

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP1800340

Fine Housing Inc		William H Sloan Jr	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

FILED - RECORDED
 2017 JUN 26 AM 10:15
 CLERK OF COURT
 DORCHESTER COUNTY

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Carmen T. Mullen
 Circuit Court Judge

2142
 Judge Code

6/26/2017
 Date

RECEIVED

DEC 08 2017

SC Court of Appeals

For Clerk of Court Office Use Only

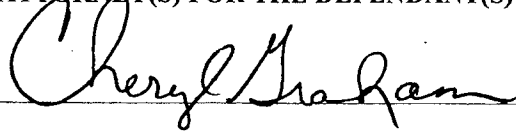
This judgment was entered on **6/26/2017**, and a copy mailed first class or placed in the appropriate attorney's box on **6/26/2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Charles S. Altman
Meredith L. Coker 575 King Street, Suite A Charleston, SC
29403

Stephanie Holmes Burton 308 E. St. John St. Spartanburg,
SC 29302

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED - RECORD IN THE COURT OF COMMON PLEAS
2017 JUN 28 AM 10:15 C.A. No.: 2016-CP-18-0340
CHERYL GLENN CLERK OF COURT
DORCHESTER COUNTY

Fine Housing, Inc.,

Plaintiff,

v.

William H. Sloan, Jr.,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION TO DISQUALIFY CHARLES S.
ALTMAN AS ATTORNEY FOR
PLAINTIFF**

This matter came before the Court on Defendant William H. Sloan, Jr.'s Motion to Disqualify Charles S. Altman as attorney for Plaintiff. A hearing was held in this matter on June 1, 2017. Charles S. Altman appeared on behalf of Plaintiff. Stephanie H. Burton appeared on behalf of Defendant Sloan.

FACTUAL BACKGROUND

The Closing

This is a legal malpractice action arising from the sale of two parcels of property by Robin M. Robinson and RRJR, LLC (collectively "Robinson") to Fine Housing, Inc. for a combined price of \$850,000.00. The parcels sold by Robinson included a gentlemen's club located at 2028 Pittsburg Avenue in North Charleston, South Carolina and a residence located at 2470 Sol Legare Road in Charleston, South Carolina. As part of the purchase agreement, Robinson agreed to lease both properties from Plaintiff with an option to repurchase the properties. The closing occurred on December 2, 2013. Defendant Sloan represented Plaintiff in connection with the closing.

The closing for the transaction was expedited, primarily because the Sol Legare parcel was scheduled to be sold at a foreclosure sale on December 3, 2013. At that time, Mr. Altman represented the Sherman Agency, the mortgage holder.

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SC Court of Appeals

Lease Dispute

By January 2014, Robinson had defaulted on the lease for both properties. On January 9, 2014, Robinson filed a lawsuit against Plaintiff captioned "*Robinson v. Fine Housing, Inc., C.A. No. 2014-CP-10-1035*" in the Charleston County Court of Common Pleas alleging that the December 2, 2013 transaction was a loan secured by the properties as opposed to a purchase of the properties by Plaintiff with an associated lease. Because Defendant Sloan is not a litigator, he referred Plaintiff to Mr. Altman. Plaintiff retained Mr. Altman for representation in the *Robinson* lawsuit and in connection with the lease default. Mr. Altman eventually settled the lawsuit with Robinson.

Tax Liens

Mr. Altman also previously represented Plaintiff in connection with various other issues relating to the sale of the two parcels. In its Complaint, Plaintiff acknowledges that it retained Mr. Altman to obtain payoffs for state and federal tax liens. Plaintiff further acknowledges that Mr. Altman negotiated a compromised amount with the taxing authorities for both parcels to be released from certain tax liens. On deposition, Plaintiff testified to not knowing the details of the negotiations involving Mr. Altman and the taxing authorities. In this case, Plaintiff alleges Defendant Sloan did not adequately determine the existence and application of tax liens and seeks damages as a result.

Title Policies

Title insurance policies were issued by Defendant Sloan in March 2014. By that time, Mr. Altman already represented Plaintiff. Moreover, Mr. Altman had direct involvement with the issuance of the title policies, as he wrote to Defendant Sloan to request issuance of the title policies after discovery of Clarke's right of first refusal and wrote to Defendant Sloan concerning the terms

of the title insurance commitments and policies. Plaintiff asserts claims in this lawsuit that such policies were not properly issued by Defendant Sloan.

