties;
- e) admits that the Plaintiff, by his actions, agreed to allow her to miss payments; and
- f) denies any manipulation of the Plaintiff by herself or any other person known to her, whether "continued" or otherwise.

13. In response to Paragraph 18., the Defendant admits, and affirmatively alleges, the Plaintiff's free and voluntary execution, delivery and acceptance of the document entitled "Statement of Mortgage Paid in Full", a true copy of which is attached hereto and incorporated herein.

14. On knowledge and information, the allegations of Paragraphs 19. and 20. are conclusory and

legal in nature, and as such require no response.

15. In response to Paragraphs 21. and 22., the Defendant alleges her belief that any amenable relationship between the parties ended by 2013; she further acknowledges receipt of the Plaintiff's letter of January 20, 2015, a true copy of which is attached hereto and incorporated herein.
16. In response to Paragraph 23., the Defendant acknowledges delivery to the Plaintiff of a demand for satisfaction of the mortgage, a true copy of which, with its attachments, is attached hereto and incorporated herein.
17. On knowledge and information, the allegations of Paragraph 24. are conclusory and legal in nature, and as such require no response.

SECOND DEFENSE:
ILLEGALITY OF CONTRACT

18. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
19. Insofar as the allegations of the Plaintiff's Complaint are founded upon an agreement or consideration, in whole or in part, for the commencement or continuance of meretricious sexual intercourse between the parties, on knowledge and information, the same is directly contrary to law, public policy and/or the best interests of society.
20. On knowledge and information, insofar as any said agreement or consideration between the parties is founded upon an agreement directly contrary to law, public policy and/or the best interests of society, such agreement cannot be enforced.

FOR A THIRD DEFENSE
EXPRESS WAIVER

21. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
22. On knowledge and information, the following facts and legal positions were acknowledged and approved, by actions and/or inaction, of and by the Plaintiff and the Defendant:
 - a) the free and voluntary execution, delivery and acceptance of the document entitled "Statement of Mortgage Paid in Full" on or about May 23, 2012;

23. The Plaintiff did not maintain the factual or legal claims which he now advances against the Defendant in his Complaint until, at the earliest, his demand letter of January, 2015.
24. During the time from May, 2012 until January, 2015, the Plaintiff gave no notice of any such factual or legal claims referenced above or now advanced by him.
25. On knowledge and information, no condition existed during the period from May, 2012 until January, 2015 which would have prevented the Plaintiff from giving notice of his change of position or reason for disclaiming his above-referenced actions and inaction in executing and delivering the "Statement of Mortgage Paid in Full", his knowledge of the Defendant's acceptance thereof, disputing the validity of the same or attempting to enforce the terms of the note and mortgage.
26. No notice or complaint, written or otherwise, was made to the Defendant on behalf of the Plaintiff alleging any such factual or legal claims referenced in the January, 2015 demand letter, or now advanced in the Complaint, until receipt of the said letter.
27. On knowledge and information, the above-referenced actions and inaction of the Plaintiff constitute and evidence an intention on the part of that person to waive any such factual or legal claims referenced above or now advanced by the Plaintiff.
28. On knowledge and information, the above-referenced actions and inaction of the Plaintiff constitute and evidence an external act on the part of that person by which his intention to waive any such factual or legal claims referenced above or now advanced by him.
29. On knowledge and information, the above-referenced actions and inaction of the Plaintiff constitute and evidence an acknowledgment of and acquiescence in the validity and effect of the "Statement of Mortgage Paid in Full."
30. The Defendant relied on the said waiver, acknowledgment and acquiescence of the Plaintiff in ordering her affairs, which ordering will be to her detriment if the causes of action set out in the Complaint are now prosecuted.
31. On knowledge and information, the above-referenced actions and inaction of the Plaintiff constitute and evidence an express waiver of any such factual or legal claims referenced above or now advanced by the Plaintiff.

FOR A FOURTH DEFENSE
BREACH OF DUTY OF GOOD FAITH

32. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are

hereby realleged by this reference to them.

33. On knowledge and information, the dealings between the Plaintiff and the Defendant imply a duty of good faith and fair dealing between the parties both to the mortgage transaction as well as to the release thereof, and a duty of co-operation on the part of such parties.
34. On knowledge and information, the actions and inaction of Plaintiff referenced herein and in the Complaint are in breach of his agreement and dealings with the Defendant as evidenced by the allegations above, and the same are also in breach of his obligation of good faith.
35. On knowledge and information, the lack of good faith on the part of the Plaintiff deprives him of the right to any relief from this Court by reason of the Defendant's alleged actions and inaction under the parties' agreement.

FOR A FOURTH DEFENSE AND COUNTERCLAIM
SATISFACTION OF MORTGAGE

36. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
37. As referenced in Paragraphs 5., 6. and 8. of the Plaintiff's Complaint, the Defendant CONNIE L. BATEY executed a Note and Mortgage to the Plaintiff on or about April 14, 2011. The said Mortgage was recorded on April 18, 2011 in Record Book 11948 at Pages 80-82 in the Office of the Clerk of Court for York County, South Carolina. A copy of the same is attached hereto and incorporated herein.
38. Based upon the notarized "Statement of Mortgage Paid In Full" executed by the Plaintiff on May 23, 2012, a copy of which is attached hereto and incorporated herein, no debt remains on the said Mortgage executed by the Defendant.
39. On knowledge and information, S.C Code § 29-3-310 (West) which requires the Plaintiff to enter satisfaction of the mortgage after formal request for such is made.
40. Formal request for such satisfaction has been made, and received by the Plaintiff, as acknowledged in Paragraphs 22. and 23. of the Complaint. A copy of that request and its attachments is attached hereto and incorporated herein.
41. The Plaintiff has failed and refused to enter a satisfaction to the said Mortgage.
42. On knowledge and information, the Plaintiff, as the mortgage holder of record, is liable to the Defendant under S.C. Code 29-3-320 (West), for the sum of Twenty-Five Thousand and no/100 (\$25,000.00) Dollars, for actual damages, costs and attorney fees in the discretion of this Court, by reason of his failure to enter a satisfaction to the said Mortgage.

43. The Defendant CONNIE L. BATEY has suffered damages by reason of the Plaintiff's refusal to satisfy the said mortgage, in that she has, among other damages, been forced to retain counsel to answer the Plaintiff's Complaint and to prosecute this Counterclaim.

WHEREFORE the said Defendant CONNIE L. BATEY prays:

A. That this Court inquire into and determine all matters set out in the Complaint herein, including, but not limited to, all questions relating to the seniority of recorded liens on the subject real property;

B. That the orders of the Court herein accord the said Defendant all protections normally accorded a mortgagor in the position of the said Defendant;

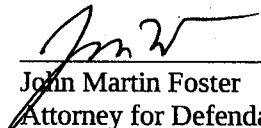
C. That the Plaintiff's action for foreclosure of the subject Mortgage be denied;

D. That, by reason of the Plaintiff's failure to satisfy the said Mortgage, the Defendant recover from the Plaintiff the sum of Twenty-Five Thousand and no/100 (\$25,000.00) Dollars, for actual damages, costs and attorney fees in the discretion of this Court;

E. That, in the alternative to the Prayer D. above, the Defendant be awarded her costs herein;

F. That this Court include a prayer for any other relief to which the facts, either as plead or presented in evidence at trial, may allow the Defendant; and

G. For such other and further relief as this Court may deem just and proper.


John Martin Foster
Attorney for Defendant

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, S.C. 29731-6106

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

May 1, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, is made by and between Connie Lynn Batey, to herein as "Mortgagor", and William G. Tucker, of 3800 Shamrock Dr., Charlotte, NC 28215, referred to herein as "Mortgagee".

Mortgagor owes Mortgagee the principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00). This debt is evidenced by Mortgagor's Promissory Note dated April 14, 2011, hereinafter referred to as the Note. This Mortgage secures to Mortgagee: a.) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, and modifications; b.) the payment of all other sums, with interest, advanced by Mortgagee to protect the security of this Mortgage; and c.) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note.

For this purpose, Mortgagor does hereby mortgage, grant, and convey to Mortgagee all of that certain real property located in the County of York, State of South Carolina, described as follows:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plat Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

TAX MAP NUMBER: 565-01-01-031

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A. Germanetti dated April 19, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

To have and to hold such property unto Mortgagee and Mortgagee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, water rights and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property".

Mortgagor covenants that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

And Mortgagor covenants with Mortgagee as follows:

1. Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note. Unless applicable law provides otherwise, all payments received by Mortgagee shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under Section Two hereof; fourth, to interest due; and last, to principal due.
2. That this Mortgage shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.
3. That if all or any part of the Property or any interest in it is sold or transferred without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage.
4. On any default under this Mortgage, or the Note secured by this Mortgage, at the option of Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby.
5. That Mortgagor will pay all taxes, assessments, or water rates, and in default thereof, Mortgagee may pay the same. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term extended coverage and any other hazards for which Mortgagee requires insurance. This insurance shall be maintained in the amounts and for the periods that Mortgagee requires. The insurance carrier shall be chosen by Mortgagor subject to Mortgagee's approval which shall not be withheld unreasonably.
6. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, on notice to Mortgagor, may make such appearances, disburse such sums as a service, and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursements or reasonable attorney fees and entry on the property to make repairs. Any amounts disbursed by Mortgagee pursuant to this section, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amount shall be payable on notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the note from which this Mortgage is given as security, unless payment of interest at such rate would be contrary to applicable law, in which event the amount shall bear interest at the highest rate permissible under applicable law. Nothing contained in this section shall require Mortgagee to incur any expense or take any action hereunder.
7. That notice and demand or request may be in writing and may be served in person or by mail.

RM 11948 P00081

Statement of Mortgage Paid in Full

This statement is to certify that the Mortgage on 2271 Ironworks Dr., Lake Wylie, SC 29710, titled to Connie Lynn Batey is hereby paid in full with no other monies due to satisfy this debt.

Signature: William G. Tucker

Name: William G. Tucker

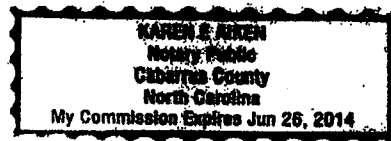
State of North Carolina

Mecklenburg County

Sworn to and subscribed before me 23 day of May 2012

Karen E. Cupen

Notary Public



January 20, 2015

To Connie Battey
Notice of Default

The purpose of this letter is to inform you of two possible alternatives you may exercise to avoid foreclosure on the house located at 2271 Iron Works Dr., Lake Wylie, SC. 29710.

"On any default under this Mortgage, or the Note secured by this Mortgage, at the option of the Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby."

If you are willing to sign a "Deed in Lieu of Foreclosure" instead of having a foreclosure proceeding filed against you it will be far simpler. The seven payments you made leave an unpaid balance of \$220,573.13

William G. Tucker
William G. Tucker

Addendum

South Carolina law provides for the transfer of real property, or mortgage on real property, a written document, dated, notarized, signed by two witnesses and filed with the office of the register of deeds must exist.

Statement of Mortgage Paid in Full

This statement is to certify that the Mortgage on 2271 Ironworks Dr., Lake Wylie, SC 29710, titled to Connie Lynn Batey is hereby paid in full with no other monies due to satisfy this debt.

Signature: William G. Tucker

Name: William G. Tucker

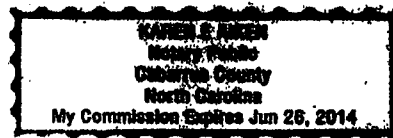
State of North Carolina

Mecklenburg County

Sworn to and subscribed before me 23 day of May 2012

Karen E. Cuper

Notary Public



Section 29-3-310 Request for entry of satisfaction

Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of delivery with a proof of delivery of the mortgagor or of his legal representative or any other person being a creditor of the debtor or a purchaser under him or having an interest in any estate bound by the mortgage and on tender of the fees of office for entering satisfaction, within three months after the certified mail, or other form of delivery, with a proof of delivery, request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

HISTORY: 1962 Code Section 45-61; 1952 Code Section 45-61; 1942 Code Section 8703; 1932 Code Section 8703; Civ. C. '22 Section 5224; Civ. C. '12 Section 3461; Civ. C. '02 Section 2375; G. S. 1791; R. S. 1894; 1817 (6) 61; 1928 (35) 1253; 1988 Act No. 494, Section 8(2); 1999 Act No. 67, Section 1.

Section 29-3-320 Liability for failure to enter satisfaction

Any holder of record of a mortgage having received such payment, satisfaction, or tender as aforesaid who shall not, by himself or his attorney, within three months after such certified mail, or other form of delivery, with a proof of delivery, request and tender of fees of office, repair to the proper office and enter satisfaction as aforesaid shall forfeit and pay to the person aggrieved a sum of money not exceeding one-half of the amount of the debt secured by the mortgage, or twenty-five thousand dollars, whichever is less, plus actual damages, costs, and attorney's fees in the discretion of the court, to be recovered by action in any court of competent jurisdiction within the State. And on judgment being rendered for the plaintiff in any such action, the presiding judge shall order satisfaction to be entered on the judgment or mortgage aforesaid by the clerk, register, or other proper officer whose duty it shall be, on receiving such order, to record it and to enter satisfaction accordingly.

Notwithstanding any limitations under Sections 37-2-202 and 37-3-202, the holder of record of the mortgage may charge a reasonable fee at the time of the satisfaction not to exceed twenty-five dollars to cover the cost of processing and recording the satisfaction or cancellation. If the mortgagor or his legal representative instructs the holder of record of the mortgage that the mortgagor will be responsible for filing the satisfaction, the holder of the mortgage shall mail or deliver the satisfied mortgage to the mortgagor or his legal representative with no satisfaction fee charged.

HISTORY: 1962 Code Section 45-62; 1952 Code Section 45-62; 1942 Code Section 8704; 1932 Code Section 8704; Civ. C. 22 Section 5225; Civ. C. 12 Section 3461; Civ. C. 02 Section 2376; G. S. 1792; R. S. 1895; 1817 (6) 61; 1999 Act No. 67, Section 2.

STATE OF SOUTH CAROLINA] MORTGAGE/DEED OF TRUST SATISFACTION
COUNTY OF YORK] PURSUANT TO SECTION 29-3-330(B)(3)
OF THE SOUTH CAROLINA CODE OF LAWS, 1976

The undersigned being the mortgagee of record, the trustee of a deed of trust, or the legal representative, agent or officer, or attorney-in-fact of the mortgagee of record or the trustee of the trust, under a written agreement duly recorded, of either of the foregoing, certifies:

The debt secured by the mortgage/deed of trust recorded in the office of the Clerk of Court or Register of Deeds of York County in Record Book 11948 at page 80 is:

☒ paid in full and the lien or the foregoing instrument has been released; or

☐ the lien of the foregoing instrument has been released.

The Clerk of Court or Register of Deeds may enter this cancellation into record.

Under penalties of perjury, I declare that I have examined this affidavit this ____ day of _____, 2015 and, to the best of my knowledge and belief, it is true, correct, and complete.

WITNESS my/our hand this ____ day of _____, 2015.

WILLIAM G. TUCKER (Signature)

(Witness Signature)

(Witness Signature)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This instrument was acknowledged before me this ____ day of _____, 2015 by WILLIAM G. TUCKER, the mortgagee of record, as to the mortgage referenced herein above.

(Signature of Notary
NOTARY PUBLIC, STATE OF NORTH CAROLINA

(Printed Name of Notary)

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendants.

CERTIFICATE OF SERVICE

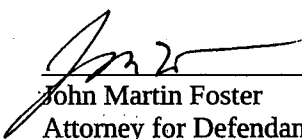
C.A. No. 2015-CP-46-00950

The undersigned hereby certifies that on , he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Answer and Counterclaim of Connie L. Batey; and
This Certificate of Service

the original of which were sent to be filed with the Clerk of the Court for the Court named above, by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, as follows:

Brian S. McCoy
Attorney for Plaintiff
McCoy Law Firm
378 East Main Street
Rock Hill, SC 29730


John Martin Foster
Attorney for Defendant

Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

May 1, 2015

FILED - RECEIVED
2015 MAY -4 PM 12:01
BRYAN HAMILTON
C.C. CH. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2015-CP-46-00950

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

REPLY TO COUNTERCLAIM

The Plaintiff, replying to the Counterclaim of Defendant, would respectfully show
unto the Court and allege:

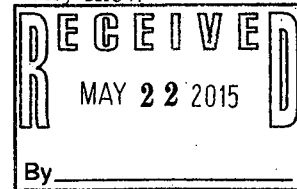
FOR A FIRST DEFENSE

The Counterclaim fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

The allegations of Plaintiff's Complaint are realleged and incorporated herein to the extent they are not inconsistent with the allegations set forth in this Reply. Plaintiff hereby responds to allegations in the Counterclaim. All allegations in the Answer and Defenses that are inconsistent with the allegations of the Complaint and this Reply are denied. All allegations of the Counterclaim that are not expressly admitted are denied:

1. With respect to the allegations of paragraph 37 of the Answer and Counterclaim, Plaintiff refers to the terms of the Note and Mortgage documents for the terms thereof.
2. The allegations of paragraph 38 are denied.
3. With respect to the allegations of paragraph 39, Plaintiff refers to the terms of the statute itself and denies any allegations inconsistent therewith.
4. The allegations of paragraph 40 are admitted.
5. With respect to the allegations of paragraph 41, Plaintiff denies that a satisfaction is required as alleged in the Complaint, and therefore admits that a Satisfaction has not been entered of record.



6. The allegations of paragraph 42 are denied.
7. The allegations of paragraph 43 are denied.

FOR A THIRD DEFENSE

The allegations of the preceding paragraphs are realleged and incorporated herein to the extent they are not inconsistent with the allegations set forth in the paragraphs of this third defense.

Defendant's counterclaim is barred by the doctrines of waiver, estoppel, novation, setoff, recoupment, and/or release.

FOR A FOURTH DEFENSE

The allegations of the preceding paragraphs are realleged and incorporated herein to the extent they are not inconsistent with the allegations set forth in the paragraphs of this fourth defense.

Defendant's counterclaim is barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

The allegations of the preceding paragraphs are realleged and incorporated herein to the extent they are not inconsistent with the allegations set forth in the paragraphs of this fifth defense.

Defendant's counterclaim is barred by her breaches of contract and her intervening conduct.

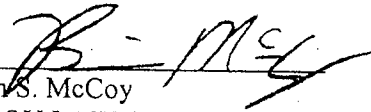
FOR A SIXTH DEFENSE

The allegations of the preceding paragraphs are realleged and incorporated herein to the extent they are not inconsistent with the allegations set forth in the paragraphs of this sixth defense.

Defendant's counterclaim is barred due the lack of any damage whatsoever, and, alternatively, due to her failure to mitigate damages.

WHEREFORE, having fully responded to the Counterclaim herein, Plaintiff prays that said Counterclaim be dismissed, that Plaintiff recover his attorney fees and costs, and for such other and further relief as may be just and proper.

Respectfully submitted this 20 day of May, 2015.


Brian S. McCoy
McCOY LAW FIRM, LLC
378 East Main Street
Rock Hill, South Carolina 29730
TEL: (803) 366-2280

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE BY MAILING

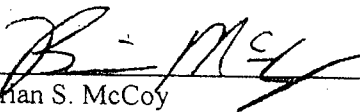
The undersigned does hereby certify that a copy of the foregoing and attached REPLY TO COUNTERCLAIM upon the Defendant in this action by depositing a copy thereof, enclosed in a pre-paid envelope, in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed as follows:

John Martin Foster, Esq.
The Guardian Building
223 East Main St., Suite 520
Rock Hill, SC 29730

This the 20 day of May, 2015

McCOY LAW FIRM, LLC

By: _____


Brian S. McCoy
Attorney for Plaintiff
378 East Main Street
Rock Hill, SC 29730
Tel: (803) 366-2800

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46- 950

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

PLAINTIFF'S TRIAL BRIEF

Plaintiff respectfully submits his Trial Brief, as follows:

SUMMARY

This case involves the well-established linchpin contract principle that for a promise to be enforceable, it must be supported by adequate consideration. If the promise is a mere promise to make a gift, it can be revoked at any time before the gift is actually made. If it purports to forgive a liquidated debt, it can be rescinded by the donor at any time before payment in full is made (see Rule in Pinnel's case below). Here, it is undisputed that no consideration supported the "Statement of Mortgage Paid in Full" from Mr. Tucker.

FACTS

In March or April of 2009, Mr. Tucker, who is 80 years old, met the Defendant on the online dating web site called "Plenty of Fish.com." Mr. Tucker is legally blind, unable to drive, and was vulnerable to manipulation. He lives in an independent living section of a retirement community in Charlotte.

Defendant is approximately 22 years younger than Plaintiff, and was working as a flight attendant at the time she met Plaintiff online. She has been married six times, although during her deposition she forgot one of her ex-husbands. (Batey Dep. At 17).

In the summer of 2009, the Defendant travelled to Charlotte and the parties met in person. Defendant stayed with Mr. Tucker, and the two began dating.

Mr. Tucker purchased numerous gifts for Defendant including two cars, furniture, airplane tickets, clothing, and cosmetic surgery.

In April 2011, Mr. Tucker paid \$235,000.00 for a house in Lake Wylie, South Carolina and allowed title to be in Defendant's name. Defendant executed and delivered a Note and Mortgage in the amount of \$225,000.00. Defendant made approximately seven payments toward the Note and Mortgage, then stopped in March of 2012 with a balance due of approximately \$220,000.00. Mr. Tucker agreed to allow her to miss payments.

In May 2012, Mr. Tucker executed a document titled "Statement of Mortgage Paid in Full." The document states that "the Mortgage on [the Property titled to Defendant] is hereby paid in full with no other monies due to satisfy this debt."

Both the Defendant and Mr. Tucker testified that the document referenced above and the purported promise contained therein was not supported by consideration. (Batey Dep. At 39; Tucker Dep. At 34).

Subsequently, Mr. Tucker took no action to file any Cancellation of Mortgage. When the parties' relationship ended unquestionably in 2014, Mr. Tucker withdrew his permission to allow Plaintiff to miss payments on the Note and Mortgage.

On or about January 20, 2015, Plaintiff sent Defendant a Notice of Default accelerating the balance due on the Note and Mortgage, and demanding payment.

LEGAL ISSUES

Several legal principles and common law apply to this situation.

1. Gratuitous Promises.

Consideration is required to support a promise; a gratuitous promise or a donative promise is not enforceable. *See e.g., Black v. Gettys*, 238 S.C. 167, 186, 119 S.E. 2d 660, 669 (1961) (plaintiff signed under seal an instrument to transfer shares of stock to a trust for the benefit of children for which she received no consideration; court held instrument was a “mere gratuitous promise,” and “[g]enerally, where a contract is entirely voluntary or without consideration, or is in effect and substance a mere gift, even though one for the conveyance of land, it will not be specifically enforced, for equity will not compel a party to be generous.”

See, Lynch v. Lynch, 201 S.C. 130, 137, 146, 21 S.E.2d 569, 572, 576 (1942) (“[A] gift to be operative must be executed and must take effect immediately and irrevocably, for the obvious reason that if anything remains to be done the title to the property does not pass Thus, mere intention to give without delivery is unavailing; the intention must be executed by a complete and unconditional delivery.”

