

20036

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

Case No. 2011-CP-02-1375

Atlantic Coast Properties, Inc.,

Respondent,

v.

Jerry E. Swann, Jr., Sandra A.
Swann, Patricia Hite and John
Hicks,

Of Which John Hicks is the Appellant.

RECORD ON APPEAL

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FILED
SEP 26 2012
SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
ATLANTIC COAST PROPERTIES, INC.
Plaintiff,

JERRY E. SWANN, JR., SANDRA A.,
SWANN, PATRICIA HITE, and JOHN
HICKS
Defendants

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina, do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

ORDER FEB 08 2012

Case No. 2011-CP-02-13757

(ACTION TO CLEAR TITLE)

Deputy Clerk

Liz Godard
C.C.P. & G.S.
Charvin G. Godard
Deputy Clerk

STIPULATED FACTS

1. The Bond for Title that is admitted is a fair and accurate copy of the agreement. There is no dispute that Atlantic Coast Properties and Mr. and Mrs. Swann signed the agreement.
2. The Bond for Title has been paid in full.
3. Patricia Hite wrote the checks and delivered the checks for all of the payments to Atlantic Coast Properties after the Swanns defaulted on the payments. There was no stipulation as to the source of those funds.
4. Atlantic Coast Properties accepted all payments made by Patricia Hite.
5. The parties stipulated to the admission of plaintiffs exhibit 1.
6. There is no written memorandum conveying any interest or assignment to Patricia Hite.
7. The property is located in Aiken County.
8. As to John Hicks, the parties stipulated to the admission of the assignment from Jerry Swann and Sandra Swann to John Hicks, the divorce decree between Patricia Hite and John Hite and two deposition transcripts of Patricia Hite.

9. As to Patricia Hite, the parties stipulated to the admission of a letter dated November 4, 2003 and a release and quit claim of equitable interest that was not properly executed. In addition, a copy of a cashiers check in the amount of \$26,267.34 that was the payoff check to Atlantic Coast Properties from Patricia Hite and copies of checks 3053, 3563 and 3680 that are payable to Atlantic Coast Properties were submitted as exhibits.
10. The parties also stipulated to the preparation of a transcript for the Court in regards to the stipulations.

STATEMENT OF FACTS

This action was filed by Atlantic Coast Properties, Inc. seeking to resolve to whom certain real estate should be conveyed. On September 15, 1999, Atlantic Coast Properties, Inc. entered into a Bond for Title with Jerry E. Swann, Jr. and Sandra A. Swann, which was recorded in Volume 2093 at page 144, Records of Aiken County, South Carolina. This Bond for Title was an agreement for Swann to pay \$30,220.00 over a 30-year period of time to purchase lots 18, 19, and 20 of Sparkleberry Hills Subdivision.

Patricia Hite claims that she entered into an oral agreement with Swann to take over the payments set out in the Bond for Title in order that she purchase lots 18, 19, and 20. On or about November 18, 2003, Patricia Hite began making payments to Atlantic Coast Properties. On August 23, 2006, Ms. Hite paid off the Bond for Title with a final payment of \$26,267.34. Ms. Hite testified that she made these payments pursuant to an oral agreement with Mr. and Mrs. Swann. Jerry Swann testified that he did have an oral agreement for Patricia Hite and her now ex-husband to take over the payments called for in the Bond for Title. She testified that she paid the taxes related to the property but agreed that Mr. Hicks may have paid a portion of the 2008 property taxes.

An employee with the plaintiff testified that she made a notation in the plaintiffs file that Mr. Swann advised her that Patricia Hite would begin making payments. The plaintiff accepted all of the payments made by Patricia Hite.

John Hicks has alleged that he is entitled to receive the property pursuant to an Assignment of Bond for Title executed November 25, 2009 and recorded in Book 4286 at page 2202, Records of Aiken County. Mr. Hicks testified that he contributed \$12,000.00 of the \$18,000.00 that was loaned Mr. and Mrs. Swann. Mr. Hicks testified that he believes he paid part of the 2008 property taxes.

There is no written agreement for Ms. Hite to take over the payments with Atlantic Coast Properties but on December 5, 2006, Mr. and Mrs. Swann did execute a document entitled Release and Quit Claim of Equitable Interest. This document was not properly witnessed and therefore was never recorded.

Mr. Swann, Mr. Hicks and John Hite all testified that the \$18,000.00 was a loan to Jerry Swann and was not pursuant to an agreement to purchase the lots in Sparkleberry Hills Subdivision. The testimony of all parties was that the discussion concerning the land being transferred as repayment of the loan came about some time later. The \$18,000.00 loan was to assist Mr. and Mrs. Swann in moving to Georgia.

CONCLUSIONS OF LAW

In order to establish an equitable lien, Patricia Hite would need to establish the debt, specific property to which the debt attaches and an expressed or implied intent that the property serve as security for payment of that debt. First Fed. Sav. & Loan Ass'n of S.C. v. Finn, 300 S.C. 228, 387 S.E. 2d 253 (1989), Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E. 2d 348 (S.C. App. 2011). "An equitable lien is a "mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered."" Horry County v. Ray, 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009).

Based on the stipulations, testimony and exhibits, Patricia Hite has established an equitable lien. Mr. Swann admitted that there was an agreement with Mr. and Mrs. Hite to assume the payments on the Bond for Title with the intent to convey the ownership when paid. The handwritten note prepared by Mr. Hite informs Patricia Hite that she should begin making payments after Mr. Hicks decided he was not going to purchase the property. Those payments were made by Patricia Hite directly to the plaintiff. She also made payments towards the taxes related to the property. Mr. Swann notified the plaintiff that Patricia Hite would be making the payments and the plaintiff accepted the payments from Patricia Hite. Although not properly witnessed, Mr. Swann testified that he believed he had assigned all of the interest in the real estate to the Hites when the documents were signed. The debt, the real estate and the intent for the property to serve as security for the payment of the debt were established.

John Hicks has alleged that the agreement between Swann and Patricia Hite is not enforceable because it does not comply with the requirements of the Statute of Frauds. The testimony and evidence submitted does take this transaction out of the Statute of Frauds.

Section 32-3-10, South Carolina Code of Laws, provides that agreements are required to be in writing and signed "unless the agreement upon which such actions shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person there unto by him lawfully authorized". The document signed by Mr. and Mrs. Swann on December 5, 2006 does not discuss any payments made by any third party. The document addresses the failure of the Swanns to comply with the terms and conditions of the Bond for Title. The document is a factor in the argument that the partial performance exception should apply as argued by Patricia Hite.

Partial performance is an exception to the Statute of Frauds. Fesmire v. Digh, 385 S.C. 296, 683 S.E.2d 803 (S.C.App. 2009). There is ample evidence of partial performance in this transaction. Patricia Hite made payments to the plaintiff to satisfy the Bond for Title. It is admitted by all parties that Ms. Hite made the payments to Atlantic Coast Properties and paid the full amount due pursuant to the recorded Bond for Title. In addition, Mr. and Mrs. Swann signed the release of Bond for Title, which if executed properly, would have allowed Atlantic Coast Properties to deed the property to Patricia Hite. Jerry Swann testified that he had spoken with Roxana Maffett of Atlantic Coast Properties and told her that Mr. and Mrs. Hite would be making the payments. Ms. Maffett made a note of the telephone conversation with Mr. Swann that Patricia Hite would make the payments. The actions by Patricia Hite and Mr. and Mrs. Swann satisfy the requirement of partial performance. There is clear evidence of the oral contract. The contract was partially executed and Patricia Hite has completed her part of the oral contract.

John Hicks has also alleged that he would be entitled to an equitable lien on the property in order to secure the debt owed him by Mr. and Mrs. Swann. Testimony in this matter reveals that there was no specific property to which this debt would attach. The discussion of this property being involved in the debt came up after Patricia Hite had paid off the debt evidenced by the Atlantic Coast Properties Bond for Title. In addition, there is nothing in writing or any evidence of the loan to Mr. and Mrs. Swann other than the testimony. This was a cash payment delivered by Mr. Hite and there is no cancelled check, receipt, or promissory note evidencing the loan.

An equitable lien will not be available to a party unless the party is without an adequate remedy at law. The Nutt Corp. v. Howell Road, LLC, Op. No. 4911 (S.C. Ct. App. filed November 23, 2011). In this case, John Hicks has an adequate remedy at law. He can pursue a collection action against Mr. and Mrs. Swann. Although Mr. Hicks has argued that

Mrs. Hite could have claims for fraud, misrepresentation or unjust enrichment, I do not find that these claims are supported by the documents introduced and the testimony of the parties.

Mr. Hicks also argues that the Court should order the plaintiff to convey the property to him based on the assignment for Mr. and Mrs. Swann that was recorded on December 3, 2009. In that document, the Swanns acknowledge that all legal rights they have are transferred to John Hicks. Mr. Hite testified that he had his attorney prepare the assignment for the benefit of Mr. Hicks after his divorce from Mrs. Hite. Mr. Hicks testified that he was aware of the Hite divorce. The assignment was executed after the completion of the divorce proceedings. Mr. Hite stated that the property should go to Mr. Hicks since it was not claimed by either party in the divorce proceedings. It does not appear that there was any conversation between the Swanns and Mr. Hicks about the assignment. Mr. Hicks also testified that one of the reasons he did not originally purchase the property was that he was aware of the interest by Mrs. Hite in the real estate. "For one to have notice of an equitable interest, it is sufficient that one knows or ought to know that some third party interest exists. South Carolina Federal Savings Bank v. San-A-Bel Corporation, 307 S.C. 76, 413 S.E. 2d 852 (Ct. App. 1992) Mr. Hicks, through his relationship with Mr. Hite and the sequence of events provided in the testimony, knew or should have known of the third party interest.

