

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Special Referee

Case No.: 2008-CP-27-151

RECEIVED
AUG 03 2017
SC Court of Appeals

C.E. Lowther, Jr., Clayton Clark Lowther,
Mitchell S. Lowther and Effie Sandra Turpin,

Respondents

v.

E. Legrand Lowther,

Appellant.

RECORD ON APPEAL

H. Fred Kuhn, Jr., Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, South Carolina 29901
843-524-3373
Attorney for the Appellant

R. Thayer Rivers, Jr., Esquire
Attorney at Law
Post Office Box 668
Ridgeland, South Carolina 29936
843-726-8136
Attorney for the Respondents

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Special Referee

Case No.: 2008-CP-27-151

C.E. Lowther, Jr., Clayton Clark Lowther,
Mitchell S. Lowther and Effie Sandra Turpin,

Respondents

v.

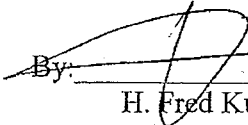
E. Legrand Lowther,

Appellant.

NOTICE OF APPEAL

The Appellant, E. Legrand Lowther, appeals the Orders of the Honorable Darrell Thomas Johnson, Special Referee entitled "Order on Defendant's Motion to Suspend Sale" dated August 1, 2014 and "Reconsideration Order" dated December 22, 2015, copies of which are attached hereto. Appellant received written notice of the entry of the Reconsideration Order on December 28, 2015.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302- FX

Beaufort, South Carolina
January 7, 2016

Attorneys for Appellant

000001

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

C.B. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER AND EFFIE SANDRA
TURPIN,)

Plaintiffs,)

Vs.)

E. LEGRAND LOWTHER,)

Defendant.)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-151

ORDER ON DEFENDANT'S
MOTION TO SUSPEND SALE

THIS MATTER is before me as a matter in equity. Defendants motion raises a number of very appealing equitable arguments. None of these overbalance the equity of "Justice delayed is justice denied". This matter has been in limbo for so long that most of the original beneficiaries are dead. Some of the fault in this may be mine, but that will not reoccur.

Addressing the issues *seriatim*:

1 & 2. These arguments were addressed to the computation of the judgment amount. Primarily the argument is that the figures are not properly divided according to the undivided interests. I think these arguments have some merit, but are not grounds to cancel the sale. One item that is very, very clear is the roughly Forty-Five thousand (\$45,000.00) dollars, cited in the order as prospective credit. My order clearly directs this to be disbursed to Plaintiffs, and taken as a credit against the judgment. The Defendant apparently ignored this directive, and the fund is not now available. This clearly is part of the judgment and any verbiage premised upon payment is

now irrelevant. I do not sua sponte raise the issue of contempt.

3. I cannot take judicial notice that a particular party will prevail on a pending lawsuit

4. If a remitter has been filed, the judgment is final.

5. I cannot take judicial notice that a change in co-tenancy affects value. Certainly in this case, a change in co-tenancy may change the asset from hypothetical to practical, in light of Defendant's recalcitrance in generating income. If these third parties want to be heard, I will certainly schedule a hearing, upon proper pleadings.

6. It is my impression that numerous accountings have been had, but the matter before me is a judgment.

7. Defendant's attorney sent his calculations of the items in the prior order in the form of a motion. If the sale proceeds exceed these calculations of \$172,845.34, I will order an escrow of the overage, and will hold another hearing. I respectfully, but emphatically, state that it is in the interest of justice that the Plaintiffs receive at least some part of the monies Defendant promised them, so many years ago.

8. I calculate the judgment, using Defendant's figures as follows:

I.	Wellington		\$132,984.98
	Mitchell	28.571	\$37,995.51
	Clark	3.571	\$4,748.89
	Sandra	3.571	\$4,748.89
	C.E. Jr.	3.571	\$4,748.89
II.	Ag South		\$9,087.12

	Mitchell	57.14 (50% + 1/7 x 50%)	\$5,192.38
	Clark	7.14	\$648.82
	Sandra	7.14	\$648.82
	C.E. Jr.	7.14	\$648.82
III.	Mims Accounting		\$21,157.97
	Mitchell	14.28	\$3,021.35
	Clark	14.28	\$3,021.35
	Sandra	14.28	\$3,021.35
	C.E. Jr.	14.28	\$3,021.35
IV.	Closing Costs		\$8000.00
	Mitchell		\$2,000.00
	Clark		\$2,000.00
	Sandra		\$2,000.00
	C.E. Jr.		\$2,000.00
	V. EchoTango		\$45,805.57
	Mitchell	25%	\$11,451
	Clark	25%	\$11,451
	Sandra	25%	\$11,451
	C.E. Jr.	25%	\$11,451

Interest 3-15-2010 to 7-24-2014

$$\begin{array}{r} 365 \times 4 = 1,460 \\ \underline{129} \\ 1,589 \end{array}$$

$$\div 365 = 4.35$$

X 7.25 Judgment rate interest

$$= 0.3153$$

TOTAL

Mitchell	\$59,659.86		
Interest 3/10/10-3/24/14	+18,810.48	=	\$78,469.48

Clark	\$21,870.06		
Interest 3/10/10-3/24/14	+6,895.62	=	\$28,765.68

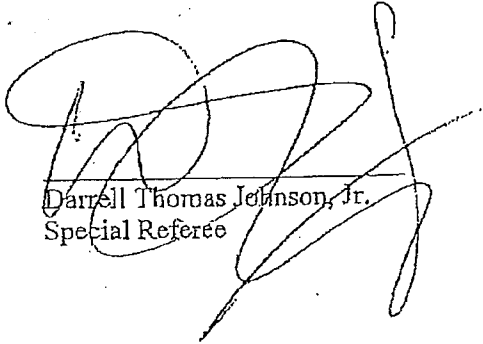
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C.E. Jr.	\$21,870.06		
Interest 3/10/10-3/24/14	+6,895.62	=	\$28,765.68

\$172,845.34

For the foregoing Defendants' motion is denied, except to the extent that any overage of the bid above One Hundred Seventy-Two Thousand Eight Hundred and Forty-Five and 34/100's (\$172, 845.34) Dollars shall be held pending further order of this Court.

Dated: August 1, 2014.


Darrell Thomas Johnson, Jr.
Special Referee

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
C.E. LOWTHER, JR., ET AL,)
)
Plaintiff,)
vs)
)
E. LEGRAND LOWTHER, ET AL)
)
Defendant)
)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2012-CP-27-314

**RECONSIDERATION
ORDER**

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
LEGRAND LOWTHER,)
)
Plaintiff,)
vs)
)
MITCHELL S. LOWTHER,)
)
Defendant)
)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-27-230

**RECONSIDERATION
ORDER**

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
MITCHELL S. LOWTHER and)
CARMON B. LOWTHER.)
)
Plaintiff,)
vs)
)
E. LEGRAND LOWTHER,)
)
Defendant)
)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-547
2008-LP-27-231

**RECONSIDERATION
ORDER**

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

C.E. LOWTEHER, JR., ET AL,

Plaintiff,

vs

E. LEGRAND LOWTHER,

Defendant

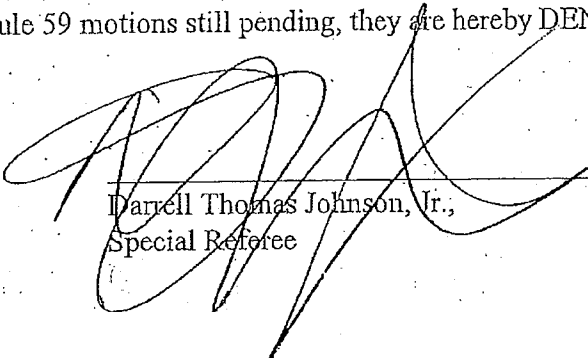
IN THE COURT OF COMMON PLEAS

C/A NO.: 2008-CP-27-151

2008-LP-27-051

**RECONSIDERATION
ORDER**

If, arguendo, there are any Rule 59 motions still pending, they are hereby DENIED.


Darrell Thomas Johnson, Jr.,
Special Referee

December 22, 2015.

State of South Carolina
In the Court of Appeals

APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS

DARRELL THOMAS JOHNSON, JR., SPECIAL REFEREE

2008-CP-27-547

MITCHELL S. LOWTHER and
CARMON B. LOWTHER,

Respondent

v.

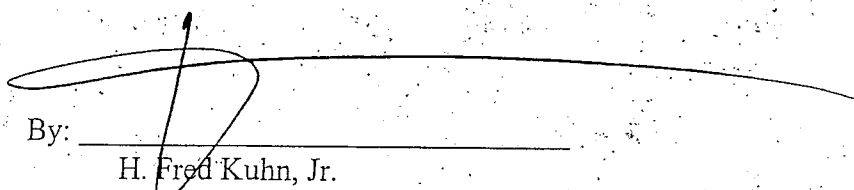
E. LEGRAND LOWTHER,

Appellant.

NOTICE OF APPEAL

The Appellant, E. Legrand Lowther, hereby appeals the Order of Darrell Thomas Johnson, Jr., Special Referee, dated March 14, 2012, a copy of which is attached hereto. Appellant received written notice of the entry of the Order on March 22, 2012.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 - facsimile

Beaufort, South Carolina
April 4, 2012

000008

Other Counsel of Record:

R. Thayer Rivers, Jr., Esquire
Attorney at Law
Post Office Box 668
Ridgeland, South Carolina 29936

000009

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MITCHELL S. LOWTHER and
CARMON B. LOWTHER.

Plaintiff,

vs

E. LEGRAND LOWTHER,

Defendant

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-547

ORDER

2012 MAR 19 PM 4:55
MARGARET POSTICK
CLERK OF COURT
JASPER COUNTY SC

The testimony before me was that the Plaintiffs needed or wanted the money, sooner rather than later. Defendant's proposal was one-sided in favor of Defendant, but that was justified by the need of Plaintiffs to have money in the short term, even if it allowed their brother to profit in an immensely disproportionate manner.

I do not seek to redraw the parties' agreement, but I do seek to construe it in a way that makes some sense. Defendant's position that he had no obligation to proceed expeditiously, and no obligation to disburse funds, is clearly contrary to the intent of the contract, and clearly contrary to the implied covenant of good faith and fair dealing. Legrand had a position of trust and confidence, as the most capable and healthy member of the family. Legrand was Personal Representative of their father's estate. Legrand was something like a partner in one of the possible arrangements available under the contract. This simply was not an arm's-length transaction.

Mr. Rivers' motion is primarily premised upon a proposition on which I respectfully disagree. While the matter involves a mortgage, the issues and the remedy were equitable. My

ruling is undoubtedly imperfect in this regard, but I am convinced that the bulk of his able representation falls under the American Rule wherein a party bears his own attorney fees.

As to the .15 acres, I hold that to be "de minimis non curat lex". I hold likewise as to the John Henry Lowther lot.

In regard to the accounting, both sides think my math is deficient. One or both may be correct, but I decline to change it.

Mr. Kuhn's erudite motion is also premised on a proposition with which I disagree. Mr. Kuhn's arguments are based on strict business reasoning. This is not just about words and numbers. Legrande had, not one, but several fiduciary relationship positions of trust and confidence, and implied duties of good faith and fair dealing. The least of his duties is the duty of good faith and fair dealing in the contract with his siblings. The contract was in the nature and spirit of a joint venture. I hold that Legrande had a duty to proceed competently and diligently, not at his personal whim. I note, specifically, that this arrangement preceded the current economic downturn.

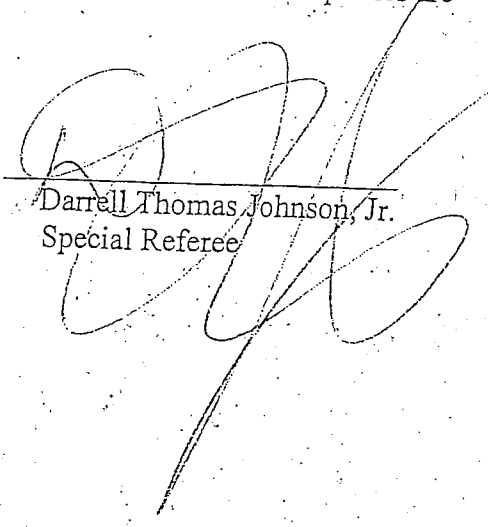
Mr. Kuhn's argument #3 is denied, with the clarification that, if there is an estate account still open after eight years, he may apply it to the judgment.

Mr. Kuhn's argument #8 is denied, with the comment that it is illustrative of Legrand's misperception of the whole case. Legrande foreclosed an owner financing transaction predating his deed, and used the amount due as his bid. The idea that he should get the lot, for which he had not paid, is absurd. Again, sharp dealing on the paperwork cannot negate the various duties or obligations that existed.

The balance of Mr. Kuhn's arguments are also denied.

IT IS NOW THEREFORE ORDERED that the Rule 59 Motions of both parties are
DENIED.

Dated: March 14, 2012



Darrell Thomas Johnson, Jr.
Special Referee

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-00572

C.E. LOWTHER, JR., ET AL.

E. LEGRAND LWOTHER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAME BEFORE ME ON DEFENDANT'S MOTION TO SUSPEND JUDGMENT SALE, HOWEVER THIS MOTION SHALL BE HEARD BY THE SPECIAL REFEREE DARRELL T. JOHNSON. THE ATTORNEYS WILL CONTACT THE SPECIAL REFEREE TO RESCHEDULE THIS MOTION.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

3069

Judge Code

Date

2/7/14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

R. THAYERS RIVERS, JR.

H. FRED KUHN

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

000014

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
C.E. LOWTHER, JR., ET AL,)
)
Plaintiff,)
vs)
E. LEGRAND LOWTHER, ET AL)
)
Defendant)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2012-CP-27-314

**RECONSIDERATION
ORDER**

FILED
2012 DEC 28 AM 9:31
MARSALET DOSHIK
CLERK OF COURT
JASPER COUNTY SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
LEGRAND LOWTHER,)
)
Plaintiff,)
vs)
MITCHELL S. LOWTHER,)
)
Defendant)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-27-230

**RECONSIDERATION
ORDER**

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
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MITCHELL S. LOWTHER and)
CARMON B. LOWTHER,)
)
Plaintiff,)
vs)
E. LEGRAND LOWTHER,)
)
Defendant)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-547
2008-LP-27-231

**RECONSIDERATION
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STATE OF SOUTH CAROLINA

COUNTY OF JASPER

C.E. LOWTEHER, JR., ET AL,

Plaintiff,

vs

E. LEGRAND LOWTHER,

Defendant

IN THE COURT OF COMMON PLEAS

C/A NO.: 2008-CP-27-151

2008-LP-27-051

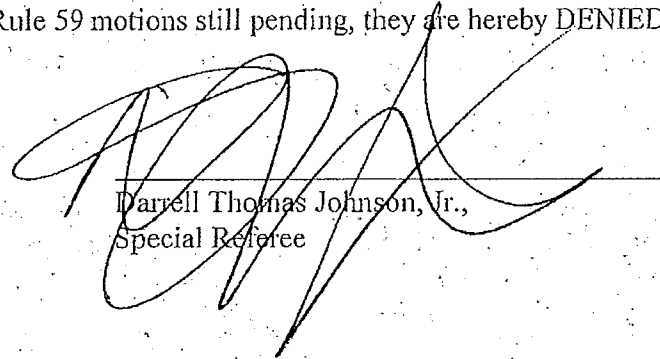
RECONSIDERATION
ORDER

MARGARET BOSCH
CLERK OF COURT
JASPER COUNTY SC

2015 DEC 28 AM 9:31

FILED

If, arguendo, there are any Rule 59 motions still pending, they are hereby DENIED.



Darrell Thomas Johnson, Jr.,
Special Referee

December 22, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

C.B. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER AND EFFIE SANDRA
TURPIN,

Plaintiffs,

Vs.

E. LEGRAND LOWTHER,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-151

2016 JAN 11 AM 9:21
CLOCK IN TIME CANCELLED
JASPER COUNTY, SC

ORDER ON DEFENDANT'S
MOTION TO SUSPEND SALE

THIS MATTER is before me as a matter in equity. Defendants motion raises a number of very appealing equitable arguments. None of these overbalance the equity of "Justice delayed is justice denied". This matter has been in limbo for so long that most of the original beneficiaries are dead. Some of the fault in this may be mine, but that will not reoccur.

