

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Appellate Case No. 2011-201547

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DEC 06 2012

SC Court of Appeals

NAFH National Bank.....Respondent,

v.

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Mathew G. Seppala a/k/a Mathew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d/b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc.; Bradco Supply Corporation; and Israel Romero.....Defendants,

Of whom ISRAEL ROMERO is the.....Appellant.

PETITION FOR A WRIT OF CERTIORARI

Dr. Israel Romero, PhD
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Petitioner

Other Counsel of Record:
Kristin Burnett Barber and Shane William Rogers
Post Office Drawer 5587
Spartanburg, SC 29304
Attorneys for Respondent

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CERTIFICATE OF COUNSEL

Dr. Israel Romero, Pro Se Petitioner certifies that the Petition for Rehearing was made on October 30, 2012, and finally ruled by the Court of Appeals on November 30, 2012.

QUESTIONS PRESENTED

1. DID THE COURT OF APPEALS ERRED WHEN FAILED TO APPLY THE PROPER LAW, AND AFFIRMED THE DECISION OF THE TRIAL COURT THAT DISMISSED THE COUNTERCLAIM?

2. DID THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE PROPER LAW AND AFFIRMED THE TRIAL COURT INTERLOCUTORY DECISION THAT DISMISSED APPELLANT'S AFFIDAVIT OF DEFAULT WHERE RESPONDENT FAILED TO PLEAD OR OTHERWISE DEFEND?

STATEMENT OF THE CASE AND FACTS

On February 4, 2011, the Respondent commenced this action by the way of Complaint (Non Jury – Foreclosure). On February 25, 2011 the Appellant was served with the Summons and copy of the Complaint. On March 10, 2011 the Appellant answered the complaint denying the pleadings, and denying the causes of action on its entirety, as well as alleging that the action by Respondent against Appellant in particular was a fraud plotted against Appellant Dr. Israel Romero (R.p.165 #2). Appellant's answer also contained the charge of falsehood and fraud in some documents filed as "exhibits" attached to the complaint (R.pp.165-166, #4, letters a-g, pp. 179-180). Eight other named defendants filed an answer (R.pp.182-195). On May 16, 2011 the Appellant filed an Affidavit of Default stating that the Respondent failed to answer on time or to reply in any way or manner, and for reason thereof the Respondent had admitted by default the claims presented by Appellant (R.pp. 196-198). On May 20, 2011 the Respondent filed a Motion to Strike Appellant's Affidavit of Default (R.pp.199-201). On May 25, 2011 the Appellant filed an Opposition to Respondent's Motion to Strike (R.pp.202-204). On July 1, 2011 the Court entered and filed an Order Granting Plaintiff's Motion to Strike, and an Order granting Appellant twenty one (21) days to file and serve a Counterclaim against

Respondent (R.pp.35-37). On July 8, 2011 the Appellant filed and served a Summons and Counterclaim (R.pp.205- 209). On July 22, 2011 the Respondent filed a REPLY to the Counterclaim with a defense that the Counterclaim failed to state facts sufficient to constitute a cause of action for which relief may be granted (R.pp.210-213). On May 23, 2011 the Respondent filed and served an AFFIDAVIT signed by the authorized representative of the Respondent Bank deposing that the real property, which is the subject of this action is not owner-occupied dwelling (R.pp.214-215). On June 2, 2011 the Appellant filed an Opposition to Perjured Affidavit (R.pp.216-220). The Respondent never answered to the charge of perjury, and the trial court never ruled on the issue. On September 23, 2011 the Appellant filed an Opposition to Deficiency Judgment and to Attorney Fees/Damages, also asking the trial court for SEVERANCE and to open the counterclaim for DISCOVERY (R.pp.226-229). The Respondent did not answer, and the trial court did not make a decision at all on the petition for severance and for discovery. On September 16, 2011 the Respondent filed an AFFIDAVIT signed by the authorized representative of the Respondent Bank which is exactly the same affidavit of May 23, 2011 but this time also accompanied by a CERTIFICATION OF EXEMPTION signed/certified by the Respondent's lawyer of record (R.pp.230-233). On September 28, 2011 the Appellant filed an Opposition to Perjured Affidavit and Certification of Exemption (R.pp.234-238). The Respondent never answered, and the trial court never ruled on the issue. On September 30, 2011 the trial was held at the Court of Common Pleas in Greenville by the Master-in-Equity (R.pp.239- 257). On October 5, 2011 a Master's Order and Judgment of Foreclosure and Sale was filed in the office of the Clerk of Court at Greenville County, dismissing the Counterclaim for failure to state a cause of action, and granting the relief sought by respondent in the Complaint (R.pp.1-34). The Notice of Appeal was served and filed on October 10, 2011 (R.pp.38-40). On October 24, 2012 the Court of Appeals AFFIRMED the lower court ruling (Unpublished Opinion No. 2012-UP-559). On October 30, 2012 appellant filed a PETITION FOR REHEARING (a copy with attachments is hereby enclosed). On November 30, 2012 denied the petition (the ORDER is hereby enclosed). Petitioner seeks a writ of certiorari to review the COURT OF APPEALS decision of October 24, 2012.

ARGUMENTS

- I. BECAUSE THE COUNTERCLAIM HAS ENOUGH PLEADINGS, AND IS BASED UPON THE VIOLATION OF A SPECIFIC LAW, THE TRIAL COURT ERRED WHEN DISMISSED THE COUNTERCLAIM FOR FAILURE TO STATE A CAUSE ACTION, AND THE COURT OF APPEALS SHOULD HAVE REVERSED THAT DECISION.

The law in South Carolina states that, “A claim which sets forth a cause of action, whether an original claim, *counterclaim*..., shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court’s jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled.” (SCRCP Rule 8(a)).

The counterclaim filed by appellant states clearly the basis for the court’s jurisdiction. And this is a non-controversial issue. Despite the law calls for a short and plain statement of the facts, appellant is very explicit with the facts showing that he is entitled for relief when states that the action by Respondent is, “fraud, trick, and deceptive practices,” (R.p.207, line 15, paragraph 3) in violation of the South Carolina Unfair Trade Practices Act (Title 39 § 39-5-10, and § 39-5-20 (a)) “Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of interpretation of Federal Act.” Appellant cited the violation by Respondent of the Fair Debt Collection Practices Act § 812 (15 USC 1692j), when Respondent in the original complaint named 22 defendants, and only eight (8) answered the complaint along with Appellant (R.p.206, #2). Those other eight only appear to ask the trial court to preserve their rights already granted by the court in previous actions not against the Respondent but against Tower Homes, other defendant in the original Respondent’s complaint (R.pp. 182-195). In addition, Appellant *prays or demand for judgment for the relief* to which he deems himself entitled, including the amount of \$500,000.00 granted by FDCPA § 813 (15 USC 1692k) as well as for “the award of a fee simple warranty deed free of mortgage, lien or encumbrances, suitable for recording, on the property located at 94 Birdsong Lane, Taylors, SC 29687, Lot #37 of the subdivision known as The Preserve at

Mountain Creek Map #T029060103700 of Greenville County Record of Deeds; granting Dr. Israel Romero an award of \$91,000.00 plus \$1,000.00 per month from March 2011 until this case becomes final, as *direct and actual damages*; granting Dr. Israel Romero an award for *suffering and mental anguish* caused by the foreclosure action brought by NAFH National Bank (the Respondent); granting an award in favor of Dr. Israel Romero as punitive damages; granting Dr. Israel Romero all costs caused to him for defending the foreclosure action, for this COUNTERCLAIM, and for other actions brought by NAFH National Bank; and for such other and further relief as the Court may deem just and proper.” (R.pp.207-208, entire WHEREFORE). With it, Appellant stated clearly the *causes of action of* fraud, trick, negligence, misrepresentation, deceptive practices, breach of the implied covenants of good faith and fair dealing, intentional infliction of emotional distress, and violation of the South Carolina Unfair Trade Practices Act in connection to the federal Fair Debt Collection Practices Act (R.pp.206-208).

The federal law connected to the South Carolina Unfair Trade Practices Act forbids the practice of furnishing certain deceptive forms of practices that “design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection or in an attempt to collect a debt such consumer allegedly owes such creditor.” This is the deception by the Respondent when named 22 defendants, and only one defendant, Tower Homes, is the real debtor. Again, the answer by the nine respondents show that none of them owes nothing to the Respondent, and eight answers only pray the trial court to preserve their rights against Tower Homes, which is a defendant in the original action. The deceptive form provided by Respondent is the original complaint (R.pp.41-160, pp.165-181, pp.182-195, pp.206-209).

Another fact that supports Appellant’s case is that the complaint is for foreclosure of five (5) properties, but Appellant is the only natural person called defendant for holding one of those five properties. Where are the other four natural persons? The ANSWER to this question was presented by the RESPONDENT on February 24, 2012

when without permission from the Court of Appeals filed at the lower court a MOTION FOR RELIEF FROM JUDGMENT with the *unbelievable confession* that Lots 23, 24, 33 and 75 of Baywood Place were already conveyed to third persons before the RESPONDENT brought this action in the lower court. The RESPONDENT also affirmed that the ONLY PERSON BEING SUED at the lower court was the Appellant (Israel Romero). The Court of Appeals overlooked this point as well as the documents that prove this fact. These documents were filed with the Court of Appeals on March 5, 2012, and were attached in support for the petition for rehearing as well as in support of the current petition pursuant to Rule 240 (c)(3) SCACR, and offered in evidence as **EXHIBIT A**. In these documents we call your particular attention to #s 1, 4, 6, 7, 8 (“Mortgage 1 was erroneously satisfied.” APPELLANT reads and this court should agree: “Mortgage 1 was maliciously inserted in the original complaint to deceive APPELLANT and the court.”) 9, 13 (“Clerical mistake,” which is but criminal action). The Respondent through the Attorney of Record on June 6, 2012 plainly admitted in open court to the same facts. Please see TRANSCRIPT OF TESTIMONY at the lower court in Greenville, p. 7, lines 23, 24, 25, and p. 8, lines 1-14. This admission by Respondent happened after Respondent had filed with the court affidavits certifying the truth of the matter presented in the original complaint. It proves not only the fraud by the Respondent but also the affidavits to be PERJURY, as Appellant had alleged before the court in several papers that are part of the record on this appeal. The entire transcript of testimony of 6/6/12 is hereby attached and offered in evidence as **EXHIBIT B**. Moreover, the fact of naming 22 defendants in the original complaint is for securing that most of the named defendants will not answer. And that is exactly what happened, and the Respondent had secured a default judgment against the fourteen (14) that did not answer. Again, only nine (9) answered, including the Appellant, but the other eight are not real defendants. They are real PLAINTIFFS as showed by the reading of their answers. This point is confirmed by the fact that the JUDGMENT BY DEFAULT is only against TOWER HOMES, and the two Seppala brothers, owners of TOWER HOMES, which in essence makes only one defendant. In the judgment, Appellant was just wiped out from the picture denying him any rights, making him loose every penny he had put on the purchase of the property

located at 94 Birdsong Lane, Taylors, SC 29687, and Appellant's title on the property was "cancelled and terminated for the public record." (See CONCLUSIONS (5) of the MASTER'S ORDER AND JUDGMENT OF FORECLOSURE AND SALE filed on October 5, 2011, and subject of this appeal) (R.p. 26, #5). Furthermore, the other four properties were to be sold together, but Appellant's property would be sold separately (R.p. 251, lines 9-15, p.30 # 20-21, pp.31-32). Appellant asked that in the case the property being conveyed to the Respondent, the Respondent owed \$115,000.00 to the Appellant. The lower court erred by not making provisions for the payment of the money by Respondent to Appellant, and the Court of Appeals affirmed that error, which is an error that warrants reversal, and this petition should be granted.