2. The “Rule in Pinnel’s case,” or Rule of Foakes v. Beer.

These English cases hold that payment of less than the full amount of a liquidated debt cannot satisfy the full debt, even if the parties agree that such lesser payment will satisfy the debt entirely. The Rule has been illustrated by Professor Farnsworth as

follows: “Thus, my \$1,000 debt to you cannot be discharged by the payment of a lesser sum, even if that is what we intend. *Nor can you make a gift of my \$1,000 debt simply by saying so.*” E. ALLEN FARNSWORTH, CHANGING YOUR MIND: THE LAW OF REGRETTED DECISIONS at p. 148 (Yale Univ. Press, 1998) (emphasis added). Nor does putting the forgiveness in writing make a difference. *Id.* at 152. *See, Ludington v. Bell*, 77 N.Y. 138, 143 (1879) (“The doctrine that payment by the debtor of a less sum than the whole amount of the debt will not extinguish the debt, although the creditor expressly agree to receive it in full and give a receipt or writing to that effect, is well established by abundant authority”).

A paraphrased illustration from an English case describing the Rule, with currency converted, is as follows: A creditor of a \$20 debt might take a horse or a sheep in satisfaction of the debt as accord and satisfaction, but if he agrees to accept \$19.50 in full satisfaction, even if it is paid based upon such an agreement, the creditor may change his mind and recover the remaining balance of \$0.50. *cf. Couldery v. Bartrum*, L.R. 19 Ch.Div. 394, 399 (1880 C.A.).

The “Rule” remains the common law in a majority of states, including South Carolina – see below. Some examples are set forth below.

In Dougherty v. Salt, 125 N.E. 94 (N.Y. 1919), a woman signed a promissory note in which she promised to pay \$3,000 to her eight-year-old nephew “for ‘value received’” and handed the note to the nephew. She died with the note still unpaid, and the nephew brought suit against her estate. The New York Court of Appeals, in an opinion by Judge Cardozo, held that although her promise was in writing and recited that value had been received, it was “the voluntary and unenforceable promise of an executory gift.”

In *Fischer v. Union Trust Co.*, 101 N.W. 852 (Mich. 1904), a father gave his daughter, as a Christmas present, a deed to certain property and also agreed to pay two mortgages on the property totaling \$8,000. The daughter then handed a dollar to her father. The father died without paying off one of the mortgages. The mortgage was foreclosed for nonpayment, and the daughter sued her father's estate for breach of the promise to pay the mortgage. The Michigan court held that the promise to pay the mortgages was donative and therefore unenforceable despite the written form of the promise and the symbolic delivery of the dollar.

In *Schnell v. Neil*, 17 Ind. 29 (1861) Schnell's wife devised \$200 each to three legatees, but died without assets. Schnell promised to pay the legatees the amounts that his wife had devised and signed a formal contract which recited that his promise was given "in consideration of one cent" paid by the promisees. The Indiana court held that Schnell's promise was unenforceable even though it was in writing and cast in the form of a bargain.

2.a. The Rule is the common Law of South Carolina

The Rule in *Pinnel's* case and *Foakes v. Beer* are binding common law of South Carolina. See *Ex Parte Zeigler*, 83 S.C. 78 (1909) (holding that the rule of *Pinnel's* case "is firmly established in this state"), *aff'd* 88 S.C. 168 (1911); *Riggs v. Home Mut. Fire Protection Ass'n*, 61 S.C. 448, 39 S.E. 2d 614 (1901) (regarding the Rule in *Pinnel's* case, Court held "in this state it has been expressly recognized in several cases . . . and must still be recognized by us.").

3. Engagement Ring analogy.

An engagement ring is given as a gift with no consideration except the expectation of future marriage. If the marriage does not occur, the donor is entitled to a return of the ring. In *Campbell v. Lynch*, 398 S.C. 12, 726 S.E. 2d 221 (Ct. App. 2012), the Court of Appeals held that an engagement ring is impliedly conditioned upon the marriage taking place. "Until the condition [of marriage] underlying the gift is fulfilled, the attempted gift is unenforceable and must be returned to the donor upon the donor's request." This holding controls irrespective of "fault" for the break-up.

4. Mr. Tucker's Refusal to Cancel the Mortgage of Record.

Significantly, an action remained to be performed before the purported cancellation of mortgage would have been completed – the filing a Cancellation of Mortgage on the public record by Mr. Tucker. However, he never filed a Cancellation of Mortgage. A step remained to be performed, and it was not. This is fatal to the claim of Ms. Batey. *See, Lynch v. Lynch, supra* (if anything remains to be done the gift may be revoked).

EXHIBITS

In addition to the Note, Mortgage, and "Statement of Mortgage Paid in Full," various correspondence and documents between the parties will be offered as exhibits.

WITNESSES

1. William Tucker – Plaintiff.
2. Connie Batey -- Defendant

Respectfully submitted,

_____/s/_____
Brian S. McCoy, Esq.
378 East Main St.,
Rock Hill, SC 29732
TEL: (803) 366-2280

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

The Undersigned hereby certifies that a true and correct copy of the foregoing

Plaintiff's Trial Brief was sent to counsel for defendant by email to:

John Martin Foster, Esq.
The Guardian Building
223 East Main St., Suite 520
Rock Hill, SC 29730

jmfoster@comporium.net

This 15th day of December 2015.

_____/s/_____
Brian McCoy

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

DEFENDANT'S TRIAL BRIEF

CASE NO. 2015-CP-46- 950

The Defendant respectfully submits her Trial Brief::

RELEVANT FACTS

In April 2011, Mr. Tucker purchased a house in Lake Wylie, South Carolina, placing title in the Defendant's name. Defendant executed and delivered a Note and Mortgage in the amount of \$225,000.00. Defendant made approximately seven payments toward the Note and Mortgage, then stopped in March of 2012 with a balance due of approximately \$220,000.00. Mr. Tucker agreed to allow her to miss payments.

In May 2012, Mr. Tucker executed a document titled "Statement of Mortgage Paid in Full." The document states that "the Mortgage on [the Property titled to Defendant] is hereby paid in full with no other monies due to satisfy this debt."

Mr. Tucker did not cancel the Mortgage. On or about January 20, 2015, Plaintiff sent Defendant a Notice of Default accelerating the balance due on the Note and Mortgage, and demanding payment. Thereafter, the Defendant made demand for cancellation of the Mortgage.

LEGAL ISSUES

Our Supreme Court, in the leading case of *Lynch v. Lynch*, 201 S.C. 130, 21 S.E.2d 569 (1942), held as follows:

The following, which is quoted with approval in the case of *Ott v. Ott*, 182 S.C. 135, 188 S.E. 789, 792, is an accurate statement of the essential elements of a gift *inter vivos*:

" 'A gift *inter vivos* as its name imports, is a gift between the living. It is a contract which takes place by the mutual consent of the giver, who divests himself of the thing given in order to transmit the title of it to the donee gratuitously, and the donee who accepts and acquires the legal title to it. It operates, if at all, in the donor's lifetime, immediately and irrevocably; it is a gift executed; no further action of the parties; no contingency of death, or otherwise, is necessary to give it effect.' 28 C.J. 621, 622."

[*Id.*, 201 S.C. at ___, 21 S.E.2d at 572; emphasis added.]

The commentators of AMERICAN JURISPRUDENCE 2D define a gift as follows:

A gift has been judicially defined as a voluntary transfer of property by one to another without any consideration or compensation therefor.

[38 AM.JUR.2D *Gifts* § 1 (2001); full citations omitted, but citing 73 A.L.R. 1539.]

Both parties herein have testified that nothing was promised in order to effect the execution of the document stating the Mortgage debt was paid in full. There is no dispute that the document or notice thereof was delivered to the Defendant. There is no question of the Plaintiff's competence to make such a gift.

All elements of a gift have been satisfied; the Defendant is entitled to a judgment satisfying the Mortgage.

While it is not for the Defendant to set the nature of the trial, counsel would suggest that, in light of the parties' agreement as to the facts, this case involves a purely legal issue,

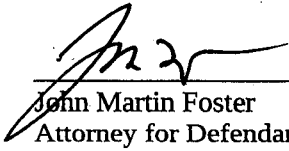
EXHIBITS

The Note, Mortgage, and "Statement of Mortgage Paid in Full" are relevant. As necessary, the Depositions of the parties are available..

WITNESSES

1. William Tucker – Plaintiff.
2. Connie Batey -- Defendant

Respectfully submitted,



John Martin Foster
Attorney for Defendant

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, S.C. 29731-6106

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

December 16, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

NOTICE and MOTION:

TO ALTER OR AMEND JUDGMENT

Pursuant to:
RULE 59(a), S.C.R.C.P.

C.A. No. 2015-CP-46-00950

To: The Plaintiff and
Brian S. McCoy, Esq.
Attorney for Plaintiff
McCoy Law Firm
378 East Main Street
Rock Hill, SC 29730

FILED-RECEIVED
2016 JAN 19 PM 2:43
DAVID HAMILTON
C.C.C. & G.S.
YORK COUNTY, SC

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of the Court, or as soon thereafter as counsel may be heard.

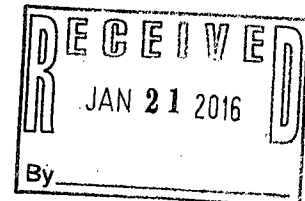
PLACE: Office of the Master in Equity for York County
1 North Congress Street
York, South Carolina 29745,
or at such other place as the Court may designate

Pursuant to Rule 59, S.C.R.C.P., the Defendant moves this Court:

For an Order reopening the Order of this Court dated December 30, 2015 and entered January 4th, 2016, a copy of which was received by the Movant on January 5th, 2016, amending the findings of fact and conclusions of law or making new findings and conclusions, and directing the entry of a new Order; and

For such other and further relief as this Court may deem just and proper, on the grounds that the Order of the Court is contrary to law and on the following bases:

A) The Court's Order states, in relevant part:



In March or April of 2009, Plaintiff [WILLIAM G. TUCKER], who was then approximately 75 years old and recently widowed, met the Defendant [CONNIE LYNN BATEY] on an online dating service . . .

[ORDER of December 30, 2015, p.1, Findings of Fact:].

As counsel heard the Plaintiff's testimony, his wife was alive and incapacitated at the time he met the Defendant, and remained so for a period of ca. one year thereafter. Since the Order concerns itself, and deals with, the relative equity between the parties, this fact should be stated accurately.

B) The Order of the Court states its finding that:

While Defendant's imposition upon Plaintiff may not rise to the legal standard of undue influence or duress, it is clear from all the circumstances that Plaintiff's execution of the Statement [satisfying the debt] was the culmination of his attempts to preserve his relationship with the Defendant.

[ORDER of December 30, 2015, p.3, E. Equity; *emphasis and matter in brackets added*].

The Court has made no finding of wrongdoing or inequitable behavior on the part of the Defendant. The Court has, further, made no finding of any imposition upon, or failure in cognitive ability on the part of, the Plaintiff. The Court's Order finds enforcement of the Statement satisfying the debt to be inequitable. *Id.*

The commentators of AMERICAN JURISPRUDENCE 2D speak clearly to such a situation. To cite several sections referencing these points:

Where the complainant seeks equitable relief from a harmful or prejudicial situation, contending that it was not entered intentionally or voluntarily, the action of the court in granting or withholding an appropriate remedy depends primarily on whether the complaining party could have foreseen and averted the situation complained of. 15 If the issue as to knowledge or foreseeability is determined against the complainant, equitable relief will be denied. 16 Thus, the complainant will be barred by negligence or carelessness. 17

[27 AM.JUR.2D Equity § 47 (2002); *footnotes omitted*]

Generally speaking, a court of equity may not assume power to administer justice because of the hardship of a case or the failure of the party's remedy at law. Equity also does not relieve parties from bargains merely because they are hard, burdensome, harsh, unwise, improvident,²⁴ oppressive,²⁵ or unprofitable.

[27 AM.JUR.2D Equity § 48 (2002); *footnotes omitted other than those cited below.*]

Generally, by resort to a court of equity, relief may be had where a contract is shown to have been defectively executed, where it does not express the agreement of the parties, or where a party did not enter into it intentionally or willingly. Unless fraud, mistake, or the like is set up, however, a court of equity will not disturb contract rights as evidenced by a writing which purports to express the intention or will of the parties to the agreement.

Equity cannot make new contracts for the parties. It is not the province of equity to rewrite or abrogate contracts to protect parties from the consequences which are attendant on their voluntary abandonment of the contract and which consequences were reasonably foreseeable when the contractual obligations were assumed. Equity is not available to reinstate rights and privileges which were voluntarily contracted away, simply because the plaintiff has come to regret the bargain he or she made, and equitable relief may not be claimed because a contract is improvident, unprofitable, or harsh, or because it produces hardship.

[27 AM.JUR.2D Equity § 65 (2002); *footnotes omitted*]

[W]here one of two parties, both guiltless of intentional wrong, must suffer a loss, the one whose conduct, act, or omission causes the loss must stand the consequences.

[27 AM.JUR.2D Equity § 65 (2002); *footnotes omitted*]

24 *Crabill v Montgomery Ward & Co.* (App, Clark Co) 73 Ohio L Abs 80, 136 NE2d 332; *Cox v Freeman*, 204 Okla 138, 227 P2d 670, 28 ALR2d 1230 (stating that the general rule is that a court of equity must, when its jurisdiction is properly invoked, give full force and effect to a contract which has been voluntarily, understandingly, and fairly entered into, and which is free from fraud, accident, mistake, or other circumstance recognized as a ground for equitable relief, although the contract is harsh, unwise, or improvident).

25 *Manufacturers' Finance Co. v McKey*, 294 US 442, 79 L Ed 982, 55 S Ct 444 (holding that the court may not modify or ignore the terms of the contract or refuse to enforce them because it considers them harsh, oppressive, or unreasonable).

The rule stated above has been repeatedly invoked by our Appellate Courts, usually in the context (absent here) of a deed by a weak-minded person. Thus, in *Zeigler v. Shuler*, 87 S.C. 1, 68 S.E. 817 (1910), the Supreme Court held:

While a court of equity is not intended to protect those who make improvident or even reckless contracts, it will always interpose to shield a helpless and weak-minded person from his half-brother, such as Govan A. Shuler is shown to be, who would take his all, and pauperize him for practically nothing.

[*Id.*, 87 S.C. at __, 68 S.E. at 819; *emphasis added.*]

More closely resembling our case is that of *Pressley v. Kemp*, 16 S.C. 334 (1882), in which an elderly lady caused her lawyer to prepare a deed to a person with whom she lived. The Supreme Court stated:

In the case of gifts *inter vivos* it is considered by the courts of equity that the natural influence which such relations as those in question¹ involve, exerted by those who possess it, to obtain a benefit for themselves, is an undue influence. Gifts brought about by it are, therefore, set aside, unless the party benefited by it can show affirmatively that the other party to the transaction was placed 'in such a position as would enable him to form an absolutely free and unfettered judgment.' *Archer v. Hudson*, 7 Beav. 551.["] We think the rule, as here² announced, is only applicable where there are well-defined confidential relations, such as those indicated in the cases cited.

[*Id.*, 16 S.C. at 346; *footnote added below.*]

The Movant reiterates that there has been no evidence, and no finding that the actions of the Plaintiff were the result of any other than an "absolutely free and unfettered judgment".

In the absence of any wrongdoing or inequitable conduct by the Defendant, and in the absence of any hint of mental incompetence on the part of the Plaintiff, the Court is faced with what is, at most, the Plaintiff's remorse for his actions. All relevant precedent makes it clear that such remorse cannot, by itself, serve as the basis for equitable relief. The Plaintiff effected a gift and must live with the consequences.

1 The *Pressley* Court cites such relations as "parent and child, man and wife, doctor and patient, attorney and client, confessor and penitent, and guardian and ward" *Id.*, 16 S.C. at 345. In this case, the Court has specifically ruled out undue influence.

C) The Order of the Court is apparently based on the conclusion that, while the Satisfaction in question was executed and delivered to the Defendant, it lacked effect because no Satisfaction was recorded in the Office of the Clerk of Court.

This conclusion is contrary to the mass of precedent on the subject. To again quote the commentators of AMERICAN JURISPRUDENCE 2D:

It is also a general rule that a release of the debt or other obligation secured by a mortgage operates as a discharge of the mortgage. Indeed, the rule that anything which operates to extinguish the debt necessarily operates to discharge the mortgage is generally regarded as prevailing notwithstanding the absence of a cancellation or release of the mortgage in writing.

[55 AM.JUR.2D *Mortgages* § 410 (2002); footnotes omitted.]

The Movant also points out that, were the above not the case, there would be no basis for the remedy allowed by S.C. Code § 29-3-310 *et seq.* Those Statutes recognize the existence of a mortgage satisfaction prior to, and separate from, the recordation of satisfaction proper.

D) To the extent allowed or required under Rule 59, S.C.R.C.P., the Movant restates the position set forth in her Trial Brief.

Our Supreme Court, in the leading case of *Lynch v. Lynch*, 201 S.C. 130, 21 S.E.2d 569 (1942), has held as follows:

The following, which is quoted with approval in the case of *Ott v. Ott*, 182 S.C. 135, 188 S.E. 789, 792, is an accurate statement of the essential elements of a gift *inter vivos*:

"A gift *inter vivos* as its name imports, is a gift between the living. It is a contract which takes place by the mutual consent of the giver, who divests himself of the thing given in order to transmit the title of it to the donee gratuitously, and the donee who accepts and acquires the legal title to it. It operates, if at all, in the donor's lifetime, immediately and irrevocably; it is a gift executed; no further action of the parties; no contingency of death, or otherwise, is necessary to give it effect.' 28 C.J. 621, 622."

[*Id.*, 201 S.C. at ___, 21 S.E.2d at 572; emphasis added.]

The commentators of AMERICAN JURISPRUDENCE 2D define a gift as follows:

A gift has been judicially defined as a voluntary transfer of property by one to another without any consideration or compensation therefor.

[38 AM.JUR.2D *Gifts* § 1 (2001); *full citations omitted, but citing* 73 A.L.R. 1539.]

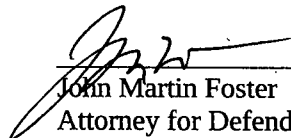
Both parties testified that nothing was promised in order to effect the execution of the document stating the Mortgage debt was paid in full. There is no dispute that the document or notice thereof was delivered to the Defendant. There is no question of the Plaintiff's competence to make such a gift.

All elements of a gift have been satisfied; the Defendant is entitled to a judgment satisfying the Mortgage.

Counsel for the Movant has not consulted with any opposing Counsel or attempted in good faith to resolve the matter contained in this Motion by reason of the dispositive nature thereof.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rules and Statutes, the records of these civil actions, and any Supporting Memorandum which the Movants may submit herein.

Respectfully submitted,


John Martin Foster
Attorney for Defendant

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6109

803 324-8100
803-324-8109: Fax
jmfoster@comporium.net

January 15, 2016

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendants.

CERTIFICATE OF SERVICE

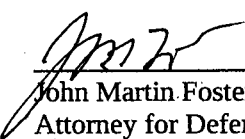
C.A. No. 2015-CP-46-00950

The undersigned, counsel for Defendant in the civil actions above, hereby certifies that on January 15, 2016, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Notice and Motion to Alter or Amend Judgment Pursuant to Rule 59(a), S.C.R.C.P.; and
This Certificate of Service

the original of which Motion and Certificate were sent to be filed with the Clerk of the Court for the Court named above, by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, as follows:

Brian S. McCoy
Attorney for Plaintiff
McCoy Law Firm
378 East Main Street
Rock Hill, SC 29730


John Martin Foster
Attorney for Defendant

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6106

803 324-8100
803 324-8109: Fax
jmfooster@comporium.net

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2016 JAN 19 PM 2:43

FILED-RECEIVED

January 15, 2016

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

IN THE COURT OF COMMON PLEAS

SIXTHTEENTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-46-950

MEMORANDUM IN OPPOSITION
TO MOTION TO ALTER OR
AMEND JUDGMENT

Plaintiff submits this Memorandum in Opposition to Defendant's Motion to Alter or Amend:

SUMMARY

Defendant's Motion to Alter or Amend Judgment essentially simply restates the arguments that have previously been considered and rejected by the Court. Accordingly, the Motion should be denied.

RESPONSES TO ARGUMENTS

A. ARGUMENT A – Factual Finding

Counsel believes that the testimony of Mr. Tucker was that he met Defendant online in March or April of 2009 when his wife was alive and incapacitated, and that his wife passed in November 2009. This factual issue in the findings has no relevance to the later events, which are the basis for the conclusions of the Court.

B. ARGUMENT B – the cited contract cases are inapplicable

The Movant's argument B focuses on the lack of a finding of undue influence or duress. However, in the Order, the Court makes an analogy to the South Carolina law relating to engagement rings. In such situations, although there is no wrongdoing or

inequitable conduct by the recipient of the ring, the ring giver is entitled to its return because of the implied condition that marriage will occur. Cambell v. Lynch, 398 S.C. 12, 726 S.E. 2d221 (Cl. App. 2012) Here, the analogy is that Mr. Tucker provided the "Statement" with the implied condition that the relationship with Ms. Batey would Continue. The citations on the Motion to cases involving contract rights have no application here. There is no dispute that no consideration was present to support a contract. Here, there only was a gratuitous promise, which is unenforceable.

C. ARGUMENT C – the underlying debt was never released.

Argument C misconstrues the Court's ruling. The fact that a satisfaction was not recorded is evidence that the Statement was merely a gratuitous promise. The initial issue is whether the Statement satisfied the underlying debt. The Court correctly held that it did not. Therefore, the law cited by Defendant is not reached in this case because the underlying debt still exists.

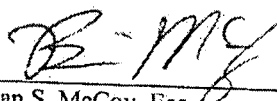
D. ARGUMENT D – the Court directly decided this issue.

The Court has directly decided the issue raised in Argument D. There was not a legal gift under the facts of this case.

CONCLUSION

For the reasons set forth herein and in the evidence produced by Plaintiff, Plaintiff requests that the Motion to Alter or Amend be denied.

Respectfully submitted this 8th day of February, 2016.


Brian S. McCoy, Esq
McCOY LAW FIRM, LLC

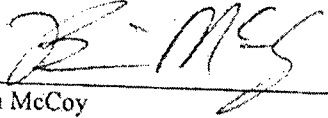
378 E. Main St.
Rock Hill, SC 29730
Tel: (803) 366-2280
Fax: (803) 366-0643
bmccoy@mccoylawfirm.com
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing and attached
MEMORANDUM IN OPPOSITION TO MOTION TO ALTER OR AMEND JUDGMENT was
served upon the attorney for Defendant by email and hand delivery to:

John Martin Foster, Esq.
The Guardian Building
223 East Main St., Suite 520
Rock Hill, SC 29730

This the 8th day of February 2016.



Brian McCoy

1 Deposition of William G. Tucker, taken before me,
2 Kelly Reiter, a Notary Public for the State of South
3 Carolina, at the law office of John Martin Foster, 223
4 East Main Street, Suite 520, Rock Hill, South Carolina,
5 commencing at 10:01 a.m. on July 14, 2015, in accordance
6 with the South Carolina Rules of Civil Procedure.