Mr. Hicks asserts that any claim of Patricia Hite should be barred based on the doctrines of collateral estoppel and unclean hands. The defense is based on the real estate not being claimed in the divorce proceedings between Mr. and Mrs. Hite. Mr. Hite knew that Patricia Hite had made the payments to the plaintiff, including the final payment. In the deposition submitted by Defendant Hicks, dated August 17, 2009, Mrs. Hite does discuss the agreement, the source of the funds and the payments she made to the plaintiff. The financial declaration that was submitted does not contain information on any real estate that the parties

owned at the time it was executed. The divorce decree does not address the property but no deed had been executed at that time.

To establish collateral estoppel, Defendant Hicks must establish that the particular issue was actually litigated and directly determined in the prior action. He must also establish that it was necessary to support the prior judgment. Crosby v. Prysmian Communications Cables and Systems USA, LLC, Op. No. 4876 (S.C. App. Filed August 24, 2011); Carolina Renewal v. South Carolina Dept. of Transp., 385 S.C. 550, 684 S.E. 2d 779 (S.C. App. 2009). Based on the facts of this case, Patricia Hite's claim is not barred by the doctrine of collateral estoppel.

"A party will have unclean hands where the party behaves 'unfairly in a matter that is subject of the litigation to the prejudice of the defendant.'" Ingram v. Kasey's Assoc., 340 S.C. 98, 531 S.E. 2d 287 (2000). There was no evidence that Patricia Hite's activities established any unfair behavior. She was notified to begin making payments after Mr. Hicks decided not to purchase the property. She made the payments to the plaintiff and the plaintiff was notified of that change by Mr. Swann. He testified that the Hites were to make the payments and he would transfer the ownership of the property. His testimony that he had no specific agreement with Patricia Hite is disputed by the testimony and note introduced by the employee of the plaintiff.

Based on the stipulated facts, the testimony and the exhibits, Atlantic Coast Properties, Inc. should convey lots 18, 19, and 20 to Patricia Hite, based on the equitable lien that has been established by the testimony, exhibits and stipulation of facts. The evidence establishes that Patricia Hite paid approximately \$30,000.00 to Atlantic Coast Properties. Mr. Swann and the Hites testified there was an agreement for the Hites to make the payments and, according to Mr. Swann, the Swanns would deliver title after the completion of the payments. None of the money that was paid by John Hicks to Mr. and Mrs. Swann was ever

used to make any of the payments due Atlantic Coast Properties. In fact, the testimony reveals that John Hicks and Mr. and Mrs. Swann knew or should have known that Patricia Hite had paid Atlantic Coast Properties when the Assignment of Bond for Title was executed by Mr. and Mrs. Swann on November 25, 2009. When that assignment was executed, Mr. and Mrs. Swann had nothing to assign. Patricia Hite had already completely performed her obligations pursuant to her agreement with Mr. and Mrs. Swann. Assuming that Mr. and Mrs. Swann do owe John Hicks \$12,000.00, he has adequate remedies to pursue that debt.

Based on the Stipulated Facts, Statement of Facts and Conclusions of Law as set forth above, IT IS ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction of this matter. All parties were properly served and notified of the hearing.
2. Atlantic Coast Properties, Inc. will execute a deed to Patricia Hite for the real property consisting of 6.46 acres on Holder Road known as Lots 18, 19 & 20 of Sparkleberry Hills Subdivision in Aiken County, S. C. within forty-five (45) days of the date of this Order.
3. The Assignment of Bond recorded in RB 4286 at Page 2202-2203 is cancelled and void.
4. Except for Patricia Hite, the remaining defendants who might claim any right title interest in or lien upon the real estate, legal or equitable, upon the real estate is barred from any claim and any cloud upon the title is removed.

AND IT IS SO ORDERED.

Feb. 7

2012


M. Anderson Griffith
Master in Equity for Aiken County

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS
ATLANTIC COAT PROPERTIES, INC.

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-02-1375

JERRY E. SWANN, JR., SANDRA A. SWANN,
PATRICIA HITE AND JOHN HICKS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (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 :

Order instructed Atlantic Coast Properties, Inc. to execute deed to Patricia Hite within 45 days of this order., Assignment in RB 4286 at Pg. 2202-2203 to be cancelled by the RMC Office and any claim or interest to remove from this real estate.

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: 6.46 acres, Lots 18, 19 & 20 of Sparkleberry Hills Subdivision.

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.

MA Griffith
M. Anderson Griffith, Master-in-Equity for Aiken County

3076

Judge Code

02/07/12

Date

John Hicks
J.C.P. & G.S.
John Hicks
Deputy Clerk

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of August, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of August, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

RMC

ATTORNEY(S) FOR THE PLAINTIFF(S)

Master On Equidy
Kathy Ruchon

James Snee

Jerry + Sandra Suen

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

D. J. Woodard by Shonita Jones

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ATLANTIC COAST PROPERTIES, INC.

Plaintiff(s)

vs.

JERRY E. SWANN, JR., ET AL

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

11-CP - 02-1375

(Please Print)

Submitted By: Kathy Ouzts Rushton

Address: 108 West Butler Avenue
Saluda, South Carolina 29138

SC Bar #: 4822

Telephone #: 864-445-9307

Fax #: 864-445-8177

Other:

E-mail: korushton@embarqmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) Cancellation of a Bond for Title |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | ☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |

C O P Y
ORIGINAL FILED

JUN 22 2011

AIKEN COUNTY
CLERK OF COURT

Submitting Party Signature:

[Signature]

Date: 6-22-11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ATLANTIC COAST PROPERTIES, INC.,

Plaintiff,

VS.

JERRY E. SWANN, JR., SANDRA A.
SWANN, PATRICIA HITE, and JOHN HICKS.

Defendants

IN THE COURT of COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO. 2011-CP-02- 01375

LIS PENDENS

2011 LP 02 00385

YOU WILL PLEASE TAKE NOTICE that action has been commenced or will be commenced and is now pending for cancellation of an Assignment of Bond recorded in RB 4286 at Pages 2202-2203 and the Bond recorded in Volume 2023 at Page 144. The property affected by this notice is described as follows:

All that certain piece, parcel or tract of land lying and situate in Aiken County, South Carolina, consisting of 6.46 acres and as further shown as Lots #18, 19 and 20 on a plat of Sparkleberry Hills Subdivision, prepared by R.M. Gaddy and Associates, Inc., RLS #C00243, dated February 9, 1996 and recorded in Plat Book 38 at Pages 170, 171 and 172 in the Office of the RMC for Aiken County.

This being a portion of the property conveyed to Atlantic Coast Properties, Inc. by Holmes Timber Company, Inc., dated April 1, 1998 and recorded in Volume 1800 at page 243 in the Office of the RMC for Aiken County, South Carolina.

Tax Map Numbers: 198-00-04-003, 198-00-04-002, 198-00-04-001

KATHY OUZTS RUSHTON, P.A.



Kathy Ouzts Rushton
Attorney for the Plaintiff

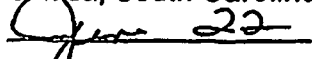
108 West Butler Avenue

Saluda, South Carolina 29138

(864) 445-9307

(864) 445-8177 - Fax

Saluda, South Carolina

 22, 2011

Atlantic Coast Properties, Inc. v. Jerry E. Swann et al
11-CP-02-

C O P Y
ORIGINAL FILED

JUN 22 2011 11:33 AM

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ATLANTIC COAST PROPERTIES,
INC.,

Plaintiff,

vs.

JERRY E. SWANN, JR., SANDRA A.
SWANN, PATRICIA HITE, and JOHN
HICKS,

Defendants

IN THE COURT of COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO. 2011-CP-02-01375

SUMMONS
(CANCELLATION OF BOND FOR TITLE)
(NON-JURY)

TO THE DEFENDANTS ABOVE NAMED:

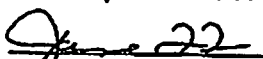
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber, Kathy Ouzts Rushton, within THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

KATHY OUZTS RUSHTON, P.A.



Kathy Ouzts Rushton
Attorney for the Plaintiff
108 West Butler Avenue
Saluda, South Carolina 29138
(864) 445-9307
(864) 445-8177 - Fax

Saluda, South Carolina

 2011

Atlantic Coast Properties, Inc. v. Jerry E. Swann et al
11-CP-02-

C O P
ORIGINAL FILED

JUN 22 2011 11:33 AM

AIKEN COUNTY
CLERK OF COURT

THE STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ATLANTIC COAST PROPERTIES, INC.,
Plaintiff,

Vs.

JERRY E. SWANN, JR., SANDRA A. SWANN,
PATRICIA HITE, and JOHN HICKS,
Defendants.

IN THE COURT OF COMMON
PLEAS FOR THE SECOND
JUDICIAL CIRCUIT

COMPLAINT

CANCELLATION OF BOND
FOR TITLE

11-CP-02-01325

NON- JURY

The Plaintiff, complaining of the above named Defendants, would respectfully show unto this Honorable Court:

1. This is an action wherein the Plaintiff is the owner of record of certain real estate ("Land") in Aiken County, South Carolina described as follows:

All that certain piece, parcel or tract of land lying and situate in Aiken County, South Carolina, consisting of 6.46 acres and as further shown as Lots #18, 19 and 20 on a plat of Sparkleberry Hills Subdivision, prepared by R.M. Gaddy and Associates, Inc., RLS #C00243, dated February 9, 1996 and recorded in Plat Book 38 at Pages 170, 171 and 172 in the Office of the RMC for Aiken County.