Addressing the issues *seriatim*:

1 & 2. These arguments were addressed to the computation of the judgment amount. Primarily the argument is that the figures are not properly divided according to the undivided interests. I think these arguments have some merit, but are not grounds to cancel the sale. One item that is very, very clear is the roughly Forty-Five thousand (\$45,000.00) dollars, cited in the order as prospective credit. My order clearly directs this to be disbursed to Plaintiffs, and taken as a credit against the judgment. The Defendant apparently ignored this directive, and the fund is not now available. This clearly is part of the judgment and any verbiage premised upon payment is

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8. I calculate the judgment, using Defendant's figures as follows:

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$$\frac{129}{1,589}$$

$$+ 365 = 4.35$$

X7.25 Judgment rate interest

$$= 0.3153$$

TOTAL

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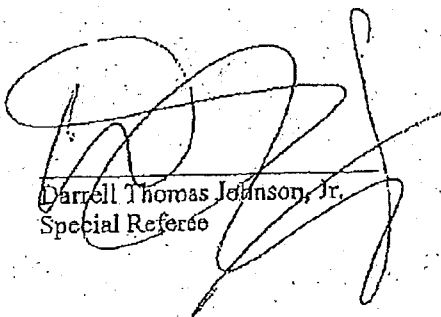
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\$172,845.34

For the foregoing Defendants' motion is denied, except to the extent that any overage of the bid above One Hundred Seventy-Two Thousand Eight Hundred and Forty-Five and 34/100's (\$172,845.34) Dollars shall be held pending further order of this Court.

Dated: August 1, 2014.


Darrell Thomas Johnson, Jr.
Special Referee

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

C.E. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER AND EFFIE SANDRA
TURPIN,

Plaintiffs,

vs

E. LEGRAND LOWTHER,

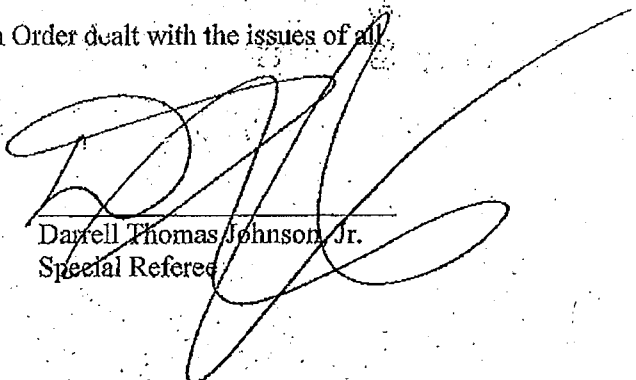
Defendant

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-151

ORDER

IT APPEARS that I did, indeed, miscaption the Rule 59 Order. 2008-CP-27-547 is a suit by one brother and his wife against Legrand Lowther. 2008-CP-27-151 is a suit by all siblings against Legrand Lowther. My Rule 59 motion Order dealt with the issues of all siblings, so the correct caption is 2008-CP-27-151.

October
Dated: ~~September~~ 5, 2012



Darrell Thomas Johnson, Jr.
Special Referee

000021

POSTED

BY *pd* 10.10.12



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

September 11, 2012

The Honorable Margaret Bostick
PO Box 248
Ridgeville SC 29936-0248

REMITTITUR

Re: Mitchell S. Lowther v. E. Legrand Lowther
Lower Court Case No. 2008CP2700151
Appellate Case No. 2012-212168

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

Enclosure

cc: R. Thayer Rivers, Jr.
H. Fred Kuhn, Jr.

000022

The South Carolina Court of Appeals

Mitchell S. Lowther and Carmon B. Lowther,
Respondents,

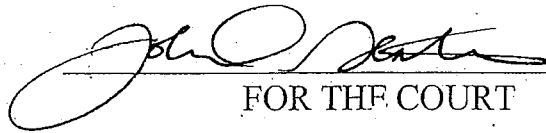
v.

E. Legrand Lowther, Appellant.

Appellate Case No. 2012-211008

ORDER

Appellant filed a Notice of Appeal from an order denying reconsideration bearing case number 2008-CP-27-547. Respondents have filed a motion to dismiss, contending an appeal regarding that case number has already been heard by this Court. Appellant filed a return, arguing this order had not been heard on appeal by this Court, but rather the order mistakenly included the incorrect case number and caption. After careful consideration of all the parties' filings, Respondents' motion to dismiss is denied. This appeal shall be held in abeyance and remanded to the Special Referee for the limited purpose of making a determination as to whether a correction of the case number and caption is necessary. This Court urges the Special Referee to act as expeditiously as possible.


FOR THE COURT

Columbia, South Carolina

cc:

R. Thayer Rivers, Jr.

H. Fred Kuhn, Jr.

FILED

Barter 9/11/12

000023

FILED

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MITCHELL S. LOWTHER and
CARMON B. LOWTHER.

Plaintiff,

vs

E. LEGRAND LOWTHER,

Defendant

2012 MAR 19 IN THE COURT OF COMMON PLEAS
C/A NO. 2008-CP-27-547

MARGARET L. OSTICK
CLERK OF COURT
JASPER COUNTY SC

ORDER

The testimony before me was that the Plaintiffs needed or wanted the money, sooner rather than later. Defendant's proposal was one-sided in favor of Defendant, but that was justified by the need of Plaintiffs to have money in the short term, even if it allowed their brother to profit in an immensely disproportionate manner.

I do not seek to redraw the parties' agreement, but I do seek to construe it in a way that makes some sense. Defendant's position that he had no obligation to proceed expeditiously, and no obligation to disburse funds, is clearly contrary to the intent of the contract, and clearly contrary to the implied covenant of good faith and fair dealing. Legrand had a position of trust and confidence, as the most capable and healthy member of the family. Legrand was Personal Representative of their father's estate. Legrand was something like a partner in one of the possible arrangements available under the contract. This simply was not an arm's-length transaction

Mr. Rivers' motion is primarily premised upon a proposition on which I respectfully disagree. While the matter involves a mortgage, the issues and the remedy were equitable. My

ruling is undoubtedly imperfect in this regard, but I am convinced that the bulk of his able representation falls under the American Rule wherein a party bears his own attorney fees.

As to the .15 acres, I hold that to be "de minimis non curat lex". I hold likewise as to the John Henry Lowther lot.

In regard to the accounting, both sides think my math is deficient. One or both may be correct, but I decline to change it.

Mr. Kuhn's erudite motion is also premised on a proposition with which I disagree. Mr. Kuhn's arguments are based on strict business reasoning. This is not just about words and numbers. Legrande had, not one, but several fiduciary relationship positions of trust and confidence, and implied duties of good faith and fair dealing. The least of his duties is the duty of good faith and fair dealing in the contract with his siblings. The contract was in the nature and spirit of a joint venture. I hold that Legrande had a duty to proceed competently and diligently, not at his personal whim. I note, specifically, that this arrangement preceded the current economic downturn.

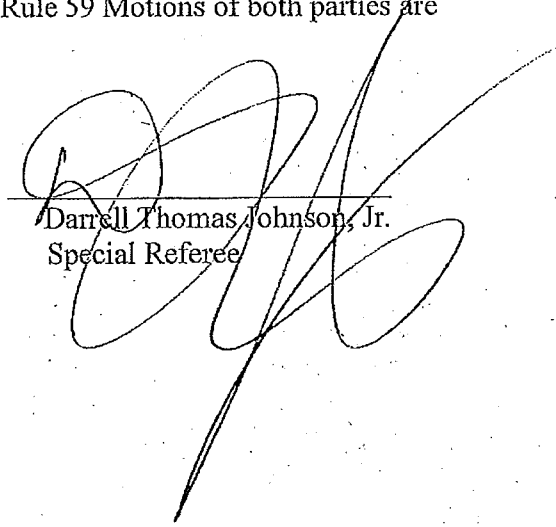
Mr. Kuhn's argument #3 is denied, with the clarification that, if there is an estate account still open after eight years, he may apply it to the judgment.

Mr. Kuhn's argument #8 is denied, with the comment that it is illustrative of Legrand's misperception of the whole case. Legrande foreclosed an owner financing transaction predating his deed, and used the amount due as his bid. The idea that he should get the lot, for which he had not paid, is absurd. Again, sharp dealing on the paperwork cannot negate the various duties or obligations that existed.

The balance of Mr. Kuhn's arguments are also denied.

IT IS NOW THEREFORE ORDERED that the Rule 59 Motions of both parties are
DENIED.

Dated: March 14, 2012



Darrell Thomas Johnson, Jr.
Special Referee

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

C.E. LOWTHER, JR., CLAYTON)
CLARK LOWTHER, MITCHELL S.)
LOWTHER AND EFFIE SANDRA)
TURPIN,)

Plaintiff,)

vs.)

E. LEGRAND LOWTHER,)

Defendant.)

IN THE COURT OF COMMON PLEAS

2008-CP-27-151

NOTICE OF MOTION AND MOTION
TO RECONSIDER ORDER ON
DEFENDANT'S MOTION TO
SUSPEND SALE

FILED
2008
JUN 12
CLERK
9:57 AM

TO: R. THAYER RIVERS, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that the Defendant, E. Legrand Lowther, through his undersigned attorneys, hereby moves before the Honorable Darrell Thomas Johnson, Jr., Special Referee, for an Order pursuant to Rule 59 of the South Carolina Rules of Civil Procedure reconsidering his Order on Defendant's Motion to Suspend Sale on the following grounds, to-wit:

1. The Special Referee erred in failing to consider that the \$45,805.57 held in the Echo Tango account has, by agreement of the parties, been disbursed either directly to the Plaintiffs or utilized to pay the Plaintiffs' share of property taxes on the Echo Tango property and property taxes and mortgage payments on the Wellington property, as well as the Plaintiffs' share of court costs. As a result, the Plaintiff Mitchell Lowther has received more than his share of these funds, while the remaining Plaintiffs have a very small balance remaining. This is more specifically set forth in the accompanying Affidavit of E. Legrand Lowther, which is attached hereto and incorporated herein by reference.

2. The Special Referee erred in failing to conduct an evidentiary hearing in order to give the Defendant the opportunity to show that the \$45,805.57 has already been substantially disbursed, with the agreement of the Plaintiffs, either to the Plaintiffs directly or for their benefit. A proffer of expected testimony is set forth in the attached Affidavit of E. Legrand Lowther.

3. The Special Referee erred in failing to vacate or set aside the judicial sale where the Special Referee has agreed that the amount of the judgment as referenced in the Transcript of Judgment, Execution, and Notice of Sale were substantially incorrect amounts.

4. The Notice of Sale references an execution against property issued to Sheriff P.J. Tanner by the Clerk of Court for Beaufort County on the 18th day of March, 2010, against E. Legrand Lowther in the amount of \$261,719.12. Upon information and belief, no such execution against property exists and the recited amount of \$261,719.12 is not correct.

5. The Notice of Sale references Judgment Roll Number 2014CP07572. The only document filed in said civil action number with the Office of the Clerk of Court for Beaufort County is a Transcript of Judgment from the Jasper County Court of Common Pleas for a judgment issued on the 13th day of March 2010 in the amount of \$193,231.32, which amount is not only inconsistent with the Notice of Sale, but is also substantially incorrect.

6. The Plaintiffs, C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin, are each indebted to the Defendant in accordance with civil actions filed in the Jasper County Court of Common Pleas and the Defendant is entitled to a set-off against any amount which the Defendant may owe to the Plaintiffs pursuant to the judgment upon which execution is now being sought, said set-off exceeding the amount owed to the Plaintiffs.

7. The judgment upon which execution is sought is interrelated with cases filed in the Beaufort County Court of Common Pleas under Civil Action Numbers 2010-CP-07-6274 and 2010-CP-07-6284, which judgment is currently pending on appeal and is not yet final.

8. The property upon which execution is sought consists of an undivided fifty (50%) percent interest in an unimproved lot of land, in which other individuals, other than Plaintiffs, own an undivided interest, an execution against the Defendant's one-half (1/2) interest will adversely affect the value of the undivided interest owned by the innocent owners. The Defendant has other real estate which is more amenable to sale without adversely affecting the value of said properties, said real estate being subdivided lots of land in Wellington Plantation in Jasper County, South Carolina.

9. The Defendant is informed and believes that it would be in the best interest of justice for a full and complete accounting to be performed of the monies owed by the Defendant to the Plaintiffs, and by the Plaintiffs to the Defendant and that said accounting will result in a substantially reduced sum, if any, owed by the Defendant to the Plaintiffs.

10. The Special Referee erred in apparently awarding to each of the four Plaintiffs herein a one-seventh interest in any funds which he previously found were owed to the Estate of C.E. Lowther, Sr., inasmuch as the Estate of C.E. Lowther, Sr. is not a party to this lawsuit, and if the Estate were a party, simply because funds are owed to the Estate does not equate to each of the Plaintiffs receiving a one-seventh interest in said funds.

11. The Special Referee erred in computing the amount of money owed to each Plaintiff with respect to the Wellington lot sales. The Report of the Special Referee dated March 13, 2010 concluded that out of the \$132,984.98 in proceeds realized from the sale of four Wellington lots, that 50% belonged to the Defendant, 25% to the Estate of C.E. Lowther, Sr., and

25% belonged to the Plaintiff Mitchell Lowther. Accordingly, the only Plaintiff in this lawsuit who was awarded an interest in these funds is Mitchell Lowther, whose 25% interest is \$33,246.24. The Special Referee erred in finding that Mitchell's interest in these funds was \$37,995.51, and that the remaining three Plaintiffs had any interest.

12. The Special Referee erred in calculating the interest of the Plaintiffs in the AgSouth payments. The Referee's Report concluded that the combination of the Estate of C.E. Lowther, Sr. and Mitchell S. Lowther are owed \$9,087.12 as their share of AgSouth rebates. The Report concluded that the Estate is owed one-half of this sum, or \$5,543.56, and the Plaintiff Mitchell S. Lowther is owed \$4,553.56. The Special Referee erred in calculating Mitchell's share, in his most recent Order to be \$5,192.38, or finding that the other Plaintiffs had any interest in these funds directly.

14. With respect to the Mims accounting, the Special Referee erred in concluding that each Plaintiff is entitled to a judgment amounting to one-seventh of \$21,157.97. The Special Referee's Report concluded that this sum was not owed to the Plaintiffs, but rather was owed to the Estate. No part of this sum was awarded to any of the Plaintiffs in the Special Referee's Report.

15. The Special Referee erred in failing to conclude that, with respect to the Echo Tango funds, the Plaintiff Mitchell has been paid in full and the remaining Plaintiffs are owed a balance of \$3,863.95 each.

16. The Plaintiffs no longer hold any judgment against the Defendant inasmuch as they have assigned \$120,000.00 of any judgment which they may hold to a third party. A copy of this Assignment has previously been filed. Even if this were a judgment in favor of the

Plaintiffs, it has been substantially satisfied. The executing Plaintiffs no longer hold a judgment against the Defendant.

17. Since the trial which resulted in the March 13, 2010 Report was held, the Defendant, with the knowledge and consent of the Plaintiffs, has made disbursements from the escrow account referenced in said Report, in complete satisfaction of the "Echo Tango" portion of the Computation in the amount of \$45,805.57. Even if this were a judgment in favor of the Plaintiffs, it has been satisfied.

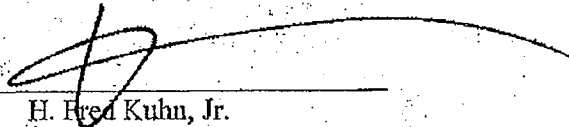
18. Since the trial which resulted in the issuance of the Report the Defendant has made payments, with the knowledge and consent of the Plaintiffs, in satisfaction of the judgment, said payments including the Plaintiffs' share of property taxes and mortgage payments on the properties which are the subject of the Report. The Defendant is entitled to a satisfaction of judgment for making the Plaintiffs' share of these payments in preservation of the Plaintiffs' interest in these properties.