7 It was stipulated by and between Counsel for the
8 Plaintiff and Counsel for the Defendant that this
9 deposition is taken for any purpose allowed under the
10 South Carolina Rules of Civil Procedure;

11 That the signing of the transcript of deposition by
12 the witness is not waived.

13 * * * * *

14 William G. Tucker, first being duly sworn, deposes and
15 says as follows:

16 Mr. Foster - Brian, I usually put in the
17 notice as the first exhibit.

18 Mr. McCoy - Sure, no objection.

19 Mr. Foster - Let's do that, without objection.

20 Whereupon - A document was marked as

21 Deposition Exhibit Number 1.

22 E X A M I N A T I O N - (By Mr. Foster)

23 Q Okay. Mr. Tucker, have you ever given a deposition
24 before?

25 A No.

1 Q Okay, sir. I assume you've talked with Mr. McCoy
2 about this, but there are certain things I go
3 through in every case. So if you will, indulge me.
4 We're in a lawsuit, of course. You're being asked
5 questions here today under oath. It's just as
6 serious, in that sense, as if you were in court.
7 Sir, no one is trying to make you feel
8 uncomfortable. If you need to take a break to go
9 to the restroom, to chew gum - - - I'm making a
10 joke, but whatever - - - you have the right to do
11 that. You don't have the right normally to consult
12 with Mr. McCoy except under very restricted
13 circumstances, which you may have gone into. You
14 have to answer the questions truthfully. You know
15 that. Sir, when I ask a question, I have to
16 assume, if you answer it, you understand what I've
17 asked you. Which is another way of saying, if I
18 ask you anything that you don't understand, sir, I
19 have to rely upon you to say, I don't understand
20 what you're talking about. Can you clarify that?
21 Can you make it clear what you're trying to find
22 out? Do you understand that, sir?

23 A Yes.

24 Q Is that understandable?

25 A (Indicating yes)

1 Q You're nodding, but I need you to say something
2 here to the lady.

3 A I'm sorry. I thought I said, yes.

4 Q You did, but there was a second part of it. So you
5 do understand what we're talking about, sir?

6 A Yes, I do.

7 Q Thank you. Sir, what you're going to say today, as
8 you may have been told, is going to be transcribed
9 and put into a booklet form as well as, I imagine,
10 electronic. You have the right to read it and to
11 make comments or changes upon it, if you wish. Do
12 you know, at this point, whether you wish to read
13 it and make changes?

14 A No, I do not know at this point.

15 Q Okay, sir.

16 A I don't know what's going to be on it.

17 Mr. McCoy - And we'll read and sign it.

18 Mr. Foster - Okay. That's what I'm trying to
19 get at.

20 FURTHER EXAMINATION - (By Mr. Foster)

21 Q Okay. I'm not trying to imply that means you could
22 say black, white, or up or down. But obviously,
23 anyone in any human situation, a mistake can
24 happen. Sir, can you state your full name, please?

25 A William Gordon Tucker.

1 Q Okay, sir. And what is your age?

2 A Eighty.

3 Q Okay, sir. Are you currently employed, or are you
4 retired?

5 A I'm sorry. I did not understand.

6 Q Are you retired, sir, from a job, or are you
7 currently working?

8 A I'm retired.

9 Q And what was your profession before you retired?

10 A I was a school counselor.

11 Q Okay, sir. And what did that entail?

12 A Unfortunately, it entailed helping some students
13 get college applications, financial aid.

14 Q Yes, sir.

15 A It also entailed trying to help students become
16 independent-living citizens, making their own
17 decisions.

18 Q And this would be by counseling the students?

19 A Correct.

20 Q Okay, sir. How many years did you do that?

21 A I'm sorry?

22 Q How many years did you work at being a school
23 counselor?

24 A Thirty-one.

25 Q And was there anything before that, sir?

1 A Only other full-time job I had was as an office boy
2 working for the Associated Press in Charlotte.

3 Q Okay, sir. How many years did you work at that?

4 A One year.

5 Q Is that the sum total of your adult experience?

6 A Yes.

7 Q Okay, sir. And when did you retire, sir?

8 A 1990.

9 Q And what was your age when you retired, sir?

10 A Fifty-seven, to the best of my memory.

11 Q Sir, what education did you have?

12 A I hold a master's degree in counseling from the
13 University of North Carolina at Chapel Hill.

14 Mr. Foster - Off the record.

15 whereupon - A brief discussion was held off
16 the record which was not reported.

17 FURTHER EXAMINATION - (By Mr. Foster)

18 Q Okay, sir. And besides your master's, sir, what
19 else?

20 A Additional studies over the period of my
21 employment. In that every five years, we have to
22 have had at least six educational credits to renew
23 our certificates.

24 Q And, sir, how about the undergraduate degree?

25 A My undergraduate degree was in social studies

1 education.

2 Q And where was that, sir?

3 A Chapel Hill.

4 Q Okay, sir. And what you were describing a minute
5 ago would be what I believe we would call
6 continuing education - - -

7 A Yes.

8 Q Or certification? Were you certified, sir? Did
9 you have to be certified as a school counselor?

10 A Yes.

11 Q And were you so?

12 A I was.

13 Q Okay, sir. And, sir, were you married, or are you
14 married?

15 A Yes, I was.

16 Q And to whom were you married, sir?

17 A I was married to Bobbie Dawkins, D-a-w-k-i-n-s.

18 Q And is she living, sir?

19 A No, she is not.

20 Q When did she die?

21 A November the 1st, 2009.

22 Q Okay. And I understand from your complaint, sir -
23 - - Perhaps this is a decent time for me to just
24 say it is. Sir, let me hand you a copy of your
25 complaint, which I'm going to ask you some

1 questions about.

2 Mr. Foster - I assume that Mister - - - Well,
3 maybe I should not assume. Does Counsel have
4 any objection to that being our second
5 exhibit?

6 Mr. McCoy - No.

7 Mr. Foster - I have not asked him to identify
8 it, but I assume it is - - -

9 Mr. McCoy - No, no problem.

10 Mr. Foster - Undisputed.

11 whereupon - A document was marked as
12 Deposition Exhibit Number 2.

13 FURTHER EXAMINATION - (By Mr. Foster)

14 Q Sir, to resume, I understand you are living in
15 what's referred to therein as an independent
16 retirement community?

17 A Correct.

18 Q Okay, sir. And where is that?

19 A The Aldersgate Retirement Community at 3800
20 Shamrock Drive, Charlotte, North Carolina.

21 Q Do you have any children, sir?

22 A Yes, I do.

23 Q And who are they, sir?

24 A I have one daughter, Laura.

25 Q I take it, that's the only child?

1 A The only child.

2 Q Okay, sir. And what is her age?

3 A Fifty-one.

4 Q How long have you been in the retirement community,
5 sir?

6 A I'm sorry?

7 Q How long have you lived at Aldersgate?

8 A It will be eight years August the 15th.

9 Q And, sir, I assume that you were living on your own
10 from retirement until the time you went to
11 Aldersgate?

12 A Yes.

13 Q Okay, sir. Sir, you met Ms. Batey, as I understand
14 it from your document, you estimated it as March or
15 April of 2009, if that's correct?

16 A To the best of my memory.

17 Q And I understand - - - Again, I'm not trying to put
18 answers in your mouth, sir, or your head. You met
19 on an internet source called Plenty of Fish dot
20 com?

21 A Correct.

22 Q Let me go back. I forgot to ask you this. What is
23 your health like, sir?

24 A Good.

25 Q And are you on any kind of medications, sir?

1 A Yes, I am.

2 Q What are they, sir?

3 A I'm on a blood pressure medicine, a medicine for
4 reflux, a medicine for allergy, and a medication
5 for arthritis.

6 Q Arthritis. Do you have one general care physician,
7 sir, or more than one?

8 A One.

9 Q And who is that, sir?

10 A Dr. John Lacoture.

11 Q You'll need to spell that for me, sir.

12 A L-a-c-o-t-u-r-e.

13 Q Okay. And what group is he with, sir?

14 A He is my primary care physician who keeps office
15 hours at Aldersgate.

16 Q Oh, okay. And are there other doctors you see,
17 sir?

18 A Only if he recommends a specialist like for an MRI
19 or something of that - - - And I also - - - I'm
20 sorry. I do have an eye doctor.

21 Q Okay, sir. And who is that, sir?

22 A Dr. Antoszyk, and don't ask me to spell it.

23 Q I assume, from the pronunciation, the gentleman
24 might be of Romanian derivation?

25 A He's a twin.

1 Q Okay. To the extent that tells me something, sir.
2 what group is he with, if you know, sir?

3 A Charlotte Eye, Ear, Nose, and Throat.

4 Q And, sir, other than the things you've told me
5 about from medication, do you suffer for any other
6 affliction or medical condition?

7 A In my opinion, I'm suffering from the typical
8 generic loss of memory that comes with aging.

9 Q And I understand, sir, from what you said in your
10 complaint and what your attorney referenced awhile
11 back, you also have problems with your eyesight?

12 A Yes.

13 Q In fact, I believe according to the complaint, you
14 are legally blind?

15 A Correct.

16 Q Who diagnosed you as such, sir?

17 A Most recently, Dr. Antoszyk, but there probably
18 have been thirty physicians over the years. I've
19 been visually impaired since I was two years old.

20 Q I see. This, I take it, did not - - - well, did it
21 obstruct greatly your job as a school counselor?

22 A No, it did not.

23 Q Okay, sir. Now, sir, you say that you've had some
24 loss of memory. Have you been diagnosed with that
25 by any doctor?

1 A No.

2 Q What leads you to believe that, sir?

3 A In that, just a few moments ago, I could not
4 remember arthritis.

5 Mr. Foster - Again, off the record.

6 Whereupon - A brief discussion was held off
7 the record which was not reported.

8 FURTHER EXAMINATION - (By Mr. Foster)

9 Q Okay, sir. Let me recite some background - - -

10 A There is one other thing perhaps we need on the
11 record.

12 Q Go ahead, sir.

13 A I am a victim of hearing loss.

14 Q Okay, sir.

15 A Approximately seventy percent.

16 Q And when did that occur? Well, let me say this.

17 A Within the last - - -

18 Q Hold on. Hold on, sir. My fault, I said it wrong.

19 Let me start again. When was that diagnosed?

20 A Diagnosed approximately three years ago.

21 Q And by whom, sir?

22 A I do not remember.

23 Q You don't know if it was Doctor - - -

24 A He's at Charlotte Eye, Ear, Nose, and Throat.

25 Q Okay.

1 A I - - - I do not remember his name at this time.

2 Q Do you wear, sir, any hearing aid or device of that
3 kind?

4 A Yes, I do.

5 Q Are you wearing one now?

6 A Yes.

7 Q Okay, sir. Has your doctor, sir, characterized the
8 degree of loss of hearing that you suffer from?

9 A I did not understand the last thing you said.

10 Q I'm trying to ask, has the doctor said - - - Or has
11 any doctor said to you, I am characterizing the
12 degree of your loss of hearing as, blank? Have
13 they said it's moderate, medium, slight, severe?

14 A Severe.

15 Q Okay, sir. That is the term they used?

16 A Yes.

17 Q Thank you. Sir, going back to where we sort of
18 left off, you met Ms. Batey on this website. I
19 assume that would indicate that you are - - - Would
20 I be able to characterize you, sir, as fairly
21 computer literate?

22 A I think it would be safe to say I am, yes.

23 Q Okay, sir. Now, you retired in 1990. Were they
24 using - - - I don't recall whether we even had the
25 internet in 1990. Was that a part of your job,

1 sir?

2 A It was not a part of my job.

3 Q Okay, sir. Do you currently have an email account,
4 sir?

5 A Yes, I do.

6 Q How long have you had it, sir?

7 A Five years.

8 Q Did you have one before that?

9 A Yes, I did.

10 Q And how long did you have that one, sir?

11 A Two years.

12 Q Can you recite those email addresses for me, sir?

13 A The first one was B, as in Bill, i-l-l-g, T as in
14 Tucker, c-k-r at hotmail dot com.

15 Q Is that the most recent one, sir, or the first one?

16 A That was the first one.

17 Q And the second one, sir?

18 A The second one is b-i-l-l-g-t-c-k-r-3-4 at yahoo
19 dot com.

20 Q To repeat, b-i-l-l-g-t-c-k-r-3-4?

21 A Correct.

22 Q Thank you. Have you had any other email addresses,
23 sir?

24 A Yes, I have.

25 Q I presume that was before these two, or was it

1 contemporary with them?

2 A Yes, it was.

3 Q You'll have to tell me which, sir, before or
4 contemporary?

5 A It was wtucker, t-u-c-k-e-r-0-0-4 at carolina dot
6 RR dot com.

7 Q And again, sir, was that contemporaneous with these
8 others, or was it before them?

9 A It would be contemporaneous.

10 Q Okay, sir. Any others?

11 A No.

12 Q Sir, which of these were in effect as of the time
13 when you met Ms. Batey in - - - I believe we said
14 it was 2009 - - -

15 A Yes.

16 Q To the best of your recollection?

17 A The Hotmail account.

18 Q Okay, sir. And the Yahoo account is now in place?

19 A Yes.

20 Q Have you communicated with Ms. Batey on both of
21 those accounts, sir?

22 A Yes.

23 Q Okay, sir. Let me recite a few facts, which I
24 don't think are in dispute in this case, but I want
25 to be sure that I'm right about them. In April of

1 2011, you purchased a house in Lake wylie, South
2 Carolina for Ms. Batey. She executed a note and
3 mortgage to you. I believe that's attached to your
4 complaint, which I've put in front of you. Does
5 that sound correct, sir?

6 A That sounds correct.

7 Q I understand, sir, from your complaint that she
8 made seven payments?

9 A Yes, she did.

10 Q Do you have records of those payments?

11 A Yes, I do.

12 Q What form are those records in, sir?

13 A They're in a spreadsheet on my computer.

14 Q Okay, sir. I presume, sir, those can be supplied
15 to us?

16 A They can be.

17 Mr. Foster - Counsel, on or off the record, of
18 course, we have not sent out - - -
19 Court Reporter - I'm sorry. Did you say on or
20 off? Which one did you say?

21 Mr. Foster - Let's make this on. Counsel, I
22 have not sent out a discovery request at this
23 point, other than this depo. If you require a
24 standard request, we can do that.

25 Mr. McCoy - well, are you asking us to produce

1 the spreadsheet?

2 Mr. Foster - I am.

3 Mr. McCoy - We'll provide that to you.

4 Mr. Foster - Okay.

5 FURTHER EXAMINATION - (By Mr. Foster)

6 Q Sir, that is the way they're kept, by way of a
7 spreadsheet, these records?

8 A Yes.

9 Q Are they kept in any other form?

10 A I believe I could request a bank account report,
11 which all payments were deposited to.

12 Q Were they deposited directly, sir, or did they go
13 through you by way of check or something of that
14 nature?

15 A I - - - Ms. Batey would write me a check, which I
16 would in turn deposit into the account.

17 Q Okay, sir. Plenty of Fish dot com, your statement
18 here by your memory is that you met the lady on
19 this website in March or April of 2009. Does that
20 accord with your memory, sir?

21 A To the best of my memory.

22 Q Okay, sir. Was that your first use of the website?

23 A No.

24 Q How long had you been using it?

25 A Approximately, at that time, two months.

1 Q And what type of website is this, sir?

2 A I believe it's referred to as a social website.

3 Q Would I interpret that correctly to be a website
4 upon which single persons might meet and interact
5 with each other?

6 A I believe that would be a fair interpretation.

7 Q Have you used any other such websites, sir?

8 A No, I have not.

9 Q Just this one?

10 A Just that one.

11 Q Have you ever interacted, sir, with anyone other
12 than Ms. Batey on that website?

13 A Yes, I have.

14 Q And how many persons have you interacted with, sir?

15 A One.

16 Q Okay, sir. And when was this?

17 A Approximately February 2009.

18 Q So about a month or so before you met her?

19 A Yes.

20 Q And who was that person, if you recall, sir?

21 A Dollie Smith.

22 Q And give me, sir, if you will, her - - - what I
23 believe is referred to as her vitals. I assume it
24 was a lady?

25 A I did, too.

1 Q And what was her age, sir?

2 A I would - - -

3 Mr. Foster - Off the record.

4 whereupon - A brief discussion was held off
5 the record which was not reported.

6 FURTHER EXAMINATION - (By Mr. Foster)

7 Q Go ahead, sir.

8 A I would estimate it at age sixty-five.

9 Q And, sir, did your interaction with her continue?

10 A I do not understand the question.

11 Q Did you continue to talk with her or have any
12 relationships with her after February 2009?

13 A Yes, I did.

14 Q And how long did that continue, sir?

15 A Probably - - - As you're classifying it,
16 conversations with, approximately a year.

17 Q Okay. So that was going on in addition to your
18 relations with Ms. Batey - - -

19 A Yes.

20 Q During that period? Did your interaction with Ms.
21 Smith entail anything other than written
22 conversation, sir?

23 A We went out to dinner perhaps three times.

24 Q Okay, sir. Do you remember when that happened?

25 A I'm sorry?

1 Q Do you remember when you went out to dinner with
2 her, sir?

3 A No, I do not.

4 Q Okay. Do I understand, sir, that this interaction
5 with Ms. Smith ended roughly one year after
6 February 2009?

7 A If we're including conversations over the
8 telephone, yes.

9 Q Okay, sir. How did your relation with Ms. Smith
10 end?

11 A Amicably.

12 Q Then I will need to ask, sir, why did it end in
13 your opinion?

14 A I'm sorry?

15 Q Why, in your understanding, did it end?

16 A I still did not understand what you said.

17 Q Well, here's what I'm trying to ask, sir. You
18 talked with Ms. Smith. You went out a few times.
19 Your relationship ended. You say it ended
20 amicably. I'm asking you, if you can tell us, why
21 you understand the relationship ended.

22 A I think that I would characterize it as we mutually
23 felt that there was nothing in the relationship for
24 either of us.

25 Q Okay. Did your relationship - - - well, let me go

1 back a step. I take it, Ms. Smith lived locally?

2 A Yes.

3 Q And have you had any contact with her since the
4 relationship ended?

5 A No.

6 Q Did your relation with Ms. Smith entail making any
7 gifts to her?

8 A Other than dinners, no.

9 Q Sir, have you ever met any other persons, or what's
10 generally referred to as singles, through ads or
11 websites or other such mechanisms?

12 A No.

13 Q Are you currently in any type of relationship or
14 friendship, as I will call it, with anyone?

15 A (No response)

16 Q By friendship, of course, I am referring to
17 something other than going bowling with the guys.

18 A You're reading my mind. Yes, I am. I have a
19 number of friendships.

20 Q Okay, sir. And how did you meet with these people?
21 How did you meet those people?

22 A The majority of them are residents at Aldersgate.

23 Q And would I assume that some of these folks are
24 ladies?

25 A You may assume so.

1 Q Okay, sir. Well, I assume it's correct that these
2 are ladies?

3 A (No response)

4 Q I need you to answer, sir.

5 A Yes.

6 Q Thank you. Have your relationships with these
7 ladies entailed going to dinner or anything of that
8 kind?

9 A In that that is a common activity practice at
10 Aldersgate, yes.

11 Q Have you made any gifts to any of those ladies?

12 A No, I have not.

13 Q Okay, sir. Sir, this may be obvious, but to go
14 back. You were married, the implication is, for a
15 good many years to Ms. Dawkins - - - Miss Dawkins,
16 I guess as she then was. Were you ever married to
17 anyone else?

18 A No.

19 Q Sir, going to the complaint I've handed you, have
20 you in fact read the complaint?

21 A I'm sorry? I did not understand.

22 Q The complaint that we've handed you as Exhibit 2,
23 sir - - -

24 A Yes.

25 Q That you put together - - - I assume you put

1 together with Mr. McCoy. Have you read that
2 document, sir?

3 A Yes, I have.

4 Q Okay, sir. Sir, going through that - - - And I'm
5 specifically going to Page 3, under the part that's
6 talking declaratory judgment. Paragraph 15, let's
7 start there.

8 Mr. McCoy - Do you need to get your magnifying
9 glass?

10 A Yeah. What's - - -

11 Q You don't have to read it.

12 Mr. McCoy - Oh, okay.

13 Q You can, if you want to.

14 Mr. McCoy - All right.

15 Q I'm going to refer to it. I'm happy to have you
16 read it, sir, but I'm going to recite it. I know
17 Mr. McCoy is careful enough a gentleman that, where
18 I can mischaracterize it, he would jump on me.

19 Mr. McCoy - (Indicating yes)

20 Q Paragraph 15. In the summer of 2009, the
21 defendant, that would be Ms. Batey, traveled to
22 Charlotte, and the parties met in person.
23 Defendant stayed with the plaintiff, comma, and the
24 two began a romantic and sexual relationship. Ms.
25 Batey stayed with you, I take it?

1 A Yes.

2 Q Where did she stay with you, sir?

3 A Yes.

4 Q No. Where, sir? Where did she stay with you?

5 A She stayed in my house.

6 Q Okay, sir. Now, were you - - - Remind me, sir. In
7 2009, were you in Aldersgate?

8 A Yes.

9 Q But you still had the use of your house?

10 A When I referred that she stayed with me in my
11 house, it was my house at Aldersgate.

12 Q Oh, okay. That clarifies it. You began with her a
13 romantic and sexual relationship. That's how you
14 characterized it, sir?

15 A Yes, I did.

16 Q Okay. Sir, I am obliged to ask, for the purpose of
17 this conversation, some things that normally I
18 would object to. But it has become a part of this
19 case, so I must know. Sir, I have to ask you to
20 characterize the nature of your sexual relationship
21 with Ms. Batey. If that is not clear enough, who
22 did what to whom?

23 A I think the common phraseology that is used is, on
24 my part, it was an oral sexual relationship.

25 Q So the oral act was performed by you?

1 A Yes.

2 Q Okay, sir. I take it, from that description, that
3 Ms. Batey would have been the recipient?

4 A Yes.

5 Q Was that the only type of activity that took place
6 which entailed what you called a romantic or sexual
7 relationship?

8 A No.

9 Q Okay, sir. Tell me what else it entailed.

10 A There was one incident of penis/vagina intercourse.

11 Q Okay, sir. Again, at the risk of sounding as if
12 I'm making jokes, I obviously assume the penis was
13 yours, the vagina hers?

14 A Yes.

15 Q Sir, again, I am not attempting to make this worse
16 in terms of intimate relationship questions than it
17 has to be, but it is a part of the lawsuit. Sir,
18 do you suffer from impotence?

19 A Yes.

20 Q And how long has that been the case?

21 A My best guess is approximately eight years.

22 Q Okay, sir. So I assume this incident that we're
23 discussing, penis/vagina, did not entail - - -
24 well, let me not assume. Did it entail
25 penetration?

1 A Yes, it did.

2 Q Okay, sir. At the time of this penetration, sir,
3 were you erect?

4 A My best answer is semi.

5 Q Did you have any aid in achieving that fact?

6 A No.

7 Q Well, then I take it, your statement is that when
8 you - - - Okay. I characterized your situation,
9 sir, as impotence, and you concurred in that. I
10 need to be more specific. Does that consist, sir,
11 of an inability to erect, or does it consist of an
12 inability to ejaculate, or both?

13 A It consists of an inability to have a full
14 erection, but not to ejaculate.

15 Q Okay, sir. Has this condition been diagnosed by a
16 doctor, sir?

17 A Yes.

18 Q When was it diagnosed, sir?

19 A Approximately seven years ago.

20 Q Who was the doctor, sir?

21 A Dr. John Lacoture.

22 Q So this would be reflected by your medical records,
23 sir?

24 A Yes.

25 Q Do you take any medication for that condition?

1 A I have in the past - - - I have in the past.

2 Q During what periods in the past did you take
3 medication for that condition?

4 A Intermittently approximately - - - Obviously, I'm
5 guessing. Six to - - - Six years to as recently as
6 perhaps two years ago.