This being a portion of the property conveyed to Atlantic Coast Properties, Inc. by Holmes Timber Company, Inc., dated April 1, 1998 and recorded in Volume 1800 at page 243 in the Office of the RMC for Aiken County, South Carolina.

Tax Map Numbers: 198-00-04-003, 198-00-04-002, 198-00-04-001

2. On or about September 15, 1999, Plaintiff, along with Defendants Jerry E. Swann, Jr. and Sandra A. Swann, entered into a Bond for Title ("Bond"), a copy of which is attached hereto as "Exhibit A" and incorporated herein by reference.

3. The Bond provided that Plaintiff would convey to Defendants Swann and Swann the Land upon payments and conditions as provided for therein. The Bond was recorded in the Office of the RMC in Volume 2023 at Page 144.

4. On or about November 5, 2003, Defendant Jerry Swann notified Plaintiff that Defendant Patricia Hite would be making the payments and that they wanted to convey

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AIKEN COUNTY

their interest to Defendant Hite.

5. Thereafter, with the knowledge and consent of Defendants Swann and Swann, Defendant Hite made the payments on the Land and paid off the entire balance.

6. Although Plaintiff contacted Defendants Swann and Swann about the necessity of executing proper documents so that title could be conveyed to Defendant Hite, Defendants Swann and Swann failed and neglected to properly sign and execute a Release and Quitclaim of Equitable Interest .

7. On or about November 25, 2009, without the knowledge or consent of Plaintiff, and further, upon information and belief, without the knowledge of Defendant Hite, Defendants Swann and Swann executed an Assignment of Bond for Title ("Assignment") whereby they conveyed their rights and interest in Bond to Defendant John Hicks. The Assignment was recorded in Book RB 4286 at Pages 2202-2203,

8. The Bond For Title provides "Purchaser shall not assign this Bond For Title or otherwise transfer any right or interest hereunder without Seller's prior consent"..

9. Defendant Swann never contacted Plaintiff concerning the Assignment to Defendant Hicks. Therefore Plaintiff is informed and believes that the purported Assignment to Defendant Hicks is null and void and without effect.

10. Plaintiff is informed and believes that Defendants Swann and Swann knew that, with their consent and approval, Defendant Hite had paid off the Land, and they had induced her to pay off Bond by promising to assign their interest in the Bond to her.

11. Plaintiff is informed and believes it is entitled to an order of the court declaring the Assignment of Bond For Title recorded in RB 4286 at Pages 2202-2203 to be void, canceled and terminated.

12. Plaintiff is informed and believes that it is entitled to an order of the court directing and authorizing it to execute a deed to Defendant Hite, the rightful owner of the Land; although the Bond holder of Record is purportedly Defendant Hicks, Plaintiff is informed and believes that Defendant Hite was the party who paid for the Land according to the terms of the Bond and that the Bond was wrongfully assigned to Defendant Hicks without knowledge or consent of Plaintiff as required under the terms of Bond.

13. Further, Plaintiff is informed and believes that Defendant Hicks paid no value for

the assignment.

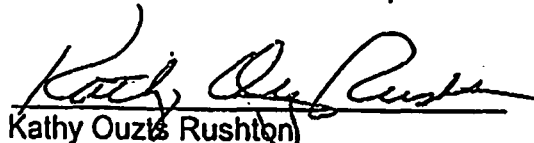
14. Plaintiff is informed and believes that the Court should inquire into the matters herein and direct the Plaintiff to convey the Land to Defendant Hite.

15. Plaintiff is informed and believes that this action was necessary and that efforts had been made to resolve this matter without filing the legal action and that they are entitled to an award of reasonable attorney's fees and costs being assessed against Defendants Swann and Swann and Hicks, jointly and severally.

WHEREFORE, Plaintiff prays that the Court issue its Order granting the following relief:

1. An Order determining that Defendant Hite is the rightful grantee of a deed to be executed by Plaintiff and quieting title unto Defendant Hite;
2. An Order voiding, cancelling and terminating the Assignment of Bond recorded in RB 4286 at Pages 2202-2203;
3. An Order extinguishing any interest, equitable or otherwise, of Defendants Swann and Swann and Hicks to the Land;
4. An award of attorney's fees and costs from Defendants Swann and Swann and Hicks, jointly and severally; and
4. Such other and further relief as may be consistent with the pleadings herein.

KATHY OUZTS RUSHTON, P.A.



Kathy Ouzts Rushton
Attorney for the Plaintiff
108 West Butler Avenue
Saluda, South Carolina 29138
(864) 445-9307
(864) 445-8177 Facsimile

Saluda, South Carolina

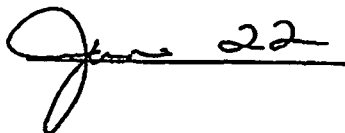
 22, 2011

EXHIBIT A

DEED

0330

VOL 2003 PAGE 144

3049 NOV

STATE OF SOUTH CAROLINA

BOND FOR TITLE

COUNTY OF Aiken

2011 CP 02 01325

This Bond for Title made and entered into this 15 day of September, 1999, by and between Atlantic Coast Properties, Inc. (Seller), whose address is Route 2 Box 244, Johnston, SC 29832 (803-275-4755) and Jerry E. Swann, Jr. and Sandra A. Swann (Purchaser), whose address is 235 Holder Road, Batesburg, SC 29005

1. Seller agrees to sell and Purchaser agrees to buy under the terms and conditions hereinafter set forth, the following described real estate:

All that certain piece, parcel, or tract of land consisting of 6.46 acres, located in Aiken County, S.C., fronting on Holder Road, better shown on a plat of Sparkleberry Hills Subdivision, prepared by R.M. Gaddy and Associates, Inc., RLS #C00243, dated February 9, 1996, recorded in Plat Book 38 at Pages 170, 171, & 172 in the records of the office of the RMC for Aiken County, S.C., better known as Lots #18, 19 & 20 of Sparkleberry Hills Subdivision.

2. Purchase Price: \$30,220.00

3. Down Payment: 865.00

4. Amount Financed: 29,355.00

5. Annual Percentage Rate: 12.00%

6. Purchaser shall pay the balance of the purchase price in 360 equal monthly installments of principal and interest in the amount of \$ 301.95 per month commencing November 1, 1999 and continuing on the same date each month thereafter until the entire balance with interest has been paid. If any payment is in default for more than ten (10) days, Seller shall collect a late charge of Twenty Five (\$25.00) Dollars.

7. Prepayment. This debt may be prepaid in whole or in part at any time without penalty.

8. Special Stipulations. Final payment to be made in the form of a cashier's check or money order. Purchaser agrees to abide by the Protective Covenants of Sparkleberry Hills Subdivision, Phase I.

9. Title Conveyed. When Purchaser is entitled to a deed to the property described herein, Seller shall deliver to Purchaser a fee simple title to the property by a general warranty deed, subject to the lien for current year property taxes, restrictions and easements of record which do not make the title unmarketable, and applicable zoning laws, and other laws and regulations.

10. Conditions of Property and Risk of Loss. Purchaser accepts possession of the property in its present condition as of the date of this Bond For Title. The risk of loss or damage to said property hereafter by act of God or other casualty until the delivery of the deed as herein provided is assumed by Purchaser. It is understood and agreed that Purchaser accepts and assumes any and all risk of loss to all trees, shrubs, or other damage to the property due to fire or other casualty, acts of God and the elements from the date hereof.

11. Improvements and Maintenance. Any fixtures or improvements which are attached to any part of the property shall be considered a part of the property and, if this Bond For Title becomes void as provided herein, Purchaser shall have no right or interest in same.

12. Indemnity. It is understood that Purchaser may have the full use and enjoyment of the property during the term of this agreement, provided, however, at all times while this Bond For Title is in effect or while said property is occupied by Purchaser, Seller shall not be liable or responsible for any activities or accidents that may occur on or in connection with Purchaser's use of said premises. Purchaser shall be solely responsible for any damage, injury or loss, to persons or property, that may occur upon the property as a result of the negligent, unlawful or willful act or omission of Purchaser or their visitors and shall defend, indemnify and hold Seller harmless for any damage, loss or expense resulting therefrom.

13. Insolvency of Purchaser. If Purchaser becomes insolvent or if any judgment creditor or other party asserts any purported lien or seeks to attach the property or Purchaser's rights under this Bond For Title, Seller may reenter the property and expel Purchaser or anyone claiming under or through Purchaser and remove any property therefrom without notice, formal

AIKEN COUNTY ASSESSOR
00-245-01-070
00-245-01-071
00-245-01-072
REC: 9-24-00

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AIKEN COUNTY
CLERK OF COURT



DEED

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VOL 2023 PAGE 145 3047 . . . 007

claim or process, Seller being absolved of any liability or claim for damages in doing anything reasonable necessary or appropriate in connection therewith, and Seller shall not thereby waive any other right afforded by law, equity or this contract.

14. Assignment. Purchaser shall not assign this Bond For Title or otherwise transfer any right or interest hereunder without Seller's prior consent. If Seller gives its consent, such approval shall not release Purchaser's obligations hereunder.

15. Entire Agreement. This Bond For Title represents the entire agreement between the parties, and no warranties, representations, promises or statements have been made by Seller unless stated herein in writing and duly executed by an authorized representative of Seller.

16. Construction of Agreement. This Bond for Title shall be construed according to the laws of South Carolina. In the absence of a specific provision to the contrary, the party upon whom an obligation is imposed shall perform the obligation at his own expense. Headings related to the contents of particular paragraphs are inserted for reference convenience and are not to be construed as parts of the particular paragraphs to which they refer. Any waiver by Seller of any particular default under the terms and provision of this contract shall only be considered a waiver of the particular default, and not a waiver of any other defaults; provided, however, Seller may later declare Purchaser's act or omission to be a default of this agreement.