Crabtree/Foster Lawsuits

In March 2014, Michael Foster and Chandler Crabtree filed lawsuits against Robinson, RRJR, LLC and Plaintiff asserting that the conveyance of the two parcels to Plaintiff violated South Carolina's Statute of Elizabeth. *Foster v. Robinson, et. al.*, C.A. No. 2014-CP-10-1757 and *Crabtree v. Robinson, et. al.*, C.A. No. 2014-CP-10-1758. The Statute of Elizabeth lawsuits stemmed from two actions filed by Crabtree and Foster against Robinson and Bank of America in the Charleston County Court of Common Pleas in July 2013. *Crabtree v. Bank of America, N.A.*, C.A. No. 2012-CP-10-4505 and *Foster v. Bank of America, N.A.*, C.A. No. 2012-CP-10-4503. On March 3, 2014, the Court issued judgments against Robinson in both the original *Crabtree* and *Foster* actions.

Mr. Altman represented Plaintiff in the *Crabtree* and *Foster* Statute of Elizabeth actions. Again, he negotiated a settlement, although Plaintiff cannot testify about the details of that settlement. In this case, Plaintiff contends that Defendant Sloan should have known about the prior pending actions against Robinson before they were reduced to judgment and included those pending actions in the title search. Damages relating to settlement of the *Foster* and *Crabtree* actions are claimed as damages against Defendant Sloan in this case.

Clarke Lease

Plaintiff also alleges that Defendant Sloan was negligent by failing to identify prior to the closing the existence of a lease relating to the Pittsburg Avenue parcel in favor of Barry Clarke that is alleged to grant Mr. Clarke a right of first refusal for a portion of the Pittsburg Avenue parcel. On May 28, 2015, Mr. Clarke filed a lis pendens against the Pittsburg Avenue parcel and

a Complaint against Plaintiff and RRJR, LLC in the Charleston County Court of Common Pleas. *Clarke v. Fine Housing, Inc. and RRJR, Inc.*, C.A. No., 15-CP-10-3038. The *Clarke* lawsuit is currently pending. Plaintiff seeks damages against Defendant Sloan in connection with that action. Mr. Altman is one of the attorneys representing Plaintiff in that case.

CONCLUSIONS OF LAW

Rule 3.7 of the South Carolina Rules of Professional Conduct prohibits an attorney from acting as an advocate at trial in which the attorney will be a necessary witness unless: (1) the lawyer's testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered; or (3) disqualification of the lawyer would work a substantial hardship on the client. Rules of Professional Conduct: Rule 3.7, RCP, Rule 407, SCACR. In addition, Comment 2 to Rule 3.7 of the South Carolina Rules of Professional Conduct describes when a party has an objection to an attorney's dual role:

The opposing party has proper objection whe[n] the combination of roles may prejudice the party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate witness should be taken as proof or as an analysis of the proof.

Rules of Professional Conduct: Rule 3.7, RCP, Rule 407, SCACR.

The South Carolina Court of Appeals has noted: "The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another while that of a witness is to state facts objectively." *Collins Entm't, Inc. v. White*, 363 S.C. 546, 564, 611 S.E.2d 262, 271 (Ct. App. 2005). In *Brooks v. S.C. Comm'n on Indigent Def.*, the South Carolina Court of Appeals observed that a necessary witness is a person who has material information that no other person can provide. *Brooks v. S.C. Comm'n on Indigent Def.*, Op. No. 23083 (S.C. Ct. App. Filed Feb. 15, 2017) (Shearhouse Adv. Sh. No. 7 at 52) ("A necessary witness is not just

someone with relevant information, however, but someone who has material information that no one else can provide.") (quoting Mettler v. Mettler, 928 A.2d 631, 633 (Conn. Sup. Ct. 2007). However, in Brooks, the South Carolina Court of Appeals explained that an attorney may be a necessary witness even when there are other witnesses to events if "no other witness would be able to provide evidence regarding the full extent of [witness's] involvement" with the relevant issues. Id. at 58.