7 Q So I take it, sir, you were on this medication or
8 had access to it during the time you had a
9 relationship with Ms. Batey?

10 A Yes.

11 Q Was this medication prescribed by Dr. Lacoture?

12 A Yes.

13 Q Okay, sir. Sir, going back to your complaint. I'm
14 going to reference two sections here. First,
15 Number 13, and then Number 18. Paragraph 13
16 states, after reciting where you met, prior to and
17 since that time - - - And that refers to March or
18 April of 2009 - - - plaintiff is legally unable - -
19 - pardon, legally blind, unable to drive, and was
20 vulnerable to manipulation. In Paragraph 18, you
21 state - - - Or your attorney states, I should say.
22 In May 2012, as a result of undue influence and
23 pressure from the defendant, plaintiff executed a
24 document titled, quote, Statement of Mortgage Paid
25 in Full. Sir, I assume that you - - - You stated

1 you have read this document?

2 A Yes.

3 Q I assume that you believe those statements to be
4 true?

5 A I do.

6 Q Okay, sir. I need to ask you, sir, to describe to
7 me what, in your opinion, such manipulation or
8 undue influence consisted of.

9 A There would be instances of disagreements,
10 misunderstandings, or other interruptions in an
11 amicable relationship that would result in periods
12 of time, short-lived, that I would not have
13 communication with Ms. Batey, or I - - - If I did,
14 it was very displeasing.

15 Q To yourself, sir?

16 A Yes.

17 Q Sir, I need to ask - - - And again, this is not
18 intended to be anything to be discreditable. Sir,
19 are you or your affairs currently under the control
20 or guidance of any court-appointed person, like a
21 guardian or a committee or someone that the probate
22 court would appoint?

23 A No.

24 Q Have you ever been so, sir?

25 A No.

1 Q Does anyone currently hold your power-of-attorney,
2 sir?

3 A Yes.

4 Q Who is that, sir?

5 A My daughter.

6 Q How long has she held it?

7 A Approximately ten years.

8 Q Okay, sir. Does that power-of-attorney, sir - - -

9 And this is legal stuff. So if you do not know,
10 I'm not trying to imply an answer. Does that
11 power-of-attorney, sir, give your daughter the
12 power to gift herself with money?

13 A I do not know.

14 Q Let me re-ask that, because I've said it badly. I
15 should say, does that power-of-attorney contain a
16 provision allowing her to gift herself with your
17 property?

18 A (No response)

19 Q Either real or personal.

20 A To the best of my knowledge, it does not.

21 Q To go a little bit into this, sir, how long is this
22 document?

23 A Five or six pages.

24 Q And is it recorded in North Carolina?

25 A Yes, it is. To the best of my memory, it is an

1 irrevocable power-of-attorney for legal and medical
2 reasons.

3 Mr. Foster - Off the record.

4 Whereupon - A brief discussion was held off
5 the record which was not reported.

6 F U R T H E R E X A M I N A T I O N - (By Mr. Foster)

7 Q Going back on the record, maybe I should ask about
8 this. Sir, is any of your property placed in a
9 trust, revocable or irrevocable?

10 A No.

11 Q All right. Sir, I've asked you to describe any
12 manipulation practiced upon you or to which you
13 felt you were subject by Ms. Batey. You've talked
14 a bit about that. Now, is there anything you have
15 to add to the answer you've given me?

16 A No.

17 Q Okay, sir. Sir, you indicated you and - - - I
18 believe you said Ms. Batey, but if I'm wrong, I'm
19 wrong. Did you exchange emails?

20 A Yes, we did.

21 Q Are those emails still in existence?

22 A Some of them. Most of them are not.

23 Q Okay, sir. Sir, what, if anything, did Ms. Batey
24 during this time period - - - And I'm going from
25 the beginning of the relationship to what I

1 understand to have been its end. You state in
2 Paragraph 21 that you believe the parties'
3 relationship ended in late 2014. I believe our
4 response will say we think it's a bit earlier. But
5 I presume there's no question that the relationship
6 did end?

7 A Yes.

8 Q During the time the relationship was effective,
9 before it ended, sir, what if anything was promised
10 or implied by Ms. Batey to you?

11 A In regards to?

12 Q Anything.

13 A I - - - I do not understand the question.

14 Q I'm asking you, sir, what if anything did Ms. Batey
15 say I'm going to do for you, or do in general, or
16 be to you, or be in general, during that time
17 period that might have influenced you to make,
18 first, the deed and then the release of the note
19 and mortgage?

20 A I'm sorry. I still do not understand.

21 Q well, did she say, I - - - And I'm not trying to
22 suggest an answer. Did Ms. Batey promise you
23 anything about her behavior or her actions or a
24 lack of action that moved you to, first, make the
25 deed to her, or later, to execute the document

1 releasing the mortgage?

2 A (No response)

3 Q I want to say this also, at the risk of stopping
4 your answer and trying to make lawyer noises. I
5 fully appreciate the fact that your complaint has
6 grounds that state while those - - - the release
7 may not be effective. I'm not trying to get into
8 that. I'm not asking about the legalities of it.
9 I'm saying what, if anything, did this lady say she
10 was going to do for you, or not do, that led you to
11 make the deed and, later, to release the note and
12 mortgage, if there's anything beyond what you've
13 told me?

14 A Let me make sure I understand what you're asking
15 me.

16 Q By all means.

17 A I - - - what I think you're asking me is, were
18 there any actions that led me to withdraw the offer
19 of the mortgage?

20 Q I'll accept that as a way of putting my question,
21 sir.

22 A Okay. Our relationship had deteriorated to a point
23 where, in my opinion, I was not of a significant
24 consideration to Ms. Batey in any of her actions or
25 considerations for me. I felt that it was an

1 appropriate time to, if you will, end our
2 relationship. Consequently, after notifying Ms.
3 Batey that I thought - - - I felt that. I thought
4 that. After thinking about it, I felt that the
5 amount and value of the home was not justified in
6 remaining unpaid.

7 Q I understand, sir. If I - - - If I'm not cutting
8 you off in finishing your answer - - -

9 A (Indicating no)

10 Q Is that your answer, sir? If you have more to add,
11 let me let you at it.

12 A Yes.

13 Q Well, sir, that narrates what you felt when the
14 relationship ended and when you made a demand. But
15 I need to refer you back to the time when the
16 release was executed, roughly May of 2012, and I'm
17 asking you - - - I have to ask again and push the
18 issue. Did the lady promise you anything or imply
19 anything about her future actions, or her past
20 actions, or her present state that led you to
21 execute the release of the mortgage and the note?

22 A No specific promise was made or no specific actions
23 were taken by her, other than to say that at that
24 particular point in time in our relationship, we
25 were experiencing some discord. As one would do

1 with a child, I wanted it to be a smooth
2 relationship. It was suggested by Ms. Batey that I
3 give her the statement saying the mortgage was paid
4 in full.

5 Q Was any of what you've just narrated about the
6 event, what happened in May of 2012, is any of that
7 reflected in contemporaneous emails or any other
8 writing?

9 A Please repeat that.

10 Q You've just narrated what you understand to be the
11 situation between yourself and Ms. Batey when you
12 released, on face, the note and mortgage in May of
13 2012. I am asking you whether any of what you
14 narrated about your understanding, your feelings,
15 would be shown or evidenced by any contemporaneous
16 emails or writing at that time?

17 A No.

18 Q Sir, other than what you've told us about, were you
19 under any other pressure, or did you have any other
20 grounds for wanting to release the note and
21 mortgage, to execute the release of note and
22 mortgage in May 2012?

23 A I'm sorry. Ask me again.

24 Q I'm asking, sir, you've given us a narration of
25 what you believe to be your reasons for executing

1 the release of the note and mortgage in May of
2 2012. Were you under any other pressures or any
3 other situations that led you to take those actions
4 - - - to take that action, other than what you've
5 narrated to us?

6 A No.

7 Q Okay. Did you have any contact with Ms. Batey,
8 sir, between the time the relationship ended and
9 the time you made your demand for payment - - -

10 A No.

11 Q Of the note? Well, let me finish, sir. Between
12 the time the relationship ended, whenever that was,
13 because as I understand it the parties disagree a
14 bit about the time, and your demand letter which I
15 believe was January 20th, 2015, did you have any
16 contact with her during that time?

17 A No.

18 Q Do you understand by contact, I mean email, voice,
19 any kind of contact?

20 A None.

21 Q Sir, I assume - - - and I do not want to put words
22 in your mouth - - - that at the time of your
23 meeting Ms. Batey, the time of your engaging the
24 relationship, the time of the deed and the note and
25 the mortgage, and your execution of the release

1 thereof - - - Again, I'm not getting into the
2 question of whether it's legal or not - - - do you
3 have any reason to believe, sir, that you were not
4 in your right mind?

5 A I did not hear your last statement.

6 Q Do you have any reason to believe, sir, during any
7 of the events that I narrated that you were not in
8 your right mind?

9 A No, I have no reason to believe that.

10 Q And I do understand, sir, that to date no doctor
11 has diagnosed you as suffering from any condition
12 that would prevent you from handling your own
13 affairs?

14 A You may assume that.

15 Q Well, I assume it's true?

16 A Yes.

17 Mr. Foster - Thank you. I don't believe I
18 have any other questions.

19 Mr. McCoy - Okay. Let us take a break, and -
20 - -

21 Mr. Foster - By all means.

22 Whereupon - A brief recess was taken.

23 Mr. McCoy - I'm not going to ask anything.

24 Mr. Foster - Okay. Thank you, sir.
25

1 whereupon - The deposition was concluded at
2 10:52 a.m.

3
4 Signing of Transcript Kelly Reiter
5 Court Reporter/Notary Public
6 of Deposition By

7
8 Witness Not Waived
9

10
11 (Recorded deposition media retained for fifteen days
12 from date of certification or until transcript has been
13 signed in cases when signature is not waived)
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

WILLIAM G. TUCKER,
Plaintiff,

v.

CONNIE LYNN BATEY,
Defendant.

NOTICE OF TAKING DEPOSITION

C.A. No. 15-CP-46-00950

TO: The Plaintiff and
Brian S. McCoy
Attorney for Plaintiff
McCoy Law Firm
378 E. Main Street
Rock Hill, S.C. 29730

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 of the Rules of Civil Procedure, the undersigned, as Attorney for the Defendant will take the oral deposition of the following witness(es):

William G. Tucker
c/o Brian S. McCoy
Attorney for Plaintiff
McCoy Law Firm
378 E. Main Street
Rock Hill, S.C. 29745

on the following date:

Tuesday, July 14, 2015

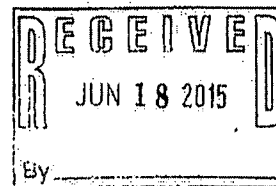
at the following time:

10:00 A.M.

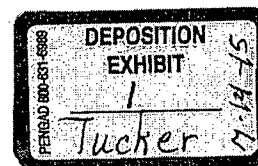
at the following location:

Office of John Martin Foster
223 E. Main Street, Suite 520
Rock Hill, S.C. 29730

FILED-RECEIVED
2015 JUN 16 AM 11:38
DAVID M. HILL
C.C. & S.S.
YORK COUNTY, SC



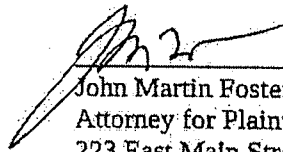
before a Notary Public, continuing from day to day, if necessary, until completed or at such other time thereafter as may be agreeable to counsel.



If attached hereto, Supoena(s) *duces tecum* will be served on the witness(es) named above and will direct the production of those materials indicated thereon.

This deposition is for the purpose of discovery or for use as evidence in the above action.

You are invited to be present and participate in accordance with Rule 30.



John Martin Foster
Attorney for Plaintiffs
223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, S.C. 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

June 11, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

WILLIAM G. TUCKER,
Plaintiff,

v.

CONNIE LYNN BATEY
Defendant,

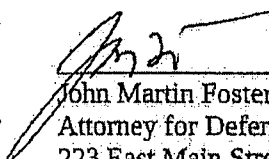
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF MAILING

C.A. No. 15-CP-46-00950

The undersigned hereby certifies that he is the attorney for Defendant in the within matter and that the attached Amended Notices of Taking of Deposition was served upon the attorney for Defendants, by depositing a copy of same in the United States Mail with sufficient postage annexed thereto, addressed as follows:

Brian S. McCoy
Attorney for Plaintiff
McCoy Law Firm
378 E. Main Street
Rock Hill, S.C. 29730


John Martin Foster
Attorney for Defendant
223 East Main Street, Suite 520
Post Office Box 1063
Rock Hill, S.C. 29731-6106
803 324-8100
803 324-8109; Fax
jmfoster@comporium.net

FILED-RECEIVED
2015 JUN 16 AM 11:38
DEVIDA HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.

Rock Hill, South Carolina

June 11, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46-950

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

COMPLAINT

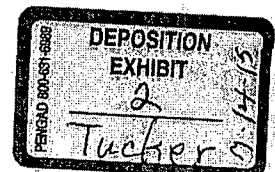
FILED - RECEIVED
2015 MAR 30 PM 3:31
JAMES HAMILTON
C.C. CP & GS
YORK COUNTY, SC

The plaintiff, William G. Tucker, through its undersigned attorney, hereby submits this Complaint against the defendant above named, and alleges:

1. The plaintiff is a citizen and resident of North Carolina. The Defendant is, upon information and belief, a citizen and resident of York County, South Carolina.
2. Upon information and belief, the Defendant is not in the military service of the United States of America, as contemplated under the soldier's and sailors Civil Relief Act of 1940, as amended.

FOR A FIRST CAUSE OF ACTION
(Mortgage Foreclosure)

3. The mortgage loan herein is not owned, securitized or guaranteed by FNMA or FHLMC and the servicing agent has not executed an agreement under the Home Affordable Modification Program.
4. The real property that is the subject of this action, is situated and located in York County, South Carolina, and is herein described below.
5. On or about April 14, 2011, for value received, the Connie Lynn Batey executed and delivered to Plaintiff a certain Promissory Note (the "Note") in writing according to the



terms and conditions set out therein, wherein and whereby said borrower promised to pay the sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00), together with interest thereon at a fixed rate of 4%, as set forth therein. A true and correct copy of the Note is attached hereto as Exhibit "A".

6. As security for the payment of the note and debt, in accordance with the terms and conditions thereof, the Defendants did execute and deliver on April 14, 2011 to Plaintiff, his successors and assigns, a mortgage covering the following described property:

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plate Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A. Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Number: 565-01-01-031
Property Address: 2271 Iron Works Drive
Lake Wylie, SC 29710

7. No dower renunciation was required on said mortgage.

8. The Mortgage was recorded in Book Volume 11948 at Page 80 on April 14, 2011, in the office of the Clerk of Court of York County (the "Mortgage"). A true and correct copy of the Mortgage is attached hereto as Exhibit "B".

9. According to the terms and conditions of Plaintiff's Mortgage, it was agreed that the mortgagor would pay all taxes, insurance, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if she

failed to do so, the mortgagee might pay same, with amount, together with interest thereon, to be secured by Plaintiff's Mortgage.

10. The monthly payments due on said Note and Mortgage are in default, and the conditions of said Note and Mortgage have been broken and the Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on said Note and Mortgage as of March 9, 2015 the principal sum \$220,573.13, plus accrued interest that continues to accrue, plus late fees and insurance fees, plus the costs and disbursements of this action, including attorneys' fees.

11. The plaintiff waives a deficiency judgment against the Defendant, but reserves his right to seek a deficiency prior to the sale of the property herein.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

12. The preceding allegations of the Complaint are incorporated herein by reference.

13. Plaintiff is 80 years old. In March or April of 2009, Plaintiff met the Defendant on the online dating site called "Plenty of Fish.com." Prior to and since that time, Plaintiff is legally blind, unable to drive, and was vulnerable to manipulation. He lives in an independent living section of a retirement community in Charlotte.

14. Defendant is approximately 22 years younger than Plaintiff, and was working as a flight attendant at the time she met Plaintiff online.

15. In the summer of 2009, the Defendant travelled to Charlotte and the parties met in person. Defendant stayed with the Plaintiff, and the two began a romantic and sexual relationship.

16. At the insistence of Defendant and due to her manipulation, Plaintiff purchased numerous gifts for Defendant including two cars, furniture, airplane tickets, clothing, and cosmetic surgery.

17. As set forth above, in April 2011, Plaintiff paid \$235,000.00 for a house in Lake Wylie, South Carolina and allowed title to be in Defendant's name. Defendant executed and delivered the above-referenced Note and Mortgage in the amount of \$225,000.00 to Plaintiff. Defendant made approximately seven payments toward the Note and Mortgage, then stopped in approximately March of 2012. Because of continued manipulation by the Defendant and the promises of an on-going relationship, the Plaintiff agreed to allow her to miss payments.

18. In May 2012, as a result of undue influence and pressure from Defendant, Plaintiff executed a document titled "Statement of Mortgage Paid in Full." The document states that the Mortgage on the Property titled to Defendant is "hereby paid in full with no other monies due to satisfy this debt."

19. The document referenced above and the purported promise contained therein was not supported by consideration and has no legal effect.

20. Moreover, the purported promise is not enforceable under the doctrines of duress, undue influence, mistake, misrepresentation, and unconscionability.

21. When the parties' relationship ended in late 2014, Plaintiff withdrew his permission to allow Plaintiff to miss payments on the Note and Mortgage.

22. On or about January 20, 2015, Plaintiff sent Defendant a Notice of Default and accelerating the balance due on the Note and Mortgage.

23. In response thereto, on January 29, 2015, counsel for Defendant responded to the Notice of Default, and demanded that a satisfaction of the mortgage be filed based on the "Statement of Mortgage Paid in Full" referenced above. An actual controversy exists.

24. Pursuant to S.C. Code section 15-53-10 et seq., the Plaintiff requests a declaratory judgment from this Court that the document purporting to gratuitously forgive the debt of over \$220,000 is not enforceable or of any binding effect.

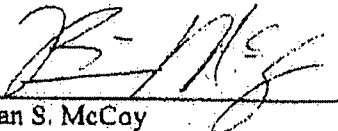
WHEREFORE, having set forth its Complaint, the plaintiff prays that the Court inquire into the matters set forth herein and:

1. Issue a declaratory judgment that the Note and Mortgage have not been satisfied because the statement of forgiveness is not enforceable;
2. That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys' fees and costs of this action.
3. That the plaintiff's mortgage be declared a first lien against the mortgaged premises and that the plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorneys' fees and for the costs of this action.
4. That the mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:
First, to the costs and expenses of the within action and sale;
Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorneys' fees, and
Third, the surplus, if any, be distributed according to law.
5. For an order directing and empowering the Sheriff of York County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property herein described should the same become necessary.
6. For an order granting the Plaintiff recovery of any amounts of rents and profits after the date of default.

7. For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency, if any.
8. For an order satisfying any prior liens that may be of record, but have been paid in full.
9. For such other and further relief as this Court deems just and proper.

Respectfully submitted this 26th day of March, 2015.

McCOY LAW FIRM, LLC



Brian S. McCoy
378 East Main Street
Rock Hill, South Carolina 29730
TEL: (803) 366-2280
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF YORK

PROMISSORY NOTE

FOR VALUE RECEIVED Connie Lynn Batey, hereinafter referred to herein as "Maker", promises to pay to the order of William G. Tucker, hereinafter referred to herein as "Payee", a principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) payable on the basis of 180 equal monthly installments of principal and interest, at the interest rate of 4%, of \$ 1,664.30. The first such payment shall be due on May 14, 2011, and each payment thereafter shall be due on or before the 14th day of each succeeding month until the unpaid balance is paid in full. Payments are considered late and delinquent after the 30th day of each month and a \$50.00 late fee will be due Payee for each late payment.

This Promissory Note is secured by a Mortgage of even date herewith (on property located on 2271 Iron Works Drive, Lake Wylie, SC 29710). If any deficiency in payment of any installment under this Note is not made good prior to the date of the next such installment, then the entire principal and accrued interest shall become due and payable, at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

This Promissory Note may be prepaid in whole or in part at any time without penalty. Purchaser shall have the right during the term of the Promissory Note to make prepayments on the unpaid balance without penalty, provided, however, that such payments shall not act as a release from any obligation to make scheduled payments provided in the Promissory Note. Only the unpaid principal shall bear interest and all payments shall first be applied upon accrued interest and the balance upon principal.

On the happening of any of the following events, each of which will constitute a default under this note, all liabilities of Maker to Payee shall become immediately due and payable at the option of Payee: (1) failure of Maker to make a payment within 30 days of the date when due; (2) application for appointment of a receiver or insolvency of Maker; or (3) filing of any petition in bankruptcy by or against Maker. Payee may waive any default before or after the default has been declared without impairing his right to declare a subsequent default under this note, this right being a continuing one. Maker waives protest of this Note. If this Note is not paid when due, Maker agrees to pay all costs and expenses of collection, including reasonable attorney fees.

MAKER:

By: Connie L Batey
Connie Lynn Batey

RECEIVED

A

201100132538
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
04-18-2011 At 11:54 am.
MORTGAGE 10.00
OR Vol 11948 Page 80 82

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, is made by and between Connie Lynn Batey, to herein as "Mortgagor", and William G. Tucker, of 3800 Shamrock Dr., Charlotte, NC 28215, referred to herein as "Mortgagee".

Mortgagor owes Mortgagee the principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00). This debt is evidenced by Mortgagor's Promissory Note dated April 14, 2011, hereinafter referred to as the Note. This Mortgage secures to Mortgagee: a.) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, and modifications; b.) the payment of all other sums, with interest, advanced by Mortgagee to protect the security of this Mortgage; and c.) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note.

For this purpose, Mortgagor does hereby mortgage, grant, and convey to Mortgagee all of that certain real property located in the County of York, State of South Carolina, described as follows:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plat Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

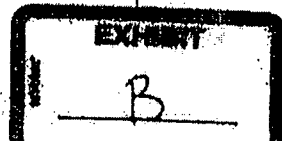
TAX MAP NUMBER: 565-01-01-031

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A. Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

To have and to hold such property unto Mortgagee and Mortgagee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, water rights and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property".

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

OK 11948 P80080



And Mortgagor covenants with Mortgagee as follows:

1. Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note. Unless applicable law provides otherwise, all payments received by Mortgagee shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under Section Two hereof; fourth, to interest due; and last, to principal due.
2. That this Mortgage shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.
3. That if all or any part of the Property or any interest in it is sold or transferred without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage.
4. On any default under this Mortgage, or the Note secured by this Mortgage, at the option of Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby.
5. That Mortgagor will pay all taxes, assessments, or water rates, and in default thereof, Mortgagee may pay the same. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term extended coverage and any other hazards for which Mortgagee requires insurance. This insurance shall be maintained in the amounts and for the periods that Mortgagee requires. The insurance carrier shall be chosen by Mortgagor subject to Mortgagee's approval which shall not be withheld unreasonably.
6. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, on notice to Mortgagor, may make such appearances, disburse such sums as a service, and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursements or reasonable attorney fees and entry on the property to make repairs. Any amounts disbursed by Mortgagee pursuant to this section, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amount shall be payable on notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the note from which this Mortgage is given as security, unless payment of interest at such rate would be contrary to applicable law, in which event the amount shall bear interest at the highest rate permissible under applicable law. Nothing contained in this section shall require Mortgagee to incur any expense or take any action hereunder.
7. That notice and demand or request may be in writing and may be served in person or by mail.