17. This is to certify further that this Bond For Title is issued subject to the terms and provisions heretofore provided; that when and if Purchaser makes full and timely payment of all sums payable as set forth in this Bond For Title and otherwise fully complies with all of the other terms and provisions hereof, Seller will deliver to purchaser a deed conveying title to the above described property as provided in this Bond For Title; and that if Purchaser fails or neglects to comply with any of the terms and provisions of this Bond For Title, Seller at his option may declare all rights of Purchaser under this Bond For Title void, after which this Bond For Title shall be deemed a lease agreement and Seller shall be deemed to be landlord and Purchaser shall be deemed to be a tenant unlawfully holding over after the expiration of a lease and notice to vacate; if said Bond For Title is deemed to be such a lease agreement, then, any and all sums previously paid by Purchaser pursuant to this Bond For Title shall be retained by Seller as rent for Purchaser's use and occupancy of the property and as reimbursement for any advancements made by Seller for the benefit of purchaser, and Purchaser shall promptly surrender possession to Seller and vacate the property and Purchaser hereby agrees to execute a Release and Quitclaim of Equitable Interest, or any other documents provided by Seller which are necessary to terminate this Bond For Title, and Seller may re-enter the property and expel Purchaser or anyone claiming under them and remove Purchaser's property without notice, formal claim or process, Seller being absolved of any liability or claim for damages in doing anything reasonable necessary and appropriate in connection therewith. Notwithstanding the foregoing, Seller may at its option institute a foreclosure action to extinguish any claim by Purchaser to any interest in the property.

18. Attorney's Fees and Expenses. In the event Purchaser defaults on its obligations hereunder, Purchaser shall pay all reasonable attorneys' fees and expenses incurred by Seller or its assignee in enforcing this agreement.

19. Taxes. Effective with the signing of this Bond For Title, Purchaser shall be responsible for payment of all future property taxes affecting the within-described property. Purchaser shall also pay a pro-rata share of property taxes for the current year. Purchaser is responsible for rollback taxes.

20. Miscellaneous. This Bond For Title shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. All rights and remedies given to Seller herein, or by law, shall be cumulative and alternative. If any provision of the Bond For Title is held invalid or unenforceable, the remainder of it shall not be affected thereby and to this end the provisions are declared severable. This agreement may not be amended except by instrument in writing, executed by both parties hereto.

21. Disclaimer. SELLER AND BROKER DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES EXPRESS OR IMPLIED AS TO THE CONDITION OF THE PROPERTY OR ITS SUITABILITY FOR ANY PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS INSPECTED THE PROPERTY AND IS PURCHASING IT "AS IS". Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller, Broker or Broker's associated salespersons relative to the legal and tax consequences of this contract, the purchase and ownership of the premises, the condition of the premises, the operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances in the premises, (if applicable), the availability of utilities to the premises or the investment potential or resale value of the premises. Purchaser acknowledges that if such matters have been of concern to Purchaser, Purchaser has sought and obtained independent advice with respect thereto.

In witness whereof, the foregoing Bond for Title is hereby duly executed the day and year first above written, and the undersigned hereby acknowledge receipt of a completed copy

DEED

VOL 2023 PAGE 146

hereof.

WITNESSES:

[Signature]

[Signature]
 SELLER Atlantic Coast Properties, Inc.
 by Jerry M. Holmes, President

[Signature][Signature]

[Signature]
 PURCHASER Jerry E. Swan, Jr.

[Signature]

[Signature]
 PURCHASER Sandra A. Swan

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF Aiken)

Personally appeared the undersigned witness and made oath that s/he saw the within Purchaser and Seller sign the Bond for Title and that s/he, with the other witness subscribed above witnessed the execution hereof.

Sworn to before me this 15th day
 of September, 1999

Witness

[Signature]

[Signature]
 Notary Public for South Carolina
 My Commission Expires: 08-24-2009
 Pamela F. Horne

ASSIGNMENT:

Seller hereby assigns this agreement for value received to
 this day of , 19 , in accordance with
 the terms set forth herein.

Witness

Seller

Witness

Seller

RETURNED TO:

Atlantic Coast Prop.
 911 Atlantic Coast Blvd.

Blvd.
 20 of 177

9-18-00 at 1040 hrs
 RECORDED
[Signature]
 Aiken County

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Atlantic Coast Properties, Inc.,

Plaintiff,

vs.

Jerry E. Swann, Jr., Sandra A. Swann,
Patricia Hite and John Hicks,

Defendants.

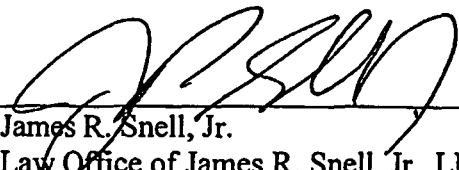
Case No.: 11-CP-02-1375

SUMMONS FOR COUNTERCLAIM
AGAINST ATLANTIC COAST
PROPERTIES, INC. AND CROSSCLAIMS
AS TO DEFENDANTS JERRY E.
SWANN, SANDRA A. SWANN AND
PATRICIA HITE

TO ATLANTIC COAST PROPERTIES, INC., JERRY E. SWANN, JR., SANDRA A. SWANN
AND PATRICIA HITE:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy
of which is herewith served upon you, and to serve a copy of your answer to this complaint upon
the subscriber at the address shown below, within thirty (30) days after service hereof, exclusive
of the day of such service, and if you fail to answer the complaint, judgment by default will be
rendered against you for the relief demanded in the complaint.

Lexington, South Carolina
July 27, 2011


James R. Snell, Jr.
Law Office of James R. Snell, Jr., LLC
Attorney for the Plaintiff
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
(803) 359-7691 (facsimile)

STATE OF SOUTH CAROLINA	}	IN THE COURT OF COMMON PLEAS
	}	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	}	
Atlantic Coast Properties, Inc.,	}	Case No.: 11-CP-02-1375
	}	
Plaintiff,	}	
	}	
vs.	}	ANSWER OF DEFENDANT JOHN HICKS
	}	CROSS CLAIM AS TO DEFENDANTS
Jerry E. Swann, Jr., Sandra A. Swann,	}	JERRY E. SWANN, JR., SANDRA A. SWANN
Patricia Hite and John Hicks,	}	AND PATRICIA HITE AND COUNTERCLAIM
	}	
Defendant.	}	

The Defendant John Hicks hereby Answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein;
2. The Defendant admits the allegations contained in paragraphs one (1) through three (3) of the Plaintiff's Complaint;
3. The Defendant would admit so much of paragraphs four (4) and five (5) in that the defendant Patricia Hite delivered payments on behalf of a third party to the Plaintiff, the remaining allegations are denied;
4. The Defendant would deny the allegations contained in paragraphs six (6) of the Plaintiff's Complaint;
5. The Defendant would admit so much of the allegations contained in paragraphs seven (7) of the Plaintiff's Complaint in that the Defendants Jerry E. Swann and Sandra A. Swann executed an Assignment of Bond for Title in his favor. The remaining allegations are denied;
6. The Defendant would admit the allegations contained in paragraph eight (8) of the Plaintiff's Complaint, but does not admit any particular meaning of this language;

7. The Defendant would deny the allegations contained in paragraph nine (9) of the Plaintiff's Complaint;
8. The Defendant would deny the allegations contained in paragraph ten (10) of the Plaintiff's Complaint;
9. The Defendant would deny the allegations contained in paragraph eleven (11) of the Plaintiff's Complaint;
10. The Defendant would deny the allegations contained in paragraph twelve (12) of the Plaintiff's Complaint;
11. The Defendant would deny the allegations contained in paragraph thirteen (13) of the Plaintiff's Complaint;
12. The Defendant would deny the allegations contained in paragraph fourteen (14) of the Plaintiff's Complaint;
13. The Defendant would deny the allegations contained in paragraph fifteen (15) of the Plaintiff's Complaint;

FOR A SECOND DEFENSE

14. The Defendant is informed and believes that the Plaintiff's requested relief, and any claims that may be made by Defendant Patricia Hite, are barred by the Statute of Frauds;

FOR A THIRD DEFENSE

15. The Defendant is informed and believes that there is no basis for the assessment of an award of attorney's fees and costs to be assessed against him;
16. The Defendant moves for an Order pursuant to SCRCP 12(b)(6) for an order striking this requested relief on the basis that there are not sufficient facts plead to constitute a cause of action for the awarding of attorney's fees and costs;

FOR A FOURTH DEFENSE

17. The Defendant moves for an Order pursuant to SCRPC 12(b)(6) for an order striking the Plaintiff's requested relief to transfer the title to the subject property to Patricia Hite on the basis that there are not sufficient facts plead to support such equitable relief;

**FOR A FIRST CROSSCLAIM AS TO DEFENDANTS
JERRY E. SWANN, JR. AND SANDRA A. SWANN**

18. The Defendant is informed and believes that the Defendants Jerry E. Swann, Jr. and Sandra A. Swann have previously conveyed and transferred their interest in the subject property to him;
19. The Defendant is informed and believes that he is entitled to an Order of the Court conveying and transferring any interest the Defendants Jerry E. Swann, Jr. and Sandra A. Swann have in the subject property to him;

**FOR A FIRST CROSSCLAIM AS TO DEFENDANT
PATRICIA HITE**

20. The Defendant is informed and believes that the Defendant Patricia Hite has no interest in the subject property whatsoever;
21. The Defendant is informed and believes that he is entitled to an Order of the Court forever ending and terminating any claim that Patricia Hite may make to the subject property;

FOR A FIRST COUNTERCLAIM

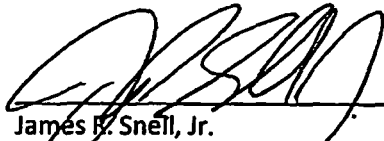
22. The Defendant is informed and believes that he is entitled to an Order of this Court requiring the Plaintiff to transfer full title and deed to the subject property to him;

FOR A SECOND COUNTERCLAIM

23. The Defendant is informed and believes that if the Plaintiff is unable to convey free and clear marketable title on any ground, including any judgment liens that it has allowed to cloud the title, then he is entitled to an award of damages in an amount to be determined by the Court;

WHEREFORE the Defendant John Hicks prays for an Order:

- 1. Determining that he is the rightful owner of the subject property and extinguishing all claims by the Plaintiff and Defendants Atlantic Coast Properties, Inc., Jerry E. Swann, Jr., Sandra A. Swann and Patricia Hite;**
- 2. Requiring the Plaintiff and/or the Court to execute such deeds of other instruments as may be necessary to grant title to the subject property in his name;**
- 3. For any monetary damages as may be determined by the Court if the Plaintiff is unable to convey good and marketable title;**
- 4. For such other and further relief as may be just and proper.**



James R. Snell, Jr.
Attorney for the Defendant John Hicks
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
(803) 359-7691 (facsimile)

July 27, 2011
Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
ATLANTIC COAST PROPERTIES, INC.