19. The Defendant holds a judgment against the Plaintiff Mitchell S. Lowther in the amount of \$51,831.19 and a judgment against the Plaintiff Charles E. Lowther, Jr. in the amount of \$20,160.28. Copies of these judgments have been previously filed. These judgments held by this Defendant against these two (2) Plaintiffs should be offset by any judgment held by these two (2) Plaintiffs against this Defendant. The net result is that this Defendant is not indebted to either of these two (2) Plaintiffs.

The Defendant accordingly respectfully requests that the Special Referee consider his Order on Defendant's Motion to Suspend Sale, and issue an Order suspending or cancelling the sale, and grant to the Defendant an evidentiary hearing, or alternatively, order that title not be

transferred and any sales proceeds be held in escrow pending further order of the Court until an evidentiary hearing can be held.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302- FX

Beaufort, South Carolina
August 11, 2014

Attorneys for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

C.B. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER AND EFFIE SANDRA
TURPIN,

Plaintiffs,

Vs.

E. LEGRAND LOWTHER,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2008-CP-27-151

ORDER ON DEFENDANT'S
MOTION TO SUSPEND SALE

2016 JAN 11 AM 9:21
CLOCK IN TIME CANCELLED
JASPER COUNTY, SC

THIS MATTER is before me as a matter in equity. Defendants motion raises a number of very appealing equitable arguments. None of these overbalance the equity of "Justice delayed is justice denied". This matter has been in limbo for so long that most of the original beneficiaries are dead. Some of the fault in this may be mine, but that will not reoccur.

Addressing the issues *seriatim*:

1 & 2. These arguments were addressed to the computation of the judgment amount. Primarily the argument is that the figures are not properly divided according to the undivided interests. I think these arguments have some merit, but are not grounds to cancel the sale. One item that is very, very clear is the roughly Forty-Five thousand (\$45,000.00) dollars, cited in the order as prospective credit. My order clearly directs this to be disbursed to Plaintiffs, and taken as a credit against the judgment. The Defendant apparently ignored this directive, and the fund is not now available. This clearly is part of the judgment and any verbiage premised upon payment is

000033

now irrelevant, I do not sua sponte raise the issue of contempt.

3. I cannot take judicial notice that a particular party will prevail on a pending lawsuit.

4. If a remitter has been filed, the judgment is final.

5. I cannot take judicial notice that a change in co-tenancy affects value. Certainly in this case, a change in co-tenancy may change the asset from hypothetical to practical, in light of Defendant's recalcitrance in generating income. If these third parties want to be heard, I will certainly schedule a hearing, upon proper pleadings.

6. It is my impression that numerous accountings have been had, but the matter before me is a judgment.

7. Defendant's attorney sent his calculations of the items in the prior order in the form of a motion. If the sale proceeds exceed these calculations of \$172,845.34, I will order an escrow of the overage, and will hold another hearing. I respectfully, but emphatically, state that it is in the interest of justice that the Plaintiffs receive at least some part of the monies Defendant promised them, so many years ago.

8. I calculate the judgment, using Defendant's figures as follows:

I.	Wellington		\$132,984.98
	Mitchell	28.571	\$37,995.51
	Clark	3.571	\$4,748.89
	Sandra	3.571	\$4,748.89
	C.E. Jr.	3.571	\$4,748.89
II.	Ag South		\$9,087.12

	Mitchell	57.14 (50% + 1/7 x 50%)	\$5,192.38
	Clark	7.14	\$648.82
	Sandra	7.14	\$648.82
	C.E. Jr.	7.14	\$648.82
III.	Mims Accounting		\$21,157.97
	Mitchell	14.28	\$3,021.35
	Clark	14.28	\$3,021.35
	Sandra	14.28	\$3,021.35
	C.E. Jr.	14.28	\$3,021.35
IV.	Closing Costs		\$8000.00
	Mitchell		\$2,000.00
	Clark		\$2,000.00
	Sandra		\$2,000.00
	C.E. Jr.		\$2,000.00
V.	EchoTango		\$45,805.57
	Mitchell	25%	\$11,451
	Clark	25%	\$11,451
	Sandra	25%	\$11,451
	C.E. Jr.	25%	\$11,451

Interest 3-15-2010 to 7-24-2014

$$\begin{array}{r} 365 \times 4 = 1,460 \\ \underline{129} \\ 1,589 \end{array} + 365 = 4.35$$

X7.25 Judgment rate interest

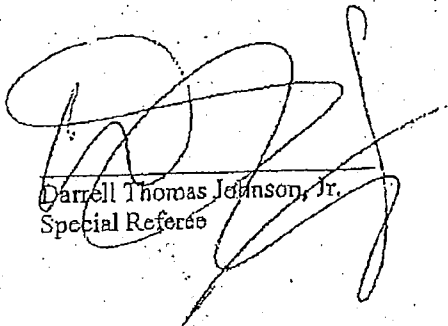
$$= 0.3153$$

TOTAL

Mitchell	\$59,659.86		
Interest 3/10/10-3/24/14	+18,810.48	=	\$78,469.48
Clark	\$21,870.06		
Interest 3/10/10-3/24/14	+6,895.62	=	\$28,765.68
Sandra	\$21,870.06		
Interest 3/10/10-3/24/14	+6,895.62	=	\$28,765.68
C.E. Jr.	\$21,870.06		
Interest 3/10/10-3/24/14	+6,895.62	=	\$28,765.68
			\$172,845.34

For the foregoing Defendants' motion is denied, except to the extent that any overage of the bid above One Hundred Seventy-Two Thousand Eight Hundred and Forty-Five and 34/100's (\$172,845.34) Dollars shall be held pending further order of this Court.

Dated: August 1, 2014.


Darrell Thomas Johnson, Jr.
Special Referee

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

C.E. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER AND EFFIE SANDRA
TURPIN,

Plaintiff,

vs.

E. LEGRAND LOWTHER,

Defendant.

IN THE COURT OF COMMON PLEAS

2008-CP-27-151

NOTICE OF MOTION AND MOTION
TO RECONSIDER COMPUTATON
OF THE MONEY AWARDED UNDER
ORDER OF MARCH 13, 2010 AND
MOTION TO SET ASIDE, CANCEL OR
NULLIFY JUDICIAL SALE HELD ON
JULY 7, 2014 AND FOR OTHER RELIEF

TO: R. THAYER RIVERS, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that the Defendant, E. Legrand Lowther, through his undersigned attorneys, hereby moves before the Honorable Darrell Thomas Johnson, Jr., Special Referee, for an Order reconsidering the computation of the money awarded under his Order of March 13, 2010 which was filed on July 3, 2014, and a copy of which was received on July 22, 2014 (hereinafter the "Computation") and for an Order setting aside, cancelling, or nullifying the judicial sale held on July 7, 2014 of property of the Defendant which was based upon said Computation.

In support of this Motion, the Defendant would respectfully show as follows:

- a. On July 3, 2014 an undated and untitled document was filed in this case which purports to be "a computation of the money awarded under (the) order of March 13, 2010 and is done for the Clerk of Court of Jasper County." A copy of this document is attached as Exhibit A. This documents purports to compute the aforesaid amount of money, excluding post-judgment interest, to be \$193,231.32.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: *July 28, 2014*

b. On March 12, 2014 a document entitled "Transcript of Judgment," was issued by the Jasper County Clerk of Court in which the principal amount of the judgment is represented to be \$193,231.32. A true and accurate copy of this document is attached hereto as Exhibit B.

c. Pursuant to the aforesaid Transcript of Judgment and Computation, execution was issued against the interest of the Defendant in property located in Beaufort County, South Carolina, and a judicial sale was held on July 7, 2014. This sale is not yet final, as it is subject to an upset bid within thirty (30) days of July 7, 2014.

The Defendant hereby moves that the aforesaid Computation be reconsidered and set aside, and the judicial sale which was held as a result of said Computation be set aside, cancelled or nullified, together with such other relief as is set forth herein, on the following grounds, to-wit:

1. Upon information and belief, the Computation was issued as the result of an *ex parte* communication.

2. The Computation was issued without notice to the Defendant or an opportunity to be heard.

3. The Computation recites that it is a computation of the money awarded under the Order of March 13, 2010 and is done for the Clerk of Court for Jasper County. It is undated, but was filed on July 3, 2014. The Transcript of Judgment issued by the Clerk of Court for Jasper County, however, is dated March 12, 2014 and was filed on that same date. It is, accordingly, an impossibility for the Transcript of Judgment to have been based upon the Computation, since the Transcript predates the Computation by several months.

4. The Computation is not supported by and is contrary to the findings set forth in the March 13, 2010 Order or Report of Special Referee in several particulars, including:

a. With respect to the "Wellington lot sales" the Computation recites that the Plaintiffs are entitled to 82.1% of \$132,984.98, for a resulting total of \$109,180.66. The Report of the Special Referee dated March 13, 2010 (hereinafter "Report"), on the other hand, found that out of the \$132,984.98 in proceeds realized from the sale of four (4) Wellington Lots, that 50% belonged to the Defendant, 25% belonged to the Estate of C.E. Lowther, Sr., and 25% belonged to the Plaintiff Mitchell Lowther. Accordingly, the only Plaintiff in this lawsuit who was awarded an interest in these funds is Mitchell Lowther, whose 25% interest is \$33,246.24.

b. With respect to the "AgSouth interest" the Computation awards \$9,087.12 to the Plaintiffs. The Report, however, concluded that the combination of the Estate of C.E. Lowther and Mitchell S. Lowther are owed \$9,087.12 as their share of the AgSouth rebates. That Special Referee concluded that the Estate is owed one-half (1/2) of \$9,087.12, or \$4,543.56, and the Plaintiff Mitchell S. Lowther is owed \$4,543.56.

c. With respect to the "Mims Accounting" the Computation gives a judgment of \$21,157.97 to the Plaintiffs. The Report, however, concluded that the sum of \$21,157.97 was not owed to the Plaintiffs, but rather was owed to the Estate. No part of this sum was awarded to any of the Plaintiffs.

d. With respect to the "Closing costs" the Computation awards a judgment of \$8,000.00 to the Plaintiffs. The Report determined that each of the four (4) Plaintiffs was owed \$2,000.00 for a total of \$8,000.00. It is respectfully submitted that this is the only portion of the Computation that correctly reflects the conclusions reached in the Report.

e. With respect to "Echo Tango" the Computation awards a judgment to the Plaintiffs in the amount of \$45,805.57. The Report, however, does not award this sum as a judgment to the Plaintiffs, but rather, concludes that the sum of \$45,805.57, which represents an

interest held in an escrow account, is an amount which should be "applied as a credit to any judgment rendered herein."

In sum, the Report of the Special Referee supports a judgment in favor of the Plaintiff Mitchell S. Lowther in the amount of \$33,246.24 for the "Wellington lot sales," in the amount of \$4,543.56 for the "AgSouth interest," and in the amount of \$2,000.00 for the "Closing costs," or a total judgment in favor of Mitchell individually in the amount of \$39,789.80. The Report further supports a judgment in favor of the remaining three (3) Plaintiffs, C. E. Lowther, Jr., Clayton Clark Lowther, and Effie Sandra Turpin, in the amount of \$2,000.00 each.

5. The Plaintiffs no longer hold any judgment against the Defendant inasmuch as they have assigned \$120,000.00 of any judgment which they may hold to a third party. A copy of this Assignment is attached as Exhibit C. Since the total judgments collectively held by these Plaintiffs against this Defendant are substantially less than \$120,000.00, the Plaintiffs no longer hold any beneficial interest in these judgments as a result of their assignment of their judgment rights to a third party.

6. Since the trial which resulted in the March 13, 2010 Report was held, the Defendant, with the knowledge and consent of the Plaintiffs, has made disbursements from the escrow account referenced in said Report, in complete satisfaction of the "Echo Tango" portion of the Computation in the amount of \$45,805.57. Even if this were a judgment in favor of the Plaintiffs, it has been satisfied.

7. Since the trial which resulted in the issuance of the Report the Defendant has made payments, with the knowledge and consent of the Plaintiffs, in satisfaction of the judgment, said payments including the Plaintiffs' share of property taxes and mortgage payments on the properties which are the subject of the Report. The Defendant is entitled to a satisfaction

of judgment for making the Plaintiffs' share of these payments in preservation of the Plaintiffs' interest in these properties.

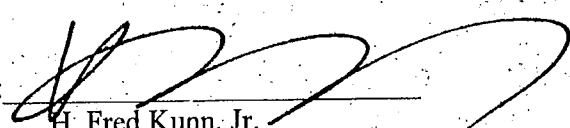
8. The Defendant holds a judgment against the Plaintiff Mitchell S. Lowther in the amount of \$51,831.19 and a judgment against the Plaintiff Charles E. Lowther, Jr. in the amount of \$20,160.28. Copies of these judgment are attached hereto as Exhibits D and E. These judgments held by this Defendant against these two (2) Plaintiffs should be offset by any judgment held by these two (2) Plaintiffs against this Defendant. The net result is that this Defendant is not indebted to either of these two (2) Plaintiffs.

It is, accordingly, respectfully requested that the Court reconsider its Computation as set forth herein, set aside, cancel or nullify the judicial sale which was held pursuant to said Computation, and grant to the Defendant notice and an opportunity to be heard regarding the outstanding balance, if any, owed by the Defendant to the Plaintiffs pursuant to the Report, as is set forth herein above.

This Motion will be heard at a date, time and place to be set by the Special Referee.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kunn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302- FX

Attorneys for Defendant

Beaufort, South Carolina
July 23, 2014

CERTIFICATE OF SERVICE

Undersigned certifies that the Notice of Motion and Motion to Reconsider Computation of the Money Awarded Under Order of March 13, 2010 and Motion to Set Aside, Cancel or Nullify Judicial Sale Held on July 7, 2014 and for Other Relief, to which this certificate is affixed, was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

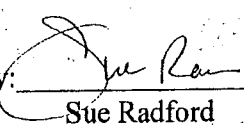
Honorable Darrell Thomas Johnson, Jr.
Post Office Box 1125
Hardeeville, SC 29927

R. Thayer Rivers, Jr., Esquire
Post Office Box 668
Ridgeland, SC 29936

2014 JUL 24 AM 9:38
JASPER COUNTY SC
CLERK OF COURT

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on July 23rd, 2014.

MOSS, KUHN & FLEMING, P.A.

By: 

Sue Radford

000042

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER:
2008-CP-27-151

C. E. LOWTHER, JR., CLAYTON)
CLARK LOWTHER, MITCHELL S.)
LOWTHER AND EFFIE SANDRA)
TURPIN)

Plaintiffs)

v.)

E. LEGRAND LOWTHER,)
Defendant.)

Wellington lot sales	\$132,984.98
(p 3&4 of order)	x 82.1%
	109,180.66
P4 AgSouth interest	9,087.12
P5 Mims Accounting	21,157.97
P5 Closing costs	8,000.00
P8 Echo Tango	45,805.57

As of 3-13-2010 193,231.32

Interest at 7.25% 14,009.27 per year
x3

+9 months 42,027.81
Interest up to 12-13-2013. 10,506.95
52,534.76

The above is a computation of the money awarded under my order of March 13, 2010 and is done for the Clerk of Court of Jasper County.

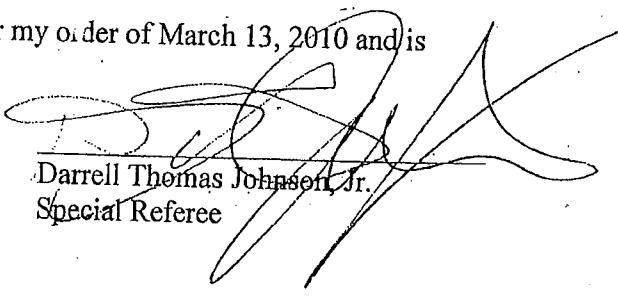

Darrell Thomas Johnson Jr.
Special Referee

EXHIBIT A

000043

2014-CP-01-572

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
C. E. LOWTHER, JR., CLAYTON)
CLARK LOWTHER, MITCHELL)
S. LOWTHER AND)
EFFIE SANDRA TURPIN,)
)
Plaintiffs,)
)
v.)
)
E. LEGRAND LOWTHER,)
Defendant)

COURT OF COMMON PLEAS
CASE NUMBER 2008-CP-27-0151

TRANSCRIPT OF JUDGMENT

2014 MAR 12 PM 3:39
CLERK OF COURT
JASPER COUNTY, S.C.

Party or Parties in Whose Favor Rendered:

C. E. LOWTHER, JR., CLAYTON CLARK LOWTHER, MITCHELL S. LOWTHER AND
EFFIE SANDRA TURPIN

Attorney of Record: R. Thayer Rivers, Jr., P.O. Box 668, Ridgeland, SC 29936 843-726-8136

Party or Parties Against Whom Rendered: E. LEGRAND LOWTHER

Attorney of Record: Fred Kuhn Jr., P.O. Drawer 507, Beaufort, SC 29901

Judgment: \$193,231.32 on March 13, 2010

Total Amount: \$193,231.32

(Does not include interest from date of Judgment until Satisfied)

Office of THE CLERK OF COURT In and for the County of JASPER and State aforesaid.
I hereby certify that the foregoing is true and correct transcript for the Docket and Book of
Judgments kept in my office.