The Court of Appeals reviewing Rule 12(b)(6) SCRPC has stated that, "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff (in this case the Appellant or "counterclaimant") to relief on any theory of the case." (R.pp.205-209). Flateau v. Harrelson, 355 SC 197, 201, 584 SE2d 415 (Ct. App. 2003); see Gentry v. Yonce, 337 SC 1, 522 SE2d 137 (1999); see also Baird v. Charleston County, 333 SC at 527, 511 SE2d at 73 (1999) declaring that if the facts and inferences drawn from the facts alleged on the counterclaim would entitle the counterclaimant to relief in any theory, then the dismissal for failure to state a claim is improper. See also McCormick v. England, 328 SC 627, 494 SE2d 431 (Ct. App. 1997) concluding that a dismissal cannot be sustained if the facts alleged in the counterclaim and inferences reasonably deducible therefrom would entitle the counterclaimant to relief in any theory of the case (R.p.207, line 15, par. 3). The Court of Appeals has departed from its own decisions which warrants reversal. The Court of Appeals recently wrote that, "In deciding whether the trial court properly dismissed a counterclaim, this court must consider whether the counterclaim, viewed in the light most favorable to the counterclaimant, states any valid claim for relief. See Gentry, 337 SC at 5, 522 SE2d at 139. The Court of Appeals made that decision but failed to apply the same standard in Appellant's case, warranting reversal. See also Cowart v. Poore, 337 SC 359, 523 SE2d 182 (Ct. App. 1999) explaining that looking at

facts in light most favorable to counterclaimant, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief.” Ashley River Properties I v. Ashley River Properties II, 374 SC 271, 278, 648 SE2d 295, 298 (Ct. App. 2007). In Appellant’s counterclaim, Appellant stated clearly the causes of action of fraud, trick, negligence, misrepresentation, deceptive practices, breach of the implied covenants of good faith and fair dealing, intentional infliction of emotional distress, and violation of the South Carolina Unfair Trade Practices Act in connection to the federal Fair Debt Collection Practices Act (R.pp.207-208, entire WHEREFORE). In the case of Cole Vision Corporation and Sears Roebuck v. Steven C. Hobbs, opinion No. 4578 (Ct. App. July 1, 2009), The Court of Appeals citing another case wrote that, “In considering a motion to dismiss a counterclaim based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the counterclaim. A Rule 12(b)(6) motion *MAY NOT* [emphasis added] be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the counterclaimant to any relief on any theory of the case. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the counterclaim states any valid claim for relief. [The Court of Appeals used its own language upside down to affirm the lower court decision in the instant case, citing Charleston Cnty. Sch. Dist. v Laidlaw Transit, Inc. 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001), in clear application of double standard again]. The court *SHOULD NOT* [emphasis added] dismiss a counterclaim merely because the court doubts the counterclaimant will prevail in the action. Doe v. Marion, 373 SC 390, 395, 645 SE2d 245, 247 (2007). The rule in South Carolina is that, “Dismissal of an action pursuant to Rule 12(b)(6) is appealable.” Williams v. Condon, 347 SC at 233, 553 SE2d at 500 (Ct. App. 2001). Therefore, dismissal of the counterclaim by the trial court was appealable, is an error that warrants reversal, and this petition should be granted.

It is also noticed that Appellant asked the trial court for severance, and to open the counterclaim for discovery. (See Appellant’s filing of September 23, 2011, SEVERANCE AND DISCOVERY) (R.pp.227-229). The trial court dismissed also this

petitions, preventing Appellant to make his case because the documents and other evidence to be sought on discovery, as well as interrogatories, and request for admissions were never delivered. In other words, the trial court was helping Respondent to make Respondent's case, which is an error that warrants reversal, and the Court of Appeals erred when affirmed the lower court's decision.

The courts in South Carolina have held that to succeed in a counterclaim, the counterclaimant must allege damages. Pilkington v. McBain, 247 SC 312, 314-15, 262 S.E.2d 916, 917-18 (1980), utilizing the rule that pleadings are to [be] liberally construed, the court found that the plaintiff in Pilkington alleged damages. In the instant case, Appellant alleged in the counterclaim that ***direct and actual damages*** are \$91,000.00 plus \$1,000.00 per month from March 2011 until this case becomes final. [See Appellant's answer to the original Complaint (R.p.167, #5, p.168), and counterclaim (R.p.208)]. This court citing Russell v. City of Columbia, 305 SC 86, 406 SE2d 338 (1991) wrote that, "To ensure substantial justice to the parties, the pleadings must be liberally construed. In deciding whether the court properly granted a motion for dismissal under Rule 12(b)(6), this court must consider whether the counterclaim, viewed in light most favorable to the counterclaimant/appellant, states any valid claim for relief. See Gentry (supra). A motion to dismiss under Rule 12(b)(6) should not be granted if "facts alleged and inferences reasonably deducible therefrom" entitle the counterclaimant/appellant to relief under any theory. Id. at 5, 522 S.E.2d at 139 (quoting Stiles v. Onorato, 318 SC 297, 300, 457 SE2d 601, 602 (1995)). Gaskins v. Farm Bureau, Opinion No. 3271 (Ct. App. December 18, 2000). In the instant case, Appellant stated clearly the *causes of action under the theories of fraud, trick, negligence, misrepresentation, deceptive practices, breach of the implied covenants of good faith and fair dealing, intentional infliction of emotional distress, and violation of the South Carolina Unfair Trade Practices Act in connection to the federal Fair Debt Collection Practices Act* (R.pp.166-168, pp.205-209). Therefore, the trial court erred when dismissed the counterclaim, and it is an error that warrants reversal, and the Court of Appeals erred. Hence, this petition should be granted.

The Court of Appeals when decided HHHunt v. Lexington, Opinion No. 4731 (Ct.

App. August 25, 2010), wrote that, “In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the counterclaim, viewed in the light most favorable to the counterclaimant, state any valid claim for relief. Brazell v. Windsor, 384 SC 512, 515, 682 SE2d 824, 826 (2009). “The trial court and this Court on appeal must presume all well pled facts to be true.” Morrow Crane Co. v. T.R.Tucker Constr. Co., 296 SC 427, 429, 373 SE2d 701, 702 (Ct. App. 1988) Obviously, the trial court did not apply the above standards properly, and the Court of Appeals used double standard against Appellant, deciding this instant case against its own decisions, when the counterclaim contains not only well pled facts but sufficient to state a valid claim for relief. Therefore, dismissal of the counterclaim by the trial court is an error that warrants reversal, and the Court of Appeals erred. Therefore, this petition should be granted.

Furthermore Appellant alleged since the beginning in the answer to the original complaint, the counterclaim, and other filings, that the action by respondent was a fraud. Appellant also alleged that some documents filed as exhibits and offered in evidence by Respondent are fraudulent, constitutive of perjury once admitted by the trial court in evidence. (R.pp.165-181, pp.206-208, pp.216-220, pp.234-238). The Respondent never answered to those allegations, and by reason thereof Respondent has admitted as a matter of law to those allegations to be true. Therefore, this petition should be granted.

II. BECAUSE THE RESPONDENT FAILED TO PLEAD OR OTHERWISE DEFEND, THE TRIAL COURT ERRED WHEN DISMISSED APPELLANT’S AFFIDAVIT OF DEFAULT, AND THE COURT OF APPEALS SHOULD HAVE REVERSED THAT DECISION BASED ON APPLICABLE LAW.

The law in South Carolina states that, “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).” Rule 55 DEFAULT, SCRPC.

On the decision of October 24, 2012 the Court of Appeals misapprehended Rule 203 SCACR, because when an appeal is taken from a FINAL ORDER in a case, the appeal is on everything that happen in that case at the lower court. The order that dismissed Appellant's affidavit of default is an INTERLOCUTORY ORDER, and was not appealable at that time because did not terminate the case. "Appealable order is a decree or order which is sufficiently final to be entitled to appellate review, as contrasted with an interlocutory order which is not appealable until the case has been tried and judgment entered, e.g. a denial of a motion for summary judgment, a motion for default judgment, are not appealable but the allowance of such motion is a final judgment and hence appealable. (See SCRCR Rule 72; Fed.R.Civil P. Rule 56). A note states that, "This Rule 72 parallels, in part, S.C. Code § 14-3-330, but is designed to reduce appeals from interlocutory or intermediate orders in an action, like the one rendered by the lower court on June 29, 2011, and filed on July 1, 2011. (R. 35-37)

On March 10, 2011 the Appellant served the Respondent and filed with the trial court his ANSWER TO COMPLAINT BY DEFENDANT ISRAEL ROMERO. In his answer, the Appellant stated that the action by Respondent, "is a fraud plotted against Defendant Israel Romero."(R.p.165, #1, 2, 3, 4, pp.166-167). In addition, on Paragraph #5 (R.p.167) the Appellant wrote: "5. With this action, NAFH National Bank, named Plaintiff in the foreclosure petition, is deceiving Defendant Israel Romero of the following: (a) Trying to take the property located at 94 Birdsong Lane, Taylors, SC 29687 from Defendant Israel Romero by fraud, by trick, by deceptive practices, because claims on Page 24 of the Complaint at Paragraph 72(a) the Plaintiff bank is asking the Court that, "the Plaintiff is entitled to an order of cancellation of termination of the same." (R.p.167, #5 letter a). This means that the Plaintiff wants Defendant Israel Romero to be kicked out of the property without any rights, as well as Defendant Israel Romero loosing every penny already invested in the property. (See Exhibit 1 attached to Appellant's ANSWER TO THE COMPLAINT, which gives Appellant rights to the property, and Appellant gave a FIRST MORTGAGE on the property in favor of TOWER HOMES) (R.pp.169-177); (b) Defendant Israel Romero has paid \$35,000.00 for the

property located at 94 Birdsong Lane, Taylors, SC 29687 (R.p.167, # 5 letter b); (c) Defendant Israel Romero paid already about \$3,000.00 in real estate taxes to the Greenville County Tax Collector for the property located at 94 Birdsong Lane, Taylors, SC 29687 (R.p.167, #5 letter c, p.220, pp.255-257); (d) Defendant Israel Romero has invested about \$15,000.00 in improvements to the property located at 94 Birdsong Lane, Taylors, SC 29687 (R.p.167, #5 letter d); (e) The Plaintiff bank while claiming this property owes Defendant Israel Romero to date \$38,000.00 at the rate of \$1,000.00 per month for caring for the property since December 30, 2007, and \$1,000.00 per month hereinafter until this case is resolved and a decision becomes final and firm (R.p.167, #5 letter e); (f)The total amount deceived by Plaintiff to Defendant Israel Romero to date is \$91,000.00 (R.p.167, #5 letter f)... Wherefore, the Defendant Israel Romero prays this Court for an Order denying the Plaintiff (Respondent) complaint and dismissing the entire action; granting the Defendant (Appellant) Israel Romero a fee simple warranty Deed free of mortgage, lien or encumbrances, suitable for recording; granting Defendant (Appellant) Israel Romero an award of \$91,000.00 plus \$1,000.00 per month hereinafter until this case becomes final, in favor of Defendant (Appellant) Israel Romero and against the Plaintiff (Respondent) as direct and actual damages; granting an award of \$2,000,000.00 (two million dollars) in favor of Defendant (Appellant) Israel Romero and against the Plaintiff (Respondent), for suffering and mental anguish caused to Defendant (Appellant) Israel Romero for this action; granting an award of \$5,000.00 (five million dollars) in favor of Defendant Israel Romero and against the Plaintiff, as punitive damages; all costs caused to Defendant (Appellant) Israel Romero to defend himself in this action; and for such other and further relief as the Court may deem just and proper.” (R.pp.167-168).

The Respondent failed to plead and did not defend in any form from the allegations presented by Appellant. Hence, on May 16, 2011 exactly 66 days after service of his ANSWER, Appellant served and filed the AFFIDAVIT OF DEFAULT with evidence of service of the ANSWER, alleging that the Respondent NAFH National Bank had filed no answer, no appearance at all, no reply, or any other form of pleading as required by law,

and that the Respondent was then in default. (R.p.196, #1, pp.196-197). In addition, Appellant alleged that Respondent is not a member of the Armed Forces of the United States of America as contemplated by the Soldiers' and Sailors' Relief Act, nor was Respondent such when this action was commenced. (R.p.196, #2). Furthermore, Appellant alleged that with the default, Respondent had admitted as true each and every of the allegations contained in the paragraph 5 of the Answer. (R.p.196, #3, p.197).