BK 11948 P0081

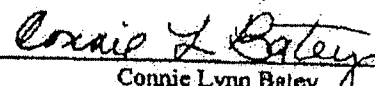
8. Mortgagor hereby relinquishes all rights of homestead. Mortgagor warrants and covenants that mortgagor is the owner in fee simple of the property and that the same is free from all liens and encumbrances. Mortgagor agrees to protect the title to the property. On failure to do so, the holder of this Mortgage may protect and add the cost thereof to the amount due under the Mortgage.

IN WITNESS WHEREOF, this mortgage has been duly executed by the Mortgagor on this the 14 day of April, 2011.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF:

MORTGAGOR:


Witness

By:  (Seal)
Connie Lynn Baley

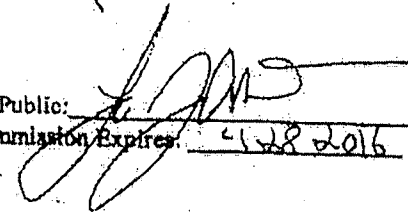

Witness

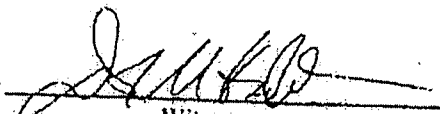
By: _____ (Seal)

THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me, the undersigned witness, and made oath that she/he saw the within named Connie Lynn Baley, sign, seal and, as the Grantor's set and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this the 14
day of April, 2011.

Notary Public:  (L.S.)
My Commission Expires: 12/28/2016


Witness

Prepared by and mail to:
David M. Hadder, Atty at Law, PA
1516 Village Harbor Drive, Lake Wylie, SC 29710

11948³ M0082

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

- The amount of the debt is stated in the Complaint attached hereto.
- The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
- The debt is described in the complaint attached hereto and evidenced by the copy of the Note attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
- If the debtor notifies the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
- If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original written requests should be addressed to McCoy Law Firm, LLC, 378 East Main Street, Rock Hill, SC 29730.
- This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

*****THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS*****

1 DEPOSITION OF CONNIE LYNN BATEY, taken
2 before me, Cathy L. Young, CVR-M and Notary
3 Public for the State of South Carolina; at
4 McCoy Law Firm, 378 East Main Street, Rock
5 Hill, South Carolina; commencing at 10:58 A.M.
6 on August 25, 2015; in accordance with the
7 South Carolina Rules of Civil Procedure;

8 That the signing of the transcript by the
9 witness is reserved.

10 * * * * *

11 CONNIE LYNN BATEY, first being duly sworn, was
12 examined and testifies as follows:

13 EXAMINATION BY MR. MCCOY:

14 Q. Good morning, Ms. Batey. My name is Brian
15 McCoy. And as I think you know, I represent
16 Mr. Tucker in this lawsuit. I know you were
17 present for Mr. Tucker's
18 deposition; is that correct?

19 A. Yes.

20 Q. Okay. So you probably know how this works, but
21 I'm going to give you the instructions that
22 we're required to do anyway. And part of that
23 is if you ever -- I don't think we're going to
24 be long today.

25 A. Okay.

1 Q. But if you need to take a break, please let me
2 know, and we will do so. I might ask you to
3 let me finish a line of questions, --

4 A. Sure.

5 Q. -- but we will do so fairly soon, okay? I need
6 to instruct you that now that we started the
7 deposition, you're not allowed to confer with
8 your attorney about the substance of the
9 deposition. He can make some objections on the
10 record, and you can talk about other things,
11 but now that we've started, even on a break,
12 you're not allowed to discuss the substance.
13 Do you understand that?

14 A. Yes.

15 Q. And you were just sworn in, so you understand
16 that you're giving your answers under oath just
17 as if you were in Court?

18 A. Yes.

19 Q. And if I ask a question and you don't
20 understand it, please ask me to clarify and
21 I'll try to do so.

22 A. Uh-huh.

23 Q. But if you answer the question, then I will
24 assume that you understood it; is that fair?

25 A. Yes.

1 Q. As you may know, Mr. Tucker doesn't hear very
2 well, and the court reporter needs to hear your
3 answer, so I'll ask you to speak somewhat
4 loudly and make sure you give a verbal answer
5 instead of a nod, okay?

6 A. Yes.

7 Q. Thank you. Have you ever had your deposition
8 taken before?

9 A. Yes.

10 Q. How many times?

11 A. Once.

12 Q. And what were the circumstances of that?

13 A. It was an accident I had at work.

14 Q. Was it a workers' comp. case?

15 A. Yes.

16 Q. Were you the plaintiff?

17 A. Yes.

18 Q. Okay. And what state was that in?

19 A. Ohio.

20 Q. Is that the only time you've had your
21 deposition taken?

22 A. Yes.

23 Q. Okay. And what is your date of birth? When
24 were you born?

25 A. Seven/9/51.

1 Q. And where were you born?

2 A. Jefferson City, Missouri.

3 Q. Is that where you grew up?

4 A. Yes.

5 Q. Did you attend high school there?

6 A. Yes.

7 Q. Did you go on to education after high school?

8 A. I went to technical training for x-ray tech.

9 Q. Oh, okay. Where was that?

10 A. It was kind of like on-job training.

11 Q. Where was that?

12 A. Through the University of Missouri.

13 Q. Did you get a degree?

14 A. No.

15 Q. Other than that training for x-ray tech, have
16 you had any other schooling after high school?

17 A. No.

18 Q. Did you do the education at the University of
19 Missouri, was that immediately after high
20 school?

21 A. No, it was about five years later.

22 Q. Okay. What did you do in-between?

23 A. I got married and had a child.

24 Q. Okay. I'll get to your marriage history in a
25 bit. Let me ask you then about your work

1 history. After high school, what was the first
2 job you had?

3 A. X-ray tech.

4 Q. Okay. And that was after you got this
5 education you just told me about?

6 A. Right. Uh-huh.

7 Q. And where did you work?

8 A. St. Mary's Hospital in Jefferson City,
9 Missouri.

10 Q. How long did you do that?

11 A. I just did it for a couple of years.

12 Q. Okay. And then after x-ray technician, what
13 was your next job?

14 A. Heavens, that was a hundred years ago. I got
15 into computer training. It was for a business
16 office supply place, and they trained me on
17 computers and I did that for like 20 years.

18 Q. Oh, okay. Where was that?

19 A. That was in Jefferson City, and then I moved up
20 to Kansas City.

21 Q. What was the name of the company?

22 A. Oh gosh, Modern Business Supply.

23 Q. Do you know about what year you moved to Kansas
24 City?

25 A. Probably about maybe '78.

1 Q. How long did you keep that job after you moved
2 to Kansas City?

3 A. Well, I just went to a different company. I
4 stayed in the same industry, just went to a
5 different company.

6 Q. Oh, okay. What was the name of the company in
7 Kansas City?

8 A. I don't have a clue. I can't remember.

9 Q. But it was an office supply company?

10 A. Yeah.

11 Q. About how long did you work for that company?

12 A. Probably about five or six years.

13 Q. Okay. And then what did you do after that
14 work-wise?

15 A. I can't remember. It's been so long ago.
16 Still staying in the same industry, I just kind
17 of moved up, you know, upgraded myself to
18 different businesses, and I finally worked for
19 a company that transferred me to Florida.

20 Q. And still in the office supply industry?

21 A. Uh-huh, in the computer industry,
22 telecommunications.

23 Q. Okay. So when did you move to Florida?

24 A. Oh, let's see, I've been here five years, about
25 14 years ago, whatever date that is.

1 Q. Okay. So around 2001?

2 A. Yeah.

3 Q. And what company did you work for in Florida
4 initially?

5 A. I worked for Net2000.

6 Q. In the computer industry?

7 A. Telecommunications.

8 Q. How long did you work for Net2000?

9 A. I worked for them until -- I worked for them
10 about seven years, then the company went out of
11 business.

12 Q. Okay. So then what did you do after that?

13 A. Nothing, I got married and stayed home for a
14 while.

15 Q. About how long?

16 A. About two, three years.

17 Q. Okay. And then when did you next work?

18 A. In 2008. Is that right? Yeah. I became a
19 flight attendant.

20 Q. For which airline?

21 A. Mesa Airlines.

22 Q. And how long did you have that job?

23 A. Eight years.

24 Q. Until -- are you still working there?

25 A. No. I'm sorry, I was only there -- I was there

1 until 2013.

2 Q. Okay.

3 A. I started in 2000 -- I was there seven years.

4 Q. Okay. Did you retire in 2013?

5 A. No, I got hurt, and I just -- I couldn't go
6 back.

7 Q. Okay. Did you quit?

8 A. Uh-huh.

9 Q. Are you working now?

10 A. No.

11 Q. Have you worked since you quit Mesa?

12 A. No.

13 Q. Are you getting Social Security benefits?

14 A. That's all, uh-huh.

15 Q. Where do you currently live?

16 A. I live at 2271 Iron Works Drive, Lake Wylie.

17 Q. And Iron Works Drive in Lake Wylie is the
18 property that's at issue in this lawsuit?

19 A. Correct.

20 Q. So if I mention the property or I'll try to say
21 Iron Works, you'll know what I'm talking about?

22 A. Correct.

23 Q. Or maybe I'll say the house, and you'll know
24 what I'm referring to?

25 A. Okay.

1 Q. Okay. Before you moved in to the house at Iron
2 Works, where did you live?

3 A. I lived on Greenwich Boulevard in Lakewood --
4 or excuse me, Lake Wylie. It was an apartment.

5 Q. An apartment in Lake Wylie. About how long
6 were you in that apartment?

7 A. Two years.

8 Q. What about before that?

9 A. I lived in New York City.

10 Q. How long were you in New York City?

11 A. Three years.

12 Q. Were you working for Mesa when you were in New
13 York City?

14 A. Uh-huh.

15 Q. And where did you live before New York City?

16 A. Jacksonville, Florida.

17 Q. How long were you in Jacksonville?

18 A. About three years.

19 Q. And what about before Jacksonville?

20 A. I was in Jupiter, Florida.

21 Q. How long in Jupiter?

22 A. About six years.

23 Q. And before that?

24 A. West Palm Beach, Florida.

25 Q. About how long in West Palm?

1 A. Two years.

2 Q. Okay. What about before that?

3 A. I was in Kansas City.

4 Q. Okay. And then before that, it goes Jefferson
5 City, and then you've told me?

6 A. Right.

7 Q. Okay. Thank you. When you lived in New York
8 City, I assume you were in your apartment?

9 A. Yeah, with about four other people.

10 Q. Okay. So you had roommates?

11 A. Crash pad.

12 Q. That's what you called it, with other flight
13 attendants?

14 A. Uh-huh.

15 Q. Can you say yes?

16 A. Yes, sorry.

17 Q. Okay. And then when you moved to Lake Wylie,
18 you still worked for Mesa, correct?

19 A. Correct.

20 Q. Was it just sort of a transfer in where you
21 were based?

22 A. Yes.

23 Q. Okay. So you were working out of Charlotte at
24 that time?

25 A. Correct.

1 Q. In Lake Wylie when you were in your apartment,
2 did you have a roommate?

3 A. No.

4 Q. Okay. Have you, other than this lawsuit and
5 the accident at work in Ohio that you've told
6 me about, -- although before I ask you that
7 question, when did you live in Ohio?

8 A. I didn't. I got hurt on the job. I flew to
9 Ohio.

10 Q. Okay. So you were hurt --

11 A. I got hurt in a hotel.

12 Q. Okay. You were on a business trip?

13 A. Correct.

14 Q. Gotcha. Okay. So other than this lawsuit and
15 the one where you were hurt at work in a hotel
16 in Ohio, have you been involved in any other
17 lawsuits?

18 A. No.

19 Q. I'm aware that you've been divorced multiple
20 times, so you're not counting those obviously?

21 A. Right.

22 Q. So other than divorces, this lawsuit, and the
23 one in Ohio, you've not been involved in any
24 other lawsuits?

25 A. No.

1 Q. Okay. You've mentioned, Ms. Batey, that you've
2 been married. Let's go through your -- and you
3 indicated one of them was fairly early, but
4 let's go through those kind of from the
5 beginning. When did you first get married?

6 A. What does that got to do with my property?

7 Q. This -- all of these things are an issue in
8 this lawsuit. In my opinion, you can consult
9 with your attorney, you are required to answer
10 these questions. If you don't, then I will
11 make a motion with the Court, and we may have
12 to reconvene, and I will seek to get the fees
13 involved in that.

14 MR. FOSTER:

15 The witness may feel slightly more at ease if I
16 add my two cents.

17 MR. MCCOY:

18 Please.

19 MR. FOSTER:

20 My understanding of the grounds for asking
21 questions is not whether it is relevant, but
22 whether it will lead possibly to relevant
23 stuff. So he has the right to ask. If there
24 is anything I feel is improper, as I have
25 indicated to you in our discussions, I might

1 say this, as Counsel's indicated, there will be
2 objections. So I do, to the extent that I'm
3 required to, which I don't think I am, advise
4 you to go ahead and give him the information.

5 WITNESS:

6 Okay.

7 EXAMINATION CONTINUES BY MR. MCCOY:

8 Q. Okay. When were you first married?

9 A. In Jefferson City, Missouri.

10 Q. What year approximately?

11 A. 1970.

12 Q. To whom?

13 A. To William Schwieterman.

14 Q. The court reporter is going to ask you how to
15 spell that, so I'll go ahead and ask you now.

16 A. S-C-H-W-I-E-T-E-R-M-A-N.

17 Q. Okay. And approximately how long were you
18 married to him?

19 A. Five years.

20 Q. Any children from the marriage?

21 A. One son.

22 Q. What is his name?

23 A. Scott.

24 Q. Is his last name Schwieterman?

25 A. Yes.

- 1 Q. And then your next marriage?
- 2 A. Was to Ron Faerber, F-A-E-R-B-E-R.
- 3 Q. And it's Faerber?
- 4 A. Uh-huh.
- 5 Q. About what year did you get married?
- 6 A. Probably 77.
- 7 Q. And about how long were you married to him?
- 8 A. Three years.
- 9 Q. Any children from the marriage?
- 10 A. No.
- 11 Q. Do you just have the one son?
- 12 A. Yes.
- 13 Q. So I won't ask you that anymore.
- 14 A. Right, no more children.
- 15 Q. All right. Okay. And then after Mr. Faerber,
- 16 when were you next married?
- 17 A. To Mark Mullenieux, M-U-L-L-E-N-I-O-U-X.
- 18 Q. Okay. About what year did you marry him?
- 19 A. Probably '80, 1980.
- 20 Q. Okay. About how long were you married to him?
- 21 A. Probably about three years.
- 22 Q. And after him, when were you next married?
- 23 A. To -- I'm trying to think of the date. His
- 24 name was Eric Wagner. Probably '82.
- 25 Q. 1982?

1 A. 1982.

2 Q. Okay. And about how long were you married to
3 him?

4 A. Two years. He was an attorney.

5 Q. Okay. After Mr. Wagner, who did you marry?

6 A. Granville Batey.

7 Q. About when did you marry him?

8 A. About 19 -- about 1992.

9 Q. Okay. How long were you married to him?

10 A. Four years.

11 Q. After Mr. Batey?

12 A. That's it. That's enough.

13 Q. Okay. So if I'm correct, you've been married
14 five times?

15 A. Six. We left out one.

16 Q. Yeah, I think we left out a Mr. Brown.

17 A. Oh, I forgot him.

18 Q. Okay. What was his name, his full name?

19 A. Britton Brown.

20 Q. How do you spell Britton?

21 A. B-R-I-T-T-O-N.

22 Q. Okay. And about when did you marry him?

23 A. I was married to him the longest. I was
24 married to him for ten years, between -- oh
25 God, I can't remember. Between Mullenieux and

1 wagner, figure out ten years in there -- no,
2 after wagner, that's it, after wagner, before
3 Batey.

4 Q. I think that fits the scenario.

5 A. Yeah.

6 Q. Okay. So your last husband was Mr. Batey?

7 A. Correct.

8 Q. When did you divorce him -- or did you divorce
9 him?

10 A. Uh-huh. We've been divorced about seven years
11 ago.

12 Q. Did your name always change with your husbands?

13 A. Yes.

14 Q. So if I do the math right, about seven years
15 ago was around 2008 is when you divorced Mr.
16 Batey?

17 A. Uh-huh.

18 Q. Would that be correct or approximately correct?

19 A. Uh-huh.

20 Q. As you only have the one child you mentioned,
21 when you -- how old was your child when you
22 divorced his father?

23 A. Five.

24 Q. Five. Was there a custody battle?

25 A. Not really.

1 Q. Did you get custody of him or did your husband?

2 A. Uh-huh, I did.

3 Q. You did. Have you ever been arrested?

4 A. Yes.

5 Q. Okay, when?

6 A. About four years ago.

7 Q. What was the charge?

8 A. DUI.

9 Q. Where you convicted?

10 A. Uh-huh.

11 Q. Any other times?

12 A. No.

13 Q. Any other arrests?

14 A. Uh-huh.

15 Q. Have you ever spent any time in jail?

16 A. Yeah, for the DUI.

17 Q. How long?

18 A. Overnight.

19 Q. Is that the only time?

20 A. Uh-huh.

21 Q. When did you first join an online dating site
22 approximately?

23 A. Oh gosh, eight years ago maybe?

24 Q. Would it have been after your divorce from Mr.
25 Batey or before?

1 A. It would have been after when I was in New
2 York.

3 Q. Okay. Do you know the first one that you
4 joined, the first dating site?

5 A. Probably Match.com.

6 Q. Okay. Have you joined any others -- just tell
7 me all the online dating sites that you've been
8 a member of or joined?

9 A. I've been on Match. I've been on Senior
10 People, I think, or something like that.

11 Q. Any others?

12 A. That's all I can remember.

13 Q. Other than Mr. Tucker, have you gone on other
14 dates from these sites?

15 A. Sure.

16 Q. Have you had any -- met any men you've gone on
17 multiple dates with from the sites?

18 A. Uh-huh, yes.

19 Q. Are you currently still on --

20 A. No.

21 Q. No on any kind of online social dating site?

22 A. No.

23 Q. Okay. Do you recall what one you were on when
24 you met Mr. Tucker?

25 A. Match.com.

1 Q. You were at Mr. Tucker's deposition when he
2 thought it was Plentyoffish.com?

3 A. Oh, well, I thought it was Match, I don't
4 remember.

5 Q. Does that remind you that you think you were a
6 member of Plentyoffish.com?

7 A. At one time, yes.

8 Q. Okay. I know you've read the Complaint. I
9 believe Mr. Tucker alleged that you all first
10 met online in March or April of 2009; does that
11 sound correct?

12 A. Uh-huh.

13 Q. Is that yes?

14 A. Yes.

15 Q. Tell me how that played out. Did you -- I
16 don't know how Plentyoffish.com works. Did one
17 of you send the other a message and then you
18 starting chatting online?

19 A. Yeah, we started chatting online because he had
20 a picture of his Dachshund, and I love
21 Dachshund. That was the only reason I started
22 talking to him.

23 Q. Because he had a picture of his Dachshund?

24 A. His Dachshund dog.

25 Q. His dog, yeah.

1 A. Yeah.

2 Q. And assuming that date period is correct, let's
3 say March or April of 2009, how long after that
4 did you first meet in person to the best of
5 your knowledge?

6 A. Oh, it was several months.

7 Q. So later on in 2009?

8 A. Uh-huh, yes.

9 Q. When you first met him, where did you live?

10 A. I lived in New York.

11 Q. Okay. Did you come to Charlotte?

12 A. Yes.

13 Q. On business?

14 A. I was transferred here, and I came down to look
15 for an apartment.

16 Q. Okay. And you'd been chatting with him prior
17 to that time?

18 A. Correct.

19 Q. And you met up with him at the time you were
20 looking for an apartment?

21 A. Correct.

22 Q. Did he go with you?

23 A. Yes.

24 Q. And to your knowledge, does Mr. Tucker drive?

25 A. No.

1 Q. So were you driving?

2 A. Yes.

3 Q. Did you rent a car?

4 A. Yes.

5 Q. And so you got an apartment. Did you get an
6 apartment in Lake Wylie you told me about?

7 A. Yes.

8 Q. Did Mr. Tucker play any role in helping you pay
9 for that?

10 A. Yes.

11 Q. What did he do in that regard?

12 A. Deposit.

13 Q. Paid the deposit?

14 A. Yes.

15 Q. And after you started -- well, was there a time
16 period when you were looking for an apartment,
17 I guess maybe you didn't have one, and you
18 actually stayed at his house?

19 A. In his spare bedroom.

20 Q. Okay. And was that on this initial trip to
21 Charlotte you were telling me about?

22 A. Yes.

23 Q. About how many nights did you stay with him?

24 A. Maybe two.

25 Q. And you testified you stayed in the spare

1 bedroom. Was there any kind of romantic
2 contact?

3 A. No.

4 Q. And after those two nights, what happened?

5 A. I went back to New York.

6 Q. Back to New York. And then about how long
7 until you came back to Charlotte?

8 A. Probably six weeks, six to eight weeks.

9 Q. So six to eight weeks later you came back. Did
10 you have your apartment at this time?

11 A. Yes.

12 Q. Okay. Did you stay anymore at Mr. Tucker's
13 house?

14 A. No.

15 Q. Other than those first two nights that you told
16 me about, have you ever stayed any other
17 nights?

18 A. Yes.

19 Q. But when you came back six to eight weeks
20 later, you stayed in your apartment, correct?

21 A. Correct.

22 Q. Did Mr. Tucker help you financially with paying
23 your rent?

24 A. No.

25 Q. So when were the other times you stayed at his

1 house?

2 A. I had some cosmetic surgery and I stayed in the
3 spare bedroom.

4 Q. Do you know about when that was?

5 A. August of 2010, I think.

6 Q. And at the time you stayed in his spare
7 bedroom, you had your apartment in Lake wylie?

8 A. Uh-huh.

9 Q. Why did you stay at his house?

10 A. I couldn't drive.

11 Q. You were recovering?

12 A. Right.

13 Q. And at that -- how many nights did you stay?

14 A. I probably stayed a week.

15 Q. Other than the initial two nights and then the
16 week you stayed after your cosmetic surgery,
17 any other times you spent the night?

18 A. I never spent the night. I always would go
19 home.

20 Q. Other than those occasions you've spoken of

21
22 A. Correct.

23 Q. Now on the week that you were recovering from
24 cosmetic surgery, you stayed in the spare
25 bedroom?

1 A. Correct.

2 Q. Was there any romantic contact?

3 A. No.

4 Q. Has there ever been romantic contact?

5 A. Not to my knowledge, anything, I do not recall
6 any.

7 Q. Okay. So you don't recall any kissing?

8 A. Well, kissing.

9 Q. Okay. All right. So maybe I should say you
10 don't recall any sexual contact?

11 A. I do not.

12 Q. Okay. There was kissing?

13 A. Correct.

14 Q. So you don't believe there was any kind of oral
15 sex?

16 A. No.

17 Q. Okay. If you first met him in person a few
18 months after -- I'm going to try to establish a
19 timeline in my head. If you first met him in
20 person a few months after you starting chatting
21 online in March or April of 2009, is it fair to
22 say that you started -- you first met him in
23 person and the relationship started in about
24 June of 2009? Would that be a starting point?