This 12th day of March 2014

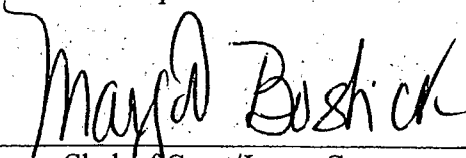

Clerk of Court/Jasper County

EXHIBIT B

000044

) IN THE COURT OF COMMON PLEAS
) C/A NO. 2008-CP-27-547

Mitchell S. Lowther, and Carmen B. Lowther

Plaintiff,

VS.

E. Legrand Lowther,

Defendants.

ASSIGNMENT OF JUDGMENT TO FIDELITY NATIONAL TITLE INSURANCE COMPANY

IN THE COURT OF COMMON PLEAS
C/A NO. 2008-CP-27-151

C.E. Lowther, Jr., Clayton Clark Lowther,
Mitchell S. Lowther, and Effie Sandra
Turpin,

Plaintiffs,

VS.

E. Legrand Lowther,

Defendants.

ASSIGNMENT OF JUDGMENT TO FIDELITY NATIONAL TITLE INSURANCE COMPANY

2013 MAY 29 PM 1:16
MARGARET BOSCH
CLERK OF COURT
JASPER COUNTY SC

EXHIBIT C

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SO
BY: M. Smith
DATE: July 7, 2014

00¹0045

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Effie Sandra Trupin, C.E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell
Saxon Lowther,

Plaintiff,

vs.

E. Legrand Lowther, individually, and as
Personal Representative of the Estate of
C.W. Lowther, Sr., and Mark Allen
Lowther, as Personal Representative of
the Estate of C.E. Lowther, Sr.

Defendants.

) IN THE COURT OF COMMON PLEAS
) C/A NO. 2010-CP-07-06274
)
)
)

ASSIGNMENT OF JUDGMENT AS TO
FIDELITY NATIONAL TITLE
INSURANCE COMPANY

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Effie Sandra Trupin, C.E. Lowther, Jr.,
Clayton Clark Lowther, and Mitchell
Saxon Lowther,

Plaintiff,

vs.

E. Legrand Lowther, individually, and as
Personal Representative of the Estate of
C.W. Lowther, Sr., and Mark Allen
Lowther, as Personal Representative of
the Estate of C.E. Lowther, Sr.

Defendants.

) IN THE COURT OF COMMON PLEAS
) C/A NO. 2010-CP-07-06284
)
)
)

ASSIGNMENT OF JUDGMENT AS TO
FIDELITY NATIONAL TITLE
INSURANCE COMPANY

FOR VALUE RECEIVED IN CONSIDERATION of the sum of One Hundred
Twenty Thousand and No/100 (\$120,000.00) Dollars having been paid to Carmen B. Lowther,
individually, and as the Personal Representative of the Estate of Mitchell S. Lowther, C.E.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: *[Signature]*
DATE: *July 7, 2014*

000046

Lowther, Jr., Clayton Clark Lowther, and Effie Sandra Turpin (collectively the "Judgment Creditors"), by Fidelity National Title Insurance Company on behalf of O'Reilly Automotive Stores, Inc., a Missouri Corporation, the Judgment Creditors in the above-captioned cases filed of record in both Jasper County, South Carolina, and Beaufort County, South Carolina, the receipt and sufficiency of which are hereby acknowledged, the Judgment Creditors named herein assign, transfer, and set over to Fidelity National Title Insurance Company, its successors and assigns forever the judgments held by them as against E. LeGrand Lowther up to the sum of One Hundred Twenty Thousand and No/100 (\$120,000.00) Dollars paid to them by Fidelity National Title Insurance Company on behalf of O'Reilly Automotive Stores, Inc., a Missouri Coproation, in partial satisfaction of the judgments entered in the above-captioned matters until such judgments are paid in full by the said E. LeGrand Lowther, together with any accruing interest thereon at the rate set forth by the South Carolina Supreme Court at the time the judgments were entered. The Judgment Creditors specifically reserve the right to collect on the remainder of the outstanding Judgments held by them against E. LeGrand Lowther for sums over and above One Hundred Twenty Thousand and No/100 (\$120,000.00) Dollars paid to them by Fidelity National Title Insurance Company on behalf of O'Reilly Automotive Stores, Inc., in partial satisfaction of the judgments entered in the above-captioned matters together with any accruing interest thereon at the rate set forth by the South Carolina Supreme Court at the time the judgments were entered.

WITNESS OUR HANDS this 23 Day of May, 2013

THIS SPACE LEFT BLANK INTENTIONALLY

SIGNATURES ON FOLLOWING PAGES

000047

WITNESS:

Witness 1

Witness 2

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

ACKNOWLEDGMENT

Personally appeared before me Carmen B. Lowther who did sign and seal the foregoing instrument on this the 23 Day of May, 2013

Notary Public for South Carolina

My Commission Expires: 7-23-2013

WITNESS:

Witness 1

Witness 2

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

ACKNOWLEDGMENT

Personally appeared before me The Estate of Mitchell S. Lowther by Carmen B. Lowther its Personal Representative who did sign and seal the foregoing instrument on this the 23 Day of May, 2013

Notary Public for South Carolina

My Commission Expires: 7-23-2013

The Estate of Mitchell S. Lowther

By: Carmen B. Lowther

Its: Personal Representative

2013 MAY 29 PM 1:16
MARGARET BOSSICK
CLERK OF COURT
JASPER COUNTY SC

000048

WITNESS:

Witness 1

Witness 2

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

ACKNOWLEDGMENT

Personally appeared before me C.E. Lowther, Jr., who did sign and seal the foregoing instrument on this the 23 Day of May, 2013

Notary Public for South Carolina

My Commission Expires: 7-22-2013

WITNESS:

Witness 1

Witness 2

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

ACKNOWLEDGMENT

Personally appeared before me Clayton Clark Lowther who did sign and seal the foregoing instrument on this the 23 Day of May, 2013

Notary Public for South Carolina

My Commission Expires: 7-13-2013

2013 MAY 29 PM 1:16
MARSHALL POSTBOX
CLERK OF COURT
JASPER COUNTY SC

Robert Lynn Smith
Witness No. 1

Effie Sandra Turpin
Effie Sandra Turpin

Kathleen J. Bearden
Witness No. 2

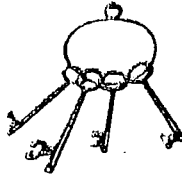
STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me by Effie Sandra Turpin this
23 day May, 2013.

Robert Lynn Smith (SEAL)
Notary Public for South Carolina
My Commission Expires: 7-23-2013

2013 MAY 29 PM 1:16
MARGARET BOSSICK
CLERK OF COURT
JASPER COUNTY SC



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

May 28, 2013

G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
Hamlin.okelley@buistbyars.com

VIA OVERNIGHT DELIVERY

The Honorable Margaret Bostick
Clerk of Court for Jasper County
265 Russell Street
Ridgeland, South Carolina 29936

Re: Lowther v. Lowther, Case No. 2008-CP-27-547
Lowther v. Lowther, Case No. 2008-CP-27-151
Turpin v. Lowther, Case No. 2010-CP-07-06274
Turpin v. Lowther, Case No. 2010-CP-07-06284
File No. 2012090113

RECEIVED
JASPER COUNTY SC
COURT
MAY 29 2013
PM 1:15

Dear Ms. Bostick:

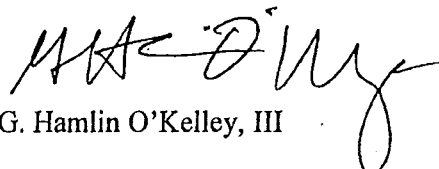
Enclosed please find an original and one-copy of the following for filing the above referenced matters:

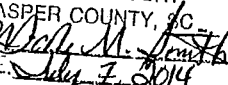
1. Partial Satisfaction of Judgment only as to Property Owned by O'Reilly Automotive Stores, Inc., a Missouri Corporation, Jasper County TMS No. 063-26-34-002;
2. Assignment of Judgment to Fidelity National Title Insurance Company.

Please file the original and return a clocked copy to me in the enclosed envelope. By copy of this letter, I am serving same upon R. Thayer Rivers, Jr., attorney for the Plaintiffs in these cases.

Should you have any questions, please feel free to contact me. With kind regards, I remain,

Yours very truly,


G. Hamlin O'Kelley, III

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: 
DATE: July 7, 2014

Enclosures

cc. (w/enc.): R. Thayer Rivers, Jr., Esq.

{00345137.DOC}

000051

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

LEGRAND LOWTHER,

Plaintiff,

vs.

MITCHELL S. LOWTHER,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-27-230

DEFAULT JUDGMENT

IT APPEARING from the Affidavit of Service of Reynolds Process Service filed June 4, 2010 that the Defendant, Mitchell S. Lowther was duly served with the Summons and Complaint by personal service upon him on May 4, 2010; that the Defendant was required to Answer or appear on or before thirty (30) days from the date of service; that the Defendant was advised in the Summons that if he should fail to Answer the Complaint within the time aforesaid, that the Plaintiff in this action would apply to the Court for a judgment by default and the relief demanded in the Complaint; and that, as evidenced by the Affidavit of Default, the Defendant has failed to Answer, respond, or appear as required and is now in default;

AND IT FURTHER APPEARING that the damages sought herein are liquidated, consisting of the sum certain of \$49,756.35 loaned by the Plaintiff to the Defendant, together with pre-judgment interest from the date this action was commenced (April 9, 2010) until the date of judgment in accordance with S.C. Code Ann. §34-31-20 (2010), or \$2,074.84, resulting in total liquidated damages of \$51,831.19.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment shall be and is hereby entered in favor of the Plaintiff against the Defendant in the amount of

EXHIBIT D

000052

\$51,831.19.

AND IT IS SO ORDERED.



Honorable Carmen T. Mullen
Chief Administrative Judge for the
Fourteenth Judicial Circuit

Beaufort, South Carolina

Dated: 10-10-10

2010 OCT 18 AM 9:47
MARSHALL BOSCH
CLERK OF COURT
JASPER COUNTY, SC

000053

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

CASE NO.: 2010-CP-27-283

LEGRAND LOWTHER,)

Plaintiff,)

VS.)

DEFAULT JUDGMENT

CHARLES EUGENE LOWTHER, JR.,)

Defendant.)

2010 OCT 18 AM 9:48
MARSHALL POSITION
CLERK OF COURT
JASPER COUNTY SC

FILED

IT APPEARING from the Affidavit of Service of Reynolds Process Service filed June 4, 2010 that the Defendant, Charles Eugene Lowther, Jr. was duly served with the Summons and Complaint by personal service upon him on May 4, 2010; that the Defendant was required to Answer or appear on or before thirty (30) days from the date of service; that the Defendant was advised in the Summons that if he should fail to Answer the Complaint within the time aforesaid, that the Plaintiff in this action would apply to the Court for a judgment by default and the relief demanded in the Complaint; and that, as evidenced by the Affidavit of Default, the Defendant has failed to Answer, respond, or appear as required and is now in default;

AND IT FURTHER APPEARING that the damages sought herein are liquidated, consisting of the sum certain of \$19,353.25 loaned by the Plaintiff to the Defendant, together with pre-judgment interest from the date this action was commenced (April 9, 2010) until the date of judgment in accordance with S.C. Code Ann. §34-31-20 (2010), or \$807.03, resulting in total liquidated damages of \$20,160.28.

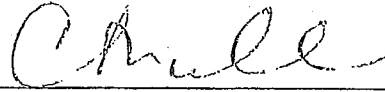
IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment shall be and is hereby entered in favor of the Plaintiff against the Defendant in the amount of

EXHIBIT E

000054

\$20,160.28.

AND IT IS SO ORDERED.



Honorable Carmen T. Mullen
Chief Administrative Judge for the
Fourteenth Judicial Circuit

Beaufort, South Carolina

Dated: 10-8-10

000055

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO.: 2014-CP-07-572

C.E. LOWTHER, JR., CLAYTON)
CLARK LOWTHER, MITCHELL S.)
LOWTHER AND EFFIE SANDRA)
TURPIN,)

Plaintiffs,)

vs.)

E. LEGRAND LOWTHER,)

Defendant.)

MOTION TO SUSPEND JUDGMENT
SALE

TO: P. J. TANNER, SHERIFF OF BEAUFORT COUNTY AND R. THAYER RIVERS, JR.,
ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that the Defendant, E. Legrand Lowther, hereby moves for an Order of the Court suspending the sale of the interest of the Defendant in the property identified in the Notice of Sale attached hereto, a copy of which is incorporated herein by reference. This motion is made upon the ground that a suspension of the sale is in the best interest of justice. More specifically:

1. The Notice of Sale references an execution against property issued to Sheriff P.J. Tanner by the Clerk of Court for Beaufort County on the 18th day of March, 2010, against E. Legrand Lowther in the amount of \$261,719.12. Upon information and belief, no such execution against property exists.

2. The Notice of Sale references Judgment Roll Number 2014CP07572. The only document filed in said civil action number with the Office of the Clerk of Court for Beaufort

000056

County is a Transcript of Judgment from the Jasper County Court of Common Pleas for a judgment issued on the 13th day of March 2010 in the amount of \$193,231.32.

3. The Plaintiffs, C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin, are each indebted to the Defendant in accordance with civil actions filed in the Jasper County Court of Common Pleas and the Defendant is entitled to a set-off against any amount which the Defendant may owe to the Plaintiffs pursuant to the judgment upon which execution is now being sought, said set-off exceeding the amount owed to the Plaintiffs.

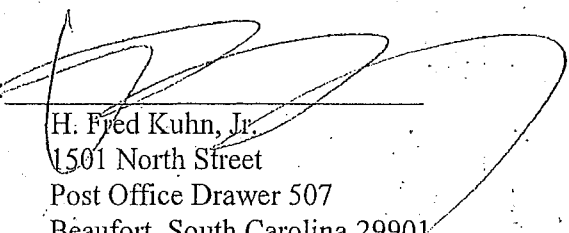
4. The judgment upon which execution is sought is interrelated with cases filed in the Beaufort County Court of Common Pleas under Civil Action Numbers 2010-CP-07-6274 and 2010-CP-07-6284, which judgment is currently pending on appeal and is not yet final.

5. The property upon which execution is sought consists of an undivided fifty (50%) percent interest in an unimproved lot of land, in which other individuals, other than Plaintiffs, own an undivided interest, an execution against the Defendant's one-half (1/2) interest will adversely affect the value of the undivided interest owned by the innocent owners. The Defendant has other real estate which is more amenable to sale without adversely affecting the value of said properties, said real estate being subdivided lots of land in Wellington Plantation in Jasper County, South Carolina.

6. The Defendant is informed and believes that it would be in the best interest of justice for a full and complete accounting to be performed of the monies owed by the Defendant to the Plaintiffs, and by the Plaintiffs to the Defendant and that said accounting will result in a substantially reduced sum, if any, owed by the Defendant to the Plaintiffs.