On May 20, 2011, 70 days late, the Respondent served and file a Motion to Strike (R.pp.199-201), and on July 1, 2011, the trial court filed an Order Granting Plaintiff's Motion to Strike, and Ordered the Appellant to file a COUNTERCLAIM within 21 days from June 27, 2011 (R.pp.35-37). This court has ruled that, "A determination in this case requires an evaluation of Rule 55, SCRPC regarding default judgments. When interpreting a court rule, "we apply the same rules of construction used in interpreting statutes. Therefore, the words of the rule must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green v. Lewis Truck Lines, Inc., 314 SC 303, 304, 443 SE2d 906, 907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning. Unless an extension is granted (In the instant case, Appellant alleged on his Opposition to Motion to Strike, that Respondent failed to answer in any form, and also failed to request the Court for permission to file a late answer since such a request must be made within thirty (30) days allowed by law to request for extension to file a late answer) (R.p.203, #3), a defendant must serve his answer within thirty days "after the service of the complaint or claim upon him." Rule 12(a), SCRPC. If a party has failed to "plead or otherwise defend [1] as provided by the South Carolina Rules of Civil Procedure, and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default. Rule 55(a), SCRPC. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party (R.pp.196-198). See Thynes v. Lloyd, 294 SC 152, 153-54, 363 SE2d 122, 123 (Ct. App. 1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party)."Stark Truss v.

Superior Construction, Opinion No. 3859 (Ct. App. August 16, 2004). In the instant case, the court erred because the clerk failed to make the entry of the default as mandated by law. [1] “The words ‘otherwise defend’ refer to the interposition of various challenges to such matters as service, venue, and the sufficiency of the prior pleading, any of which might prevent a default if pursued in the absence of a responsive pleading.” 10A Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2682, at 16-17 (3rd ed. 1989). Respondent did not challenge service of the ANSWER, neither venue nor the sufficiency of the prior pleading. Respondent just ignored the pleadings, and filed no responsive pleading at all. Therefore, the trial court erred when did not make the entry of default, and the Court of Appeals erred when affirmed that erroneous decision, applying a double standard on its own decisions as well as ruling against the applicable law. Therefore, this petition should be granted.

Rule 55(b)(1), SCRCF, entitled “Cases Involving Liquidated Damages or Sum Certain,” provides that where the amount sought is a sum certain and the defaulting party has not made an appearance the judge may enter default judgment for the amount sought without holding a hearing. In our case, the claim was for a sum certain, and the court erred by not entering a default judgment, by holding a hearing on June 27, 2011, and by making a decision to grant the motion to strike the Affidavit of Default, constituting an error that warrants reversal, and the Court of Appeals erred affirming that lower court decision. Therefore, this petition should be granted.

This court also has ruled that, “Although Appellant’s late answer amounted to a “pleading”, it did not comply with the time requirements of Rule 12(a), SCRCF. Appellants clearly failed to file an answer within the thirty days of service upon them and they were technically in default. Thus, Appellants’ answer was not a valid pleading or defense “as provided by” the Rules of Civil Procedure. A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCF, meaningless.” Stark Truss v. Superior Construction. Id. In the instant case, Respondent came 70 days late with a Motion to Strike, which in no way is a late

answer. Respondent alleged that, “3(b) Nowhere in the body of the “Answer to Complaint” does Defendant Romero identify any counterclaim or set forth a counterclaim consistent with Rule 8(a) of the SCRCP.” As this court can see, Respondent’s allegation is against the rule set by this court above in Stark Truss v. Superior Construction. Id. This court further ruled that, “filing a late answer (or a late motion to strike) would not alter the fact that Appellant (Respondent in our case) were in default, especially if entering default is a ministerial act to be automatically performed once an affidavit shows the defendant (Respondent in our case) has failed to comply with the requirements of the rules. Thynes, 294 SC at 153-54, 363 SE2d at 123. Therefore, the trial court erred by not entering the default, by holding a hearing on June 27, 2011, and by making a decision to grant the motion to strike the Affidavit of Default, and this appeal should be granted.

CONCLUSION

For all the reasons stated above, petitioner asks the Supreme Court to grant the petition for a writ of certiorari pursuant to the authority conferred by SC Const. Art.V §5.

Dated: Taylors, South Carolina
December 5, 2012

Respectfully submitted,



Dr. Israel Romero
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Petitioner

CERTIFICATION OF PETITIONER

I, Dr. Israel Romero, do hereby CERTIFY: That the foregoing PETITION FOR A WRIT OF CERTIORARI complies with Rule 242 SCACR.

DATED: December 5, 2011



Dr. Israel Romero
Pro Se Petitioner



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

October 24, 2012

Israel Romero
94 Birdsong Lane
Taylors SC 29687

Mr. Shane William Rogers
PO Drawer 5587
Spartanburg SC 29304-5587

Ms. Kristin Burnett Barber
PO Drawer 5587
Spartanburg SC 29304-5587

Re: NAFH Bank v. Tower Homes
Appellate Case No. 2011-201547

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

cc: Charles B. Simmons, Jr.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

NAFH National Bank, Respondent,

v.

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Matthew G. Seppala a/k/a Matthew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d/b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc; Bradco Supply Corporation; and Israel Romero, Defendants,

Of whom Israel Romero is the Appellant.

Appellate Case No. 2011-201547

Appeal From Greenville County
Charles B. Simmons, Jr., Master-in-Equity

AFFIRMED

Israel Romero, of Taylors, pro se.

Kristin Burnett Barber and Shane William Rogers, both
of Johnson, Smith, Hibbard & Wildman, LLP, of
Spartanburg, for Respondent.

PER CURIAM: Israel Romero, proceeding pro se, appeals the master-in-equity's order granting NAFH National Bank's (the Bank's) motion to dismiss Romero's counterclaim for failure to state a cause of action.¹ We affirm² pursuant to Rule 220(b), SCACR, and the following authorities: *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d 61, 64 (Ct. App. 2012) ("In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCR, the appellate court applies the same standard of review as the trial court." (citation and internal quotation marks omitted)); *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001) ("A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim."); *id.* ("The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief.").

AFFIRMED.

SHORT, GEATHERS, and LOCKEMY, JJ., concur.

¹ Romero also argues the master-in-equity erred in granting the Bank's motion to strike Romero's affidavit of default; however, because Romero did not file a Notice of Appeal from the order granting the motion to strike, we need not address this issue. See Rule 203, SCACR (requiring a party to serve and file a notice of appeal indicating the date of the order from which the appeal is taken).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Appellate Case No. 2011-201547

NAFH National Bank.....Respondent,

v.

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Mathew G. Seppala a/k/a Mathew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d//b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc.; Bradco Supply Corporation; and Israel Romero.....Defendants,

Of whom ISRAEL ROMERO is the.....Appellant.

PETITION FOR REHEARING

HERE COMES Dr. Israel Romero, the Appellant in the above captioned case in his own name and representation, filing a PETITION FOR REHEARING pursuant to Rule 221 (a) SCACR in accordance with Rule 240 SCACR on the Unpublished Opinion No. 2012-UP-559, Submitted October 1, 2012 and Filed October 24, 2012, as follows:

1. That this petition for rehearing shall state with particularity the points overlooked or misapprehended by this Court when affirmed the lower court's decision or order.

POINT 1

2. The law in South Carolina states that, “A claim which sets forth a cause of action, whether an original claim, counterclaim..., shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court’s jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled.” (SCRPC Rule 8(a)).

The counterclaim filed by appellant states clearly the basis for the court’s jurisdiction. And this is a non-controversial issue. Despite the law calls for a short and plain statement of the facts, appellant is very explicit with the facts showing that he is entitled for relief when states that the action by Respondent is, “fraud, trick, and deceptive practices,” (R.p.207, line 15, paragraph 3) in violation of the South Carolina Unfair Trade Practices Act (Title 39 § 39-5-10, and § 39-5-20 (a)) “Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of interpretation of Federal Act.” Appellant cited the violation by Respondent of the Fair Debt Collection Practices Act § 812 (15 USC 1692j), when Respondent in the original complaint named 22 defendants, and only eight (8) answered the complaint along with Appellant (R.p.206, #2). Those other eight only appear to ask the trial court to preserve their rights already granted by the court in previous actions not against the Respondent but against Tower Homes, other defendant in the original Respondent’s complaint (R.pp. 182-195). In addition, Appellant *prays or demand for judgment for the relief* to which he deems himself entitled, including the amount of \$500,000.00 granted by FDCPA § 813 (15 USC 1692k) as well as for “the award of a fee simple warranty deed free of mortgage, lien or encumbrances, suitable for recording, on the property located at 94 Birdsong Lane, Taylors, SC 29687, Lot #37 of the subdivision known as The Preserve at Mountain Creek at Map #T029060103700 of Greenville County Record of Deeds; granting Dr. Israel Romero an award of \$91,000.00 plus \$1,000.00 per month from March 2011 until this case becomes final, as *direct and actual damages*; granting Dr. Israel Romero an award for *suffering and mental anguish* caused by the foreclosure action brought by NAFH National Bank (the Respondent); granting an award in favor of

Dr. Israel Romero as punitive damages; granting Dr. Israel Romero all costs caused to him for defending the foreclosure action, for this COUNTERCLAIM, and for other actions brought by NAFH National Bank; and for such other and further relief as the Court may deem just and proper.” (R.pp.207-208, entire WHEREFORE). With it Appellant stated clearly the *causes of action of* fraud, trick, negligence, misrepresentation, deceptive practices, breach of the implied covenants of good faith and fair dealing, intentional infliction of emotional distress, and violation of the South Carolina Unfair Trade Practices Act in connection to the federal Fair Debt Collection Practices Act (R.pp.206-208).

The federal law connected to the South Carolina Unfair Trade Practices Act forbids the practice of furnishing certain deceptive forms of practices that “design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection or in an attempt to collect a debt such consumer allegedly owes such creditor.” This is the deception by the Respondent when named 22 defendants, and only one defendant, Tower Homes, is the real debtor. Again, the answer by the nine respondents show that none of them owes nothing to the Respondent, and eight answers only pray the trial court to preserve their rights against Tower Homes, which is a defendant in the original action along with Appellant. The deceptive form provided by Respondent is the original complaint (R.pp.41-160, pp.165-181, pp.182-195, pp.206-209).

Another fact that supports Appellant’s case is that the original complaint is for the foreclosure of **five (5) properties**, but Appellant is the only natural person called by defendant for holding one of those five properties. Where are the other four (4) natural persons? The ANSWER to this question was presented by the RESPONDENT on February 24, 2012 when without permission from this Court of Appeals filed at the lower court a MOTION FOR RELIEF FROM JUDGMENT with the *unbelievable confession* that Lots 23, 24, 33 and 75 of Baywood Place were already conveyed to third persons before the RESPONDENT brought this action in the lower court. The RESPONDENT also affirmed that the ONLY PERSON BEING SUED at the lower court was the

APPELLANT. This Court of Appeals overlooked this point as well as the documents that prove this fact. These documents were filed with this tribunal on March 5, 2012, and are hereby attached as support for this petition pursuant to Rule 240 (c)(3) SCACR, and offered in evidence as **EXHIBIT A**. In these documents we call your particular attention to #s 1, 4, 6, 7, 8 (“Mortgage 1 was erroneously satisfied.” APPELLANT reads and this court should agree: “Mortgage 1 was maliciously inserted in the original complaint to deceive APPELLANT and the court.”) 9, 13 (“Clerical mistake,” which is not but criminal action). The Respondent through the Attorney of Record on June 6, 2012 plainly admitted in open court to the same facts. Please see TRANSCRIPT OF TESTIMONY at the lower court in Greenville, p. 7, lines 23, 24, 25, and p. 8, lines 1-14. This admission by Respondent happened after Respondent had filed with the court affidavits certifying the truth of the matter presented in the original complaint. It proves not only the fraud by the Respondent but also the affidavits to be PERJURY, as Appellant had alleged before the court in several papers that are part of the record on this appeal. The entire transcript of testimony of 6/6/12 is hereby attached and offered in evidence as EXHIBIT B.