25 A. I prefer friendship.

1 Q. Okay.

2 A. But yes.

3 Q. And you are correcting me because I used the
4 word "relationship," and you prefer -- you
5 think the word friendship is more accurate?

6 A. Yes.

7 Q. Yes.

8 Q. Okay. But your friendship started I guess when
9 you started chatting online, I don't know if
10 you count that as friendship or not, but when
11 you met in person in June 2009 approximately,
12 that's when the friendship began?

13 A. Uh-huh, yes.

14 Q. I'm sorry?

15 A. Yes.

16 Q. Okay. When then would you say the friendship
17 ended?

18 A. November 2014.

19 Q. Okay. So a little bit more than five years you
20 were in a friendship with Mr. Tucker?

21 A. Right. I had relationships during our
22 friendship.

23 Q. With other men?

24 A. Correct.

25 Q. Okay. And did you make Mr. Tucker aware of

1 those?

2 A. Yes, he was aware of it.

3 Q. Okay. Do you believe that you made it clear to
4 Mr. Tucker that you weren't his girlfriend?

5 A. Correct, many times.

6 Q. Now during this period of time that you were
7 friends, did he buy you gifts?

8 A. Yes.

9 Q. And to the best of your ability, can you list
10 for me, please, the gifts that you recall that
11 he bought you?

12 A. He bought me some jewelry. I've never asked
13 this man for one thing.

14 Q. Okay.

15 A. He just gave me things.

16 Q. Okay. Other than the jewelry?

17 A. A car.

18 Q. What kind of car?

19 A. A Kia Soul and a Nissan.

20 Q. So two cars?

21 A. Uh-huh.

22 Q. Okay, what else?

23 A. The house.

24 Q. And that's the house at issue in the case?

25 A. The house, right.

1 Q. Okay. Anything else?

2 A. I would take him grocery shopping every week
3 and he would buy some groceries for me.

4 Q. All right. Anything else?

5 A. No.

6 Q. You mentioned you had cosmetic surgery.

7 A. Uh-huh.

8 Q. Did he pay for that?

9 A. Yes.

10 Q. What was that?

11 A. I had a tummy tuck and facelift.

12 Q. Was that all done at the same time?

13 A. Uh-huh. No, it was done in two procedures,
14 twice, two procedures.

15 Q. With some time in between?

16 A. Correct.

17 Q. Okay. Which was the one where you had to stay
18 with him for a week?

19 A. The facelift.

20 Q. On the tummy tuck you didn't have to?

21 A. Uh-huh.

22 Q. Did he ever pay for trips that he took you on?

23 A. He paid for trips that he wanted to go on, yes.

24 Q. But he went with you?

25 A. Correct.

1 Q. Where did y'all go together?

2 A. We went to Charleston one time. We went to
3 Ireland and France.

4 Q. Were Ireland and France separate trips?

5 A. No, it was one trip.

6 Q. Okay. And he paid for all those?

7 A. Correct.

8 Q. Did he ever pay for you to take trips without
9 him?

10 A. To go see my grandchildren.

11 Q. In Dallas?

12 A. Uh-huh.

13 Q. Did he ever pay your rent at your apartment
14 when you lived in the apartment in Lake Wylie?

15 A. Maybe a portion of it, not the whole thing,
16 because I was working, I did work.

17 Q. Okay. Would you agree that he paid 125 a month
18 for two years on your apartment?

19 A. No, I wouldn't agree with that.

20 Q. Do you think it was less than that?

21 A. Yes, uh-huh.

22 Q. You agree he paid some portions of your rent?

23 A. Just would hand me cash now and then, you know.

24 Q. Okay. Did he ever give you -- did he pay for
25 any furniture?

1 A. Yeah, some furniture.

2 Q. What about new carpet?

3 A. Yes.

4 Q. Was that for the house?

5 A. The house.

6 Q. For all of these gifts we've just discussed,
7 did you ever promise him anything or give him
8 anything in exchange for --

9 A. Absolutely not. I never asked for anything,
10 and I never promised him anything.

11 Q. What about for the house?

12 A. I never asked for the house. My car was broken
13 into twice, and he called me and I told him
14 about it. He said, "Well, you need a house.
15 You've got to get out of that apartment." I
16 did not ask him for it. He said, "Call your
17 realtor, we're going to go look at houses."

18 Q. Okay. And about when was that, your call,
19 timeframe?

20 A. It was four years ago in April.

21 Q. April 2012?

22 A. No, four years ago.

23 Q. You're right, you're right, April 2011.

24 A. Right.

25 Q. And so what were the circumstances of that?

1 You were having -- you had some break-ins at
2 your apartment and he suggested --

3 A. My car got -- I had a convertible and my car
4 got -- the convertible top got ripped twice,
5 and I called him and told him about it. And of
6 course I called my insurance. His comment was
7 that you need to get out of that apartment and
8 get a house. I said, "I can't afford the
9 house, I don't have the money for a house." He
10 goes, "We're going to go look at a house. Call
11 Linette who is my friend who is a realtor, and
12 we're going to go look at houses." I did not
13 ask him for a house, I did not say, "Let's go
14 look at a house." It was strictly all him.
15 All of those gifts were his. I did not ask him
16 for one thing. I've never asked that man for
17 one thing in my life.

18 Q. What about when he gave you the statement that
19 the mortgage was paid in full?

20 A. I didn't ask him for that. I got tired of him
21 threatening me, threatening me. Every week he
22 would threat -- "I'm taking your house away,
23 I'm taking your house away."

24 Q. Okay. Well, let's go back then to the time you
25 bought the house. Did you two then go together

1 to look at houses?

2 A. Yes.

3 Q. Okay. And you found the one on Iron Works and
4 you liked it?

5 A. Yes.

6 Q. And at that time, you -- at the time you bought
7 it, it was purchased in your name that you
8 signed a promissory note to Mr. Tucker,
9 correct?

10 A. Correct.

11 Q. Okay.

12 MR. MCCOY:

13 I'm going to have this marked as Exhibit 1.

14 (Court Reporter marks Plaintiff's Exhibit Number 1,
15 Promissory Note, attached hereto.)

16 EXAMINATION CONTINUES BY MR. MCCOY:

17 Q. And does that appear to be a copy of the
18 promissory note that you executed to Mr. Tucker
19 when you purchased the house?

20 A. Correct.

21 Q. And at the same time, as is normal in these
22 situations, you executed a -- did you execute a
23 mortgage to secure that loan?

24 A. What do you mean? I don't understand the
25 question.

1 (Court Reporter marks Plaintiff's Exhibit Number 2,
2 Mortgage, attached hereto.)

3 EXAMINATION CONTINUES BY MR. MCCOY:

4 Q. I'm going to show you then what's been marked
5 as Plaintiff's Exhibit Number 2. Is that a
6 mortgage that you signed to secure the loan
7 that's Exhibit 1 secured by the house on Iron
8 works?

9 A. I don't understand the difference between this
10 and this. It's the same thing.

11 Q. Okay. I'll try to explain with your lawyer
12 overseeing me, the promissory note is when you
13 borrowed the money and promised to pay it back.
14 I mean you can read that and see that's
15 correct.

16 A. Right.

17 Q. And then when you signed the mortgage, you're
18 saying if I don't pay this back, then you have
19 a mortgage on my house which will allow you to
20 take the house back if I don't pay this. So --

21 A. Basically they're the same thing.

22 Q. Well, this is saying I promise to pay the money
23 back, this is saying you have an interest in my
24 house in case I don't pay it back.

25 A. But there's a little document here in the

1 middle from him that says I don't have to pay
2 this back.

3 Q. Well, -- and I think I know what document
4 you're talking about, but if you look at the
5 dates on both of these, were they executed as
6 you said when you bought the house in April of
7 2011?

8 A. Well, I'm assuming it is, it says April. This
9 says May.

10 Q. It says the first payment is due in May, but I
11 agree with you there doesn't appear to be a
12 date on this, but you don't dispute, do you,
13 that you executed these at the same time,
14 right?

15 A. Right.

16 Q. Do you recall where you were when you did it?

17 A. Uh-huh, the attorney's office in the real
18 estate company.

19 Q. Right. Do you remember his name?

20 A. Hadder.

21 Q. Yeah. Okay. So you signed both Exhibits
22 Number 1 and 2, correct?

23 A. Uh-huh.

24 Q. All right. Now after that time, did you
25 understand that you had to make payments to Mr.

1 Tucker?

2 A. Uh-huh, which I did.

3 Q. Okay. And I suppose the amount -- do you
4 remember how much you paid?

5 A. Like seven months worth or something like that.

6 Q. Okay. So you paid it for about the first seven
7 months?

8 A. Uh-huh.

9 Q. Okay. And I believe that corresponds with what
10 Mr. Tucker alleged in his lawsuit. So that
11 would have been approximately May of '11, so
12 probably, let's just say, till maybe January of
13 2012 or so?

14 A. Okay.

15 Q. Does that sound right?

16 A. Yeah.

17 Q. And so then you stopped paying?

18 A. Uh-huh.

19 Q. Why?

20 A. He told me I didn't have to pay it anymore. He
21 said, "I know you don't have any money." He
22 sent me emails that said, "I'll send you back
23 the check if you send me a check." I had a
24 check back that he did send back. Email after
25 email said, "Oh, I don't want you to break up

1 with me, I don't want you to pay the house
2 back." And I said, "No, because I'm tired of
3 these threats. Every week I get threats,
4 you're going to take my house, you're going to
5 take my house." "Well, I'll get it in writing,
6 I'll get it notarized in writing that I'm not
7 going to take your house." And that's what
8 created this document.

9 Q. Okay. And I know what you're referring to, but
10 before we get there, so you stopped making
11 payments with his permission --

12 A. Correct.

13 Q. -- after -- in approximately January of 2012,
14 correct?

15 A. Correct.

16 Q. So then when were the statements from him, "I'm
17 going to take your house"?

18 A. Oh, prior to that, always. Every time his
19 feelings would get hurt, he would --

20 Q. But if you were making the payments, why would
21 he say that?

22 A. Just to threaten me because that's just the way
23 he is.

24 Q. Okay.

25 A. Like a little boy getting hurt.

1 Q. So when you stopped making the payments, it was
2 with his permission?

3 A. Correct.

4 MR. MCCOY:

5 Let's go ahead and mark this as Exhibit 3.

6 (Court Reporter marks Plaintiff's Exhibit Number 3,
7 Statement of Mortgage Paid In Full, attached
8 hereto.)

9 EXAMINATION CONTINUES BY MR. MCCOY:

10 Q. Okay, Ms. Batey, I'm handing you a document
11 marked Plaintiff's Exhibit 3, and it's a
12 Statement of Mortgage Paid in Full, and it's
13 one sentence, so I'll just read it. "This
14 statement is to certify that the mortgage on
15 2271 Iron Works Drive, Lake Wylie, South
16 Carolina 29710, titled to Connie Lynn Batey is
17 hereby paid in full with no other monies due to
18 satisfy this debt." Is that correct?

19 A. Correct.

20 Q. And about when -- and it appears to be dated
21 May 23rd, 2012; do you know when you received
22 this?

23 A. Shortly thereafter.

24 Q. And again, this is something that you didn't
25 ask for?

1 A. No, I did not.

2 Q. You didn't give anything in order to get this?

3 A. No, never promised anything.

4 Q. Okay. Would you say it came out of the blue?

5 A. Yes.

6 Q. Okay. And so after this time and even before,
7 you haven't made any other payments to him on
8 the note?

9 A. No.

10 Q. Okay. So after, according to the timeline we
11 talked about, you were still friends, so this
12 was May of 2012, you were friends for another
13 two and a half years or so; is that correct?

14 A. Uh-huh, yes.

15 Q. What happened -- you told me November 2014 is
16 essentially when the friendship ended. What
17 happened then?

18 A. I don't know. I received a phone call from
19 him, and he just said, "I can't do this
20 anymore." I was like okay, whatever, move on.

21 Q. Okay. And then after that has there been any
22 other contact?

23 A. No communication whatsoever.

24 MR. MCCOY:

25 Mark this Exhibit 4.

1 (Court Reporter marks Plaintiff's Exhibit Number 4,
2 Letter, attached hereto.)

3 EXAMINATION CONTINUES BY MR. MCCOY:

4 Q. Okay. I'm handing you what's been marked
5 Plaintiff's Exhibit Number 4, a letter dated
6 January 20, 2015, from Mr. Tucker to you. Do
7 you recall, did you receive that letter?

8 A. Yes, I received this.

9 Q. And it would have been shortly after the date
10 on there?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. Okay. So in this letter, he essentially says
15 you're in default and wants you to start making
16 payments or give him a deed in lieu of
17 foreclosure; is that correct?

18 A. Correct.

19 Q. So prior to -- between the phone you mentioned
20 in November of '14 and this letter, there was
21 no other contact?

22 A. No.

23 Q. Okay. So when you got this letter, did you
24 understand that he was wanting you to pay off
25 the mortgage?

1 A. Oh, yes.

2 Q. Okay. And what did you do in response to this?

3 A. I contacted my attorney.

4 Q. Mr. Foster?

5 A. Yes.

6 Q. Okay. And I believe Mr. Foster wrote a letter
7 on your behalf to Mr. Tucker?

8 A. Correct.

9 Q. Is it your opinion that you don't owe any money
10 to Mr. Tucker on the Note and Mortgage.

11 MR. FOSTER:

12 I believe I have to say something here because
13 I believe the lady's being asked to render a
14 legal opinion. Insofar as she can do so as a
15 non-lawyer, I obviously have no objection.
16 With that interjection --

17 EXAMINATION CONTINUES BY MR. MCCOY:

18 Q. Okay. Subject to his objection, can you answer
19 the question?

20 A. Yeah, I feel I do not owe anything.

21 Q. And why?

22 MR. FOSTER:

23 Same objection, by the way.

24 MR. MCCOY:

25 Okay.

1 WITNESS CONTINUES:

2 A. Because of the notes that he has give me, the
3 documentation he has given me, the emails he's
4 given me.

5 Q. When you say documentation, I'm assuming you're
6 referring to Exhibit Number 3?

7 A. Correct.

8 Q. Anything else?

9 A. I have emails that say, "Do not pay me back."

10 Q. And were those prior to Exhibit Number 3?

11 A. Correct.

12 Q. Other than that, any other reasons?

13 A. No.

14 Q. Any other documentation?

15 A. No.

16 Q. Do you still live in the house?

17 A. Correct.

18 Q. Have you lived in the house since you bought
19 it?

20 A. Yes.

21 Q. Have you ever rented it?

22 A. No.

23 Q. Have you ever received rent?

24 A. Yes. I have a roommate.

25 Q. You have a roommate that pays you some rent?

1 A. Uh-huh.

2 Q. Is that current?

3 A. Uh-huh.

4 Q. When did that start?

5 A. About a year ago.

6 Q. Who is your roommate?

7 A. William Patterson. I had two roommates, I only
8 have one now.

9 Q. There was someone in addition to Mr. Patterson
10 at one time?

11 A. Uh-huh.

12 Q. Who was that?

13 A. Geri Granderson.

14 Q. Is that a man?

15 A. Girl.

16 Q. And approximately what time period was she in
17 the house?

18 A. She was there until -- she was there for two
19 years until about a month ago.

20 Q. Is Mr. Patterson a friend or boyfriend?

21 A. Friend.

22 Q. Not a boyfriend?

23 A. No.

24 Q. Have you ever listed the house for sale?

25 A. Yes.

1 Q. When did you do that?

2 A. Last -- about a year ago.

3 Q. Is it currently listed?

4 A. No.

5 Q. Who was it listed with?

6 A. Tate.

7 Q. Do you recall the realtor?

8 A. I can't remember her name.

9 Q. You had a sign in the yard and it was on the
10 MLS and all that?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. Did you get any offers?

15 A. No.

16 Q. How long was it listed?

17 A. Six months.

18 Q. And then you took it off?

19 A. Yes.

20 Q. Do you have any current plans to sell the
21 property?

22 A. Not at the moment.

23 Q. Do you have current plans to move to another
24 state?

25 A. Not at the moment.

1 Q. Is the house currently insured?

2 A. Yes.

3 Q. Has it been continuous -- has it been insured
4 since you bought it?

5 A. Yes.

6 Q. And when I say insured, I say, I mean fire and
7 all that.

8 A. Uh-huh, you have it right there.

9 Q. Yes. Your attorney sent me this.

10 MR. MCCOY:

11 Let's make it an exhibit.

12 (Court Reporter marks Plaintiff's Exhibit Number 5,
13 Homeowners Declaration Page, attached hereto.)

14 EXAMINATION CONTINUES BY MR. MCCOY:

15 Q. I'm handing you what's been marked as Exhibit
16 5, which was provided to me by your attorney as
17 a copy of your Homeowners Declaration Page; is
18 that accurate?

19 A. Yes.

20 Q. And to your knowledge, you currently have this
21 insurance on the house?

22 A. Yes.

23 Q. Okay. This is a little housekeeping this. Mr.
24 Foster will appreciate I am going to have the
25 Notice of Deposition marked as an exhibit,

1 Exhibit 6.

2 MR. MCCOY:

3 Any objections, Mr. Foster?

4 MR. FOSTER:

5 No, sir.

6 (Court Reporter marks Plaintiff's Exhibit Number 6,
7 Notice of Deposition, attached hereto.)

8 EXAMINATION CONTINUES BY MR. MCCOY:

9 Q. Ms. Batey, when you attended Mr. Tucker's
10 deposition, you were wearing a neck brace; is
11 that correct?

12 A. Uh-huh.

13 Q. What caused that?

14 A. I've had two surgeries since February on my
15 neck.

16 Q. Was there a cause of that or did --

17 A. I just have degenerative disks in my neck.

18 Q. I don't really -- I don't know how
19 plentyoffish.com works, but when you were
20 exchanging messages with Mr. Tucker, was there
21 a message system on plentyoffish.com that you
22 used?

23 A. It's just like a message system.

24 Q. A chat kind of a thing?

25 A. Correct.

1 Q. But I think I understand that you separately
2 communicated with him by email?

3 A. Uh-huh, yes.

4 Q. Okay. And did that start early on or at first
5 did you go through the Plenty of Fish system?

6 A. I think just through the Plenty of Fish system.

7 Q. Okay. About when did you start emailing with
8 him outside of that system?

9 A. I don't --

10 Q. You don't remember?

11 A. I don't remember.

12 Q. Okay. Can you tell me what email accounts?
13 And by that, I mean the addresses you have.

14 A. Of mine?

15 Q. Yes.

16 A. I only have one, it's sunbeamjoy@yahoo.

17 Q. No numbers?

18 A. No.

19 Q. And that's the one you always used when you
20 communicated with Mr. Tucker?

21 A. Yes.

22 Q. Okay. Do you still have the messages that you
23 exchanged with Mr. Tucker?

24 A. No. Through Plenty of Fish?

25 Q. Well, through Plenty of Fish and on your Yahoo

1 account.

2 A. I have probably some on my Yahoo account.

3 Q. Okay. You don't think you have any on Plenty
4 of Fish?

5 A. No.

6 Q. You're not on it anymore?

7 A. No.

8 Q. Did you ever go through and affirmatively
9 delete the emails between you and --
10 intentionally delete emails between you and Mr.
11 Tucker?

12 A. Not to my knowledge.

13 Q. So to your knowledge, they still should all be
14 on your Yahoo account?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. Have you looked or checked for that recently?

19 A. Not recently.

20 Q. Okay. Now I'm not talking about the dating
21 sites, are you otherwise on social media
22 online? And by that, I mean Facebook, Twitter,
23 and others that I probably don't know about.

24 A. I'm on -- yeah, I'm on Facebook.

25 Q. Okay. Is that the only social media you're

1 on?

2 A. Uh-huh.

3 Q. Is that yes?

4 A. Yes.

5 Q. You're not on Twitter?

6 A. No.

7 MR. MCCOY:

8 I'm going to ask to take a short break because
9 I think we're almost done. We'll take a short
10 break, reconvene in five minutes.

11 (BRIEF RECESS)

12 MR. MCCOY:

13 I don't have any further questions.

14 MR. FOSTER:

15 I have no questions because I believe you
16 clarified everything.

17 * * * * *

18 (Concluded at 10:58 A.M.)

19 * * * * *

20

21

22

23

24

25

1 Trial proceedings, audio recorded by the Court, at
2 the Master-in-Equity Court, 1 North Congress Street, York,
3 South Carolina, commencing on December 16, 2015. Please
4 note the audio recording did not include the beginning
5 time of the hearing. The Honorable S. Jackson Kimball,
6 III, presiding.

7 * * * * *

8 Judge Kimball - All right. This is Case Number
9 2015-CP-46-0249, William G. Tucker against
10 Connie Lynn Batey. Present and representing the
11 plaintiff is Mr. Brian McCoy. Present and
12 representing the defendant is Mr. Martin Foster.
13 If you gentlemen are ready, let's proceed. Call
14 your first witness.

15 Mr. McCoy - Thank you, Your Honor. The
16 plaintiff calls William Tucker.

17 Judge Kimball - Mr. Tucker - - -

18 Mr. McCoy - Your Honor, I want to tell you that
19 Mr. Tucker has a hard time hearing. So I'll be
20 louder than usual.

21 Judge Kimball - That's all right. Let's do this
22 then. Let's put that stand here, so that he can
23 talk to us both.

24 Mr. McCoy - Okay.

25 Judge Kimball - You can question him from that

1 point.

2 Mr. McCoy - Yes, sir.

3 Judge Kimball - Hopefully, that will work for
4 us. Set it back in the middle, Brian, so I can
5 see them.

6 Mr. McCoy - Oh, okay.

7 Judge Kimball - That's good. Okay. Mr. Tucker,
8 if you will, stand and raise your right hand,
9 please, sir.

10 Whereupon, William G. Tucker, having been first duly
11 sworn, was examined and testified as follows:

12 Judge Kimball - Have a seat.

13 DIRECT EXAMINATION

14 BY MR. MCCOY:

15 Q Mr. Tucker, will you please state your full name for
16 the record?

17 A William Gordon Tucker.

18 Q And where do you live, sir?

19 A 3120 Bristol Lake Court, which is a part of the
20 Aldersgate Retirement Community located in Charlotte,
21 North Carolina.

22 Q Okay. And how old are you, sir?

23 A Eighty-one.

24 Q Are you currently employed?

25 A No. I retired in 1990.

1 Q And where did you work prior to retiring?
2 A For the Charlotte-Mecklenburg School System as a
3 school counselor for thirty-one years.
4 Q And you did that for the thirty-one years prior to
5 retiring?
6 A Correct.
7 Q And are you currently married?
8 A No, I am not. I am widowed.
9 Q Okay. So you were married?
10 A Yes, I was.
11 Q And how long were you married?
12 A Fifty-six years.
13 Q And when did your wife pass?
14 A November 2009.
15 Q And what did she die of?
16 A She had Alzheimer's. She had been diagnosed with
17 early onset Alzheimer's and had been a resident of a
18 facility for Alzheimer's patients for five years.
19 Q Did there come a time when you went online to some
20 online social site?
21 A Yes, I did. That was approximately January of 2009.
22 Q And what was the website?
23 A The website was a social website known as Plenty of
24 Fish.
25 Q And just briefly, what is that, or how does that

1 work?