It appears that Mr. Altman is a necessary witness who can offer material testimony about several issues on which no other witness is available to offer complete testimony. First, Mr. Altman is a necessary witness concerning the settlement of the Statute of Elizabeth lawsuits filed against Plaintiff by Foster and Crabtree, the terms of the settlements and the necessity of settling these actions. The deposition testimony of Plaintiff's 30(b)(6) representative, Vincent Destaso, reveals that Plaintiff is uncertain regarding the terms of the settlement of these actions. Specifically, Mr. Destaso testified: "I think the total settlement was like \$102,000.00. It was like \$100,000 plus some fee or something, 2 or \$4,000." Mr. Destaso did not offer any testimony concerning the necessity of settling such actions. Even if Mr. Destaso could rely on the settlement agreements to testify regarding settlement terms for these actions (as is argued by Plaintiff), he would still be unable to testify why it was necessary to settle such actions. Plaintiff has not identified any other witness to testify regarding the settlement of the Foster and Crabtree matters. Moreover, Mr. Altman's testimony on such issues would be contested, since Defendant Sloan may argue that that these claims had no legal validity and he has not responsibility to Plaintiff for damages that it incurred in settling those claims.

Second, Mr. Altman is a necessary witness concerning the title insurance policies issued for both properties as he corresponded with Defendant Sloan regarding the content of the policies at the time of issuance.

Third, Mr. Altman is a necessary witness concerning tax liens affecting to both parcels and their eventual discharge. Specifically, Mr. Altman is a necessary witness regarding: (1) disputes concerning which tax liens actually applied to the parcels; (2) disputes concerning why Mr. Altman advised Plaintiff to pay a tax lien that was in John Robinson's name (the deceased husband of Ms. Robinson); (3) the settlement with Robin Robinson which allowed Mr. Altman to talk to the South Carolina Department Revenue about Robinson's tax liabilities; and (4) Mr. Altman's negotiations with the South Carolina Department of Revenue concerning satisfaction of a tax lien of \$81,953.76 on the Sol Legare parcel. Based upon the deposition testimony, Plaintiff apparently lacks knowledge concerning the disposition of the tax liens. For example, during Plaintiff's 30(b)(6) deposition, Mr. Destaso evinced uncertainty as to whether all tax liens had been satisfied or payoffs obtained for such liens. When asked if "all the liens, tax liens encumbering the properties [were] released and resolved," Mr. Destaso answered: "I hope so." Moreover, Mr. Destaso testified that he had "not really" looked at the various tax liens that may have encumbered the two parcels and was not familiar with such liens.

Mr. Destaso's deposition testimony also demonstrates uncertainty regarding Mr. Altman's resolution of tax liens with the South Carolina Department of Revenue. During Plaintiff's deposition, Mr. Destaso was asked whether Mr. Altman was given a power of attorney to obtain payoffs on the tax liens from the South Carolina Department of Revenue and IRS as a result of a settlement with Robinson. Mr. Destaso answered: "I think so." Similarly, when asked whether Mr. Altman directed Defendant Sloan to issue a \$60,000.00 check to the South Carolina

Department of Revenue, Mr. Destaso responded: "I don't remember now, but I remember it got resolved." Given that Mr. Destaso is unable to provide complete factual testimony concerning the existence of tax liens on the parcels, whether the tax liens attached to both parcels have been paid, whether payoffs on all tax liens had been acquired, and whether \$60,000.00 had been paid to the South Carolina Department of Revenue to resolve a tax lien, it is apparent that Mr. Altman is a necessary witness concerning these issues. In addition, Mr. Altman's testimony will be contested to the extent that Plaintiff contends that any tax liens remain unpaid or that Defendant Sloan failed to escrow sufficient funds to satisfy all tax liens that actually encumbered the land