This Court of Appeals reviewing Rule 12(b)(6) SCRCR has stated that, “A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff (in this case the Appellant or “counterclaimant”) to relief on any theory of the case.” (R.pp.205-209). Flateau v. Harrelson, 355 SC 197, 201, 584 SE2d 415 (Ct. App. 2003); see Gentry v. Yonce, 337 SC 1, 522 SE2d 137 (1999); see also Baird v. Charleston County, 333 SC at 527, 511 SE2d at 73 (1999) declaring that if the facts and inferences drawn from the facts alleged on the counterclaim would entitle the counterclaimant to relief in any theory, then the dismissal for failure to state a claim is improper. See also McCormick v. England, 328 SC 627, 494 SE2d 431 (Ct. App. 1997) concluding that a dismissal cannot be sustained if the facts alleged in the counterclaim and inferences reasonably deducible therefrom would entitle the counterclaimant to relief in any theory of the case (R.p.207, line 15, par. 3). This Court of Appeals recently wrote that, “In deciding whether the trial court properly dismissed a counterclaim, this court must consider whether the counterclaim, viewed in the light most favorable to the counterclaimant, states any valid claim for

relief. See Gentry, 337 SC at 5, 522 SE2d at 139; see also Cowart v. Poore, 337 SC 359, 523 SE2d 182 (Ct. App. 1999) explaining that looking at facts in light most favorable to counterclaimant, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief.” Ashley River Properties I v. Ashley River Properties II, 374 SC 271, 278, 648 SE2d 295, 298 (Ct. App. 2007). In Appellant’s counterclaim, Appellant stated clearly the causes of action of fraud, trick, negligence, misrepresentation, deceptive practices, breach of the implied covenants of good faith and fair dealing, intentional infliction of emotional distress, and violation of the South Carolina Unfair Trade Practices Act in connection to the federal Fair Debt Collection Practices Act (R.pp.207-208, entire WHEREFORE). In the case of Cole Vision Corporation and Sears Roebuck v. Steven C. Hobbs, opinion No. 4578 (Ct. App. July 1, 2009), this court citing another case wrote that, “In considering a motion to dismiss a counterclaim based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the counterclaim. A Rule 12(b)(6) motion *MAY NOT* [emphasis added] be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the counterclaimant to any relief on any theory of the case. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the counterclaim states any valid claim for relief. The court *SHOULD NOT* [emphasis added] dismiss a counterclaim merely because the court doubts the counterclaimant will prevail in the action. Doe v. Marion, 373 SC 390, 395, 645 SE2d 245, 247 (2007). The rule in South Carolina is that, “Dismissal of an action pursuant to Rule 12(b)(6) is appealable.” Williams v. Condon, 347 SC at 233, 553 SE2d at 500 (Ct. App. 2001). Therefore, dismissal of the counterclaim by the trial court is appealable, is an error that warrants reversal, and this appeal should be granted.

It is also noticed that Appellant asked the trial court for severance, and to open the counterclaim for discovery. (See Appellant’s filing of September 23, 2011, SEVERANCE AND DISCOVERY) (R.pp.227-229). The trial court dismissed also this petitions, preventing Appellant to make his case because the documents and other evidence to be sought on discovery, as well as interrogatories, and request for admissions

were never delivered. In other words, the trial court was helping Respondent to make Respondent's case. This Court of Appeals overlooked this fact.

The courts in South Carolina have held that to succeed in a counterclaim, the counterclaimant must allege damages. Pilkington v. McBain, 247 SC 312, 314-15, 262 SE2d 916, 917-18 (1980), utilizing the rule that pleadings are to [be] liberally construed, the court found that the plaintiff in Pilkington alleged damages. In the instant case, Appellant alleged in the counterclaim that ***direct and actual damages*** are \$91,000.00 plus \$1,000.00 per month from March 2011 until this case becomes final. [See Appellant's answer to the original Complaint (R.p.167, #5, p.168), and counterclaim (R.p.208)]. This court citing Russell v. City of Columbia, 305 SC 86, 406 SE2d 338 (1991) wrote that, "To ensure substantial justice to the parties, the pleadings must be liberally construed. In deciding whether the court properly granted a motion for dismissal under Rule 12(b)(6), this court must consider whether the counterclaim, viewed in light most favorable to the counterclaimant/appellant, states any valid claim for relief. See Gentry (supra). A motion to dismiss under Rule 12(b)(6) should not be granted if "facts alleged and inferences reasonably deducible therefrom" entitle the counterclaimant/appellant to relief under any theory. Id. at 5, 522 SE2d at 139 (quoting Stiles v. Onorato, 318 SC 297, 300, 457 SE2d 601, 602 (1995)). Gaskins v. Farm Bureau, Opinion No. 3271 (Ct. App. December 18, 2000). In the instant case, Appellant stated clearly the *causes of action under the theories of fraud, trick, negligence, misrepresentation, deceptive practices, breach of the implied covenants of good faith and fair dealing, intentional infliction of emotional distress, and violation of the South Carolina Unfair Trade Practices Act in connection to the federal Fair Debt Collection Practices Act* (R.pp.166-168, pp.205-209). Therefore, the trial court erred when dismissed the counterclaim, and it is an error that warrants reversal, and this appeal should be granted.

This court when decided HHHunt v. Lexington, Opinion No. 4731 (Ct. App. August 25, 2010), wrote that, "In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the counterclaim, viewed in the light most favorable to the counterclaimant, state any valid claim for relief. Brazell v. Windsor, 384 SC 512, 515,

682 SE2d 824, 826 (2009). “The trial court and this Court on appeal must presume all well pled facts to be true.” Morrow Crane Co. v. T.R.Tucker Constr. Co., 296 SC 427, 429, 373 SE2d 701, 702 (Ct. App. 1988) Obviously, the trial court did not apply the above standards properly, when the counterclaim contains not only well pled facts but sufficient to state a valid claim for relief. Appellant has profusely proved the intention of Respondent to deceive Appellant, and to deceive the court. There is another set of documents showing that the Respondent acquired FOUR PROPERTIES by the sum of \$35,600.00 (no wonder if those properties were used only for the purpose of deceive, as a trick), but acquired 94 Birdsong Lane, Taylors, SC 29687 (Appellant’s property) ONE PROPERTY by the sum of \$52,500.00. The documents showing the above describe facts are hereby attached and offered in evidence as **EXHIBIT C**. Therefore, dismissal of the counterclaim by the trial court is an error that warrants reversal, and this appeal should be granted.

Furthermore, Appellant alleged since the beginning in the answer to the original complaint, the counterclaim, and other filings, that the action by respondent was a fraud. Appellant also alleged that some documents filed as exhibits and offered in evidence by Respondent are fraudulent, constitutive of perjury once admitted by the trial court in evidence. (R.pp.165-181, pp.206-208, pp.216-220, pp.234-238). The Respondent never answered to those allegations, but admitted the PERJURY via MOTION FOR RELIEF FROM JUDGMENT and by reason thereof Respondent has admitted as a matter of law to those allegations to be true (see EXHIBITS A and B above). All documents mentioned in this Petition for Rehearing have been filed with this Court of Appeals in several motions, but more specifically in the MOTION FOR RELIEF FROM JUDGMENT OR ORDER OF EVICTION filed on June 21, 2012. Therefore, this petition should be granted, and the appeal should be granted, and the lower court’s order should be reversed.

POINT 2

3. The Court of Appeals misapprehended Rule 203 SCACR, because when an appeal is taken from a FINAL ORDER in a case, the appeal is on everything that happened in that case at the lower court. In addition, the order was not appealable at that time because it was interlocutory and did not terminate the case. “Appelable order is a decree or order which is sufficiently final to be entitled to appellate review, as

contrasted with an interlocutory order which generally is not appealable until the case has been tried and judgment entered, e.g. a denial of a motion for summary judgment [motion for default judgment] is not appealable but the allowance of such motion is a final judgment and hence appealable. (See SCRCP Rule 72; Fed.R. Civil P. 56)

The law in South Carolina states that, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)." Rule 55 DEFAULT, SCRCP.

On March 10, 2011 the Appellant served the Respondent and filed with the trial court his ANSWER TO COMPLAINT BY DEFENDANT ISRAEL ROMERO. In his answer, the Appellant stated that the action by Respondent, "is a fraud plotted against Defendant Israel Romero." (R.p.165, #1, 2, 3, 4, pp.166-167). In addition, on Paragraph #5 (R.p.167) the Appellant wrote: "5. With this action, NAFH National Bank, named Plaintiff in the foreclosure petition, is deceiving Defendant Israel Romero of the following: (a) Trying to take the property located at 94 Birdsong Lane, Taylors, SC 29687 from Defendant Israel Romero by fraud, by trick, by deceptive practices, because claims on Page 24 of the Complaint at Paragraph 72(a) the Plaintiff bank is asking the Court that, "the Plaintiff is entitled to an order of cancellation of termination of the same." (R.p.167, #5 letter a). This means that the Plaintiff wants Defendant Israel Romero to be kicked out of the property without any rights, as well as Defendant Israel Romero losing every penny already invested in the property. (See Exhibit 1 attached to Appellant's ANSWER TO THE COMPLAINT, which gives Appellant rights to the property, and Appellant gave a FIRST MORTGAGE on the property in favor of TOWER HOMES) (R.pp.169-177); (b) Defendant Israel Romero has paid \$35,000.00 for the property located at 94 Birdsong Lane, Taylors, SC 29687 (R.p.167, # 5 letter b); (c) Defendant Israel Romero paid already about \$3,000.00 in real estate taxes to the Greenville County Tax Collector for the property located at 94 Birdsong Lane, Taylors, SC 29687 (R.p.167, #5 letter c, p.220, pp.255-257); (d) Defendant Israel Romero has invested about \$15,000.00 in improvements to the property located at 94 Birdsong Lane, Taylors, SC 29687 (R.p.167, #5 letter d); (e) The Plaintiff bank while claiming this

property owes Defendant Israel Romero to date \$38,000.00 at the rate of \$1,000.00 per month for caring for the property since December 30, 2007, and \$1,000.00 per month hereinafter until this case is resolved and a decision becomes final and firm (R.p.167, #5 letter e); (f)The total amount received by Plaintiff to Defendant Israel Romero to date is \$91,000.00 (R.p.167, #5 letter f)... Wherefore, the Defendant Israel Romero prays this Court for an Order denying the Plaintiff (Respondent) complaint and dismissing the entire action; granting the Defendant (Appellant) Israel Romero a fee simple warranty Deed free of mortgage, lien or encumbrances, suitable for recording; granting Defendant (Appellant) Israel Romero an award of \$91,000.00 plus \$1,000.00 per month hereinafter until this case becomes final, in favor of Defendant (Appellant) Israel Romero and against the Plaintiff (Respondent) as direct and actual damages; granting an award of \$2,000,000.00 (two million dollars) in favor of Defendant (Appellant) Israel Romero and against the Plaintiff (Respondent), for suffering and mental anguish caused to Defendant (Appellant) Israel Romero for this action; granting an award of \$5,000.00 (five million dollars) in favor of Defendant Israel Romero and against the Plaintiff, as punitive damages; all costs caused to Defendant (Appellant) Israel Romero to defend himself in this action; and for such other and further relief as the Court may deem just and proper.” (R.pp.167-168).

The Respondent failed to plead and did not defend in any form from the allegations presented by Appellant. Hence, on May 16, 2011 exactly 66 days after service of his ANSWER, Appellant served and filed the AFFIDAVIT OF DEFAULT with evidence of service of the ANSWER, alleging that the Respondent NAFH National Bank had filed no answer, no appearance at all, no reply, or any other form of pleading as required by law, and that the Respondent was then in default. (R.p.196, #1, pp.196-197). In addition, Appellant alleged that Respondent is not a member of the Armed Forces of the United States of America as contemplated by the Soldiers’ and Sailors’ Relief Act, nor was Respondent such when this action was commenced. (R.p.196, #2). Furthermore, Appellant alleged that with the default, Respondent had admitted as true each and every of the allegations contained in the paragraph 5 of the Answer. (R.p.196, #3, p.197).