2 A It's one of those things described as a social
3 network, which my interpretation was an opportunity
4 to meet people, to communicate with them through the
5 use of emails, and perhaps for some to develop
6 relationships.

7 Q And is that how you met the defendant, Ms. Batey?

8 A Yes, it is.

9 Q And approximately when was that?

10 A I met her for the first time in approximately May of
11 2009, when she had indicated she was moving from New
12 York to Charlotte and would like to meet some people
13 who knew Charlotte and could help her make some
14 connections, find a place to live.

15 Q Okay. Had you chatted on this website prior to that?

16 A We chatted back and forth for approximately a month
17 or two.

18 Q And I think you said in May or June, she came to
19 Charlotte to try to get an apartment?

20 A She did come in May to try and locate an apartment.
21 She was unsuccessful at that time in finding the one
22 that she was looking for. She returned in June,
23 stayed at my house, and we located an apartment for
24 her in the Lake Wylie area.

25 Q And subsequently, she moved to Lake Wylie?

1 A She did move to Lake Wylie.
2 Q I'm not sure if you said this, but what was her
3 occupation?
4 A I'm sorry?
5 Q What was her occupation?
6 A Her occupation? She was an airline attendant for
7 Mesa Airlines.
8 Q So was she flying in and out on a - - -
9 A Yes.
10 Q After she got the apartment in June of 2009, did you
11 continue communicating with her?
12 A We did. We emailed back and forth. In that her job
13 took her out of town frequently, we would see each
14 other when she would be in town for social occasions
15 of dinner and things of that nature.
16 Q Did there come a time when you developed - - - where
17 it was kind of a relationship?
18 A We developed a relationship, which ultimately led to
19 what I felt like was going to be long-term.
20 Q During this time when you were seeing her, did you
21 give her gifts?
22 A I did give her gifts, the typical gifts I think men
23 tend to give to women, flowers, jewelry, things of
24 nature, a couple of cars.
25 Q So you went so far as to give her two cars?

1 A Yes.

2 Q And these gifts were over a period of time?

3 A Over an extended period of time.

4 Q Did there come a time when she wanted to move out of
5 her apartment and into a house?

6 A Yes. It became fairly apparent that the apartment
7 complex in which she lived was not the safest place
8 to live. In fact, on one occasion, she had a
9 convertible automobile. The top was cut. We both
10 agreed that it would be better for her to move to
11 some other location, preferably a house of her own.

12 Q Okay. So do you know about what time period this
13 was?

14 A This would have been probably March/April of 2011.

15 Q Okay. So you had been in a relationship almost - - -
16 at least from the point you started talking to her,
17 at least two years?

18 A Yes.

19 Q Did you help her then with her effort to find a
20 house?

21 A Yes, I did help her. She and I would both go with a
22 real estate agent to look at possible locations. She
23 found one which she liked. I ultimately agreed to
24 help her get it by offering her the money as a loan
25 to buy the house.

1 Q Okay. Where was the house?

2 A The house is in Lake Wylie.

3 Q Did you attend a closing with Ms. Batey?

4 A Yes, I did. It was in the office of David Howe,
5 Attorney at Law, in Lake Wylie.

6 Q David Hadder?

7 A Yes.

8 Mr. McCoy - These are the three we premarked.

9 Mr. Foster - With no objection.

10 FURTHER EXAMINATION

11 BY MR. MCCOY:

12 Q I'm going to hand you three documents that have been
13 premarked. Plaintiff's Exhibit 1, which is a
14 promissory note from Ms. Batey to you in the amount
15 of two hundred and twenty-five thousand dollars, is
16 that the note that you received at the closing?

17 A Yes.

18 Q Okay. I'll just hand you Exhibit 2, which is a
19 mortgage from Ms. Batey to you for two hundred and
20 twenty-five thousand dollars for the property on Iron
21 Works in Lake Wylie. Is that the mortgage you
22 received at closing?

23 A Yes, it is.

24 Q And was that recorded?

25 A Yes, it was.

1 Q And you may or may not have knowledge of this. It's
2 public record. This is the deed to the property on
3 Iron Works in Lake Wylie. Is that the deed that Ms.
4 Batey received at closing?

5 A Yes.

6 Mr. McCoy - Okay. Your Honor, I'm going to ask
7 that these be admitted into evidence for the
8 plaintiff.

9 Mr. Foster - No objection, Your Honor.

10 Judge Kimball - All right. Without objection.

11 Mr. McCoy - Thank you.

12 FURTHER EXAMINATION

13 BY MR. MCCOY:

14 Q After the closing in April of 2011, did Ms. Batey
15 make any payments required by the mortgage?

16 A Yes, she did. She made a total of seven payments.
17 In January of 2012, she made the last payment when I
18 agreed that it seemed to be a financial burden for
19 her to make the payments at that time, and that I
20 would agree to her skipping payments.

21 Q So you gave her permission to miss the payments?

22 A Yes, I did.

23 Q At this point in time, when you gave her permission
24 to miss the mortgage payment, did you believe that
25 you and Ms. Batey were boyfriend and girlfriend, and

1 that you were exclusive?

2 A Yes. I felt that we had a relationship.

3 Q And did you think that it was exclusive? She wasn't
4 seeing other people, and you weren't to see other
5 people?

6 A That was my belief at the time.

7 Q Is that what you wanted?

8 A Yes, it was.

9 Q Did there come a time when Ms. Batey asked you to
10 forgive the balance on the note and mortgage?

11 A Yes. As in many relationships, we had times of
12 difficulty where we would argue or disagree over
13 things. Threats may have been made. In an attempt
14 to prolong our relationship, I agreed to furnish her
15 with a document that indicated the payment was in
16 full, but in giving this, I believed that we would
17 have a long-term relationship. I might even get to
18 move into the house, which I was - - - had paid for.

19 Q And prior to giving the statement, do you recall - -
20 - the statement of the mortgage being paid in full,
21 do you recall exchanging emails with her on the
22 topic?

23 A Yes, we did.

24 Q I'm going to hand you what's been marked as
25 Plaintiff's Exhibit 4. Are you able to see that?

1 A I am not.

2 Q Do you recall, in preparation for today and
3 contemporaneously, do you recall this email chain?

4 A Yes, I do.

5 Mr. McCoy - All right. Your Honor, I would like
6 to read it to him. It's fairly short.

7 Judge Kimball - I have a small magnifying glass,
8 if that will help. It's not a big one.

9 Mr. McCoy - Would a magnifying glass help you?

10 A Perhaps it would.

11 Judge Kimball - All right.

12 FURTHER EXAMINATION

13 BY MR. MCCOY:

14 Q Mr. Tucker, if you could, take a look at that with
15 the magnifying glass. My question now is, do you
16 recognize that as an email, a printed email chain,
17 between you and Ms. Batey?

18 A Yes, I do.

19 Q And you can see the email addresses that are
20 involved?

21 A Yes.

22 Q Your emails seem to be in pretty large type. Is that
23 because of your eyesight?

24 A Yes, it is.

25 Mr. McCoy - Your Honor, I'm going to move this

1 to be admitted as Plaintiff's Exhibit 4.

2 Judge Kimball - Any objection?

3 Mr. Foster - I am not going to object, Your
4 Honor.

5 Judge Kimball - All right. So that will be
6 Plaintiff's Exhibit 4, without objection. Is
7 there something on there to identify it?

8 Mr. McCoy - I'm going to - - -

9 Judge Kimball - You said two emails. Is this
10 the only email chain?

11 Mr. McCoy - No. There will be another one
12 later.

13 Judge Kimball - What's the date on that?

14 Mr. McCoy - Yes, sir. It's - - -

15 Judge Kimball - Just so we can distinguish
16 between them.

17 Mr. McCoy - Plaintiff's Exhibit 4 is an email
18 thread where they all take place on May 21,
19 2012.

20 Judge Kimball - Good enough.

21 FURTHER EXAMINATION

22 BY MR. MCCOY:

23 Q Okay, sir. So Plaintiff's Exhibit 4, as you've
24 testified, is an email chain between you and Ms.
25 Batey on May 21st, 2012. Is that correct?

1 A Yes, it is.

2 Q And as most printed emails are, the earlier emails
3 start at the bottom, and the replies go up from
4 there. So if you look at the bottom, that one is
5 from you in big type. You can look at yours. It
6 says, send no payments, they will be returned to you?

7 A Correct.

8 Q Is this consistent with what you testified to
9 earlier, where you gave her permission not to send
10 payments?

11 A Correct.

12 Q This is going to be a little hard for you to see it,
13 sir. Above that is her response. Tell me if I read
14 this accurately. Why? So you can evict me? No way.

15 A That is as I remember it.

16 Q Okay. And then in response, you say - - - And these
17 are all on the same day. If you accept it, I will
18 have a notarized statement stating that I will not
19 evict you, or perhaps I can get you a paid-in-full
20 statement so that you will not have to worry about
21 that. I appreciate your honesty about the trip. If
22 ever again I bring up house payments, I'll shoot
23 myself or something to assure you that they will
24 never be brought up again. Again, I felt sorry for
25 myself and lashed out without thinking. Did I read

1 that accurately?

2 A Yes, you did.

3 Q And her reply to that, right above it says, I want
4 notarized paid-in-full soon, or I will get roommates,
5 and you will never see me again. Do you recall that
6 being her response?

7 A I remember that.

8 Q And then your response, the last one is, you sure do
9 drive a hard bargain, but this should settle it once
10 and for all. Starting to rain here with thunder and
11 lightning. Was that your response?

12 A Yes, it is.

13 Mr. McCoy - I think I moved to have that
14 admitted.

15 Judge Kimball - You did.

16 FURTHER EXAMINATION

17 BY MR. MCCOY:

18 Q So, Mr. Tucker, was that the discussion that you had
19 regarding the requested satisfaction of the mortgage?

20 A Yes, it was.

21 Q And you mentioned in there, you wrote, this will
22 settle it. Were you referring to the statement that
23 you had prepared?

24 A (No response)

25 Q I'm going to hand you what's been marked as Exhibit

1 5, and that's titled, Statement of Mortgage Paid-in-
2 Full?

3 A Yes.

4 Q Is that an accurate copy of the document that you
5 prepared?

6 A Yes, it is.

7 Q Okay. And it says - - - Did you prepare this
8 yourself? What were the circumstances?

9 A Yes, I did prepare this myself without any assistance
10 legally, believing that this would smooth over our
11 differences and promote a long-term relationship.

12 Q Okay. Did you get any legal advice in making this?

13 A I did not.

14 Judge Kimball - Any objection to that one, Mr.
15 Foster?

16 Mr. Foster - Absolutely not.

17 Mr. McCoy - Then we would like to have that
18 admitted as Plaintiff's Exhibit 5, Your Honor.

19 Judge Kimball - Yes, sir.

20 FURTHER EXAMINATION

21 BY MR. MCCOY:

22 Q Contemporaneously with or prior to you providing that
23 statement, did Ms. Batey make you any promises or
24 offer you anything in exchange for that?

25 A No, she did not.

1 Q At the time you gave her that, did you have an
2 expectation that the relationship would continue?

3 A Yes, I had that expectation.

4 Q That was in May of 2012. Did the relationship
5 continue after that?

6 A It did. Unfortunately, that was not the magic
7 bullet. We still had differences. It became more
8 and more evident that we were not going to be able to
9 have a relationship. Therefore, in September of
10 2013, I chose to end it.

11 Q Okay. Between the time period of May of 2012 and
12 September of 2013, did you learn that Ms. Batey was
13 seeing other men?

14 A Yes.

15 Q Did she, during that time period, make you aware that
16 she considered you and her to be just friends?

17 A Yes. She made a statement to that effect.

18 Q Prior to the termination of the relationship, which I
19 think you testified occurred about September 23rd,
20 2013 - - -

21 A Yes.

22 Q Did you have a discussion about an annuity?

23 A Yes. I had taken out an annuity, to which Ms. Batey
24 would be the beneficiary, and we talked about it. I
25 had given her updates over a period of time, and I

1 had decided that I no longer chose for her to be the
2 beneficiary of that annuity.

3 Q How much was the annuity? Do you recall?

4 A Approximately a hundred and twenty thousand dollars.

5 Q Was she wanting you to get an attorney involved with
6 the annuity to somehow make it irrevocable that she
7 was the beneficiary?

8 A There was. To me, there seemed to be an attempt to
9 do that, but I did not agree.

10 Q Mr. Tucker, I'm going to hand you a three-page email
11 chain dated September 22nd, 2013 and September 23rd,
12 2013. Could you look over that with the magnifying
13 glass, and just testify as to whether that is a true
14 and correct copy of the email exchange?

15 A Yes.

16 Mr. McCoy - Okay. Your Honor, I'd move to have
17 this be admitted as Plaintiff's Exhibit 6.

18 Judge Kimball - Any objection?

19 Mr. Foster - No objection, Your Honor.

20 Judge Kimball - All right, sir.

21 FURTHER EXAMINATION

22 BY MR. MCCOY:

23 Q Mr. Tucker, I know you've just reviewed the email.
24 Does it reference the annuity that you testified
25 about?

1 A Yes.

2 Q And in Ms. Batey's response, she says - - - Well,
3 there's a discussion about you going to see Mr.
4 Hadder - - - or David's office? Is that the
5 attorney, David Hadder?

6 A Yes, it is.

7 Q And was that when she wanted you to get something
8 changed to it, so that you couldn't revoke it?

9 A Yes. That is correct.

10 Q And then at the end of this email, there is - - - Is
11 this where you essentially end the relationship?

12 A Essentially, yes.

13 Q And in response to your statement that you thought
14 ended the relationship, she replies, so are you
15 calling the attorney to settle this once and for all?
16 Do you recall that?

17 A Yes, I do.

18 Q And then you tell her, strange how people interpret
19 an email one way or another. Then you said, it ends
20 here. I'm doing no more. Then finally she replies,
21 so once again, you lied about talking to Hadder.
22 Have a good remaining of your life.

23 A That is as I remember it.

24 Q And that was September 23rd, 2013. Subsequent to
25 that, did you have additional communication with her?

1 A Subsequent to that, I have had no communication with
2 her whatsoever.

3 Q Well, other than - - - Subsequent to that, did you
4 send her a notice of default on the mortgage?

5 A I did, in fact, send that in January of 2014.

6 Q And in this document titled Notice of - - - Well, let
7 me hand you what's been marked as Plaintiff's Exhibit
8 7. Is that a true and correct copy of the letter
9 that you sent to her on January 20th, 2015?

10 A Yes, it is.

11 Q And in this, do you mention she's in breach of the
12 mortgage, and that all amounts due become payable,
13 which we call acceleration? You mentioned that in
14 this letter?

15 A Right.

16 Mr. McCoy - All right. Your Honor, I'd move to
17 admit Plaintiff's Exhibit 7.

18 Judge Kimball - Any objection?

19 Mr. Foster - No objection.

20 Judge Kimball - All right, sir.

21 FURTHER EXAMINATION

22 BY MR. MCCOY:

23 Q Mr. Tucker, Plaintiff's Exhibit 7 makes it apparent
24 that you had changed your mind or didn't believe that
25 the document you had previously given her had

1 canceled the debt or released the mortgage. Is that
2 correct?

3 Mr. Foster - I am obliged to say something here
4 about leading the witness, but I merely make
5 notice of it.

6 A That is correct.

7 Mr. McCoy - I'll rephrase.

8 FURTHER EXAMINATION

9 BY MR. MCCOY:

10 Q Did you change your mind about Exhibit Number 5,
11 which was the Statement of Payment-in-Full, by the
12 time you sent her Exhibit 7 on January 20th? Had you
13 changed your mind?

14 A I had changed my mind in that, that was generated
15 believing we would have a long-term relationship
16 that, in fact, did not occur. I felt that I had the
17 right to withdraw that.

18 Q At any time, did you take a step of having a
19 cancellation of mortgage recorded?

20 A I did not take a step to have it recorded.

21 Q And are you aware that that would be required in
22 order to have the mortgage satisfied on record?

23 A Yes.

24 Q Has Ms. Batey made any other payments to you since
25 she stopped making them in January of 2012?

1 A No payments have been made.

2 Q Did you receive a letter from her attorney, asking

3 you to satisfy the mortgage?

4 A Yes, I did.

5 Q And he'll probably ask you about that. Are you

6 requesting this Court to foreclose on your mortgage

7 on Ms. Batey's - - -

8 A I would - - -

9 Q Note?

10 A I am asking this Court to foreclose.

11 Mr. McCoy - Okay. Thank you, sir. Please

12 answer any questions from Mr. Foster.

13 Judge Kimball - Mr. Foster?

14 Mr. Foster - Your Honor, I assume you'd like for

15 me to use the same?

16 Judge Kimball - Please.

17 Mr. Foster - Thank you.

18 CROSS EXAMINATION

19 BY MR. FOSTER:

20 Q Mr. Tucker, if you can't hear me, let me know. Can

21 you hear me from there, sir?

22 A I can hear you fine.

23 Q Thank you. Sir, I'm going to show you a document and

24 ask you whether that is a copy of the document that

25 was sent to you by my office. Do you recognize this,

1 sir?

2 A Yes, I did receive this from you.

3 Q Thank you.

4 Mr. Foster - Your Honor, we would move this into
5 evidence.

6 Judge Kimball - Any objection?

7 Mr. McCoy - No objection.

8 Judge Kimball - All right. That will be
9 Defendant's Exhibit 1.

10 FURTHER EXAMINATION

11 BY MR. FOSTER:

12 Q Thank you, sir. Let me get this, if I may. Mr.
13 Tucker, I've handed you Plaintiff's Exhibit 5, which
14 is the Statement of Mortgage Paid-in-Full. Sir, I
15 have some questions about that. Did Ms. Batey
16 promise you anything or imply anything about her
17 future actions, or past actions, or her present state
18 when that document was signed that led you to execute
19 that release?

20 A No, she did not make any promises.

21 Q Which is what I believe you said in your deposition,
22 sir. Thank you. Sir, were you under any other
23 pressure, or did you have any other grounds for
24 wanting to execute that release in May of 2012?
25 Specifically, I'm asking whether you believe if

1 there's anything else that would constitute a reason
2 for executing it at that date?
3 A As I stated a few moments ago, my belief that this
4 would perhaps lead to an extended relationship
5 between the two of us.
6 Q Sir, I'm obliged to ask, and I intend no disrespect
7 in doing so. Sir, do you have any idea that you have
8 any diminishment in your ability to make rational
9 decisions?
10 A I do not.
11 Q Has any doctor or any medical professional told you
12 that you have such?
13 A No doctor has told me such.
14 Q So as far as you are aware, and I hope I don't lead
15 by putting it in this fashion, you are and were in
16 May of 2012, as far as you are aware, sir, in your
17 right mind?
18 A Yes, I do believe that.
19 Q Okay, sir. I believe we established that the notice
20 of default, which was put in - - - To be sure of
21 this, because there was - - - I believe you
22 originally said 2014. But that is dated January of
23 2015? Is that correct, sir?
24 A 2014?
25 Q I believe you said '14, sir. Without trying to tell

1 you what to say, the document - - -

2 Judge Kimball - Which document are we talking
3 about?

4 Mr. Foster - We're talking about the notice of
5 default.

6 A 2015. You are, in fact, correct.

7 Mr. Foster - That's Plaintiff's 7.

8 A Yes.

9 Judge Kimball - And it should be?

10 Mr. Foster - '15.

11 A '15.

12 Judge Kimball - I think that's what was said.
13 The notice of default?

14 Mr. Foster - Yes, Your Honor.

15 Judge Kimball - January 20th, 2015?

16 Mr. Foster - That's what Mr. McCoy said. Yes,
17 sir.

18 FURTHER EXAMINATION

19 BY MR. FOSTER:

20 Q Sir, this was a point which I believe you stated in
21 narrating some of the emails that I wish to be clear
22 about. There were payments proffered, and they were
23 refused by you. Is that correct?

24 A To the best of my knowledge, I did not receive a
25 payment which I refused.

1 Mr. Foster - Will the Court allow me a moment?

2 Judge Kimball - Yes, sir.

3 FURTHER EXAMINATION

4 BY MR. FOSTER:

5 Q Sir, let me show you a document, which we supplied to
6 counsel. Have you ever seen this document before?

7 A I did not recall having seen this.

8 Q Okay, sir. I think I'm - - - Well, can we agree that
9 this presumes to be a check?

10 A It does presume to be a check.

11 Q Someone has written across it, void. Is that your
12 handwriting, sir?

13 A I cannot testify that is my handwriting.

14 Q Can you deny it, sir?

15 A Neither can I deny it.

16 Q There's a notation under it. I assume that is not
17 your handwriting, sir?

18 A That is not my handwriting.

19 Mr. Foster - Okay, sir. Excuse me, if the Court
20 will allow - - -

21 Judge Kimball - Go ahead.

22 FURTHER EXAMINATION

23 BY MR. FOSTER:

24 Q Sir, to restate what may have already been stated
25 several times, you had expectations when you executed

1 this statement satisfying the debt?

2 A Yes, I had expectations.

3 Q Were they based upon any actions of or statements by
4 Ms. Batey?

5 A The actions that precipitated it were the
6 disagreements, arguments, et cetera that we were
7 having. I felt this would perhaps lead to a
8 satisfaction of those disagreements, and therefore,
9 lead to a long-term relationship.

10 Q So would I be correct, sir, in characterizing these
11 as hopes?

12 A Yes. You may classify them that way.

13 Mr. Foster - I have no further questions.

14 Judge Kimball - Redirect?

15 Mr. McCoy - No, Your Honor.

16 Judge Kimball - All right. Thank you, sir. You
17 may step down. Watch your step.

18 Whereupon - A cell phone rings.

19 Judge Kimball - Is that your phone?

20 Mr. Tucker - It is.

21 Judge Kimball - Bring it up here. Turn it off
22 and bring it up here. You saw the sign out
23 there?

24 Mr. Tucker - I did, and I didn't know I had it
25 on, Your Honor.

1 Judge Kimball - Well, it's going to cost you
2 thirty dollars to get it back.

3 Mr. Tucker - Okay. Yes, sir.

4 Judge Kimball - Is it off?

5 Mr. Tucker - It is.

6 Judge Kimball - Set it right up there.

7 Mr. Tucker - Okay. Right here?

8 Judge Kimball - Yes. Anything further from the
9 plaintiff?

10 Mr. McCoy - No. The plaintiff rests, Your
11 Honor.

12 Judge Kimball - All right. Mr. Foster?

13 Mr. Foster - Your Honor, I believe I'm going to,
14 before we start, to move for judgment at this
15 point. What I understand that we have here is,
16 as the gentleman stated, a matter of what he
17 hoped was going to happen. As I indicated in my
18 brief, we have here what I understand to be a
19 completed gift. We have a document. We have
20 its delivery to the lady, which I believe is
21 indicated by the testimony. She was aware of
22 it. The mortgage cannot survive if there is no
23 debt securing the mortgage. That, I believe to
24 be the only issue in this case. I am certainly
25 happy to go forward and present what additional

1 evidence we have to the Court. It will be, in
2 my opinion, cumulative because I believe this to
3 be the only issue in front of the Court today.
4 Judge Kimball - Well, Mr. McCoy, address the
5 Court.
6 Mr. McCoy - Thank you, Judge. I, of course,
7 oppose the motion. Under South Carolina law, I
8 believe the Statement of Mortgage Paid-in-Full
9 did not, in fact, cancel the debt. It did not
10 have the legal effect of canceling the debt.
11 If, Your Honor, saw the law I submitted, the
12 common law in South Carolina has adopted the
13 ruling in Pinnel's case or the Foakes versus
14 Beer case, which says that - - - And there's no
15 dispute here that there was no consideration.
16 The law is, if there's - - - In that
17 circumstance where there's no consideration, the
18 purported cancellation of a debt or a portion of
19 the debt is not effective until, in fact, the
20 full amount of the debt is paid. And here,
21 there remained other steps that needed to be
22 taken. Which again, the South Carolina law
23 says, if there's additional steps to be taken,
24 then the gift is not completed. The examples of
25 that are a deed. You can promise land, but

1 until you get a deed - - - Or you can promise
2 shares of stock, but until you give them the
3 stock certificate and have it recorded on the
4 corporate ledger, it's not a completed
5 transaction. So if there are steps to yet be
6 performed, it's not a completed transaction, and
7 the purported donor can change his or her mind.
8 That's what we're saying. Clearly, there was a
9 step yet to be performed on the satisfaction of
10 the mortgage, and no one took the step to
11 satisfy it. But they could rule in the Pinnel's
12 case - - - And the lack of any kind of paid-in-
13 full onto the note or anything like that shows
14 that, in this circumstance, he was leaving
15 himself the option of changing his mind. I made
16 the analogy here to the engagement ring, which
17 South Carolina law settled, where that's a gift.
18 It was given. Mr. Foster would say, it's a
19 completed gift. Well, it is. But in that case,
20 the Court has determined in that circumstance
21 there is an expectation on the part of the donor
22 that the marriage will actually occur. If it
23 doesn't, then he's entitled to demand the ring
24 back. I think here, we're talking about a two
25 hundred and thirty-five thousand dollar house.