Plaintiff,

v.

JERRY E. SWANN, JR., SANDRA A.,
SWANN, PATRICIA HITE, and JOHN
HICKS.

Defendants

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

SUMMONS FOR CROSS-CLAIM
AS TO DEFENDANTS JERRY E.
SWANN, JR., SANDRA A. SWANN
AND JOHN HICKS

Case No.: 2011-CP-02-1375

(ACTION TO CLEAR TITLE)
(Non Jury)

TO: JERRY E. SWANN, JR., SANDRA A. SWANN, and JOHN HICKS

YOU ARE HEREBY SUMMONED and required to Answer the Cross-Claim in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Cross-Claim on the subscribers at their offices at 322 Laurens Street NW, Aiken, SC 29801, within thirty (30) days after the service hereof, exclusive of the date of such service, and if you fail to answer the Cross-Claim within the time aforesaid, the Petitioner in this action will apply to the court for the relief demanded in the Cross-Claim and judgment by default will be rendered against you for the relief demanded in the Cross-Claim.

FOX & VERENES

August 6, 2011

BY:


JAMES L. VERENES
P.O. DRAWER 328
AIKEN, SC 29802
TELEPHONE: (803)649-6281

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AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
ATLANTIC COAST PROPERTIES, INC.)
)
Plaintiff,)
)
v.)
)
JERRY E. SWANN, JR., SANDRA A.,)
SWANN, PATRICIA HITE, and JOHN)
HICKS.)
Defendants)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

ANSWER AND CROSSCLAIM
OF PATRICIA HITE

Case No.: 2011-CP-02-1375

(ACTION TO CLEAR TITLE)
(Non Jury)

FOR A FIRST DEFENSE

The Defendant, PATRICIA HITE, responding to the Complaint, would respectfully show unto this Honorable Court:

1. This Defendant denies each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, qualified or explained.
2. This Defendant admits the allegations of Paragraphs 1, 2 and 3 of the Complaint.
3. Upon the information and belief, this Defendant admits the allegations of Paragraphs 4 and 5 of the Complaint.
4. This Defendant admits the allegations of Paragraph 6 of the Complaint and would further allege that the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, did sign a document captioned, Release and Quit Claim of Equitable Interest, on or about December 5, 2006; however, the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, did not have this document properly witnessed.

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AIKEN COUNTY
CLERK OF COURT

5. This Defendant admits the allegations of Paragraph 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Complaint.

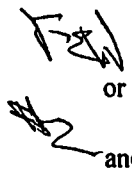
FOR A SECOND FIRST DEFENSE AND BY WAY OF CROSS-CLAIM AS TO DEFENDANTS

JERRY E. SWANN, JR., SANDRA A. SWANN AND JOHN HICKS

6. This Defendant realleges each and every allegation contained in Paragraph 1 – 5 as if fully stated herein.

7. On or about December 5, 2006, the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, executed a document captioned, Release and Quit Claim of Equitable Interest, purporting to assign the bond for title executed by the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, and the Plaintiff herein to PATRICIA HITE.

8. This Defendant based upon the representations of the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, paid the Plaintiff \$26,267.34 representing the pay-off on the bond for title executed by Atlantic Coast Properties, Inc. and the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN.

 9. This Defendant is informed and believes that she is entitled to an Order of the Court cancelling or terminating any interest that the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, and the Defendant, JOHN HICKS, have to the property that is the subject of this action.

10. This Defendant is informed and believes that she is entitled to an Order of the Court directing the Plaintiff to execute a Deed conveying the subject property to this Defendant and barring the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN, and the Defendant, JOHN HICKS, from any equitable or otherwise to the property that is the subject of this action.

WHEREFORE, the Defendant, PATRICIA HITE, prays for an Order of the Court:

1. Determining that this Defendant is the rightful grantee of the Deed to be executed by the

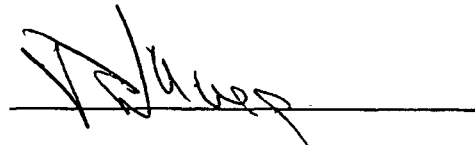
Plaintiff and quieting title unto this Defendant.

2. Voiding, cancelling, and terminating the assignment of bond recorded in RB 4286 at Page 2202, Records of Aiken County, South Carolina.

3. Extinguishing an interest, equitable or otherwise, of the Defendants, JERRY E. SWANN, JR. and SANDRA A. SWANN and the Defendant, JOHN HICKS, to the subject property.

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

August 16, 2011



JAMES L. VERENES, Attorney for Patricia Hite
P.O. DRAWER 328
AIKEN, SC 29802
803-649-6281
BAR#: 5703

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Atlantic Coast Properties, Inc.,

Plaintiff,

vs.

Jerry E. Swann, Jr., Sandra A. Swann,

Patricia Hite and John Hicks,

Defendant.

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IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 11-CP-02-1375

ANSWER OF DEFENDANTS

JERRY E. SWANN, JR. AND SANDRA A. SWANN

The Defendants Jerry E. Swann, Jr. and Sandra A. Swann hereby Answer the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendants denies each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein;
2. The Defendants admit paragraphs one (1) through three (3) of the Plaintiff's Complaint;
3. The Defendants deny paragraphs four (4) through fifteen (15) of the Plaintiff's Complaint;
4. The Defendants would show that they have a properly executed purchase agreement with the Plaintiff for the property referred to in the Plaintiff's Complaint. They have assigned and transferred their interest to defendant John Hicks;
5. The Defendants would show that there was no agreement to sell, transfer or otherwise convey their interest to defendant Patricia Hite;

FOR A SECOND DEFENSE

6. The Defendants are informed and believe that the Plaintiff's claims for relief are barred by the Statute of Frauds;

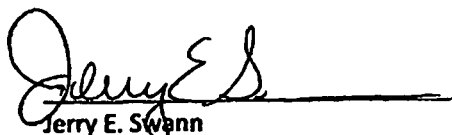
FOR A THIRD DEFENSE

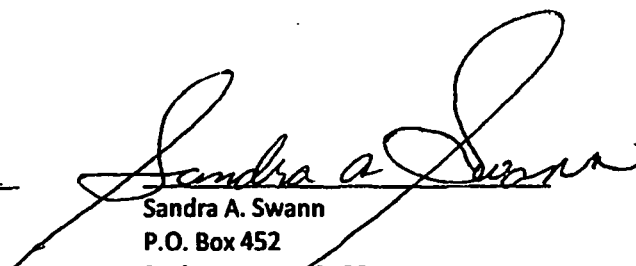
7. The Defendants are informed and believe that there is no basis either contractually between the parties or in law to support the Plaintiff's requested relief of attorney's fees;

WHEREFORE the Defendants pray for an Order:

1. Determining John Hicks is the rightful owner of the subject property and extinguishing all claims by the Plaintiff and Defendants Atlantic Coast Properties, Inc., Jerry E. Swann, Jr., Sandra A. Swann and Patricia Hite;
2. Requiring the Plaintiff and/or the Court to execute such deeds of other instruments as may be necessary to grant title to the subject property in the name of John Hicks;
3. For any monetary damages as may be determined by the Court if the Plaintiff is unable to convey good and marketable title;
4. For such other and further relief as may be just and proper.

Respectfully Submitted,


Jerry E. Swann
P.O. Box 452
Butler, Georgia 31006


Sandra A. Swann
P.O. Box 452
Butler, Georgia 31006

STATE OF SOUTH CAROLINA)
)
COUNTY OF Aiken)
)
ATLANTIC COAST PROPERTIES, INC.)
)
Plaintiff,)
)
)
v.)
)
JERRY E. SWANN, JR., SANDRA A.,)
SWANN, PATRICIA HITE, and JOHN)
HICKS.)
)
Defendants)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

ANSWER OF PATRICIA HITE TO
CROSS-CLAIM OF JOHN HICKS

Case No.: 2011-CP-02-1375

(ACTION TO CLEAR TITLE)
(Non Jury)

The Defendant, PATRICIA HITE, responding to the Cross-Claim of Defendant, JOHN HICKS, would respectfully show unto this Honorable Court:

1. This Defendant would reallege each and every allegation contained in her Answer and Cross-Claim in this matter.
2. This Defendant denies the allegations of Paragraphs 20 and 21 of Cross-Claim as Defendant, PATRICIA HITE, filed by the Defendant, JOHN HICKS.
3. Upon the information and belief, this Defendant denies the remaining allegations of Answer, Cross-Claim and Counter-Claim filed by the Defendant, JOHN HICKS.