This motion will be heard at a date, time and place to be set by the Presiding Judge or Clerk of Court of the Beaufort County Court of Common Pleas and Defendant moves that, due to the impending nature of the sale, said hearing be expedited.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302- FX

Beaufort, South Carolina
July 1, 2014

Attorneys for Plaintiff

000058



P.J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3192
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL RECORDS	255-3188
JUDGMENTS	255-3189
FAX #	255-9405
WEB SITE	www.bcsa.net

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDGMENT ROLL NUMBER
	)	2014CP07572
C.E. LOWTHER, JR., CLAYTON CLARK	)	
LOWTHER, MITCHELL S. LOWTHER	)	
AND EFFIE SANDRA TURPIN	)	
	)	NOTICE OF SALE
VS	)	
	)	
E. LEGRAND LOWTHER	)	

Under and by virtue of Execution Against Property issued to me by the Clerk of Court for Beaufort County, on the 18th day of March 2010 against E. Legrand Lowther in the amount of \$261,719.12. I will sell to the highest bidder at Public Auction, at Beaufort County Courthouse, Ribaut Road, Beaufort, South Carolina, at 11:00 a.m. on the 7th day of July 2014, the following parcel described to-wit:

All his right, title and interest in his undivided one-half (1/2) in all that certain piece, parcel or lot of land situate, lying and being in the Chechessee Community of Beaufort County, South Carolina, and being particularly described as Lot 6 of Echo Tango Subdivision, Phase II on a plat prepared by Richard Kesselring RLS 8105, dated December 9, 1997, and revised December 29, 1997 and January 25, 1998 and recorded in Plat Book 112 at Page 165 in the Office of the Register of Deeds for Beaufort County, South Carolina. This being portions of the same property conveyed to E. Legrand Lowther by deeds recorded in Deed Book 2675 on Page 0235 - 0239 and Deeds recorded in Deed Book 1373 at Page 140 and Deed Book 2292 at Pages 1752 - 1761 all in the Office of the Register of Deeds for Beaufort County, South Carolina.

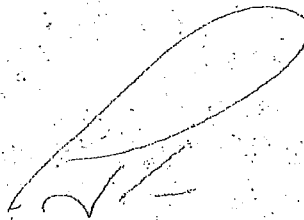
Property Address: Lot 6, 73 Echotango Road, Okatie, South Carolina 29909

Tax Map Number: R600 006 000 009B 0000

A deposit of five percent (5%) of the bid price must be posted at the time of Sale. Sale will be subject to the Upset Bidding, which shall conclude at the Beaufort County Courthouse, Beaufort, South Carolina at 11:00 A.M. on the 6th day of August 2014. Upset bid date will not remain open, unless a bid is made at date of Original Sale.

000059

TO SATISFY THE AFORESAID EXECUTION PLUS COSTS, SAID SALE IS SUBJECT TO ALL PRIOR LIENS AND/OR ENCUMBRANCES. SAID SALE SHALL REMAIN OPEN FOR THIRTY (30) DAYS.



P.J. TANNER
SHERIFF

TERMS: CASH



Beaufort County... "Dedicated, Professional Service."

000060

IN THE STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MITCHELL S. LOWTHER and CARMEN
B. LOWTHER,

Plaintiffs,

vs:

E. LEGRAND LOWTHER,

Defendant.

IN THE STATE OF SOUTH CAROLINA

COUNTY OF JASPER

C. E. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER and EFFIE SANDRA
TURPIN,

Plaintiffs,

v.

E. LEGRAND LOWTHER,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-27-547

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-27-151 (sic, 08-CP-
27-150)

JASPER COUNTY SC
CLERK OF COURT
JAN 14 2009

IN THE STATE OF SOUTH CAROLINA
COUNTY OF JASPER

C. E. LOWTHER, JR., CLAYTON
CLARK LOWTHER, MITCHELL S.
LOWTHER and EFFIE SANDRA
TURPIN,

Plaintiffs,

v.

E. LEGRAND LOWTHER,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-07-151

NOTICE OF MOTION AND MOTION TO RECONSIDER, ALTER OR AMEND
JUDGMENT OR FOR A NEW TRIAL (RULE 59, SCRCP)

TO: R. THAYER RIVERS, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that the Defendant, E. Legrand Lowther, through his undersigned attorneys, hereby moves before the Honorable Darrell T. Johnson, Special Referee, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for an Order reconsidering, altering or amending that Report of Special Referee dated March 15, 2010 and filed on March 18, 2010, or alternatively for a new trial, on the following grounds:

1. The Court erred in failing to give the Defendant credit for payments he made on the AgSouth Loan. Prior to his death, C. E. Lowther, Sr., along with the Defendant Legrand Lowther and the Plaintiff Mitchell Lowther borrowed money for their business. The parties have referred to this loan as the AgSouth loan. Mr. Lowther, Sr., Legrand Lowther, and Mitchell Lowther are jointly responsible for this loan, and between them they are each

responsible for one-third of the loan payment. When Mr. Lowther, Sr. died, this loan was still outstanding. This loan is payable in quarterly installments. The Defendant Legrand Lowther has made payments, since the death of C. E. Lowther, Sr., towards this loan totaling \$13,310.28. This AgSouth loan was acquired through the membership of Legrand Lowther in AgSouth. The Special Referee should have found that, with respect to this loan, Legrand Lowther owed \$4,436.76, but paid \$13,310.21, and accordingly is owed \$8,873.45 from Mitchell and the Estate. Mitchell Lowther owed \$5,070.58 on this loan (his one-third plus his one-seventh of one-third owed through the Estate), he paid nothing towards the payments, and accordingly he owes \$5,070.58. The Plaintiff C. E. Lowther, Jr., Clayton Clark Lowther and Effie Sandra Turpin each owe \$633.82 (their one-seventh of one-third share) they each paid nothing, and they accordingly each still owe \$633.82 to the Defendant with respect to this loan.

2. The Court erred in finding as a matter of fact and concluding as a matter of law that the combination of the Estate of C. E. Lowther and Mitchell S. Lowther are owed \$9,087.12 as their share of the AgSouth rebates where this finding is not supported by the greater weight or preponderance of the evidence and there is no evidence that Legrand Lowther agreed to give, gift, or share any funds received by him as a result of his membership in or investment in AgSouth.

3. The Court erred in finding as a matter of fact and concluding as a matter of law that Legrand Lowther owed \$21,157.97 to the Estate of C. E. Lowther, where this finding is apparently based upon the accounting performed by David Mims, which shows that the Estate should have \$21,157.97 in the Estate checking account, so that Legrand Lowther would actually owe whatever difference is between \$21,157.97 and what the

balance is in the Estate checking account.

4. The Special Referee erred in finding that C. E. Lowther, Sr. owned, or that any beneficiary of the Estate of C. E. Lowther owned, an ownership interest in the Echo Tango property. The evidence in this case shows that the Defendant Legrand Lowther and C. E. Lowther, Sr. entered into a development agreement whereby Legrand Lowther owned by the Echo Tango Subdivision, and C. E. Lowther, Sr., pursuant to a contract entered into between the two of them, surrendered any ownership rights that he had, and following the death of C. E. Lowther, Sr., the Defendant and the Plaintiffs entered into a contractual agreement whereby the Plaintiffs surrendered any ownership rights or equitable interest which they may have inherited from their father pursuant to quit-claim deeds and, upon default, acquired certain rights to share in the "net profits", received from the Echo Tango Subdivision pursuant to a formula and agreement expressly set forth in writing in the Notes signed by each of them.

5. The Special Referee erred in finding as a matter of fact and concluding as a matter of law that a closing statement is not a document to which the parol evidence rule applies.

6. The Special Referee erred in finding as a matter of fact that there is any ambiguity created by a contract that calls for Notes of \$250,000.00 and \$950,000.00, and the actual Notes which were subsequently signed by each of the Plaintiffs for \$252,000.00 and \$952,000.00. The evidence in this case shows that all the parties agreed that \$2,000.00 of the consideration being paid in connection with the subject transactions was moved from cash up front to seller financing so that the Defendant would have sufficient cash available to him to pay the closing costs being incurred.

7. The Special Referee erred in finding as a matter of fact and concluding as a matter of law that Legrand Lowther owed \$2,000.00 to each of the Plaintiffs, where it is clear from the documents in this written, real estate transaction, that each of the Plaintiffs agreed to reduce the price that was being paid for the 40 acre parcel of land by \$2,000.00 each, and to increase the price that was being paid for the Wellington Plantation property, which was 100% seller financed, and there was no agreement that this \$2,000.00 would be owed over and above the other remedies available to the Plaintiffs expressly set forth in the written documents, in the event of default.

8. The Court erred in finding as a matter of fact and concluding as a matter of law that the Plaintiffs are entitled to have a deed conveying to them any interest in the Haydon repossessed property where this finding is unsupported by the evidence, is contrary to the greater weight or preponderance of the evidence, and is beyond the scope of the pleadings. The evidence in this case shows that the Haydon property was purchased by E. Legrand Lowther, individually, for the sum of \$25,000.00 as a result of being the successful bidder at a mortgage foreclosure sale.

9. The Court erred in finding as a matter of fact and concluding as a matter of law that the Plaintiffs are entitled to have a deed conveying to them an interest in Lot 12 which was deeded from Mitchell to Legrand Lowther inasmuch as this finding is contrary to the greater weight or preponderance of the evidence and beyond the scope of the pleadings.

10. The Court erred in finding as a matter of fact and concluding as a matter of law that the Estate of C. E. Lowther owned or owns any interest in the Echo Tango lots. Echo Tango was owned 100% by the Defendant at the time of the death of C. E. Lowther;

Sr. Legrand Lowther and C. E. Lowther, Sr. had entered into a loose development agreement regarding Echo Tango. After the death of C. E. Lowther, Jr. a new contract was entered into between Legrand Lowther and each of the beneficiaries of the Estate of C. E. Lowther and the only interest which these beneficiaries have in the Echo Tango development is governed by the terms of their agreement, which is set forth in writing in the Contracts (Notes) signed by each of them.

11. The Court erred in finding as a matter of fact and concluding as a matter of law that it was always recognized that C. E. Lowther, Sr. owned a one-half interest in the Echo Tango Subdivision. The interest of C. E. Lowther, Sr. in the Echo Tango Subdivision was an equitable interest governed by the written agreement between Legrand Lowther and C. E. Lowther, Sr. and this agreement was re-negotiated between the Plaintiffs and the Defendant following the death of C. E. Lowther, Sr. as evidenced by the written Contracts (Notes) executed by the parties.

12. The Court erred in finding as a matter of fact that there was a 1997 deposit of \$20,000.00 paid by Mr. Colberg (sic Kohlberg) which is not reflected on the Echo Tango Draft Interim Accounting, where this finding is not supported by and is contrary to the greater weight or preponderance of the evidence. The aforesaid Draft Interim Accounting shows that \$92,135.06 was received from Mr Kohlberg as the total amount from the sale of the Echo Tango lot and, additionally, another \$54,625.00 was received from Mr. Kohlberg as a contribution towards the sewer expenses. There is no evidence to suggest that the \$20,000.00 down payment received on Mr. Kohlberg is not reflected in the Accounting.

13. The Court erred in finding as a matter of fact and concluding as a matter of

law that \$25,000.00 should be deducted from the Echo Tango expenses shown on the Echo Tango Draft Interim Accounting where this finding is not supported by the greater weight or preponderance of the evidence. The Court's finding is based upon the "inference" that the \$35,000.00 First National Bank Note included in it the original \$25,000.00 that was borrowed from First National Bank to pay certain expenses, and this inference is likewise not supported by or is contrary to the greater weight or preponderance of the evidence, which is that \$25,000.00 was borrowed to pay some of the aforesaid expenses, but that the \$35,000.00 Note is an entirely separate, distinct Note.

14. The Court erred in finding as a matter of fact and concluding as a matter of law that Legrand Lowther was not entitled to reimburse any of his "cost of capital" or interest expense or lost interest expense for monies advanced in the development of Echo Tango. In so holding, the Court confused the \$500,696.05 which Legrand Lowther spent in developing the Echo Tango Subdivision with the Mortgage given by Legrand Lowther to the Plaintiffs on the Wellington Plantation property.

15. The Court erred in failing to give Legrand Lowther interest on these funds advanced to the development of Echo Tango at the pre-judgment rate of 8 3/4% per annum.

16. The Court erred in finding as a matter of fact that Legrand Lowther would put no further funds into developing the Echo Tango Subdivision where this finding is not supported by the greater weight or preponderance of the evidence.

17. The Court erred in finding that Legrand Lowther is not interested in selling the lots in the Echo Tango Subdivision where this finding is against the greater weight or preponderance of the evidence.

18. The Court erred in finding that Legrand Lowther is not interested in selling any lots in Wellington Plantation where this finding is not supported by the greater weight or preponderance of the evidence.

19. The Court erred in finding that there is ample money sitting in escrow to finish the development of the Echo Tango lots where this finding is not supported by the greater weight or preponderance of the evidence.

20. The Court erred in ordering funds from an escrow account to be disbursed to the Plaintiffs where this finding is not supported by the greater weight or preponderance of the evidence.

21. The Court erred in finding as a matter of fact and concluding as a matter of law that attorney's fees are owed by the Defendant to the Plaintiffs where there is no basis for the award of attorney's fees in this case and this finding is not supported by the greater weight or preponderance of the evidence.

22. The Court erred in finding as a matter of fact that no accounting was proffered by the Defendant to the Plaintiffs where this finding is not supported by the greater weight or preponderance of the evidence.

23. The Court erred in determining that the Plaintiffs have an ownership interest in the funds sitting in an escrow account where this finding is not supported by the greater weight or preponderance of the evidence.

24. The Court erred in finding as matter of fact and concluding as a matter of law that the Plaintiffs are owed or entitled to \$45,805.57 out of an escrow account where this finding is not supported by the greater weight or preponderance of the evidence.

25. The Court erred in finding as a matter of fact and concluding as a matter of

law that each of the Plaintiffs is entitled to one-seventh or one-half of the balance sitting in an escrow account where this finding is not supported by the greater weight or preponderance of the evidence.

26. The Court erred in finding as a matter of fact and concluding as a matter of law that the Plaintiffs are entitled to a disbursement of any funds received from the sale of any lot in Echo Tango Subdivision at this time, where there are no net proceeds in existence in accordance with the terms of the Contracts or Notes signed by the Plaintiffs.

27. The Court erred in finding as a matter of fact that Legrand Lowther intends to put no further effort into funding the development of the remaining four (4) lots of the Echo Tango Subdivision where this finding is not supported by the greater weight or preponderance of the evidence.

28. The Court erred in concluding that Legrand Lowther intends to put no further efforts into funding the development of the remaining lots at Wellington Plantation, where this finding is not supported by the greater weight or preponderance of the evidence.

29. The Court erred in implying that Legrand Lowther is not taking reasonable efforts to sell lots in the Echo Tango Subdivision where this finding is not supported by the greater weight or preponderance of the evidence.

30. The Court erred in finding by implication that Legrand Lowther is not taking reasonable efforts to sell lots located within Wellington Plantation, where this finding is not supported by the greater or preponderance of the evidence.

31. The Court erred in failing to apply, enforce, or recognize the agreement of the parties, as expressly set forth in the written Notes, regarding any parties' entitlement to "net proceeds" from the sale of lots in either Echo Tango or Wellington Plantation.

32. The Court erred in finding that as of December 31, 2007 nothing had been done regarding the default on the Notes where the deed in lieu of foreclosure had been tendered in March of 2007.

33. The Court has erroneously captioned its Report with Case Numbers 2008-CP-27-547 and 2008-CP-27-151, whereas the correct Case Numbers are 2008-CP-27-150 and 2008-CP-07-151.

34. The Court erred in finding as matter of fact and concluding as a matter of law that the percentage interest in unsold Lot 12 that was deeded from Mitchell to Legrand is Mitchell 28.571%, and Sandra, Clark and C.E., Jr. 3.571% each, said finding being contrary to the greater or preponderance of the evidence, which was that the Defendant, as a matter of "family honor" was willing to recognize this lot as being equitably owned one-half by his father's Estate, which would give each of the Plaintiffs a one-seventh of one-half interest, or a 7.1% interest in said unsold lot.

35. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the Defendant is entitled to a credit for the advance disbursements already made by him to the Plaintiffs on the Echo Tango lot sale, consisting of \$36,000.00 already advanced to the Plaintiff Mitchell, \$22,000.00 already advanced to the Plaintiff Sandra, and \$16,000.00 each already advanced to the Plaintiffs Clark and C. E., Jr.