Mr. Altman is also a necessary witness concerning the necessity of paying the certain tax liens on the parcels. Mr. Altman and Defendant Sloan communicated on numerous occasions between April and November 2014 regarding the necessity of paying an \$81,953.76 state tax lien on the Sol Legare parcel. In an email dated November 6, 2014, Mr. Altman wrote: "not paying the liens would be an ethical violation.....The liens must be paid and there are sufficient funds to do so." On November 10, 2014, Sloan wrote to Destaso that he disagreed with Mr. Altman's opinion concerning the state tax liens, because the South Carolina Department of Revenue affirmatively denied holding any lien on the properties. Plaintiff has not suggested that Mr. Destaso or any other witness has personal knowledge concerning the necessity of paying these liens. Moreover, the nature of this testimony is specialized and requires an explanation of legal opinions that a layman— such as Mr. Destaso — is not qualified to provide. Accordingly, Mr. Altman's testimony is necessary because no other individual is available to testify as to Mr. Altman's opinion concerning the necessity of paying such tax liens. In addition, Mr. Altman's testimony may be contested to the extent that he testifies that Plaintiff had to satisfy the lien for \$81,953.76 against the Sol Legare parcel.

Fourth, Mr. Altman is a necessary witness concerning damages suffered by Plaintiff including: (1) the diminution of Plaintiff's title insurance coverage; (2) Plaintiff's settlement with Robinson; (3) Plaintiff's mitigation of its damages through rents received for the Pittsburg Avenue parcel subsequent to closing; and (4) Plaintiff's failure to mitigate damages by refusing an offer by Barry Clarke to purchase the Pittsburg Avenue parcel. First, with regard to diminution of insurance coverage, Mr. Destaso, Plaintiff's 30(b)(6) designee, testified that he did not understand the \$50,000 lost title coverage, but "was advised by counsel that I had suffered a \$50,000 insurance loss." Plaintiff has not identified any other individual has knowledge regarding the title insurance loss. Second, Mr. Altman is also a necessary witness concerning Plaintiff's settlement of the Robinson lawsuit. At Plaintiff's 30(b)(6) deposition, Mr. Destaso could only testify that the matter settled. When asked for certain details on the settlement, Mr. Destaso simply testified: "I'm aware that Charlie settled the matter." Mr. Destaso was also not able to testify that Robinson executed releases to allow Mr. Altman to obtain lien payoffs. Given Mr. Destaso's lack of knowledge on the subject and Plaintiff's failure to identify another witness with knowledge of the settlement, it is apparent that Mr. Altman is a necessary witness on this issue.

In addition, Mr. Altman is a necessary witness concerning offer by Barry Clarke to purchase the Pittsburg Avenue parcel for \$650,000.00. Plainly, Defendant Sloan may introduce such testimony as part of his defense relating to Plaintiff's failure to mitigate his damages.

The Court further finds that Defendant Sloan has proper objection to Mr. Altman's testimony pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct because Mr. Altman's dual role as fact witness and advocate would prejudice Defendant Sloan. Specifically, the Court finds that Mr. Altman's dual role would inevitably confuse and mislead the jury, since it would be unclear to the jury whether Mr. Altman's testimony and arguments are proof or analysis

of his testimony. This dual role is particularly concerning in this case, since Mr. Altman's testimony would cover a broad range of contested issues that may be determinative of Defendant's Sloan's liability.

The Court further finds that Mr. Altman's disqualification would not work a substantial hardship on Plaintiff because Plaintiff has long known that Mr. Altman would likely testify at the trial of this case. Defendant Sloan identified Mr. Altman as a witness with knowledge of the facts of the case in his June 2016 discovery response. Thus, it is no surprise that Mr. Altman's testimony will likely be required at trial.

Accordingly, the Court finds that Mr. Altman must be disqualified as counsel for Plaintiff pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct. The Court specifically finds that Rule 3.7 of the South Carolina Rules of Professional Conduct does not preclude another attorney from Mr. Altman's firm representing Plaintiff at the trial of this case. Therefore, the disqualification applies solely to Mr. Altman and not to his firm or any attorneys therein.

It is the Court's understanding that the parties in this case along with those involved in the aforementioned case filed by Barry Clarke have agreed to mediate both cases in July 2017. Given that this mediation is scheduled soon and with the consent of Defendant Sloan, this Court finds that Mr. Altman may participate in such mediation in July 2017.

Accordingly, Defendant Sloan's motion to disqualify Mr. Altman as counsel for Plaintiff is granted consistent with this opinion.

AND IT IS SO ORDERED.



Carmen T. Mullen, Presiding Judge
First Judicial Circuit

June 23, 2017
St. George, South Carolina