On May 20, 2011, 70 days late, the Respondent served and file a Motion to Strike

(R.pp.199-201), and on July 1, 2011, the trial court filed an Order Granting Plaintiff's Motion to Strike, and Ordered the Appellant to file a COUNTERCLAIM within 21 days from June 27, 2011 (R.pp.35-37). This court has ruled that, "A determination in this case requires an evaluation of Rule 55, SCRPC regarding default judgments. When interpreting a court rule, "we apply the same rules of construction used in interpreting statutes. Therefore, the words of the rule must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green v. Lewis Truck Lines, Inc., 314 SC 303, 304, 443 SE2d 906, 907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning. Unless an extension is granted (In the instant case, Appellant alleged on his Opposition to Motion to Strike, that Respondent failed to answer in any form, and also failed to request the Court for permission to file a late answer since such a request must be made within thirty (30) days allowed by law to request for extension to file a late answer) (R.p.203, #3), a defendant must serve his answer within thirty days "after the service of the complaint or claim upon him." Rule 12(a), SCRPC. If a party has failed to "plead or otherwise defend [1] as provided by the South Carolina Rules of Civil Procedure. and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default. Rule 55(a), SCRPC. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party (R.pp.196-198). See Thynes v. Lloyd, 294 SC 152, 153-54, 363 SE2d 122, 123 (Ct. App. 1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party)."Stark Truss v. Superior Construction, Opinion No. 3859 (Ct. App. August 16, 2004). In the instant case, the court erred because the clerk failed to make the entry of the default as mandated by law. [1] "The words 'otherwise defend' refer to the interposition of various challenges to such matters as service, venue, and the sufficiency of the prior pleading, any of which might prevent a default if pursued in the absence of a responsive pleading." 10A Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2682, at 16-17 (3rd ed. 1989). Respondent did not challenge service of the ANSWER,

neither venue nor the sufficiency of the prior pleading. Respondent just ignored the pleadings, and filed no responsive pleading at all. Therefore, the trial court erred when did not make the entry of default, and this appeal should be granted.

Rule 55(b)(1), SCRCPP, entitled “Cases Involving Liquidated Damages or Sum Certain,” provides that where the amount sought is a sum certain and the defaulting party has not made an appearance the judge may enter default judgment for the amount sought without holding a hearing. In our case, the claim was for a sum certain, and the court erred by not entering a default judgment, by holding a hearing on June 27, 2011, and by making a decision to grant the motion to strike the Affidavit of Default, constituting an error that warrants reversal, and this appeal should be granted.

This court also has ruled that, “Although Appellant’s late answer amounted to a “pleading”, it did not comply with the time requirements of Rule 12(a), SCRCPP. Appellants clearly failed to file an answer within the thirty days of service upon them and they were technically in default. Thus, Appellants’ answer was not a valid pleading or defense “as provided by” the Rules of Civil Procedure. A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCPP, meaningless.” Stark Truss v. Superior Construction. Id. In the instant case, Respondent came 70 days late with a Motion to Strike, which in no way is a late answer. Respondent alleged that, “3(b) Nowhere in the body of the “Answer to Complaint” does Defendant Romero identify any counterclaim or set forth a counterclaim consistent with Rule 8(a) of the SCRCPP.” As this court can see, Respondent’s allegation is against the rule set by this court above in Stark Truss v. Superior Construction. Id. This court further ruled that, “filing a late answer (or a late motion to strike) would not alter the fact that Appellant (Respondent in our case) were in default, especially if entering default is a ministerial act to be automatically performed once an affidavit shows the defendant (Respondent in our case) has failed to comply with the requirements of the rules. Thynes, 294 SC at 153-54, 363 SE2d at 123. Therefore, the trial court erred by not entering the default, by holding a hearing on June 27, 2011, and by making a decision to

grant the motion to strike the Affidavit of Default, and this petition for rehearing should be granted.

CONCLUSION

For the reasons stated above, this Court should grant this petition and reverse the judgment of the trial court.

Dated: Taylors, South Carolina
October 30, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dr. Israel Romero", is written over a horizontal line.

Dr. Israel Romero
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Appellant (Pro Se)

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

NAFH National Bank,)
)
Plaintiff,)

**NOTICE OF MOTION AND MOTION
FOR RELIEF FROM JUDGMENT**

C.A. No.: 2011-CP-23-00858

v.)

Tower Homes, Inc.; Nathan Seppala)
a/k/a Nathan P. Seppala; Matthew G.)
Seppala a/k/a Matthew Seppala; Total)
Comfort Installations, LLC a/k/a Total)
Comfort Installations; Blue Tarp)
Financial, Inc. d/b/a ProTrade Credit;)
CEMEX Construction Materials, L.P.)
a/k/a CEMEX Construction Materials)
LP; Stock Building Supply, LLC f/k/a)
Stock Building Supply, Inc.; Central)
Mutual Insurance; Imperial Systems,)
Inc. a/k/a Imperial Systems Inc. a/k/a)
Imperial Systems Inc; The Peoples)
National Bank; The Greenville News;)
Air Systems, Inc.; HD Supply)
Plumbing/HVAC, Ltd.; Greer Flooring)
Center, Inc.; MTP Nursery, LLC d/b/a)
MTP Nursery and Landscaping; 84)
Lumber Company, L.P.; Marsh)
Furniture Company; Sears Commercial)
d/b/a Sears Holdings, Inc.; Thomas)
Concrete of South Carolina, Inc. d/b/a)
Thomas Concrete of South Carolina Inc;)
Bradco Supply Corporation; and Israel)
Romero,)

Defendants.)

TO: THE ABOVE-NAMED DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that NAFH National Bank, moves, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an order for Relief from Master’s Order and Judgment of Foreclosure and Sale dated September 30, 2011 and filed October 5,

2011 in the Office of the Clerk of Court for Greenville County, South Carolina in the above-captioned matter (the "Order"). This motion is based, in part, on the following:

1. On February 4, 2011, the Plaintiff filed its Lis Pendens, Summons and Complaint for foreclosure of certain notes and mortgages as more particularly described therein (the "Complaint").

2. The Complaint sought foreclosure of Note 1, as defined in the Complaint and incorporate herein by reference, which was secured by that certain Mortgage (With Future Advance Clause) executed and delivered by Tower Homes, Inc. ("Tower Homes") to the Bank dated December 7, 2007 and recorded December 12, 2007 in Mortgage Book MO 2893 at page 997 and re-recorded March 13, 2008, to correct the lot number, in Mortgage Book MO 4930 at page 300, both in the Office of the Register of Deeds for Greenville County, South Carolina, encumbering certain real property as more particularly described therein (hereinafter "Mortgage 1").

3. For value received, the Bank released certain lots from Mortgage 1 as more particularly set forth in the Complaint.

4. At the time of the filing of the Complaint, the Bank believed that the property encumbered by Mortgage 1 was Lots 23, 24, 33 and 75 of Baywood Place as shown on plat thereof recorded in Plat Book 50-J at page 39 in the Office of the Register of Deeds for Greenville County, South Carolina (hereinafter referred to as "Mortgaged Property 1") and more particularly described in **Exhibit "A"** legal description attached hereto and incorporated herein by reference.

5. In accordance with the terms of the Order, Mortgaged Property 1 was sold at foreclosure sale and a Master's Deed has been issued to FBSA 1, LLC which is dated January 5,

2012 and recorded January 17, 2012 in Book DE 2399 at pages 4704-4711 in the Office of Register of Deeds for Greenville County, South Carolina (the "Master's Deed").

6. On Friday, February 17, 2012, the undersigned attorney was notified by the attorney closing the sale of one of the lots encumbered by Mortgage 1 that, prior to the filing of the Complaint, Mortgage 1 had been satisfied for the public record with said satisfaction being dated December 22, 2009 and recorded January 4, 2010 in Book SAT 392 at pages 1815-1816 in the Office of the Register of Deeds for Greenville County, South Carolina (the "Satisfaction.") A copy of the Satisfaction is attached hereto as **Exhibit "B"** and incorporated herein by reference.

7. After a search of the public records in the Office of the Register of Deeds for Greenville County, South Carolina, it appears that there was an indexing error related to the re-recording of Mortgage 1 and therefore the undersigned attorney's office was unable to find the Satisfaction prior to the commencement of the foreclosure action, and therefore, was unable to clear up the same through the foreclosure action.

8. Additionally after a review of the Bank's record it has been determined that Mortgage 1 was erroneously satisfied.

9. When Note 1 was executed and delivered to the Bank, it was originally secured by real property located in Greenville County and real property located in Pickens County. In September 2009 two (2) of the lots located in Greenville County were sold and released from Mortgage 1. In October 2009, the lots located in Hamilton Park, Pickens County, South Carolina, were sold and the mortgage encumbering said property was supposed to be cancelled for the Pickens County public record.

10. Upon information and belief, in December 2009, the attorney's office who closed the sale of the Pickens County lots contacted the Bank inquiring as to the satisfaction of the mortgage. Further, upon information and, a bank employee, who is no longer employed by the Bank, mistakenly satisfied Mortgage 1 instead of just satisfying the mortgage encumbering the Pickens County real property.

11. At all relevant times, there was a balance due and owing under the terms of Note 1 and Mortgage 1 and the Plaintiff was entitled to foreclose the same.

12. Mortgage 1 was erroneously satisfied.

13. Rule 60(a) of the South Carolina Rules of Civil Procedure provides that: "Clerical mistakes in judgments, orders or others parts of the record and errors therein arising from the oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders."

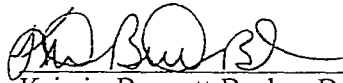
14. Had the undersigned attorney been aware of the erroneous satisfaction of Mortgage 1 at the time of the filing of the Complaint, a cause of action to set aside the erroneous satisfaction of Mortgage 1 would have been included and the Complaint and the Plaintiff would have sought an order from this Court setting aside the Satisfaction. In addition the Plaintiff would have asked that the Court find that the Plaintiff was entitled to foreclosure of Note 1 and Mortgage 1 and for sale of Mortgaged Property 1.

15. Pursuant to SCRCF Rule 60, the Plaintiff respectfully requests that the Order be corrected to provide the following: that Mortgage 1 was erroneously satisfied; that the Satisfaction be set aside for the public record; and that the Plaintiff is entitled to foreclose Note 1 and Mortgage 1.

16. Nothing contained herein is intended nor does it have any effect Note 2 and Mortgage 2 which encumbers real property located 94 Birdsong Lane, Taylors, South Carolina.

Based on the foregoing, the foregoing the Plaintiff respectfully asserts that it is entitled to an order granting the relief set forth in Paragraph 15 above.

Respectfully submitted,



Kristin Burnett Barber Bar # 70420
Johnson, Smith, Hibbard and Wildman, L.L.P.
220 North Church Street (29306)
Post Office Drawer 5587
Spartanburg, SC 29304-5587
(864) 582-8121
Attorney for Plaintiff NAFH National Bank

February 24, 2012
Spartanburg, South Carolina

EXHIBIT "A"
(Legal Description for Mortgaged Property 1)

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville being shown and designated as Lots 23, 24, 33 and 75 of Baywood Place as shown on plat thereof recorded in Plat Book 50-J at page 39 and having, according to said plat, metes and bounds as shown thereon.

This being the same property conveyed to Tower Homes, Inc. by deed of TM Properties, LLC dated December 7, 2007 and recorded December 12, 2007 in Book DE 2304 at page 683 in the Office of the Register of Deeds for Greenville County, South Carolina.