36. The Court erred in failing to find as a matter of fact and conclude as a matter of law that the Defendant Legrand Lowther is entitled to be reimbursed for the \$26,021.05 difference between what he has spent in developing Echo Tango (\$500,696.05) and what he has been reimbursed (\$474,675.00), and that this reimbursement should take place before any disbursement of "net proceeds" can be made from the sale of any Echo Tango

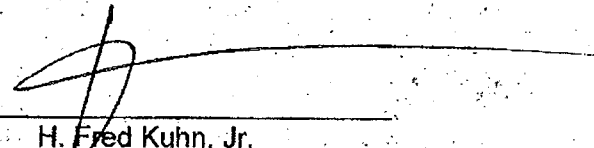
lots.

37. The Court erred in failing to enforce, recognize or apply the agreement of the parties as set forth in their Notes regarding the governance of the development of Echo Tango or Wellington.

The Defendant accordingly respectfully requests that the Court reconsider, alter, or amend its report to correct the foregoing errors, or alternatively, grant to the Defendant a new trial.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

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(843)524-3373
(843)524-1302 (FX)

Attorney for the Defendant

Beaufort, South Carolina
March 31, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

CASE NUMBER: 08-CP-27- 547

MITCHELL S. LOWTHER and CARMEN)
B. LOWTHER,)

Plaintiffs,)

v.)

REPORT OF SPECIAL REFEREE

E. LEGRAND LOWTHER,)

Defendant.)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

CASE NUMBER: 08-CP-27- 151

C. E. LOWTHER, JR., CLAYTON CLARK)
LOWTHER, MITCHELL S. LOWTHER)
AND EFFIE SANDRA TURPIN,)

Plaintiffs,)

REPORT OF SPECIAL REFEREE

v.)

E. LEGRAND LOWTHER,)

Defendant.)

2010 JUN 13 11:04 AM
JASPER COUNTY SC
CLERK OF COURT
THAYER RIVERS JR

This is the second matter referred to me by the Honorable Carmen T. Mullen to hear as Special Master and issue a final Order. An initial hearing was held on April 29, 2009. We were unable to finish everything at that time and a further hearing was held on May 11, 2009. Present at the hearing were Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin together with their attorney, R. Thayer Rivers, Jr. Also present was E. LeGrand Lowther together with his attorney, H. Fred Kuhn, Jr.

000072

The Complaint of the Plaintiffs allege that they deeded certain properties in both Beaufort and Jasper Counties to the Defendant E. LeGrand Lowther and C. E. Lowther, Jr., Clayton Clark Lowther and Effie Sandra Turpin received Notes and Mortgages in the amount of \$252,000.00 and the Plaintiff Mitchell Lowther received a Note and Mortgage in the amount of \$952,000.00. These were dated December 20, 2005 with a due date of December 31, 2006. As of December 31, 2006, the Notes had not been paid and the Defendant had not turned over the deeds to the Plaintiffs. The lawsuit in question was apparently drafted March 7, 2008, filed on March 10, 2008, and served on E. LeGrand Lowther who by and through his attorney, H. Fred Kuhn, Jr., proffered the deeds along with a mortgage satisfaction on March 17, 2008. The issues in front of me are as follows:

1. The return of deeds to the Wellington premises to the various parties.
2. An accounting of all funds and profits derived from the Echo Tango property located on the Chechessee River in Beaufort County.
3. Determining other properties not listed in the Lis Pendens that are to be returned to the Plaintiffs as part of this action.
4. Determining the sums owed to the parties as part and parcel of Wellington, Echo Tango and business loans and advances (as opposed from personal loans) by and between the parties.
5. A determination of the appropriateness, if at all, of attorney fees in favor of the Plaintiffs.

To the Summons and Complaint the Defendant through his attorney, proffered the deeds. I will take this as a General Denial of the allegations of the Complaint. The issue of the 40 acre transaction by and between the parties and certain specific complaints about the handling of the Estate of E. LeGrand Lowther and Mark Allen Lowther as Personal Representatives of the Estate of Eugene Lowther, Sr. are before the Probate Court for Beaufort County and are not being heard by me.

000073

WELLINGTON PROPERTY. The title to Wellington, as well as the Echo Tango property, apparently has passed back and forth between Mitchell S. Lowther, E. LeGrand Lowther and C. E. Lowther, Sr., on several occasions. As of the date of C. E. Lowther, Sr.'s death, his one-half undivided interest in Echo Tango was held by E. LeGrand Lowther, but the ownership by Mr. Lowther, Sr., was recognized by all. At the time of the death of Mr. Lowther in June of 2004, the title to Wellington was C. E. Lowther, Sr., now the Estate of C. E. Lowther, Sr., (25%), Mitchell S. Lowther (25%), and E. LeGrand Lowther (50%). As far as the Echo Tango properties go, each of the Lowther siblings (four of whom are parties to this action) owned one-seventh of fifty percent of the Echo Tango property or 7.14%. As to the Wellington property, the Plaintiff Mitchell S. Lowther owned twenty-five percent plus one-seventh of twenty-five percent or 3.571 percent bring his total to 28.571 percent. The other siblings (Clark Lowther, C. E. Lowther, Jr., and Sandra Turpin) own 3.571 percent each of the Wellington property. From the Mims accounting and the Tedder spreadsheet (Plaintiff's Exhibit 12 and Plaintiff's Exhibit 2 of the May 11, 2009, hearing) it appears that the total of the net proceeds of the Wellington sales are

Reid Sanders	\$ 31,168.00
Lance Sanders.	\$ 30,631.94
Barrientos	\$ 21,185.04
John Henry Lowther	<u>\$ 50,000.00</u>
	\$ 132,984.98

I realize there is a dispute by the parties as to the value of the John Henry Lowther lot. John Henry Lowther is the son of the Defendant E. LeGrand Lowther and during the time E. LeGrand Lowther owned this property, he deeded it as a gift to his son John Henry Lowther. An appraisal was done by Randy Waite, a local appraiser, with whose work I am familiar, and it appraised at \$67,500.00. LeGrand Lowther testified that in his opinion that it is worth less than

that because he tried to sell and could not get an offer of anything near that. He further stated that instead of the lot being .9 acres as shown on the appraisal, it was actually only three-fourths of an acre. I note that on Mr. Waite's three comparables, two of them were three-quarter acre lots and all three comparable sales were located in Wellington. In any event, having reviewed both the Waite appraisal and Mr. Lowther's testimony, I note that Mr. Waite as a more neutral professional, who does have substantial evidence to back his valuation of the property. Of this amount, the Plaintiffs would be entitled to 82.1 percent (14.286×4 {their share of the Estate of C.E. Lowther} and the 25% of the share of Mitchell S. Lowther). I am puzzled by the lack of a mortgage release, which would have involved an agreed upon figure. I doubt that the Aunts and Uncles would have driven a hard bargain at that time. Out of an abundance of caution, I attribute a value of \$50,000.00 to this lot.

AgSouth payment reimbursements: This matter also comes from a loan to AgSouth (formerly known as the Federal Land Bank) that was in the name of E. LeGrand Lowther but was historically paid by Mitchell S. Lowther, E. LeGrand Lowther and C. E. Lowther, Sr., who at some point during the '90s comprised a business called C. E. Lowther and Sons and the accounting apparently came from rebates from a lender that were generated by sales of land and timber that were owned by the parties and comprising Wellington Plantation. As mentioned above, the parties owned the property in various percentages, i.e., 50% to E. LeGrand Lowther, 25% to C. E. Lowther, Sr., and 25% to Mitchell S. Lowther. It appears that the payments have been made one-third each, and I use that formula as its basis. It appears that based on the Tedder spreadsheet, which has been represented to me as being more or less accurate (save the question of capital costs on Echo Tango and the John Henry lot), that the combination of the Estate of C. E. Lowther and Mitchell S. Lowther are owed \$9,087.12 as their share of the AgSouth rebates which apparently have all been received by E. LeGrand Lowther.

Mims accounting: There is further in the record an agreed upon accounting by David Mims, a CPA from Beaufort, who determined in regard to various matters with the Estate involving lot sales and other transactions with E. LeGrand Lowther as Personal Representative that there is a figure of \$21,157.97 owed by E. LeGrand Lowther to the Estate.

There is a further issue of the Sauls funeral bill having been double claimed by E. LeGrand Lowther. While Exhibits 4 and 13 from the second hearing held on May 11, 2009, seem to indicate that E. LeGrand Lowther may have been paid twice, this is a matter for the Probate Court, and I would not presume to rule on it while the Probate is still ongoing.

Closings costs and closing on December 28, 2005: The contract by and between the parties over the sale of these various properties, which is Defendant's Exhibit 1, pages 4 – 29, was for each to get \$75,000.00 at closing and that Mitchell S. Lowther was to get a note of \$950,000.00, Effie Sandra Turpin, Clayton Clark Lowther, and C. E. Lowther, Jr., were to get Notes in the amount of \$250,000.00. Mr. Kuhn has again ably and forcefully argued that I should be bound by the terms and conditions of the closing statement which shows E. LeGrand Lowther paying all the closing costs (some \$14,000.00) by himself. I do not consider a closing statement to be a document to which the parol evidence rule applies. Furthermore, there is an ambiguity created by the contract which calls for Notes of \$250,000.00 and \$950,000.00, and the actual Notes which show that the figures were \$252,000.00 and \$952,000.00. It was presented from several witnesses that the difference was that each of the siblings advanced \$2,000.00 to Mr. Lowther to pay the buyer's closing costs. While it has been again ably argued by Mr. Kuhn that they got repaid in the form of getting a Note for \$2,000.00, this does not persuade me. The Note wasn't paid and the only remedy for his default is return of the property. This would have, and did have, the effect of depriving each of them of \$2,000.00 of their down payment. Based

on the foregoing I have determined that each of the four Plaintiffs is entitled to \$2,000.00.
(\$8,000.00)

I have further determined that the Lowther children (Mitchell S. Lowther 28.571%, Effie Sandra Turpin, Clark Clayton Lowther and C. E. Lowther, 3.571% each) are entitled to have a deed from this Court conveying to them their percentage interest in the Haydon repossessed property as well as the remaining unsold lot (Lot 12) that was deeded from Mitchell to LeGrand which has not been sold out. The Haydon lot was sold prior to the contract and foreclosed afterward, in the name of E. LeGrand Lowther. If E. LeGrand Lowther was the property party to regain title, his interest came from the defaulted purchase. If E. LeGrand Lowther was not the proper party to regain title, equity deems done what ought to be done.

Echo Tango: E. LeGrand Lowther and the Estate of C. E. Lowther, Sr. own some six lots on the Chechessee River in Beaufort County known as Echo Tango Plantation. These were held solely in the name of E. LeGrand Lowther but it was always recognized that C. E. Lowther, Sr., owned a one-half undivided interest in the premises. There are in the record several different versions of an accounting of the Echo Tango monies. While I am sure they were done in good faith, there are in fact a few discrepancies in each version. The first one is called Echo-Tango Draft Interim Accounting. It shows total lot sales from all sources of \$889,606.71. The testimony shows this is incorrect. There was a 1997 deposit of \$20,000.00 paid by Mr. Colburg which is not reflected on that. E. LeGrand Lowther testified that he and his father took that money and spent it on other things, but it is in fact a receipt of monies for Echo Tango that it is not in the accounting. I also have some confusion about some of the deductions claimed. As an example, there is a 1998 payment to Richard Kesselring, a local surveyor, in the amount of \$5,270.00 and there is also a payment to Beaufort Jasper Water and Sewer Authority for

\$16,680.00. There was also mention made of some \$4,000.00 paid to an engineer for initial engineering work. These total slightly less than \$25,000.00 and the testimony was by Mitchell Lowther that he had borrowed that money from First National Bank to cover those amounts. E. LeGrand Lowther testified that he at some point had taken over that note. This leads to the second problem with the accounting. The original First National Bank Note which both Mitchell S. Lowther and E. LeGrand Lowther admitted was in existence and was a source of the money to pay the Kesselring bill, the sewer bill and the engineering work, has been subsumed by a note of some \$35,000.00 also to First National Bank. E. LeGrand Lowther could not produce any receipts of what these tax deductible expenses were. He likewise could not remember a single expenditure of the \$35,000.00. I have to infer that the \$35,000.00 First National Bank Note included in it the original \$25,000.00 that was borrowed from First National Bank to pay the above mentioned expenses. For that reason, I deduct \$25,000.00 from the claimed expenses on the accounting.

Cost of Capital: It has also been presented to me, which I accepted into evidence, a calculation by E. LeGrand Lowther of what his cost of capital was for this project. While the Tedder spreadsheet shows this is approximately \$40,000.00, Mr. Lowther has revised it, and asserts some \$95,000.00. I have struggled with the doctrine of merger, and made several false starts. I have, however, resolved that the agreement as to expenses survives the closing and the reconveyance. It seems ludicrous to me to suggest that a defaulting mortgagor is entitled to interest from the mortgagee. I hold that any implied right to capital cost or interest merged with the conveyance, and would be extinguished through the date of the reconveyance. I make no ruling as to any claim which might arise subsequent to the Plaintiffs being fully restored to the status quo ante.

Remedy: I am somewhat troubled as to the remedy on the escrow balance and otherwise. E. LeGrand Lowther has made it very clear from his testimony that he intends to put no further funds into finishing the development of the other four lots at Echo Tango. He further has not listed them for sale, and apparently has not even determined a sales price if a willing buyer sought to buy one of the lots. He has likewise indicated the same in regard to Wellington, i.e., that he is not going to put any further money into developing the other lots for sale until some distant point in the future, and the lots that are there are not listed with any realtor, nor is there any apparent effort to sell those lots. This is of special concern in regard to Echo Tango, as there is apparently ample money sitting in escrow to finish those lots for sale.

This is a classic example of an impasse. I have the general equitable authority to effectuate a remedy, but no one has sought a partition, in kind or by sale, to end this impasse. As Mr. Lowther has indicated no desire to expend any further funds from Echo Tango, I see no reason not to order the escrow agent to disburse the escrow. Four-sevenths of one-half of this balance (the Estate of C. E. Lowther owns 50%, the Plaintiffs are four of the seven children) belongs to the Plaintiffs, Mitchell S. Lowther, Effie Sandra Lowther, Clayton Clark Lowther and C. E. Lowther, Jr. This is \$45,805.57. The balance shall be applied as a credit to any judgment rendered herein.

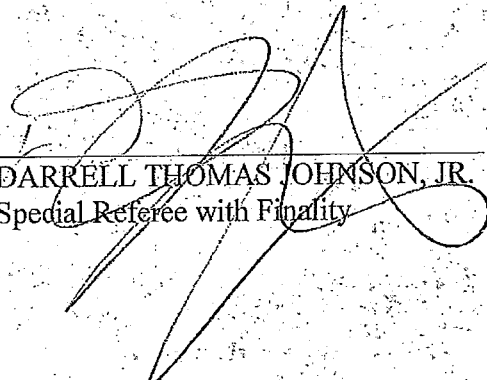
Attorney fees: As noted in the prior order, the Contract between the parties provides for attorney fees, the Mortgage between the parties provides for attorney fees, the Note which certainly covers Echo Tango even if there is no mortgage on it, also provides for attorney fees. Again, as noted in the prior Order, the Note by its own terms when into default on December 31, 2006. As of December 31, 2007, nothing had been done. Only when the parties sought legal counsel who in turn made a formal demand for the return of the deeds and an accounting, and in turn filed suit and served the Defendant, did the Defendant proffer the deeds, but not an

accounting. I think it is both appropriate and the law that they are entitled to recover attorney fees against the Defendant E. LeGrand Lowther, LIMITED TO THE TIME AFTER DEFAULT AND PRIOR TO THE DELIVERY OF THE DEED. I find that the accounting and other matters are governed by the "American Rule" by which each party bears their own attorney fees. Mr. Rivers, attorney for the Plaintiffs, within ten days shall present affidavits as to the amount and value of such services.