WHEREFORE, the Defendant, PATRICIA HITE, prays for an Order of the Court:

Granting relief requested by the Plaintiff in its Complaint and the relief prayed for by this Defendant in her Answer and Cross-Claim.

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

October 11, 2011



JAMES L. VERENES, Attorney for Patricia Hite
P.O. DRAWER 328
AIKEN, SC 29802
803-649-6281
BAR#: 5703

Patricia Hite

1 A. I wasn't really comfortable with it. I just
2 know that it adjoined our property. I thought I was
3 going to be presently there the duration of my life
4 remaining.

5 Q. Did you ever ask anyone to provide you with a
6 written contract or written document?

7 A. I think I perhaps asked Atlantic Coast upon
8 the initiation being that Jerry and Sandy were
9 unavailable, but I do know that Jerry and I had three
10 conversations prior to them moving about, well, what are
11 you going to do, where are you going to be. But I really
12 didn't want to make it my business because I just
13 considered them friends. I didn't want to be a busy
14 body. I didn't want to have anything to do with their
15 decision-making process. I just do know that if it had
16 become vacant, I wanted to have ownership of it, along
17 with my then said husband, because we didn't want
18 anything to happen to the property essentially.

19 Q. So you wanted to acquire the property because
20 it adjoined yours? I guess y'all would be neighbors?

21 A. Well, actually, my then -- my now ex-husband,
22 then husband, we had an interest in it. Yes.

23 Q. Was it a joint decision upon you and your
24 husband to buy 235 Holder Road?

25 A. I can't say that it was a joint decision. He

Garber Reporting Service
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Southern Reporting, Inc.

Transcript of
Hearing

12/8/2011

Atlantic Coast Properties, Inc. vs. Swann, et al.
2011-CP-02-1375

COPY

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Email: SouthernReporting@sc.rr.com

1 State of South Carolina)
2 County of Aiken)
3 Atlantic Coast Properties,) 2011-CP-02-1375
4 Inc.,)
5 Plaintiff,) Hearing
6 vs.)
7 Jerry E. Swann, Jr.,)
8 Sandra A. Swann, Patricia)
9 Hite, and John Hicks,)
10 Defendants.)
11)
12)

13 The within hearing, taken before Andrea S. Shorb, a
14 notary public in and for the State of South Carolina,
15 commencing at the hour of 10:56 a.m., Thursday, December
16 8, 2011, at the Aiken County Courthouse, 109 Park Avenue
17 SE, Aiken, South Carolina.

18
19
20 Reported by
21 Andrea S. Shorb
22
23
24
25

1 APPEARANCES

3 Honorable M. Anderson Griffith

4 Master-in-Equity

5 Post Office Box 1397

6 Aiken, South Carolina 29802-1397

8 For the Plaintiff: Kathy Ouzts Rushton, Esq.

9 Attorney at Law

10 108 West Butler Avenue

11 Saluda, South Carolina 29138

13 For the Defendant Patricia Hite: James L. Verenes, Esq.

14 Fox & Verenes

15 Post Office Drawer 328

16 Aiken, South Carolina 29802-328

18 For the Defendant John Hicks: James R. Snell, Jr., Esq.

19 Attorney at Law

20 316 S. Lake Drive

21 Lexington, South Carolina 29072

23 Pro Se Defendant: Jerry E. Swann

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1 EXHIBITS

2 (All exhibits were marked prior to the beginning of the
3 hearing, with the exception of Defendant Hick's No. 5 on
page 32, and all exhibits were retained by the Court)

4 Plaintiff's Exhibit No. 1, business records;
15 pages.

5 Defendant Hite's Exhibit No. 1, letter, dated
6 November 4, '03; 1 page.

7 Defendant Hite's Exhibit No. 2, "Release and Quitclaim
8 of Equitable Interest";
1 page.

9 Defendant Hite's Exhibit No. 3, Copy of
cashier's check, dated 11/18/03; 1 page.

10 Defendant Hite's Exhibit No. 4, Copy of check
11 No. 3053; 1 page.

12 Defendant Hite's Exhibit No. 5, Copies of check
13 Nos. 3563 and 3680; 2 pages.

14 Defendant Hite's Exhibit No. 6, Copy of letter,
dated November 4, '03; 1 page.

15 Defendant Hite's Exhibit No. 7, Handwritten note;
16 1 page.

17 Defendant Hicks' Exhibit No. 1, Assignment of Bond for
Title, dated 11/25/09; 2 pages.

18 Defendant Hicks' Exhibit No. 2, "Final Order of
19 of Divorce; 11 pages.

20 Defendant Hicks' Exhibit No. 3, Deposition transcript
of Patricia Hite, dated 8/17/09; 89 pages.

21 Defendant Hicks' Exhibit No. 4, Sealed deposition
22 transcript of Patricia Hite, dated 10/25/11.

23 Defendant Hicks' Exhibit No. 5, "Financial
Declaration," dated 10/26/09; 6 pages.

24

25

P R O C E E D I N G S

THE COURT:

All right. We're here this morning on case Atlantic Coast Properties, Inc. v. Jerry E. Swann, Jr., Sandra A. Swann, Patricia Hite, and John Hicks, Case No. 2011-CP-02-1375. If for the record and for myself as well, if I could have the parties beginning with the plaintiff identify themselves and any witnesses they may have, although I realize we may have some stipulations; and I'll get to that in a minute.

MS. RUSHTON:

May it please the Court. Kathy Rushton for the plaintiff Atlantic Coast Properties, and Roxanne Maffett is here as a business manager and possible witness to testify.

THE COURT:

Thank you. All right. Mr. Swann, I believe you're pro se; is that correct?

MR. SWANN:

Yes, sir.

THE COURT:

And as I understand it, the only witness would be yourself; or is it someone else?

MR. SWANN:

1 That's correct, sir.

2 THE COURT:

3 Okay. All right, Mr. Verenes.

4 MR. VERENES:

5 James Verenes. And I'm here representing Patricia
6 Hite, named defendant, and she will be my only
7 witness.

8 THE COURT:

9 Okay. And Mr. Snell.

10 MR. SNELL:

11 James Snell representing John Hicks; and we'll have
12 one, possibly two witnesses.

13 THE COURT:

14 All right. Now, we had a short pretrial conference
15 attended by the attorneys and Mr. Swann, and there
16 was some discussion about trying to stipulate to
17 some facts; and so the parties were given sometime
18 to review that and get the exhibits marked, and I
19 appreciate everyone participating in that. It will
20 certainly shorten the length of time. And whoever
21 wants to address the Court in regards to any
22 stipulation of facts or what the status is of that,
23 I'll be glad to hear from you.

24 MS. RUSHTON:

25 May it please the Court. The Plaintiff -- I was

1 prepared to call Roxanne Maffett, but we have
2 agreed to stipulate that basically the "Bond for
3 Title" that is of record in the courthouse, as well
4 as attached to the Complaint, is a fair and
5 accurate Bond for Title. There's no dispute about
6 the fact that it was entered into by the Swanns and
7 Atlantic Coast Properties for the terms that are
8 set forth, and it is also stipulated that it has
9 been paid off in full. And Atlantic Coast
10 Properties stands ready to convey its interest in
11 the property to someone, but they're just not sure
12 to whom they should execute the deed. And it is
13 also stipulated that Patricia Hite made all the
14 payments after the Swanns defaulted on the Bond for
15 Title, and that it is also stipulated that Atlantic
16 Coast Properties accepted the monies from Patricia
17 Hite in good faith to apply to this account. And I
18 believe that's all the stipulations. We stipulated
19 to Plaintiff's Exhibit 1, which is basically
20 business records from Atlantic Coast Properties.
21 My client is not -- I am not calling her as a
22 witness. She will be available if either of the
23 other parties want to -- want her to testify.

24 THE COURT:

25 All right. Any objections from anyone in regards

1 to those stipulations as relating the Court?

2 MR. SNELL:

3 I think just two minor, just for clarification. I
4 think -- I think the stipulation as far as the
5 payment history was the payments were physically
6 delivered by Patricia Hite without a stipulation as
7 to the source of funds. And I believe we had an
8 agreement there was not a signed document or
9 assignment or memorandum conveying any -- there's
10 no written memorandum conveying any interest or
11 assignment to Patricia Hite. And we -- on behalf
12 of Defendant Hicks, we've pre-marked four exhibits,
13 which is the assignment from Jerry and Sandra Swann
14 to John Hicks; a Final Order of Divorce between
15 Patricia Hite and John Hite; and then two
16 deposition transcripts of Patricia Hite.

17 THE COURT:

18 And is that the entire transcript, a portion, or --

19 MR. SNELL:

20 Entire, Your Honor.

21 THE COURT:

22 Okay. Is there any stipulation which parts are
23 stipulated to, or just the entire document?

24 MR. VERENES:

25 As to the deposition?

1 THE COURT:

2 Right.

3 MR. VERENES:

4 I mean, only a small portion of it is really
5 relevant to the Court; but, I mean, there's nothing
6 in there that we disagree --

7 THE COURT:

8 Okay.

9 MR. VERENES:

10 -- or have a problem with. But there's really only
11 a few pages that actually reference this property.

12 THE COURT:

13 Okay. All right. Well, let's kind of be
14 particular on these stipulations now, because we're
15 talking about a stipulation on a payment from Mrs.
16 Hite and, as I understand, there's a little bit of
17 a change to that stipulation or --

18 MS. RUSHTON:

19 The only clarification was that Ms. Hite actually
20 wrote the checks, and everyone agrees on that; but
21 there might be some disagreement on where the funds
22 came from.