Lot 23
109 Red Coat Court, Simpsonville, SC
Tax Map No.: 0576040108600

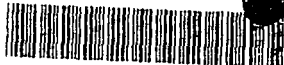
Lot 24
113 Red Coat Court, Simpsonville, SC
Tax Map No.: Tax Map No.: 0576040108500

Lot 33
22 Patriot's Pride Court, Simpsonville, SC
Tax Map No.: 0576040107600

Lot 75
104 Red Coat Court, Simpsonville, SC
Tax Map No.: 0576040106400

EXHIBIT "B"
(Copy of Satisfaction)

Re-record to correct lot number


 2007121386 MTG
 9 PGS
 Book:MO 4893 Page:997-1005
 December 12, 2007 11:07:57 AM
 Rec:\$15.00 Cnty Tax:\$0.00 State Tax:\$0.00
FILED IN GREENVILLE COUNTY, SC

This document was prepared by (name, address, phone):


First National Bank of Spartanburg
 Div of First National Bank of the South
 P.O. Box 3508
 Spartanburg, SC 29304

State of South Carolina Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)


1. **DATE AND PARTIES.** The date of this Mortgage is 12/07/2007 and the parties and their addresses are as follows:

MORTGAGOR: TOWER HOMES, INC.
 3220 WADE HAMPTON BLVD
 TAYLORS, SC 29687


 2008024376 MTG
 9 PGS
 Book:MO 4930 Page:300-308
 March 13, 2008 03:02:07 PM
 Rec:\$15.00 Cnty Tax:\$0.00 State Tax:\$0.00
FILED IN GREENVILLE COUNTY, SC

Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: First National Bank of Spartanburg
 Div of First National Bank of the South
 P.O. Box 3508
 Spartanburg, SC 29304


 2010000222 SAT/MTG
 2 PGS
 Book:SAT 392 Page:1815-1816
 January 04, 2010 01:31:38 PM
 Rec:\$5.00 Cnty Tax:\$0.00 State Tax:\$0.00
FILED IN GREENVILLE COUNTY, SC

2. **MORTGAGE.** For good and valuable consideration, the re the Secured Debt (hereafter defined), Mortgagor grants described property:
 SEE ATTACHED EXHIBIT "A"

Fayssoux Law Firm

PAID IN FULL AND SATISFIED

THIS 22nd DAY OF Dec 2009
 FIRST NATIONAL BANK OF SPARTANBURG
 DIV. OF FIRST NATIONAL BANK OF THE SOUTH
 BY: Patricia Williams
 TITLE: VP
 WITNESS: Kerry Blanton

The property is located in GREENVILLE at SEE ATTACHED
(County)

EXHIBIT "A" (Address), SEE ATTACHED (City), South Carolina 29687 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

NFS

- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
 2010000222 Book: SAT 392 Page: 1815-1816
 January 04, 2010 01:31:38 PM

Timothy J. Kearney

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated 07/12/2005

Entity Name: TOWER HOMES, INC.

Entity Name: _____

Nathan Seppala
 (Signature) NATHAN SEPPALA 12/07/2007 (Seal)
 (Date) _____ (Date)

 (Signature) _____ (Seal)
 (Date) _____ (Date)

Signed, Sealed and delivered in the presence of:

[Signature]
 (Witness) _____

[Signature]
 (Witness) _____

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

NAFH National Bank,)
)
Plaintiff,)

CERTIFICATE OF SERVICE

C.A. No.: 2011-CP-23-00858

v.)
)

Tower Homes, Inc.; Nathan Seppala)
a/k/a Nathan P. Seppala; Matthew G.)
Seppala a/k/a Matthew Seppala; Total)
Comfort Installations, LLC a/k/a Total)
Comfort Installations; Blue Tarp)
Financial, Inc. d/b/a ProTrade Credit;)
CEMEX Construction Materials, L.P.)
a/k/a CEMEX Construction Materials)
LP; Stock Building Supply, LLC f/k/a)
Stock Building Supply, Inc.; Central)
Mutual Insurance; Imperial Systems,)
Inc. a/k/a Imperial Systems Inc. a/k/a)
Imperial Systems Inc; The Peoples)
National Bank; The Greenville News;)
Air Systems, Inc.; HD Supply)
Plumbing/HVAC, Ltd.; Greer Flooring)
Center, Inc.; MTP Nursery, LLC d/b/a)
MTP Nursery and Landscaping; 84)
Lumber Company, L.P.; Marsh)
Furniture Company; Sears Commercial)
d/b/a Sears Holdings, Inc.; Thomas)
Concrete of South Carolina, Inc. d/b/a)
Thomas Concrete of South Carolina Inc;)
Bradco Supply Corporation; and Israel)
Romero,)

Defendants.)
)

I, Tammy Vaughan, in my capacity as paralegal with the law firm Johnson, Smith, Hibbard and Wildman Law Firm, L.L.P., attorneys for Plaintiff NAFH National Bank, do hereby certify that on the 24th day of February, 2012 I have served the within *Notice of Motion and Motion for Relief from Judgment* upon the Defendants below either, personally or by and through

their Registered Agent or Attorney of Record, by depositing a copy of the same into the United States Mail, postage prepaid, in the correct amount and addressed as follows:

Joseph G. Armstrong, Esq.,
Registered Agent for Tower Homes, Inc.
601 East McBee Avenue, Suite 104
Greenville, SC 29601

Mr. Nathan P. Seppala
100 Copeland Road
Greer, SC 29651

Mr. Matthew G. Seppala
12215 NE 212th Ave.
Brush Prairie, WA 98606

Total Comfort Installations, LLC
Attn: Authorized Agent
4080 McGinnis Ferry Rd.
Alpharetta, GA 30005

Rebecca Roser, Esq.
Blue Tarp Financial, Inc.
Robinson McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29202

Andrew T. Darwin, Esq.
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304

Stanley H. McGuffin, Esq.
Sinkler Boyd, PA
P.O. Box 11889
Columbia SC 29211

Roy W. Boggs, Esq.
Korn Law Firm, PA
P.O. Box 11264
Columbia SC 29211

Angela A. Elliott, Esq.
Joel F. Greer, Esq.
Business & Construction Law Group LLC
607 Pendleton St., Ste. 106
Greenville SC 29601

David R. Price, Esq.
Olson Smith Jordan & Cox, PA
P.O. Box 1207
Easley SC 29641

Woodard, B. Ray, Esq.
Woodard & Butler
P.O. Box 1906
Walterboro SC 29488

Jason N. Coleman,
Registered Agent for Air Systems, Inc.
4 Custom Mill Court
Greenville, SC 29609

Leo A. Dryer, Jr., Esq.
Dryer Law Offices
P.O. Box 11567
Columbia SC 29211

MTP Nursery and Landscaping, LLC
Attn: Michael T. Poulos, Authorized Agent
4399 Wade Hampton Blvd.
Taylors, SC 29687

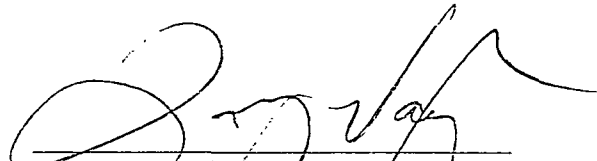
CT Corporation System, Registered Agent
84 Lumber Company, L.P.
75 Beattie Place
Greenville, SC 29601

Keven K. Kenison, Esq.
Kenison, Dudley & Crawford LLC
704 E Mcbee Ave.
Greenville SC 29601

Townes B Johnson, III, Esq.
Kenison, Dudley & Crawford LLC
704 East Mcbee Avenue
Greenville SC 29601

Edward W. Mullins, III, Esq.
Bruner Powell Robbins Wall & Mullins
P.O. Box 61110
Columbia SC 29260

Mr. Israel Romero
94 Birdsong Lane
Taylors, SC 29687



Tammy Vaughan,
Paralegal to Kristin Burnett Barber

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO: 2011-CP-23-00858

NAFH National Bank,

2017 JAN 11 P 3:50 Plaintiff

-vs-

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Matthew G. Seppala a/k/a Matthew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d/b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc; Bradco Supply Corporation; and Israel Romero,

Defendants

MASTER'S REPORT OF SALE

To the Honorable the Court of Common Pleas for Greenville County, I beg to submit the following as my Report of Sale in the above stated case:

In pursuance of the Decree heretofore passed October 5, 2011, I sold the premises therein described, after due advertisement according to law and custom of this Court on sales day December 7, 2011, to NAFH National Bank, Its Successors and Assigns, for the sum of Thirty-Five Thousand Six Hundred and no/100ths (\$35,600.00) Dollars for Property One. Said bid was assigned to FBSA 1, LLC on December 28, 2011, and,

Upon its compliance with the terms of sale, on January 5, 2012, I executed and delivered to FBSA 1, LLC a deed to the premises.

All of which is respectfully submitted,

Charles B. Simmons, Jr., Master-in-Equity for Greenville County

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2011CP2300858

IN THE COURT OF COMMON PLEAS

NAFH National Bank vs. Tower Homes Inc

CHECK ONE:

2012 JAN 11 P 3:50

- 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.
- 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: _____

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; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order For Deficiency Judgment (Note 1 & 2) in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to lbobo@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 11th day of January, 2012.

Court Reporter:

PRESIDING JUDGE -

Andrew Todd Darwin Holcombe Bomar. P.A. P.O. Drawer 1897 Spartanburg, SC 29304

Israel Romero 94 Birdsong Lane Taylors, SC 29687

Ashley V Myers Haynsworth Sinkler Boyd Pa 1201 Main Street Suite 2200 Columbia, SC 29201

Keven Kurtis Kenison Kenison, Dudley & Crawford Llc 704 E Mabee Ave Greenville, SC 29601

B. Ray Woodard Woodard & Butler P.O. Box 1906 Walterboro, SC 29488

Roy White Boggs Peter D. Korn, PA P.O. Box 12369 Columbia, SC 29211

Leo A. Dryer Jr. Dryer Law Offices P.O. Box 11567 Columbia, SC 29211

Mailed hard copy:

Kristin Burnett Barber Johnson, Smith, Hibbard & Wildman P.O. Drawer 5587 Spartanburg, SC 293045587

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

NAFH National Bank,)
)
Plaintiff,)

ORDER FOR DEFICIENCY JUDGMENT

C.A. No.: 2011-CP-23-00858

v.)

Tower Homes, Inc.; Nathan Seppala a/k/a)
Nathan P. Seppala; Matthew G. Seppala)
a/k/a Matthew Seppala; Total Comfort)
Installations, LLC a/k/a Total Comfort)
Installations; Blue Tarp Financial, Inc.)
d/b/a ProTrade Credit; CEMEX)
Construction Materials, L.P. a/k/a CEMEX)
Construction Materials LP; Stock Building)
Supply, LLC f/k/a Stock Building Supply,)
Inc.; Central Mutual Insurance; Imperial)
Systems, Inc. a/k/a Imperial Systems Inc.)
a/k/a Imperial Systems Inc; The Peoples)
National Bank; The Greenville News; Air)
Systems, Inc.; HD Supply)
Plumbing/HVAC, Ltd.; Greer Flooring)
Center, Inc.; MTP Nursery, LLC d/b/a)
MTP Nursery and Landscaping; 84)
Lumber Company, L.P.; Marsh Furniture)
Company; Sears Commercial d/b/a Sears)
Holdings, Inc.; Thomas Concrete of South)
Carolina, Inc. d/b/a Thomas Concrete of)
South Carolina Inc; Bradco Supply)
Corporation; and Israel Romero,)
)
Defendants.)

FILED CLERK OF COURT
GREENVILLE S.C.

2012 JAN 11 P 3:50

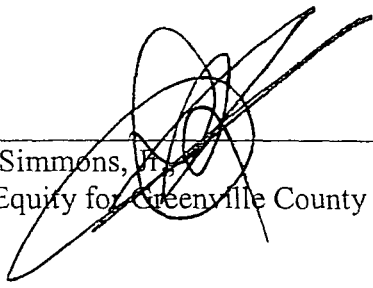
After the sale of the property which is the subject of this action, I have determined that a deficiency exists in the amount of Eighty-Two Thousand Eight Hundred Seventy and 89/100ths (\$82,870.89) Dollars based upon the following:

- a. Total debt secured by Note 1 and Mortgage 1, as provided in Note 1 and Mortgage 1 as of September 30, 2011, inclusive of reference and deed fee: \$116,878.36

b.	PLUS Interest from September 30, 2011 through December 7, 2011 (date of final sale) (per diem rate of \$13.62 x 68 days)	\$ 926.16
c.	Plus Commission:	\$ 356.00
d.	Plus Advertising Fee:	\$ 310.37
e.	LESS Amount of Bid for Property One:	(\$35,600.00)
h.	Total Deficiency Judgment as of December 7, 2011	\$82,870.89

The Clerk of Court for Greenville is directed to forthwith enter and docket such judgment in the Clerk's Office pursuant to Section 29-3-650, Code of Laws of South Carolina (1976), as amended.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against the **Defendant Tower Homes, Inc., Nathan Seppala a/k/a Nathan P. Seppala and Matthew G. Seppala a/k/a Matthew Seppala, jointly and severally**, in the amount of Eighty-Two Thousand Eight Hundred Seventy and 89/100ths (\$82,870.89) Dollars.