1 We're at a different level than clothes or
2 flowers or gifts to that effect. There is a
3 legitimate expectation and implied condition
4 that, under those circumstances, the donor can
5 change his mind if that condition doesn't
6 actually happen. Otherwise the next day, she
7 could have said, I never want to see you again.
8 Thanks for the house. But I think that's just
9 the analogy. I just think the law in Pinnel's
10 case and the fact that these steps remained to
11 be done shows that it wasn't a completed gift.
12 Judge Kimball - Now, the gift that we're talking
13 about is the release of the debt, right?
14 Mr. McCoy - I think that - - -
15 Judge Kimball - It's the debt?
16 Mr. McCoy - It's the release of the debt. The
17 note, Exhibit 5, is actually titled Statement of
18 Mortgage Paid-in-Full.
19 Judge Kimball - Right.
20 Mr. McCoy - It - - -
21 Judge Kimball - Right.
22 Mr. McCoy - It references the debt. Clearly,
23 the mortgage wasn't actually satisfied on
24 record. But yes, in a sense, they're talking -
25 - - It's liquidated debt. The amount was fixed.

10 Mr. Foster - I understand.

13 Mr. Foster - Thank you, Your Honor. Your Honor,
14 we call Ms. Batey.

17 Whereupon, Connie Lynn Batey, having been first duly
18 sworn, was examined and testified as follows:

20 Mr. Foster - Thank you, sir. I will use this
21 platform again, if the Court will allow.

24 Mr. Foster - Thank you, sir.

25 DIRECT EXAMINATION

1 BY MR. FOSTER:

2 Q Ms. Batey, let me ask you the same matters that we
3 discussed before. Ma'am, when this document was
4 signed, Plaintiff's 5, was a copy thereof delivered
5 to you?

6 A Through email.

7 Q Thank you. Ma'am, at the time of this document or
8 before, did you promise Mr. Tucker anything, or imply
9 anything about your future actions or your past
10 actions or your present state at that time, that
11 would have led him to execute or release the mortgage
12 and note?

13 A Absolutely not.

14 Q Okay. Ma'am, are you aware of any other pressure or
15 circumstances he was under that would deprive him of
16 the ability to make a free gift at that time to you?

17 A No, I'm not aware.

18 Q Are you aware, ma'am, or were you aware at the time
19 of any condition he had medically or otherwise that
20 would have prevented him from making the free and
21 voluntary act of executing that document?

22 A No.

23 Q Did you request that document, ma'am?

24 A No, I did not.

25 Q Well, there was an email, I believe, where there was

1 a discussion, was there not?

2 A There was a discussion, yes, because he always
3 threatened me. He was constantly threatening me that
4 he's going to take the house away.

5 Q What was your understanding of the circumstances
6 under which you acquired the house, ma'am?

7 A As Mr. Tucker said, I was in an apartment. My car
8 was vandalized twice. He suggested I need a house.
9 I said, I can't afford a house. I don't have the
10 money. He said, don't worry about it. Call your
11 friend, the realtor, and we'll go start looking for
12 homes.

13 Q Did you attempt to make payments to him that were
14 refused, ma'am?

15 A Yes, I did.

16 Q Payments under the mortgage?

17 A (Indicating yes)

18 Q Ma'am, did you receive the demand notice, Plaintiff's
19 7, dated January 20th, 2015?

20 A Yes, I did.

21 Q Ma'am, have you taken care of the house since - - -
22 Well, let me go back. You live in this house?

23 A Correct.

24 Q You keep it up, I assume?

25 A Yes, sir.

1 Q Have you made any payments or paid expenses on it?

2 A All the expenses on it.

3 Q Have you treated the house as your own?

4 A I assumed it was my own.

5 Q Have you entered, ma'am, into any contracts or
6 undertaken any action that you would not have taken
7 had you believed the house was not fully yours?

8 A About a year-and-a-half ago, I did put it up for
9 sale, but I took it off. I decided not to go
10 anywhere.

11 Mr. Foster - Ma'am, I have nothing further.
12 Please answer any questions from the Court or
13 Mr. McCoy.

14 Judge Kimball - Mr. McCoy?

15 CROSS EXAMINATION

16 BY MR. MCCOY:

17 Q Ms. Batey, had you been on any online social sites
18 prior to meeting Mr. Tucker online?

19 A Yes.

20 Q For a long period of time?

21 A No, not - - - (No further response)

22 Q Not that long?

23 A (Indicating no)

24 Q And you've previously been married?

25 A Yes.

1 Q How many times?

2 A Six times.

3 Q And you've gone on some other dates with the men
4 you've met on the online dating?

5 A Yes.

6 Q Have any of them given you a house?

7 A No.

8 Q At the time you went to the closing, you realized you
9 did agree to make payments to Mr. Tucker, right?

10 A Correct.

11 Q And then you did make some payments?

12 A Correct.

13 Q And then you missed some payments, didn't you, before
14 he said, you don't have to pay any more?

15 A Right.

16 Q But then your last one was in January? So you had
17 missed a couple, and then you made that one in
18 January of '12?

19 A I think that might be correct.

20 Q Okay. And that's when he started telling you, you
21 don't have to pay?

22 A Exactly.

23 Q Now from the time you moved in, the deed was in your
24 name?

25 A Correct.

1 Q You've always treated the house as if it was your
2 own?

3 A Absolutely.

4 Q Even before he told you to stop making payments?

5 A Right.

6 Mr. McCoy - I have nothing further, Your Honor.

7 Judge Kimball - Any redirect?

8 Mr. Foster - No, Your Honor.

9 FURTHER EXAMINATION

10 BY JUDGE KIMBALL:

11 Q Ms. Batey, what led Mr. Tucker to forgive the debt in
12 your judgment, in your opinion?

13 A He promised me that it would be my home, always my
14 home, and I - - -

15 Q Then why did you sign a mortgage?

16 A Well, I - - - He said, you really probably won't have
17 to pay this back, but we just need to do it legally.
18 That's why he did it, and I offered to pay him back
19 what I could afford. Okay? And then - - - Then he
20 said, look, you're having financial problems. Don't
21 worry about it. You don't have to pay me back.

22 Q So his motivation for allegedly canceling the debt
23 was what?

24 A I - - - He wanted a relationship. I told him all
25 along, this is a friendship, and that's all it was.

1 Judge Kimball - If I have generated any
2 questions, you all are free to ask them. Mr.
3 Foster, she's your witness. So you can go
4 first.
5 Mr. Foster - No questions, Your Honor.
6 Mr. McCoy - No questions, Judge.
7 Judge Kimball - Thank you, ma'am. You may step
8 down. Watch your step. Anything further?
9 Anything in reply?
10 Mr. McCoy - Well, I - - -
11 Judge Kimball - Is there anything further from
12 the defendant?
13 Mr. Foster - Nothing, sir.
14 Judge Kimball - Is there anything in reply from
15 the plaintiff?
16 Mr. McCoy - No, Your Honor.
17 Judge Kimball - Anything else from either party?
18 Mr. McCoy - Nothing further, Your Honor.
19 Mr. Foster - Nothing, Your Honor.
20 Judge Kimball - All right. I will - - - As I
21 said, I didn't have an opportunity to read the
22 briefs. So I will do that, and either contact
23 you all about an order or just go ahead and do
24 one myself. I would like for you to do this,
25 though. I know that your brief was sent in PDF

1 format, Mr. Foster. I can't remember what yours
2 was.
3 Mr. McCoy - I think I sent it in Word, Judge.
4 Mr. Foster - I can send it by DocX.
5 Judge Kimball - That's fine. That's what I
6 need. I need both briefs in Word format.
7 Mr. Foster - Yes, sir.
8 Judge Kimball - All right. Thank you.
9 Mr. Foster - Thank you, Your Honor.
10 Mr. McCoy - Thank you, Your Honor.
11 Judge Kimball - That will conclude the hearing.
12 Whereupon - The hearing concludes. Please note
13 the audio recording did not include the time the
14 hearing concluded.
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF YORK

PROMISSORY NOTE

FOR VALUE RECEIVED Connie Lynn Batey, hereinafter referred to herein as "Maker", promises to pay to the order of William G. Tucker, hereinafter referred to herein as "Payee", a principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) payable on the basis of 180 equal monthly installments of principal and interest, at the interest rate of 4%, of \$ 1,664.30. The first such payment shall be due on May 14, 2011, and each payment thereafter shall be due on or before the 14th day of each succeeding month until the unpaid balance is paid in full. Payments are considered late and delinquent after the 30th day of each month and a \$50.00 late fee will be due Payee for each late payment.

This Promissory Note is secured by a Mortgage of even date herewith (on property located on 2271 Iron Works Drive, Lake Wylie, SC 29710). If any deficiency in payment of any installment under this Note is not made good prior to the date of the next such installment, then the entire principal and accrued interest shall become due and payable, at the option of the holder of this Note. Failure to exercised this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

This Promissory Note may be prepaid in whole or in part at any time without penalty. Purchaser shall have the right during the term of the Promissory Note to make prepayments on the unpaid balance without penalty, provided, however, that such payments shall not act as a release from any obligation to make scheduled payments provided in the Promissory Note. Only the unpaid principal shall bear interest and all payments shall first be applied upon accrued interest and the balance upon principal.

On the happening of any of the following events, each of which will constitute a default under this note, all liabilities of Maker to Payee shall become immediately due and payable at the option of Payee: (1) failure of Maker to make a payment within 30 days of the date when due; (2) application for appointment of a receiver or insolvency of Maker; or (3) filing of any petition in bankruptcy by or against Maker. Payee may waive any default before or after the default has been declared without impairing his right to declare a subsequent default under this note, this right being a continuing one. Maker waives protest of this Note. If this Note is not paid when due, Maker agrees to pay all costs and expenses of collection, including reasonable attorney fees.

MAKER:



By: Connie L Batey
Connie Lynn Batey

201100132538
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
04-18-2011 At 11:54 am.
MORTGAGE 10.00
OR Vol 11948 Page 80 - 82

STATE OF SOUTH CAROLINA
COUNTY OF YORK

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, is made by and between Connie Lynn Batey, to herein as "Mortgagor", and William G. Tucker, of 3800 Shamrock Dr., Charlotte, NC 28215, referred to herein as "Mortgagee".

Mortgagor owes Mortgagee the principal sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00). This debt is evidenced by Mortgagor's Promissory Note dated April 14, 2011, hereinafter referred to as the Note. This Mortgage secures to Mortgagee: a.) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, and modifications; b.) the payment of all other sums, with interest, advanced by Mortgagee to protect the security of this Mortgage; and c.) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note.

For this purpose, Mortgagor does hereby mortgage, grant, and convey to Mortgagee all of that certain real property located in the County of York, State of South Carolina, described as follows:

All that certain piece, parcel or lot of land lying and being situate in Bethel Township, York County, South Carolina, and being more particularly described as Lot 45 of MILL CREEK FALLS SUBDIVISION as shown on a plat thereof recorded in Plat Book C-226, Page 2, in the Office of the Clerk of Court for York County, South Carolina, to which plat reference is hereby made for a more particular description of the above-numbered piece, parcel or lot of land.

TAX MAP NUMBER: 565-01-01-031

This being the identical property conveyed to Connie Lynn Batey by Deed from Marson J. Germanetti and Linda A. Germanetti dated April 18, 2011 and recorded in Book 11948, Page 78, in the Office of the Clerk of Court for York County, South Carolina.

To have and to hold such property unto Mortgagee and Mortgagee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, water rights and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property".

Mortgagor covenants that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

1
BK 11948 P00080



And Mortgagor covenants with Mortgagee as follows:

1. Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note. Unless applicable law provides otherwise, all payments received by Mortgagee shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under Section Two hereof; fourth, to interest due; and last, to principal due.
2. That this Mortgage shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.
3. That if all or any part of the Property or any interest in it is sold or transferred without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage.
4. On any default under this Mortgage, or the Note secured by this Mortgage, at the option of Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby.
5. That Mortgagor will pay all taxes, assessments, or water rates, and in default thereof, Mortgagee may pay the same. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term extended coverage and any other hazards for which Mortgagee requires insurance. This insurance shall be maintained in the amounts and for the periods that Mortgagee requires. The insurance carrier shall be chosen by Mortgagor subject to Mortgagee's approval which shall not be withheld unreasonably.
6. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, on notice to Mortgagor, may make such appearances, disburse such sums as a service, and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursements or reasonable attorney fees and entry on the property to make repairs. Any amounts disbursed by Mortgagee pursuant to this section, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amount shall be payable on notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the note from which this Mortgage is given as security, unless payment of interest at such rate would be contrary to applicable law, in which event the amount shall bear interest at the highest rate permissible under applicable law. Nothing contained in this section shall require Mortgagee to incur any expense or take any action hereunder.
7. That notice and demand or request may be in writing and may be served in person or by mail.

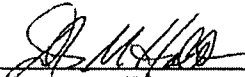
BK 11948 PD0081

8. Mortgagor hereby relinquishes all rights of homestead. Mortgagor warrants and covenants that mortgagor is the owner in fee simple of the property and that the same is free from all liens and encumbrances. Mortgagor agrees to protect the title to the property. On failure to do so, the holder of this Mortgage may protect and add the cost thereof to the amount due under the Mortgage.

IN WITNESS WHEREOF, this mortgage has been duly executed by the Mortgagor on this the 14 day of April, 2011.

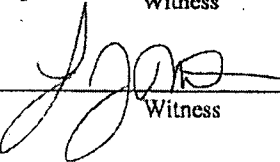
SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF:

MORTGAGOR:



Witness

By: Connie L Batey (Seal)
Connie Lynn Batey



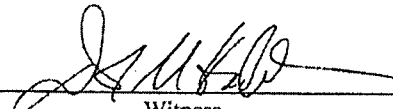
Witness

By: _____ (Seal)

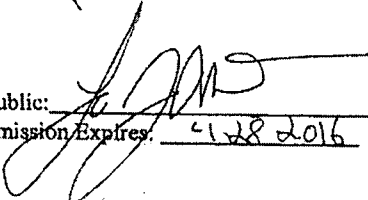
THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me, the undersigned witness, and made oath that she/he saw the within named Connie Lynn Batey, sign, seal and, as the Grantor's act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this the 14
day of April, 2011.



Witness

Notary Public: 
My Commission Expires: 128 2016 (L.S.)

Prepared by and mail to:
David M. Hadder, Atty at Law, PA
1516 Village Harbor Drive, Lake Wylie, SC 29710

3
BK-11948 P00082

Statement of Mortgage Paid in Full

This statement is to certify that the Mortgage on 2271 Ironworks Dr., Lake Wylie, SC 29710, titled to Connie Lynn Batey is hereby paid in full with no other monies due to satisfy this debt.

Signature: William G. Tucker

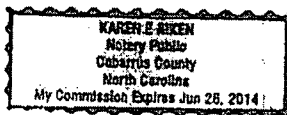
Name: William G. Tucker

State of North Carolina

Mecklenburg County

Sworn to and subscribed before me 23 day of May 2012

Karen E. Cullen
Notary Public



January 20, 2015

To Connie Battey
Notice of Default

The purpose of this letter is to inform you of two possible alternatives you may exercise to avoid foreclosure on the house located at 2271 Iron Works Dr., Lake Wylie, SC. 29710. "On any default under this Mortgage, or the Note secured by this Mortgage, at the option of the Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby." If you are willing to sign a "Deed in Lieu of Foreclosure" instead of having a foreclosure proceeding filed against you it will be far simpler. The seven payments you made leave an unpaid balance of \$220,573.13

William G. Tucker



2015-07-21 12:01

1 18033248109 >>

P. 2/2

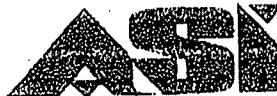
POLICY NO. 2015-10-02/000

TOTAL OF BOOK VALUE

NO. 0171



American Strategic Insurance Corp
1 ASI Way
St. Petersburg, FL 33707
Phone: (727) 374-2502



Homeowners Declaration Page

Named Insured:
CONNIE BATEY
2271 IRON WORKS DR
LAKE WYLER, SC 29710

Effective Date of This Transaction: 4/14/2015

Activity of This Transaction: Other

Residence Premises:
2271 IRON WORKS DR
LAKE WYLER, SC 29710

Total Policy Premium: \$1,550
Policy Number: SCA15204

Agent:
Allan Tate Insurance Services, LLC
6207 Park South Drive Suite 201
Charlotte, NC 28210

Agent Code: 420199
For Policy Service, Call: (704) 847-3636
E-Mail Address: atchinsurance@allentate.com

Policy Period: From: 04/14/2015 To: 04/14/2016
(At 12:01 AM Standard Time at the residence premises)

Plan Type: HO3

Coverages and Limits of Liability		
Coverages at the residence premises is provided only where a limit of liability is shown or a premium is stated.		
	Limit	Premium
SECTION I: A. Dwelling Coverage	\$313,000	\$91.07
B. Other Structures	\$31,300	\$0.44
C. Personal Property	\$156,500	Included
D. Loss of Use	\$62,600	Included
SECTION II: E. Personal Liability - Each Occurrence	\$500,000	\$5.00
F. Medical Payments to Others - Each Person	\$5,000	\$0.00
OTHER COVERAGES AND ENDORSEMENTS:		
(Printed on the following page)		
DEDUCTIBLES:		
All Other Perils:	\$500	
Wind/Hail:	\$500	

Special Messages: OTHER COVERAGES, LIMITS AND EXCLUSIONS APPLY - REFER TO YOUR POLICY FOR DETAILS

THIS POLICY DOES NOT INCLUDE COVERAGE FOR FLOOD LOSSES.

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR WIND/HAIL LOSSES WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE ENCLOSED EXAMPLE ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

Mortgagee:

1st Mortgagee:

2nd Mortgagee:

Page 1 of 2

Countersigned by Authorized Representative

St. Petersburg, Florida

Date: 04/27/2015

ASI HO SC DEC 02 10



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2015-CP-46-00950

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

NOTICE OF DEPOSITION

TO: Counsel for Defendant:

PLEASE TAKE NOTICE that counsel for the Plaintiff, pursuant to Rule 30 (b)(6) of the South Carolina Rules of Civil Procedure, will take, or cause to be taken, the deposition upon oral examination of Connie Lynn Batey before a notary public, or some other person duly authorized by law to take deposition. The deposition will commence at 10:00 a.m., on August 25, 2015, at the McCoy Law Firm, LLC, 378 East Main Street, Rock Hill, SC 29730.

This the 23rd day of July, 2015.

McCOY LAW FIRM, LLC

By: B. McCoy

Brian S. McCoy
Counsel for Plaintiff
378 East Main Street
Rock Hill, SC 29730
Tel: (803) 366-2280



CERTIFICATE OF SERVICE

I, Brian S. McCoy, hereby certify that on this date I served the foregoing **NOTICE OF DEPOSITION** by depositing in the U.S. Mail, postage paid, addressed to counsel for Defendant as follows:

John Martin Foster, Esq.
The Guardian Building
223 East Main St., Suite 520
Rock Hill, SC 29730

This 23rd day of July, 2015.



Brian S. McCoy

January 20, 2015

To Connie Battey
Notice of Default

The purpose of this letter is to inform you of two possible alternatives you may exercise to avoid foreclosure on the house located at 2271 Iron Works Dr., Lake Wylie, SC. 29710. "On any default under this Mortgage, or the Note secured by this Mortgage, at the option of the Mortgagee, and on fifteen (15) days notice to Mortgagor, the unpaid balance of the note and any advances made under it, or the instrument securing it, together with interest, shall become immediately due and payable, and this Mortgage may be foreclosed as provided by statute, time being of the essence of this contract. Any waiver of any default under this Mortgage or under the Note secured hereby at any time, shall not, at any time, be taken to be a waiver of the terms of this Mortgage or the instrument secured thereby." If you are willing to sign a "Deed in Lieu of Foreclosure" instead of having a foreclosure proceeding filed against you it will be far simpler. The seven payments you made leave an unpaid balance of \$220,573.13

William G. Tucker



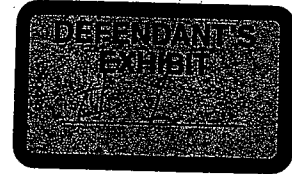
JOHN MARTIN FOSTER

Attorney at law

The Guardian Building	PO Box 106	803 324 8100
223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporlum.net

January 29, 2015

Mr. William G. Tucker
3800 Shamrock Drive
Charlotte, N.C. 28215
To Be Sent by Certified Mail:



Re: 2271 Iron Works Drive
Lake Wylie, S.C. 29710

Mr. Tucker:

I represent Ms. Connie L. Batey, owner of the real property referenced above. I am in receipt of your demand letter of January 20, 2015.

Your demand letter is premised upon the existence of a continuing debt to you secured by the mortgage on the above real property. Based upon the notarized document executed by you on May 23, 2012, a copy of which is enclosed herewith, I have advised my client that no such debt exists.

I call your attention to the provisions of S.C. Code § 29-3-310 (West) which requires you to enter satisfaction of the mortgage after formal request for such is made. A copy of that Statute is enclosed. By this certified mail, such formal request is hereby made. I enclose a Satisfaction of Mortgage form and return envelope, and confirm that any fees for the recordation of such form will be borne by my office.

I further call to your attention the provisions of S.C. Code 29-3-320 (West), which renders you, as the mortgage holder of record, liable for \$25,000.00, and for actual damages, costs and attorney fees in the discretion of the Court. In default of our receipt of a properly executed Satisfaction within the time allowed, I have advised my client to file a civil action for all remedies allowed by law or in equity.

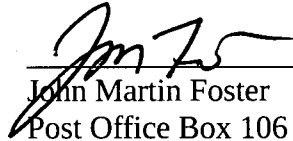
Yours,

John Martin Foster

cc: Client file
Enclosures

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
Attorney for Appellant

June 23, 2017