23 THE COURT:

24 Okay. Is that an accurate --

25 MR. SNELL:

1 Yes, Your Honor.

2 MS. RUSHTON:

3 But she did physically write all the checks and
4 deliver them.

5 MR. VERENES:

6 And we'll present testimony on that issue.

7 THE COURT:

8 Okay. All right. Are there any other facts to be
9 stipulated to other than that in regards to the
10 plaintiff?

11 MS. RUSHTON:

12 The property is in Aiken County.

13 THE COURT:

14 Okay. So, as I understand, basically the plaintiff
15 unless someone -- a defendant wants to call a
16 plaintiff's witness, the plaintiff will not present
17 testimony and we will start with the defendants?
18 Is that procedurally where we're at?

19 MS. RUSHTON:

20 Yes, Your Honor.

21 THE COURT:

22 Okay. Any preference requested by the defendants'
23 attorneys as far as which one will start first --

24 MR. VERENES:

25 We haven't finished the stipulations.

1 THE COURT:

2 Oh, I'm sorry. I thought I asked if there was
3 anything else --

4 MR. VERENES:

5 My apology.

6 THE COURT:

7 Go ahead.

8 MR. VERENES:

9 That we had stipulated to some documents that I
10 have to present. There's Hite's Exhibit 1, a
11 November 4, '03 letter from Atlantic Coast
12 Properties. No. 2, which is an improperly executed
13 Release and Quitclaim of Equitable Interest
14 regarding this Bond for Title, it was signed but
15 was not witnessed correctly; but we do offer that
16 document. We have a copy of a cashier's check in
17 the amount of \$26,267.34, which was the payoff
18 check to Atlantic Coast Properties from Patricia
19 Hite; and a copy of check No. 3053 in the amount of
20 653.90 to Atlantic Coast, dated November 18, '03; a
21 copy of check Nos. 3563 and 3680, payable to
22 Atlantic Coast Properties, each of them for 301.95.
23 And there's a -- the Hite Exhibit No. 7 is not
24 stipulated to. That's the handwritten note that we
25 will -- that we would testify that Mr. Hite wrote

1 that that -- that one's not stipulated to. We'll
2 be presenting testimony on that.

3 THE COURT:

4 All right. Anything else?

5 MR. VERENES:

6 I think that's it, Your Honor.

7 THE COURT:

8 All right. So No. 1 we've got a letter dated
9 November 4th, 2003; No. 2 is the Quitclaim Deed
10 issue on the witness; No. 3 is a copy of the
11 cashier's check; No. 4 is a check for No. 30- -- or
12 3053; 5 is a check 3563; and 6 is check 3680?

13 MR. VERENES:

14 No.

15 THE COURT:

16 Okay.

17 MR. VERENES:

18 The two -- those two checks are one exhibit. Six
19 is actually another copy of the letter, the
20 November 4, '03 letter. It has a different
21 notation written on it.

22 THE COURT:

23 Okay. Is that stipulated to?

24 MS. RUSHTON:

25 Yes, Your Honor, for the plaintiff.

1 THE COURT:

2 Okay.

3 MR. SNELL:

4 Yes, Your Honor.

5 THE COURT:

6 All right. Mr. Swann, do you agree with that?

7 MR. SWANN:

8 Yes, sir.

9 THE COURT:

10 All right. So I'm going to add this No. 7 is not
11 stipulated to in that regard.

12 MR. VERENES:

13 So as I understand it from the stipulations, we're
14 not going to have to go through the payment history
15 and that testimony of the checks written to
16 Atlantic Coast and all that.

17 MR. SNELL:

18 I think as I -- as I understand it, you're -- you
19 provided the -- agrees to the checks that you've
20 provided and stipulate to those, and I think we
21 agreed that the -- the date that the Swanns
22 defaulted that the subsequent payments, I think,
23 beginning with the checks you produced were
24 presented by Patricia Hite.

25 MR. VERENES:

1 Like we said, time consuming I'm just trying to
2 make sure that we stipulate that she made those
3 payments.

4 MR. SNELL:

5 I think that's -- I think that's -- I think that's
6 correct. My understanding --

7 MR. VERENES:

8 Including the payoff check for 26,000?

9 MR. SNELL:

10 That was a check -- right. That was a -- I think
11 we -- we agreed that she physically delivered and
12 -- and not stipulating to the source, but that she
13 got a check that she has and she said she delivered
14 and they said that they got from her. That's --

15 MR. VERENES:

16 But she made that payment not -- certainly not Mr.
17 Hicks.

18 MR. SNELL:

19 Correct.

20 MR. VERENES:

21 Okay.

22 MR. SNELL:

23 Correct.

24 THE COURT:

25 All right. Stipulate to the payment history and

1 Ms. Hite and that these checks that they have
2 stipulated to were signed and delivered by Ms.
3 Hite? Is that what the stipulation is?

4 MR. SNELL:

5 Yes, Your Honor.

6 THE COURT:

7 Okay.

8 MS. RUSHTON:

9 Yes, Your Honor. The only issue is the source of
10 funds.

11 THE COURT:

12 Okay. All right. Is there anything else?

13 MR. SNELL:

14 Nothing from Defendant Hicks, Your Honor.

15 THE COURT:

16 Now, I assume the parties are in agreement we're
17 going to get the stipulations transcribed, and I'm
18 going to have a copy of that when I'm reviewing.

19 MS. RUSHTON:

20 Everyone's looking to me.

21 MR. VERENES:

22 Yes, sir. You mean -- you mean to have the court
23 reporter --

24 THE COURT:

25 Go ahead and transcribe.

1 MR. VERENES:

2 Yes.

3 THE COURT:

4 Okay.

5 MR. VERENES:

6 Yes. I didn't know if you meant for us to have it
7 typed or what, but --

8 THE COURT:

9 No.

10 MR. VERENES:

11 But, yes, to have her --

12 THE COURT:

13 And, you know, a lot of them I have they don't want
14 the record transcribed; but given what we're doing
15 here, I'm just telling you in this case I'm going
16 to need it.

17 MR. VERENES:

18 For that -- that part of it certainly.

19 THE COURT:

20 Yes.

21 MR. VERENES:

22 Certainly.

23 THE COURT:

24 And you can limit it to the stipulation portion of
25 it --

1 MR. VERENES:

2 Yes.

3 THE COURT:

4 -- and see if we need anything else.

5 MR. VERENES:

6 Yes. That's much better than one of us having to
7 put it on paper.

8 THE COURT:

9 All right. Now, do we have any other stipulations?

10 All right. Having heard none in regards to that,
11 do you have any preference to parties as to which
12 defendants? And I would assume we're talking about
13 Mr. Hicks or Mrs. Hite proceeding first. Anyone
14 have any preference; and if not, then I'll just go
15 by the way they're listed.

16 MR. VERENES:

17 It doesn't matter to me.

18 THE COURT:

19 All right. Well, then, I'll say, Mr. Verenes,
20 we've got Ms. Hite before Hicks in the Pleadings,
21 so let's go that testimony.

22 MR. VERENES:

23 All right. Then we call Patricia Hite.

24 (Witness sworn)

25 THE COURT:

1 Ma'am, please have a seat and state your full name
2 for the court reporter, please.

3 MS. HITE:

4 Patricia Ann Holder Hite.

5 THE COURT:

6 Thank you, ma'am.

7 EXAMINATION

8 BY MR. VERENES:

9 Q. Now, Ms. Hite, when I ask you questions and you
10 answer, please be sure to answer verbally. Don't
11 do like if we're in a conversation and nod your
12 head or say uh-huh and huh-uh.

13 A. I will try.

14 Q. Okay. And be sure to speak up loud enough so
15 everyone can hear what you say and especially the
16 young lady seated in front of you --

17 A. Yes, sir.

18 Q. -- and the judge can -- we can hear what you say.
19 Okay?

20 A. Thank you.

21 Q. All right. Are you a resident of Aiken County?

22 A. Yes, sir. I am.

23 Q. Okay. And, now, you know the property that we're
24 talking about here, these three lots in
25 Sparkleberry Hills?

1 A. Yes, sir. I do.

2 Q. All right. Now, and we've stipulated that you made
3 payments to Atlantic Coast Properties?

4 A. Yes, sir. I did.

5 Q. Is that right?

6 A. Yes, sir.

7 Q. And then in -- in '06 you paid off the balance and
8 you -- in other words, you made monthly payments,
9 and then you -- but in '06 you paid it off; is that
10 correct?

11 A. That is correct.

12 Q. Okay. And where did the money for that payoff come
13 from, the \$26,000?

14 A. My private checking account.

15 Q. All right. And where did that -- where did it get
16 -- where did it come from to get into your account?

17 A. A loan that I applied for with Safe Federal Credit
18 Union.

19 Q. With what?

20 A. A loan that I applied for at Safe Federal Credit
21 Union.

22 Q. Okay. And was loan secured?

23 A. Yes, sir.

24 Q. By what? What property was it --

25 A. 261 Holder Road.

1 Q. And that was what?

2 A. My residence at the time.

3 Q. And who owed that?

4 A. My now ex-husband and I.

5 Q. All right. So the two of you mortgaged your home?

6 A. Yes, sir.

7 Q. And took out a loan?

8 A. Yes, sir.

9 Q. Well, how much was borrowed?

10 A. \$105,000.

11 Q. So and you paid Atlantic Coast 26,000?

12 A. Yes, sir.

13 Q. What were the other funds for?

14 A. I initially wanted to borrow \$75,000, but my now
15 ex-husband coached me into an additional 30,000 for
16 a new truck. But I took the funds from what I was
17 qualified for to payoff an existing -- pre-existing
18 rental, 151 Holder Road and 235 Holder Road.