Based upon the foregoing, it is hereby ordered as follows:

1. That the Plaintiffs are granted judgment against the Defendant E. LeGrand Lowther in the amounts aforesaid.
2. The issue of attorney fees will be held in abeyance pending documents to be furnished by attorney Rivers and supplemental order will be issued.
3. It appears that an appropriate fee for the Special Referee should be \$4,000.00 and should be borne equally by the parties.
4. That should the parties not agree upon the mathematical computations aforesaid, I retain jurisdiction to clarify same.

IT IS SO ORDERED.


DARRELL THOMAS JOHNSON, JR.
Special Referee with Finality

March 15, 2010.

000080

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CASE NUMBER: 2008-CP-27-151
C. E. LOWTHER, JR., et al	)	
Plaintiffs,	)	
v.	)	
E. LEGRAND LOWTHER,	)	
Defendant,	)	MOTION TO RECONSIDER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CASE NUMBER: <u>2008-CP-27-547</u>
MITCHELL S. LOWTHER and	)	
CARMON B. LOWTHER	)	
v.	)	
E. LEGRAND LOWTHER,	)	MOTION TO RECONSIDER
Defendant	)	

2010 MAR 23 2:37
 CLERK OF COURT
 JASPER COUNTY SC

This is an appeal from the Order of the Honorable Darrell Thomas Johnson, Jr., Special Referee with Finality which was dated March 15, 2010, recorded March 18, 2010 and received by Plaintiffs on March 20, 2010.

Pursuant to Rule 59(e) of the South Carolina Civil Procedure, the Plaintiffs move for the Special Master to reconsider his Order in the following aspects:

1. Attorney fee: As noted in the Master's Report, the notes involved provide for the payment of attorney's fees in the event that the matter is turned over to an attorney for collection. As it is further noted in the Master's Report, no relief was offered to the Plaintiffs until after they had hired an attorney and filed

suit. The relief proffered was solely a deed to return certain acreage back to the Plaintiffs. It did not include the monies the Defendant had derived from selling the property and keeping all the proceeds, the return of all the properties to which the Plaintiffs were entitled, nor anything else. The Plaintiffs are informed and believe that they are entitled to an award of attorney's fees for the pursuit of the entire action not merely the proffer of the deed which did not contain all the acreage required.

2. The return of the Haden lot should include .15 acres deeded by the Defendant, E. Legrand Lowther to John Lowther, Sr. and Karina Lowther, which was a part of the Haden Lot and is shown in Deed Book 0738 at Page 0050-0051 in the ROD office of Jasper County, South Carolina.

3. The Special Master noted that a more reliable appraisal of the John Henry lot was that of Randy Waite which was \$67,500.00, but instead awarded only \$50,000.00 for that lot, which is substantially closer to the figure of the Defendant than that of the Plaintiff's impartial expert. It further was based on an appraisal of .75 acres, whereas with the addition of the .15 acres listed above, the lot was actually .9 acres and was bigger and more valuable than even Waite Appraisal figure was.

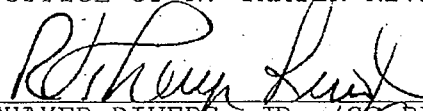
4. The Plaintiffs pray that all lots deleted by Legrand, which were not included in the proffer deed to include but not be limited to, Lots 12, 13, 69, 17, 20, 18, 15, 21 and any other lots

done deeded from the Defendant to himself prior to December 20, 2005.

5. The Plaintiffs would respectfully submit that the accounting re Echo Tango is short at least Twenty Nine Thousand (\$29,000.00) Dollars and perhaps as much as Forty Nine Thousand (\$49,000.00) Dollars and respectfully request that figure be verified and changed.

Respectfully submitted,

LAW OFFICE OF R. THAYER RIVERS, JR.



R. THAYER RIVERS, JR. (SC BAR 4754)
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Ridgeland, South Carolina 29936
TELE: 843/726-8136
FAX: 843/726-4401
rtrivers@excite.com

ATTORNEY FOR PLAINTIFFS

April 30, 2010
Ridgeland, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

CASE NUMBER: 08-CP-27-547

MITCHELL S. LOWTHER and CARMEN)

B. LOWTHER,)

Plaintiffs,)

v.)

REPORT OF SPECIAL REFEREE

E. LEGRAND LOWTHER,)

Defendant.)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

CASE NUMBER: 08-CP-27-151

C. E. LOWTHER, JR., CLAYTON CLARK)

LOWTHER, MITCHELL S. LOWTHER)

AND EFFIE SANDRA TURPIN,)

Plaintiffs,)

REPORT OF SPECIAL REFEREE

v.)

E. LEGRAND LOWTHER,)

Defendant.)

2010 JUN 13 10:04 AM
CLERK OF COURT
JASPER COUNTY SC

This is the second matter referred to me by the Honorable Carmen T. Mullen to hear as Special Master and issue a final Order. An initial hearing was held on April 29, 2009. We were unable to finish everything at that time and a further hearing was held on May 11, 2009. Present at the hearing were Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin together with their attorney, R. Thayer Rivers, Jr. Also present was E. LeGrand Lowther together with his attorney, H. Fred Kuhn, Jr.

MAILED

pd 3/18/10

000084

The Complaint of the Plaintiffs allege that they deeded certain properties in both Beaufort and Jasper Counties to the Defendant E. LeGrand Lowther and C. E. Lowther, Jr., Clayton Clark Lowther and Effie Sandra Turpin received Notes and Mortgages in the amount of \$252,000.00 and the Plaintiff Mitchell Lowther received a Note and Mortgage in the amount of \$952,000.00. These were dated December 20, 2005 with a due date of December 31, 2006. As of December 31, 2006, the Notes had not been paid and the Defendant had not turned over the deeds to the Plaintiffs. The lawsuit in question was apparently drafted March 7, 2008, filed on March 10, 2008, and served on E. LeGrand Lowther who by and through his attorney, H. Fred Kuhn, Jr., proffered the deeds along with a mortgage satisfaction on March 17, 2008. The issues in front of me are as follows:

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To the Summons and Complaint the Defendant through his attorney, proffered the deeds. I will take this as a General Denial of the allegations of the Complaint. The issue of the 40 acre transaction by and between the parties and certain specific complaints about the handling of the Estate of E. LeGrand Lowther and Mark Allen Lowther as Personal Representatives of the Estate of Eugene Lowther, Sr. are before the Probate Court for Beaufort County and are not being heard by me.

000085

WELLINGTON PROPERTY. The title to Wellington, as well as the Echo Tango property, apparently has passed back and forth between Mitchell S. Lowther, E. LeGrand Lowther and C. E. Lowther, Sr., on several occasions. As of the date of C. E. Lowther, Sr.'s death, his one-half undivided interest in Echo Tango was held by E. LeGrand Lowther, but the ownership by Mr. Lowther, Sr., was recognized by all. At the time of the death of Mr. Lowther in June of 2004, the title to Wellington was C. E. Lowther, Sr., now the Estate of C. E. Lowther, Sr., (25%), Mitchell S. Lowther (25%), and E. LeGrand Lowther (50%). As far as the Echo Tango properties go, each of the Lowther siblings (four of whom are parties to this action) owned one-seventh of fifty percent of the Echo Tango property or 7.14%. As to the Wellington property, the Plaintiff Mitchell S. Lowther owned twenty-five percent plus one-seventh of twenty-five percent or 3.571 percent bring his total to 28.571 percent. The other siblings (Clark Lowther, C. E. Lowther, Jr., and Sandra Turpin) own 3.571 percent each of the Wellington property. From the Mims accounting and the Tedder spreadsheet (Plaintiff's Exhibit 12 and Plaintiff's Exhibit 2 of the May 11, 2009, hearing) it appears that the total of the net proceeds of the Wellington sales are

Reid Sanders	\$ 31,168.00
Lance Sanders	\$ 30,631.94
Barrientos	\$ 21,185.04
John Henry Lowther	<u>\$ 50,000.00</u>
	\$ 132,984.98

I realize there is a dispute by the parties as to the value of the John Henry Lowther lot. John Henry Lowther is the son of the Defendant E. LeGrand Lowther and during the time E. LeGrand Lowther owned this property, he deeded it as a gift to his son John Henry Lowther. An appraisal was done by Randy Waite, a local appraiser, with whose work I am familiar, and it appraised at \$67,500.00. LeGrand Lowther testified that in his opinion that it is worth less than

that because he tried to sell and could not get an offer of anything near that. He further stated that instead of the lot being .9 acres as shown on the appraisal, it was actually only three-fourths of an acre. I note that on Mr. Waite's three comparables, two of them were three-quarter acre lots and all three comparable sales were located in Wellington. In any event, having reviewed both the Waite appraisal and Mr. Lowther's testimony, I note that Mr. Waite as a more neutral professional, who does have substantial evidence to back his valuation of the property. Of this amount, the Plaintiffs would be entitled to 82.1 percent (14.286×4 {their share of the Estate of C.E. Lowther} and the 25% of the share of Mitchell S. Lowther). I am puzzled by the lack of a mortgage release, which would have involved an agreed upon figure. I doubt that the Aunts and Uncles would have driven a hard bargain at that time. Out of an abundance of caution, I attribute a value of \$50,000.00 to this lot.

AgSouth payment reimbursements: This matter also comes from a loan to AgSouth (formerly known as the Federal Land Bank) that was in the name of E. LeGrand Lowther but was historically paid by Mitchell S. Lowther, E. LeGrand Lowther and C. E. Lowther, Sr., who at some point during the '90s comprised a business called C. E. Lowther and Sons and the accounting apparently came from rebates from a lender that were generated by sales of land and timber that were owned by the parties and comprising Wellington Plantation. As mentioned above, the parties owned the property in various percentages, i.e., 50% to E. LeGrand Lowther, 25% to C. E. Lowther, Sr., and 25% to Mitchell S. Lowther. It appears that the payments have been made one-third each, and I use that formula as its basis. It appears that based on the Tedder spreadsheet, which has been represented to me as being more or less accurate (save the question of capital costs on Echo Tango and the John Henry lot), that the combination of the Estate of C. E. Lowther and Mitchell S. Lowther are owed \$9,087.12 as their share of the AgSouth rebates which apparently have all been received by E. LeGrand Lowther.

Mims accounting: There is further in the record an agreed upon accounting by David Mims, a CPA from Beaufort, who determined in regard to various matters with the Estate involving lot sales and other transactions with E. LeGrand Lowther as Personal Representative that there is a figure of \$21,157.97 owed by E. LeGrand Lowther to the Estate.

There is a further issue of the Sauls funeral bill having been double claimed by E. LeGrand Lowther. While Exhibits 4 and 13 from the second hearing held on May 11, 2009, seem to indicate that E. LeGrand Lowther may have been paid twice, this is a matter for the Probate Court, and I would not presume to rule on it while the Probate is still ongoing.

Closings costs and closing on December 28, 2005: The contract by and between the parties over the sale of these various properties, which is Defendant's Exhibit 1, pages 4 – 29, was for each to get \$75,000.00 at closing and that Mitchell S. Lowther was to get a note of \$950,000.00, Effie Sandra Turpin, Clayton Clark Lowther, and C. E. Lowther, Jr., were to get Notes in the amount of \$250,000.00. Mr. Kuhn has again ably and forcefully argued that I should be bound by the terms and conditions of the closing statement which shows E. LeGrand Lowther paying all the closing costs (some \$14,000.00) by himself. I do not consider a closing statement to be a document to which the parol evidence rule applies. Furthermore, there is an ambiguity created by the contract which calls for Notes of \$250,000.00 and \$950,000.00, and the actual Notes which show that the figures were \$252,000.00 and \$952,000.00. It was presented from several witnesses that the difference was that each of the siblings advanced \$2,000.00 to Mr. Lowther to pay the buyer's closing costs. While it has been again ably argued by Mr. Kuhn that they got repaid in the form of getting a Note for \$2,000.00, this does not persuade me. The Note wasn't paid and the only remedy for his default is return of the property. This would have, and did have, the effect of depriving each of them of \$2,000.00 of their down payment. Based

on the foregoing I have determined that each of the four Plaintiffs is entitled to \$2,000.00.
(\$8,000.00)

I have further determined that the Lowther children (Mitchell S. Lowther 28.571%, Effie Sandra Turpin, Clark Clayton Lowther and C. E. Lowther, 3.571% each) are entitled to have a deed from this Court conveying to them their percentage interest in the Haydon repossessed property as well as the remaining unsold lot (Lot 12) that was deeded from Mitchell to LeGrand which has not been sold out. The Haydon lot was sold prior to the contract and foreclosed afterward, in the name of E. LeGrand Lowther. If E. LeGrand Lowther was the property party to regain title, his interest came from the defaulted purchase. If E. LeGrand Lowther was not the proper party to regain title, equity deems done what ought to be done.

Echo Tango: E. LeGrand Lowther and the Estate of C. E. Lowther, Sr. own some six lots on the Chechessee River in Beaufort County known as Echo Tango Plantation. These were held solely in the name of E. LeGrand Lowther but it was always recognized that C. E. Lowther, Sr., owned a one-half undivided interest in the premises. There are in the record several different versions of an accounting of the Echo Tango monies. While I am sure they were done in good faith, there are in fact a few discrepancies in each version. The first one is called Echo-Tango Draft Interim Accounting. It shows total lot sales from all sources of \$889,606.71. The testimony shows this is incorrect. There was a 1997 deposit of \$20,000.00 paid by Mr. Colburg which is not reflected on that. E. LeGrand Lowther testified that he and his father took that money and spent it on other things, but it is in fact a receipt of monies for Echo Tango that it is not in the accounting. I also have some confusion about some of the deductions claimed. As an example, there is a 1998 payment to Richard Kesselring, a local surveyor, in the amount of \$5,270.00 and there is also a payment to Beaufort Jasper Water and Sewer Authority for

\$16,680.00. There was also mention made of some \$4,000.00 paid to an engineer for initial engineering work. These total slightly less than \$25,000.00 and the testimony was by Mitchell Lowther that he had borrowed that money from First National Bank to cover those amounts. E. LeGrand Lowther testified that he at some point had taken over that note. This leads to the second problem with the accounting. The original First National Bank Note which both Mitchell S. Lowther and E. LeGrand Lowther admitted was in existence and was a source of the money to pay the Kesselring bill, the sewer bill and the engineering work, has been subsumed by a note of some \$35,000.00 also to First National Bank. E. LeGrand Lowther could not produce any receipts of what these tax deductible expenses were. He likewise could not remember a single expenditure of the \$35,000.00. I have to infer that the \$35,000.00 First National Bank Note included in it the original \$25,000.00 that was borrowed from First National Bank to pay the above mentioned expenses. For that reason, I deduct \$25,000.00 from the claimed expenses on the accounting.

Cost of Capital: It has also been presented to me, which I accepted into evidence, a calculation by E. LeGrand Lowther of what his cost of capital was for this project. While the Tedder spreadsheet shows this is approximately \$40,000.00, Mr. Lowther has revised it, and asserts some \$95,000.00. I have struggled with the doctrine of merger, and made several false starts. I have, however, resolved that the agreement as to expenses survives the closing and the reconveyance. It seems ludicrous to me to suggest that a defaulting mortgagor is entitled to interest from the mortgagee. I hold that any implied right to capital cost or interest merged with the conveyance, and would be extinguished through the date of the reconveyance. I make no ruling as to any claim which might arise subsequent to the Plaintiffs being fully restored to the status quo ante.

Remedy: I am somewhat troubled as to the remedy on the escrow balance and otherwise. E. LeGrand Lowther has made it very clear from his testimony that he intends to put no further funds into finishing the development of the other four lots at Echo Tango. He further has not listed them for sale, and apparently has not even determined a sales price if a willing buyer sought to buy one of the lots. He has likewise indicated the same in regard to Wellington, i.e., that he is not going to put any further money into developing the other lots for sale until some distant point in the future, and the lots that are there are not listed with any realtor, nor is there any apparent effort to sell those lots. This is of special concern in regard to Echo Tango, as there is apparently ample money sitting in escrow to finish those lots for sale.

This is a classic example of an impasse. I have the general equitable authority to effectuate a remedy, but no one has sought a partition, in kind or by sale, to end this impasse. As Mr. Lowther has indicated no desire to expend any further funds from Echo Tango, I see no reason not to order the escrow agent to disburse the escrow. Four-sevenths of one-half of this balance (the Estate of C. E. Lowther owns 50%, the Plaintiffs are four of the seven children) belongs to the Plaintiffs, Mitchell S. Lowther, Effie Sandra Lowther, Clayton Clark Lowther and C. E. Lowther, Jr. This is \$45,805.57. The balance shall be applied as a credit to any judgment rendered herein.