 Charles B. Simmons, Jr.
 Master-in-Equity for Greenville County

Date: January 5, 2012
 Greenville, South Carolina

NAFH National Bank vs. Tower Homes Inc

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.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCB; Rule 41(a);
 - SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP; 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: _____

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; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order For Deficiency Judgment (Note 1 & 2) in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to lbobo@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 11th day of January, 2012.

Court Reporter:

PRESIDING JUDGE -

- Andrew Todd Darwin** Holcombe Bomar, P.A. P.O. Drawer 1897 Spartanburg, SC 29304
- Israel Romero** 94 Birdsong Lane Taylors, SC 29687
- Ashley V Myers** Haynsworth Sinkler Boyd Pa 1201 Main Street Suite 2200 Columbia, SC 29201
- Keven Kurtis Kenison** Kenison, Dudley & Crawford Llc 704 E Mabee Ave Greenville, SC 29601
- B. Ray Woodard** Woodard & Butler P.O. Box 1906 Walterboro, SC 29488
- Roy White Boggs** Peter D. Korn, PA P.O. Box 12369 Columbia, SC 29211
- Leo A. Dryer Jr.** Dryer Law Offices P.O. Box 11567 Columbia, SC 29211

Mailed hard copy:
Kristin Burnett Barber Johnson, Smith, Hibbard & Wildman P.O. Drawer 5587 Spartanburg, SC 293045587

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

NAFH National Bank,)
)
Plaintiff,)

ORDER FOR DEFICIENCY JUDGMENT

C.A. No.: 2011-CP-23-00858

v.)

Tower Homes, Inc.; Nathan Seppala a/k/a)
Nathan P. Seppala; Matthew G. Seppala)
a/k/a Matthew Seppala; Total Comfort)
Installations, LLC a/k/a Total Comfort)
Installations; Blue Tarp Financial, Inc.)
d/b/a ProTrade Credit; CEMEX)
Construction Materials, L.P. a/k/a CEMEX)
Construction Materials LP; Stock Building)
Supply, LLC f/k/a Stock Building Supply,)
Inc.; Central Mutual Insurance; Imperial)
Systems, Inc. a/k/a Imperial Systems Inc.)
a/k/a Imperial Systems Inc; The Peoples)
National Bank; The Greenville News; Air)
Systems, Inc.; HD Supply)
Plumbing/HVAC, Ltd.; Greer Flooring)
Center, Inc.; MTP Nursery, LLC d/b/a)
MTP Nursery and Landscaping; 84)
Lumber Company, L.P.; Marsh Furniture)
Company; Sears Commercial d/b/a Sears)
Holdings, Inc.; Thomas Concrete of South)
Carolina, Inc. d/b/a Thomas Concrete of)
South Carolina Inc; Bradco Supply)
Corporation; and Israel Romero,)
)
Defendants.)

CLERK OF COURT
JAN 11 2011

2011 JAN 11 P 3:50

After the sale of the property which is the subject of this action, I have determined that a deficiency exists in the amount of Sixty-Eight Thousand Two Hundred Ten and 57/100ths (\$68,210.57) Dollars based upon the following:

- a. Total debt secured by Note 2 and Mortgage 2, as provided in Note 2 and Mortgage 2 as of September 30, 2011: \$119,089.97

b.	PLUS Interest from September 30, 2011 through December 7, 2011 (date of final sale) (per diem rate of \$11.18 x 68 days)	\$ 760.24
c.	Plus Commission:	\$ 525.00
d.	Plus Advertising Fee:	\$ 310.36
e.	Plus Deed Fee:	\$ 25.00
f.	LESS Amount of Bid for Property Two:	(\$52,500.00)
h.	Total Deficiency Judgment as of December 7, 2011	\$68,210.57

The Clerk of Court for Greenville is directed to forthwith enter and docket such judgment in the Clerk's Office pursuant to Section 29-3-650, Code of Laws of South Carolina (1976), as amended.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against the **Defendant Tower Homes, Inc., Nathan Seppala a/k/a Nathan P. Seppala and Matthew G. Seppala a/k/a Matthew Seppala, jointly and severally**, in the amount of Sixty-Eight Thousand Two Hundred Ten and 57/100ths (\$68,210.57) Dollars.

Charles B. Simmons, Jr.,
Master-in-Equity for Greenville County

Date: January 5, 2012
Greenville, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2011-CP-23-858

NAFH National Bank,)
)
)
Plaintiff,)

vs.)

TRANSCRIPT OF TESTIMONY

Tower Homes, Inc.; Nathan Seppala)
a/k/a Nathan P. Seppala; Matthew G.)
Seppala a/k/a Matthew Seppala;)
et al,)
)
Defendants.)

June 6, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Kristen B. Barber, Esquire
Attorney for the Plaintiff

Wanda E. Fudge, CCR
Court Reporter

1 BY THE COURT: Hello, Dr. Romero.

2 DR. ROMERO: Hello.

3 BY THE COURT: Are we ready to go on record?

4 MS. BARBER: Yes, Your Honor.

5 BY THE COURT: For the record, this is 2011-858. This case
6 involves a mortgage foreclosure. One of the parcels that was
7 covered through a foreclosure was a property that Dr. Romero, who
8 is present here today, was buying under an unrecorded Bond for
9 Title.

10 My recollection is the case came to a hearing. Dr. Romero
11 made very fine arguments that he should stay in the property,
12 that the first mortgage should not have priority, and the
13 equities weighed in his favor, and I felt compelled, of course,
14 to rule opposite.

15 Dr. Romero, I understand that you have the case on appeal.
16 Plaintiff -- the property went back to Plaintiff, correct?

17 MS. BARBER: Went to an assignee of the bank of the
18 Plaintiff, correct, Your Honor.

19 BY THE COURT: A deed has been issued to your client?

20 MS. BARBER: That's correct, Your Honor.

21 BY THE COURT: Your client is wanting possession of the
22 property?

23 MS. BARBER: That's correct, Your Honor.

24 BY THE COURT: Okay. Dr. Romero, you have filed a Motion
25 to Stay Writ of Ejectment and I have reviewed that, and it was

1 filed with the Clerk's Office on May 16, 2012. So, I'll be glad
2 to hear your brief summary of your position.

3 DR. ROMERO: Yes, Your Honor. This property is---

4 BY THE COURT: I need you to stand up when you address the
5 Court, please, sir.

6 DR. ROMERO: Yes, I'm sorry. Yes. This property is still
7 subject to litigation, and this litigation, as you correctly said
8 already, is on appeal and the appeal is already perfected and is
9 ripe for the decision. We are just waiting for that.

10 I do have here some documents that were introduced as
11 exhibits in the -- I would ask the Court to receive evidence to
12 show how the case is on appeal.

13 The point is that the appeal being granted in my favor, this
14 property will have to be conveyed -- title on the property will
15 have to be conveyed back to me, and that is going to create
16 serious trouble to the bank. That is the main point we are
17 trying to let this Court to know.

18 As the Court may -- you -- Judge -- may recall, the main
19 argument that we brought to this Court is that the proceedings
20 was fraudulent, that it was fraud on the proceedings. And after
21 the appeal was perfected, the bank came to this Court with a
22 motion to be relieved from a -- they call clerical mistake, and I
23 didn't see anywhere my name being misspelled, the location being
24 -- any numbers reversed or anything in the entire proceedings of
25 clerical mistakes.

1 The document says -- and this document was brought to this
2 Court by the bank; that after they -- after the property or the
3 whole case was decided, they found that four properties, which is
4 what I have been alleging all the time, arguing all the time
5 on that, those four properties were conveyed -- title was
6 conveyed on those properties to other people before the Complaint
7 came to this Court from the bank, the original Complaint. And
8 also---

9 BY THE COURT: All right. Let me stop right there.

10 DR. ROMERO: Yes.

11 BY THE COURT: There were multiple lots involved in this
12 foreclosure.

13 DR. ROMERO: Correct.

14 BY THE COURT: Are you saying that the lot that you were
15 buying under a Bond for Title had been transferred prior to
16 foreclosure?

17 DR. ROMERO: No. I'm not saying that. What I'm saying is
18 the argument I brought, the argument I brought is that the whole
19 matter was fraudulent, is a fraud. In that document filed by the
20 bank in this Court afterwards, after everything was already on
21 appeal and the appeal was perfected, after that they came saying
22 that clerical mistakes in judgment or whatever could be
23 corrected. When property has been conveyed before a case
24 started, those are not clerical mistakes. And also, they came
25 saying that the bank, after reviewing their own documents, found

1 that, yes, that the bank has the documents, that those other
2 properties were conveyed.

3 BY THE COURT: All right. Help me understand how that
4 relates to the particular lot that you are purchasing under Bond
5 for Title.

6 DR. ROMERO: Okay. It relates that in my opinion, of course
7 coming from my countersuit, the number one issue that it asks
8 there in the petition, relief sought, whatever, always number one
9 is title on the property located a 94 Birdsong Lane and once the
10 appeal is decided, it is decided in my favor, this Court or
11 whoever will have no other choice but convey the title on that
12 property to me. That's the number one thing because that has
13 been the number one relief sought, always, always, always and, of
14 course, all of the damages, all of the damages.

15 An officer from the bank, they have -- on the trial
16 proceedings before you -- and you mentioned several times that I
17 have filed a document stating that certain affidavits they were
18 perjured affidavits. The document presented to this Court by
19 this bank is saying, yes, they are perjured affidavits but they
20 are clerical mistakes. Those are not clerical mistakes.

21 BY THE COURT: Again, I'm sorry, I don't completely follow
22 your argument, but let me -- I've ruled against you.

23 DR. ROMERO: Yes.

24 BY THE COURT: And you've appealed to our very fine
25 appellate courts which is certainly your right, and I think, in

1 fact, I encouraged you, if you disagreed with my decision, to do
2 that.

3 Let me ask you, when is the last time you've made a payment
4 on this property that you contend that you are purchasing?

5 DR. ROMERO: Okay. I don't recollect exactly when, but I
6 stopped making payments because there were nobody to make the
7 payment---

8 BY THE COURT: I understand. Give me a range of time, you
9 think.

10 DR. ROMERO: I don't remember. It could be, what---

11 BY THE COURT: Three years ago?

12 DR. ROMERO: About two years ago, maybe, maybe.

13 BY THE COURT: Are you aware that under the appellate court
14 rules that an Order directing the sale of property is not stayed
15 by an appeal? In other words, the rules specifically require the
16 action to proceed on to a sale absent some type of bond. So, are
17 you proposing that a bond be posted?

18 DR. ROMERO: Well, if it is necessary to try that avenue, if
19 that is the way that we can solve to stay, that might very
20 certain end -- the number one point is that in the appeal, Your
21 Honor, it's very likely that---

22 BY THE COURT: Well, let me ask you, what happens if
23 ultimately the appellate court says, "You know what, Simmons, you
24 were right." How is that fair to the bank that you stay there
25 another two years without paying anything if they ultimately win?

1 DR. ROMERO: Well, about payment if the bank ever says that
2 they had a really right to have the property to come to me and
3 they never come to me asking me neither for payment or for any
4 other kind of solution to the situation -- I did propose to the
5 bank, I did propose to the bank a settlement that I was willing
6 to buy the property. I made an offer and they said, "No, no,
7 your offer is not accepted" and that's it; no more, no
8 counteroffer, no nothing.

9 BY THE COURT: Under the Bond for Title with Tower Homes
10 what amount was supposed to have been paid on a monthly basis?

11 DR. ROMERO: On that one, was six hundred and something
12 including insurance but they were carrying the insurance but
13 after they disappeared, I bought insurance on the property.
14 That's right. I paid for the insurance on the property. The
15 property has insurance.