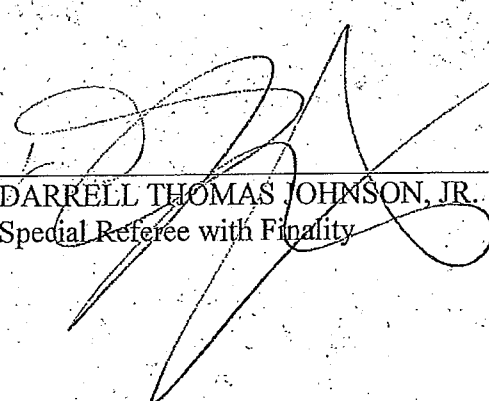
Attorney fees: As noted in the prior order, the Contract between the parties provides for attorney fees, the Mortgage between the parties provides for attorney fees, the Note which certainly covers Echo Tango even if there is no mortgage on it, also provides for attorney fees. Again, as noted in the prior Order, the Note by its own terms when into default on December 31, 2006. As of December 31, 2007, nothing had been done. Only when the parties sought legal counsel who in turn made a formal demand for the return of the deeds and an accounting, and in turn filed suit and served the Defendant, did the Defendant proffer the deeds, but not an

accounting. I think it is both appropriate and the law that they are entitled to recover attorney fees against the Defendant E. LeGrand Lowther, LIMITED TO THE TIME AFTER DEFAULT AND PRIOR TO THE DELIVERY OF THE DEED. I find that the accounting and other matters are governed by the "American Rule" by which each party bears their own attorney fees. Mr. Rivers, attorney for the Plaintiffs, within ten days shall present affidavits as to the amount and value of such services.

Based upon the foregoing, it is hereby ordered as follows:

1. That the Plaintiffs are granted judgment against the Defendant E. LeGrand Lowther in the amounts aforesaid.
2. The issue of attorney fees will be held in abeyance pending documents to be furnished by attorney Rivers and supplemental order will be issued.
3. It appears that an appropriate fee for the Special Referee should be \$4,000.00 and should be borne equally by the parties.
4. That should the parties not agree upon the mathematical computations aforesaid, I retain jurisdiction to clarify same.

IT IS SO ORDERED.


DARRELL THOMAS JOHNSON, JR.
Special Referee with Finality

March 15 2010.

000092

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
CASE NO.: 08-CP-27-151

C. E. LOWTHER, JR., CLAYTON)
CLARK LOWTHER, MITCHELL)
S. LOWTHER AND EFFIE)
SANDRA TURPIN,)

Plaintiffs,)

v.)

E. LEGRAND LOWTHER,)

Defendant.)

2011 JUL -3 PM 3:24
CLERK OF COURT
JASPER COUNTY, SC

Wellington lot sales
(p 3&4 of Order)

\$132,984.98

x 82.1%

\$109,180.66

P4. AgSouth Interest

9,087.12

P5 Mims Accounting

21,157.97

P5 Closing Costs

8,000.00

P8 Echo Tango

45,805.57

As of 3/13/2010

\$193,231.32

Interest at 7.25%

14,009.27 (per year)

x3

\$ 42,027.81

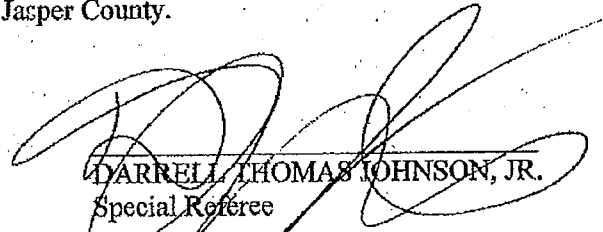
+ 9 months

10,506.95

Interest up to 12/13/2013

\$ 52,534.76

The above is a computation of the money awarded under my order of March 13, 2010
and is done for the Clerk of Court of Jasper County.


DARRELL THOMAS JOHNSON, JR.
Special Referee

Resigned July 3, 2014

000093



P.J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3192
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL RECORDS	255-3188
JUDGMENTS	255-3189
FAX#	255-9405
WEB SITE	www.bcsa.net

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDGMENT ROLL NUMBER
	)	2014CP07572
C.E. LOWTHER, JR., CLAYTON CLARK	)	
LOWTHER, MITCHELL S. LOWTHER	)	
AND EFFIE SANDRA TURPIN	)	
	)	NOTICE OF SALE
VS	)	
	)	
E. LEGRAND LOWTHER	)	

Under and by virtue of Execution Against Property issued to me by the Clerk of Court for Beaufort County, on the 18th day of March 2010 against E. Legrand Lowther in the amount of \$150,367.39. I will sell to the highest bidder at Public Auction, at Beaufort County Courthouse, Ribaut Road, Beaufort, South Carolina, at 11:00 a.m. on the 3rd day of August 2015, the following parcel described to-wit:

All his right, title and interest in his undivided one-half (1/2) in all that certain piece, parcel or lot of land situate, lying and being in the Chechessee Community of Beaufort County, South Carolina, and being particularly described as Lot 4 of Echo Tango Subdivision, Phase II on a plat prepared by Richard Kesselring RLS 8105, dated December 9, 1997, and revised December 29, 1997 and January 25, 1998 and recorded in Plat Book 112 at Page 165 in the Office of the Register of Deeds for Beaufort County, South Carolina. This being portions of the same property conveyed to E. Legrand Lowther by deeds recorded in Deed Book 2675 on Page 0235 – 0239 and Deeds recorded in Deed Book 1373 at Page 140 and Deed Book 2292 at Pages 1752 - 1761 all in the Office of the Register of Deeds for Beaufort County, South Carolina.

Property Address: Lot 4, 65 Echotango Road, Okatie, South Carolina 29909

Tax Map Number: R600 006 000 0057 0000

A deposit of five percent (5%) of the bid price must be posted at the time of Sale. Sale will be subject to the Upset Bidding, which shall conclude at the Beaufort County Courthouse, Beaufort, South Carolina at 11:00 A.M. on the 2nd day of September 2015. Upset bid date will not remain open, unless a bid is made at date of Original Sale.

000094

TO SATISFY THE AFORESAID EXECUTION PLUS COSTS, SAID SALE IS SUBJECT TO ALL PRIOR LIENS AND/OR ENCUMBRANCES. SAID SALE SHALL REMAIN OPEN FOR THIRTY (30) DAYS.



P.J. TANNER
SHERIFF

TERMS: CASH

000095



STATE OF SOUTH CAROLINA

WRIT OF EXECUTION

2011 JUN 18 PM 3:34

COUNTY OF JASPER

CLERK OF COURT
JASPER COUNTY, SC

To the Sheriff of the County of JASPER; GREETINGS:

Whereas judgment was rendered on the 17th day of November, Two Thousand and Eleven in an action in the Court of Common Pleas docketed under case numbers 2008-CP-27-547 and 2008-CP-27-151 in Jasper County, South Carolina, in the amount of \$289,923.65 in favor of the Plaintiffs, Effie Sandra Trupin, C.E. Lowther, Jr., Clayton Clark Lowther, and Mitchell Saxon Lowther, against E. LeGrand Lowther, plus interest from the date of judgment until paid in full at the rate of 7.25%.

AND WHEREAS, the said judgment was assigned by that Assignment of Judgment from the Plaintiffs, Effie Sandra Trupin, C.E. Lowther, Jr., Clayton Clark Lowther, and Mitchell Saxon Lowther to Fidelity National Title Insurance Company by that assignment dated May 23, 2013 and filed in the Office of the Clerk of Court for Jasper County, South Carolina on May 29, 2013 (the "Assignment of Judgment");

AND WHEREAS, the Assignment of Judgment assigns to Fidelity National Title Insurance Company the sum of One Hundred Twenty Thousand and No/100 (\$120,000.00) Dollars, which is a portion of the Judgment;

AND WHEREAS, Carmen B. Lowther, individually and as personal representative of the Estate of Mitchell S. Lowther, C.E. Lowther, Jr., Clayton Clark Lowther, and Effie Sandra Trupin reserved the right under the Assignment of Judgment to collect on the remainder of the outstanding Judgments held by them against E. LeGrand Lowther for sums over and above One Hundred Twenty

Thousand and No/100 (\$120,000.00) Dollars;
{00467571.DOC}

000096

AND WHEREAS, the said Judgment was docketed in Jasper County on March 19, 2012 in Case Number 2008-CP-27-547 and on October 10, 2012 in Case Number 2008-CP-27-151, and the total amount of judgment was \$289,923.65, with interest thereon from, at the rate of 7.25% per annum;

AND WHEREAS, the said Assignment of Judgment was docketed in Jasper County on May 29, 2013 and the total amount of the Assignment of Judgment as to Fidelity National Title Insurance Company was \$120,000.00, with interest thereon from, at the rate of 7.25% per annum;

Therefore we recommend, that you satisfy the said judgment out of the personal property of said judgment debtors within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to said judgment debtors on the day when said judgment was so docketed in your County, or at any time thereafter, in whose hands so ever the same may be, and duly return this execution according to law, to this Clerk of Court of Common Pleas for the County of Jasper.

Witness Margaret Boshick as Clerk of Court for Jasper County, South Carolina, the 18th day of June, 2014.

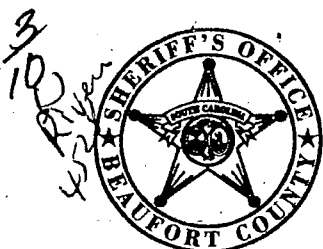
Attest:

Margaret Boshick
Clerk of Court of Common Pleas
Jasper County, South Carolina

Maria Kiehling Brees
S.C. Bar No. 76799
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464
Tel. (843) 856-4488
ATTORNEY FOR PLAINTIFF

{00467571.DOC}

000097



P.J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF 255-3200
CHIEF DEPUTY 255-3192
CRIMINAL RECORDS 255-3232
CRIMINAL WARRANTS 255-3228
CIVIL RECORDS 255-3188
JUDGMENTS 255-3189
FAX# 255-9405
WEB SITE www.bcsa.net

RECORDED
2015 Apr -17 09:55 AM



BEAUFORT COUNTY SC - ROD
BK 3389 Pgs 1010-1012
FILE NUM 2015015800
04/01/2015 12:37:10 PM
REC'D BY shirleys RCPT# 770557
RECORDING FEES \$10.00
County Tax \$56.10
State Tax \$132.60

Grantee Address
Shaun D. Bernie
BEAUFORT COUNTY AUDITOR
C/o Sandra Turpin
1831 Blalock Avenue
Waycross Georgia 31803

PREPARED WITHOUT THE BENEFIT OF A TITLE EXAM

THE STATE OF SOUTH CAROLINA,
COUNTY OF BEAUFORT

TITLE BY THE SHERIFF AT JUDICIAL SALE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

NOT A WARRANTY TITLE

ADD DMP Record 4/2/2015 01:55:06 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	006	000	009B	0000	

WHEREAS, the provisions of Title 15, Chapter 39 Section 10 through 880 of the South Carolina Code, 1976, as amended, entitled "Executions and Judicial Sales Generally" duly enacted by the General Assembly of the State of South Carolina, provide for a method and procedure for the execution of judgments and sale and collection of proceeds in satisfaction of the executed judgments; and

WHEREAS, the provisions of the aforesaid Title 15, Chapter 39, Section 10 through 880 authorize the levy and sale of so much of the lien debtor's property, real or personal, or both, as may be sufficient to satisfy the judgment of C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin following proper advertisement of the property for sale; and

WHEREAS, I, P. J. Tanner, SHERIFF OF BEAUFORT COUNTY, pursuant to the authority of the aforesaid provisions and amendments thereto, was issued by the Beaufort County Clerk of Court, a writ of execution on March 18, 2010 on behalf of C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin against E. Legrand Lowther, to levy and sell so much of E. Legrand Lowther property, real or personal, or both as may be sufficient to satisfy the executed judgment of C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin against E. Legrand Lowther, in the amount of \$261,719.12.; and

WHEREAS, by virtue of said execution, P.J. Tanner, SHERIFF OF BEAUFORT COUNTY did publicly advertise the property executed upon and to be sold pursuant to S.C. Code Ann. §15-39-650 and 660; and

WHEREAS, upon the failure of the lien debtor, or anyone acting in their behalf, to satisfy the lien, the property described hereinafter was duly sold at public auction on July 7, 2014 during the usual hours of sale, to C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin, the purchaser and the highest bidder at such sale for the sum of Fifty One Thousand and 00/100 (\$51,000.00) Dollars and utilized the proceeds of such sale to satisfy so much of the lien as it would and with any excess proceeds from this sale, if any, paid over those proceeds to any judgment creditor having a prior lien;

000098

NOW THEREFORE, P. J. TANNER, SHERIFF OF THE COUNTY OF BEAUFORT, in consideration of the premises, and the sum of Fifty One Thousand and 00/100 (\$51,000.00) Dollars paid to me by the said C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin the following property described as:

All his right, title and interest in his undivided one-half (1/2) interest in all that certain piece, parcel or lot of land situate, lying and being in the Chechessee Community of Beaufort County, South Carolina, and being particularly described as Lot 6 of Echo Tango Subdivision, Phase II on a plat prepared by Richard Kesselring RLS 8105, dated December 9, 1997, and revised December 29, 1997 and January 25, 1998 and recorded in Plat Book 112 at Page 165 in the Office of the Register of Deeds for Beaufort County, South Carolina. This being portions of the same property conveyed to E. Legrand Lowther by deeds recorded in Deed Book 2675 on Page 0235 - 0239 and Deeds recorded in Deed Book 1373 at Page 140 and Deed Book 2292 at Pages 1752 - 1761 all in the Office of the Register of Deeds for Beaufort County, South Carolina.

Property Address: Lot 6, 73 Echotango Road, Okatie, South Carolina 29909

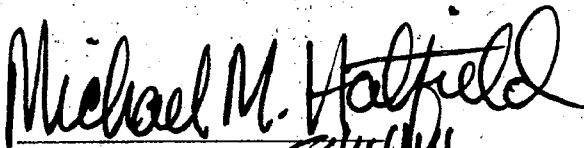
Tax Map Number: R600 006 000 009B 0000

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises hereby granted, and with the appurtenances, unto the said C. E. Lowther, Jr., Clayton Clark Lowther, Mitchell S. Lowther and Effie Sandra Turpin, it's Successors and assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina, in such cases provided.

Witness my Hand and Seal this 14th day of Aug in the year of our Lord Two Thousand 2014.

Signed, Sealed and Delivered in the presence of:



Witness



P.J. Tanner

Sheriff of Beaufort County



Witness

000099

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
ACKNOWLEDGEMENT

I, Lori C. Tuten (notary), do hereby certify that P.J. Tanner as

Sheriff of Beaufort County personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

[Signature]

Notary Public of South Carolina

My commission expires: 8-27-23

Sheriff of Beaufort County

TO

R. Thayer Rivers, Jr., Esquire
Post Office Box 668
Ridgeland, South Carolina 29936



Beaufort County... "Dedicated, Professional Service."

000100

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE JASPER COUNTY
Court of Common Pleas

Darrell Thomas Johnson, Special Referee

Case No.: 2008-CP-27-151

C.E. Lowther, Jr., Clayton Clark Lowther,
Mitchell S. Lowther and Effie Sandra Turpin,

Respondents

v.

E. Legrand Lowther,

Appellant.

CERTIFICATE OF COUNSEL

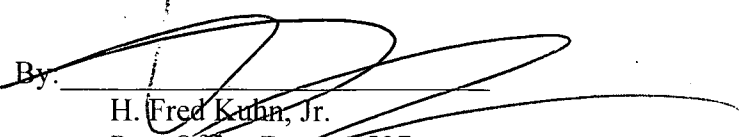
RECEIVED

AUG 03 2017

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
Post Office Drawer 507
Beaufort, South Carolina 29901
(843) 524-3373 Telephone
(843) 524-1302 Facsimile

Beaufort, South Carolina
July 31, 2017

Attorneys for the Appellant