16 BY THE COURT: So, you're telling---

17 DR. ROMERO: It would be about, yes, it would be \$620. I
18 think, it's \$618 plus the insurance. They said the insurance.
19 Yes.

20 BY THE COURT: Are you telling me the Bond for Title for
21 that house was only \$620 a month?

22 DR. ROMERO: Yes.

23 BY THE COURT: All right. Ms. Barber, let me hear from
24 you. First, if you will, address the issue with the motion
25 relative to the clerical issue following the foreclosure Order.

1 MS. BARBER: Yes, Your Honor. We filed a motion under Rule
2 60. This was a case where after we got the Order after the
3 property had been sold on the other four lots which is not
4 subject to Dr. Romero's appeal, when we were going back through
5 the title, while the closing attorney was going back through the
6 title, he found that the mortgage had been canceled for the other
7 four lots prior to the foreclosure sale. There was -- we were
8 unable to find it when we did our title work because of the fact
9 there was an indexing error with Greenville County. So, that
10 indexing error has been corrected after we filed our Lis Pendens
11 and after we filed our Complaint. The Court issued an Order
12 allowing us to reinstitute our mortgage and proceed -- and to fix
13 that mistake that we would have fixed in the beginning had we
14 known about it.

15 So, that's what -- it had nothing to do with fraudulent
16 documents or anything. It was a simple -- the property was never
17 transferred. It was a simple mistake on the part of the bank in
18 satisfying a mortgage that should not have been satisfied. No
19 one showed up at the hearing. We had a 15-minute hearing before
20 Your Honor. No one showed up at the hearing. All parties were
21 served, including Dr. Romero. No one attended that hearing. And
22 Your Honor issued an Order.

23 BY THE COURT: Now, move into -- to the extent that Dr.
24 Romero is asking to post a bond -- and I'm not sure exactly if he
25 is -- but what's your client's position on that?

1 MS. BARBER: Your Honor, our client's position would be that
2 in October you issued the Order -- on October 20th of 2011, we had
3 a hearing on -- or Dr. Romero filed a Notice of Appeal and
4 Appellate's Written Undertaking Staying Judgment. At that time,
5 you entered an Order -- it's dated October 21, 2011, filed
6 October 26, 2011. I have a copy if you want to see it.

7 BY THE COURT: If you will hand it to my bailiff, please.

8 MS. BARBER: This issue has already come before the Court,
9 and the Court set a bond in the amount of \$13,500. It was to be
10 paid by November -- it was supposed to be paid by -- I'm sorry --
11 October 27, 2011. If the bond was not posted in the amount of
12 \$13,500, then your Order concluded that the property would be
13 sold at the November 7, 2011 sale. October 27th came and passed.
14 No bond was posted. We proceeded with a foreclosure sale, and
15 then the Court issued an Order in January of this year
16 transferring the title to the petitioner.

17 Additionally, which is not before the Court, but Dr. Romero
18 filed a Motion to Stay pending appeal in the appellate court as
19 well, and the appellate court denied the stay as well.

20 So, our position would be he's already had one bite at the
21 apple. He's already had one chance to stay. He did not post the
22 bond pursuant to the Court's instructions, pursuant to the
23 previous hearing that we had and, therefore, he should not be
24 allowed -- we proceeded with the sale. We sold the property. He
25 should not be allowed to now come back in and ask for a second

1 bite of the apple.

2 BY THE COURT: Dr. Romero, let me ask you, first, is it
3 correct that you never did file the bond that you were allowed
4 the opportunity to do under the October 2011 Order?

5 DR. ROMERO: Yes, that time, yes, Your Honor, because I had
6 to have cash, \$13,500. Everyone who were willing to give a bond,
7 that's what they request. You have to have that amount in your
8 bank account, and that created a problem. I didn't have \$13,500
9 cash in my bank account to -- for those people to issue the --
10 and also to take that money there, a way to have that. That
11 created the problem. I think the bond was in an amount too high.

12 The other solution that I was willing to -- instead of a
13 bond, paying like rent to the bank, but they didn't want to deal
14 with me at all. The only thing they want is me out of the
15 property. I think that they feel that they have been doing
16 something that is wrong. That's why they -- they say, "Okay,
17 when I get rid of this person, then this person will go away."
18 They have no idea where they do because later on some
19 investigation will come. That's for sure. Yes, yes. I want to
20 submit these documents.

21 BY THE COURT: Yes, sir. You can submit whatever you want
22 to to my court reporter, if you'll let Ms. Barber see---

23 DR. ROMERO: Yes. Correct, yes. This is the copy -- I gave
24 you a copy of this. The cover letter for the initial Brief of
25 Respondent, then the Record on Appeal, and then the Final Brief

1 of Appellant---

2 MS. BARBER: You don't have copies. You just have copies of
3 the first page---

4 DR. ROMERO: Correct, correct, correct because this says
5 received by the -- and this is yours.

6 BY THE COURT: There's no issue but that he's properly
7 perfected his appeal, correct?

8 MS. BARBER: No. There's no issue whatsoever. We are
9 actively involved in the appeal. So, there's no issue on that.

10 BY THE COURT: Dr. Romero, you can hand that up. That will
11 collectively be marked as your exhibit for today's hearing.

12 DR. ROMERO: Yes.

13 (Final Brief of Appellant, Letter dated January 18, 2012 to
14 The Honorable Tanya A. Gee from Dr. Romero, Record on Appeal
15 (first page), Letter dated January 27, 2012 to The Honorable
16 Tanya A. Gee from Kristin Burnett Barber, and Final Brief of
17 Respondent entered into evidence as Defendant's Exhibit No. 1)

18 BY THE COURT: All right. So, Dr. Romero, here's what I'm
19 going to do. I will give you ten days from today to post that
20 \$13,500 bond. If not, then the property's going to need to be
21 vacated within thirty days of today. I understand you disagree
22 with me. That's just part of the job that I have. But if the
23 bond's not posted and if you're not out, then the Sheriff's
24 Office will come out and forcibly remove anything---

25 DR. ROMERO: Within thirty days, starting today, you say?

1 BY THE COURT: Yes, sir.

2 DR. ROMERO: Okay.

3 BY THE COURT: Ms. Barber, if you would prepare a short
4 Order, if you'll send a courtesy copy to Dr. Romero. Again, the
5 clock starts ticking today.

6 MS. BARBER: Yes, Your Honor.

7 BY THE COURT: Thank you, sir.

8 DR. ROMERO: Thank you. Excuse me, again, Your Honor, I
9 want to make sure I have the correct dates. How many days for
10 the bond?

11 BY THE COURT: Ten days.

12 DR. ROMERO: Ten, okay.

13 BY THE COURT: Again, this is over the objection of Ms.
14 Barber who certainly has a strong argument, that the Order from
15 October is clear in its terms. But it's ten days from today. If
16 that is posted, it has to be done in a fashion approved by the
17 Clerk of Court's Office here in Greenville, and Ms. Barber also
18 has to be provided a copy. Cash, other assets, a bonding
19 company, it doesn't matter to me.

20 DR. ROMERO: Including other assets?

21 BY THE COURT: As long as agreeable by the Clerk of Court.
22 And then if that's not done within ten days of today, then within
23 thirty days of today the property has to be vacated. I want you
24 to understand, if ultimately the appeal is upheld, in other
25 words, it's not reversed, then that \$13,500 would be paid to the

1 bank to compensate them for the time that they've lost for your
2 staying in the property.

3 All right. Thank you.

4 DR. ROMERO: Thank you, Your Honor.

5 MS. BARBER: Do you want me to email it to you?

6 BY THE COURT: That's fine. Just email it to my court
7 reporter, if you will.

8 MS. BARBER: Thank you.

9 BY THE COURT: Do you have Dr. Romero's email?

10 MS. BARBER: I do, Your Honor.

11 DR. ROMERO: Yes, she does.

12 MS. BARBER: Unless you've changed it.

13 DR. ROMERO: No, no. It is the same one.

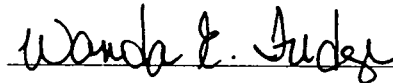
14 BY THE COURT: All right. Thank you so much. Thank you,
15 Ms. Barber.

16 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina, do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 6th of
8 June 2011.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11 June 14, 2011

12
13 

14 Wanda E. Fudge, CCR

15 Certified Court Reporter
16
17
18
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25

EXHIBIT C

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO: 2011-CP-23-00858

NAFH National Bank,

2012 JAN 11 P 3:50

Plaintiff

-vs-

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Matthew G. Seppala a/k/a Matthew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d/b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc; Bradco Supply Corporation; and Israel Romero,

Defendants

MASTER'S REPORT OF SALE

To the Honorable the Court of Common Pleas for Greenville County, I beg to submit the following as my Report of Sale in the above stated case:

In pursuance of the Decree heretofore passed October 5, 2011, I sold the premises therein described, after due advertisement according to law and custom of this Court on sales day December 7, 2011, to NAFH National Bank, Its Successors and Assigns, for the sum of Thirty-Five Thousand Six Hundred and no/100ths (\$35,600.00) Dollars for Property One. Said bid was assigned to FBSA 1, LLC on December 28, 2011, and,

Upon its compliance with the terms of sale, on January 5, 2012, I executed and delivered to FBSA 1, LLC a deed to the premises.

All of which is respectfully submitted,

Charles B. Simmons, Jr.,
Master-in-Equity for Greenville County

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO: 2011-CP-23-00858

NAFH National Bank,

2012 JAN 11 P 3:50

Plaintiff

-vs-

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Matthew G. Seppala a/k/a Matthew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d/b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc; Bradco Supply Corporation; and Israel Romero,

Defendants

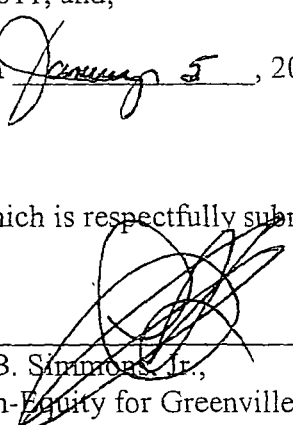
MASTER'S REPORT OF SALE

To the Honorable the Court of Common Pleas for Greenville County, I beg to submit the following as my Report of Sale in the above stated case:

In pursuance of the Decree heretofore passed October 5, 2011, I sold the premises therein described, after due advertisement according to law and custom of this Court on sales day December 7, 2011, to NAFH National Bank, Its Successors and Assigns, for the sum of Fifty-Two Thousand Five Hundred and no/100ths (\$52,500.00) Dollars for Property Two. Said bid was assigned to FBSA 1, LLC on December 28, 2011, and,

Upon its compliance with the terms of sale, on January 5, 2012, I executed and delivered to FBSA 1, LLC a deed to the premises.

All of which is respectfully submitted,



Charles B. Simmons, Jr.,
Master-in-Equity for Greenville County

The South Carolina Court of Appeals

NAFH National Bank, Respondent,

v.

Tower Homes, Inc.; Nathan Seppala a/k/a Nathan P. Seppala; Matthew G. Seppala a/k/a Matthew Seppala; Total Comfort Installations, LLC a/k/a Total Comfort Installations; Blue Tarp Financial, Inc. d/b/a ProTrade Credit; CEMEX Construction Materials, L.P. a/k/a CEMEX Construction Materials LP; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.; Central Mutual Insurance; Imperial Systems, Inc. a/k/a Imperial Systems Inc. a/k/a Imperial Systems Inc; The Peoples National Bank; The Greenville News; Air Systems, Inc.; HD Supply Plumbing/HVAC, Ltd.; Greer Flooring Center, Inc.; MTP Nursery, LLC d/b/a MTP Nursery and Landscaping; 84 Lumber Company, L.P.; Marsh Furniture Company; Sears Commercial d/b/a Sears Holdings, Inc.; Thomas Concrete of South Carolina, Inc. d/b/a Thomas Concrete of South Carolina Inc; Bradco Supply Corporation; and Israel Romero, Defendants,

Of whom Israel Romero is the Appellant.

Appellate Case No. 2011-201547

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr. J.

[Signature] J.

[Signature] J.

Columbia, South Carolina

cc: Israel Romero
Shane William Rogers
Kristin Burnett Barber

FILED
30 Mar 2012