19 Q. The 235 is --

20 A. Was Atlantic Coast.

21 Q. That's this property?

22 A. Yes, sir.

23 Q. All right. So -- so that money paid off a loan on
24 some other property that we're not here about?

25 A. Yes, sir.

1 Q. A truck that we're not here about?

2 A. Yes, sir.

3 Q. And the three lots that we are here about --

4 A. Yes, sir

5 Q. -- is that right?

6 A. Yes, sir. That is correct.

7 Q. Okay. All right. Now, Mr. and Mrs. Swann -- Mr.
8 and Mrs. Swann were the ones that had the Bond for
9 Title; is that correct?

10 A. That is correct.

11 Q. Did you have discussions with them about taking
12 over this loan and buying the property?

13 A. Yes. They were aware, Jerry more so, I think, than
14 Sandy. I always spoke with Jerry.

15 Q. All right. And was he aware and do you believe he
16 was aware that you were paying Atlantic Coast?

17 A. He was fully aware.

18 Q. Okay. Who did you deal with at Atlantic Coast?

19 A. Ms. Roxanne Maffett.

20 Q. All right. The lady that's seated right here?

21 A. Yes, sir.

22 Q. Okay. Have you been -- had you asked Atlantic
23 Coast for a deed before today? Have you asked --
24 investigated that before this?

25 A. Yes, sir.

1 Q. Okay.

2 A. That the procedure was that once the lien was
3 satisfied, a deed would be acquired but it had to
4 go through the proper channels and that -- I don't
5 know what contractually they had with Jerry and
6 Sandy, but there was a Bond to Title to be
7 transferred and that properly signed and notarized,
8 and then I would acquire the deed because of the
9 satisfaction on that lien.

10 Q. Okay. Did you and the Swanns ever have a contract
11 between yourselves in writing?

12 A. No, sir. We did not.

13 Q. All right. Do you believe in your mind that you
14 and the Swanns had a contract that you agreed to
15 verbally?

16 A. Verbally, yes, sir. We did.

17 Q. And what was the terms? What was that agreement?

18 A. That when I assumed their payments that I -- and
19 satisfied the lien, that I would own the property.

20 Q. All right. Was there ever a time when all this was
21 going on that John Hicks was considering buying the
22 property?

23 A. I believe that was before I became involved.

24 Q. Well, that's what I mean.

25 A. Yes, sir.

1 Q. Your understanding there was such a time?

2 A. Yes, sir.

3 Q. Okay. Now, I'm going to show you what's been
4 marked as Hite Exhibit No. 7 --

5 A. Yes, sir. Thank you.

6 Q. Okay. Now, before -- don't read it, but can you
7 tell me what that who -- what that note is, not the
8 contents of the note, but where did -- where did
9 you first see it?

10 A. I found this in my house on my bar.

11 Q. Okay. And who wrote that note?

12 A. My now ex-husband, John Hite.

13 Q. And how do you -- how do you -- how are you
14 confident that that's who wrote it?

15 A. Because this is his handwriting. It was found in
16 my house, and it was by him --

17 Q. Okay.

18 A. -- in regard to this --

19 Q. Is it concerning this property?

20 A. Yes. It's in regard to this issue.

21 Q. Okay.

22 MR. VERENES:

23 Your Honor, I would offer this as Hite, I guess,
24 Hite's Exhibit No. 7.

25 THE COURT:

1 Objections?

2 MS. RUSHTON:

3 No objections, Your Honor.

4 MR. SNELL:

5 No objections, Your Honor.

6 MR. SWANN:

7 No, sir.

8 THE COURT:

9 All right. Without objection No. 7.

10 EXAMINATION BY MR. VERENES RESUMES:

11 Q. Now if you -- now if you would read that note.

12 A. "John Hicks has pulled out on Jerry's property.

13 You need to get started as soon as possible
14 property payment and due for October and November.

15 I now have to pay John \$450.00 for appraisal and
16 bank fees on loan."

17 Q. Okay. And is that referring to the Swann property?

18 A. Yes, sir. It is.

19 Q. Okay. Are you here -- are you here asking this
20 court to require the deed be transferred into your
21 name?

22 A. Yes, sir.

23 Q. And why do you think you should have title to the
24 property?

25 A. Because I did what I said I would do. I satisfied

1 the lien, and now I expect them to honor and do
2 what they said they would do.

3 Q. They who?

4 A. Everyone concerned.

5 Q. Who is --

6 A. Especially Jerry.

7 Q. Okay. And what was it that Jerry is supposed to
8 do?

9 A. He was supposed to bond the title back to Atlantic
10 Coast and therefore I would require -- I mean,
11 acquire the deed.

12 Q. Okay. And was there ever a time that in your mind
13 that the title would be in yours and your now ex-
14 husband's name?

15 A. I think that's something I presumed while I was
16 still married, yes.

17 Q. Okay.

18 A. Not knowing anything else.

19 Q. At the time all this started, y'all -- y'all were
20 not in Family Court?

21 A. You're correct.

22 Q. Okay. I mean, there was not -- there were no
23 divorce proceedings going on at that time, were
24 there?

25 A. Not to my knowledge.

1 Q. All right. Well, you certainly weren't -- were not
2 in court and --

3 A. No, sir.

4 Q. -- and -- and had not retained attorneys or
5 anything --

6 A. No, sir.

7 Q. Okay. During the divorce, did this property come
8 up?

9 A. Pardon.

10 Q. During the divorce, did the -- did the existence of
11 this property come up?

12 A. Yes, sir. It did.

13 Q. Did your husband express that he had an interest or
14 not in this property?

15 A. Not.

16 Q. Did he say he did not have an interest?

17 A. Did not.

18 Q. Okay. I believe he testified that in his
19 deposition, didn't he?

20 A. Yes, sir. He did.

21 Q. Is the property listed on anyone's Financial
22 Declaration for the divorce?

23 A. Not to my knowledge.

24 Q. Okay.

25 MR. VERENES:

1 That's all I have, Your Honor.

2 THE COURT:

3 Okay.

4 BY MR. VERENES:

5 (To Ms. Hite) Now if you would answer any questions
6 of either Ms. Rushton, Mr. Snell, or Mr. Swann.

7 THE COURT:

8 One second.

9 MR. VERENES:

10 Or the Court.

11 THE COURT:

12 Mr. Snell.

13 MR. SNELL:

14 Thank you so much, Your Honor.

15 EXAMINATION BY MR. SNELL:

16 Q. Good morning again, Ms. Hite. My name is James
17 Snell. I took your deposition a little bit earlier
18 at your lawyer's office.

19 A. Yes, sir.

20 Q. And I just have a few questions just to kind of
21 confirm some of the testimony that you provided at
22 the deposition and also provided to the Court.
23 First of all, when you said you made the agreement
24 to payoff this property, isn't it true at that time
25 you didn't know what the balance was?

1 A. At which time?

2 Q. At the time when you said you had the agreement to
3 payoff the property. You testified at your
4 deposition that you didn't know what the balance on
5 that property was; you didn't know what the payoff
6 was; is that correct?

7 A. I -- I knew how much the payoff was when I went to
8 acquire a loan.

9 Q. Now, what year did you acquire the loan?

10 A. I believe it was '06, might have been latter '05 or
11 '06.

12 Q. Now, I think the cashiers check introduced by your
13 -- by your lawyer for that payoff was dated August
14 2006. Does that sound about right?

15 A. It sounds about right.

16 Q. And then we -- we had some checks written by you in
17 2003. Would that have been approximately the time
18 that you started -- testified you made the
19 agreement to payoff the property?

20 A. I believe that to be true. Yes, I do.

21 Q. Now, back in 2003, did you know what the payoff of
22 the property was?

23 A. I believe roughly I did, yes.

24 Q. Okay. Now, at your deposition, you testified that
25 you didn't. What was the -- what was the payoff in

1 2003?

2 A. Well, I had -- I had a figure, but I didn't know
3 the exact. No, I didn't.

4 Q. Okay. Now, I believe you testified at your
5 deposition that you had -- had made some -- well,
6 first of all, to the best of your knowledge, that
7 Mr. Hicks had paid, I think, you testified to the
8 2008 property taxes; is that correct?

9 A. Pardon.

10 Q. You testified at your deposition that Mr. Hicks had
11 paid the 2008 property taxes on this property.

12 A. He paid some.

13 Q. And did he pay -- did you pay any portion of the
14 2008 property taxes?

15 A. I believe I did.

16 Q. Okay. So do you -- did you talk to Mr. Hicks and
17 coordinate paying the taxes?

18 A. I've had no communication with anyone on that
19 property.

20 Q. Okay. So tell -- I guess, tell me what portion or
21 what percentage of the -- those property taxes did
22 you pay.

23 A. What was not paid, what was left unpaid.

24 Q. Okay. Did you get copies of any statement from the
25 assessor's office or --

1 A. All I have are receipts.

2 Q. Okay. So when you testified that -- about the '08
3 property taxes at your deposition, your testimony's
4 now that you paid some portion and Mr. Hicks paid a
5 portion?

6 A. I believe that, yes.

7 Q. All right. Did Mr. Hicks pay a portion in any
8 other years of property taxes?

9 A. Not to my knowledge.

10 Q. All right. Now, at this time the property that
11 we're talking about, this 235 Holder Road, that's
12 right next to the property that you and your
13 husband lived at when y'all were married at 261; is
14 that correct?

15 A. Yes. It's in the front.

16 Q. Okay. And at this point, I guess, at your
17 deposition you testified that you hadn't been using
18 the property now for anything, hadn't started using
19 it for any purpose?

20 A. I, per se, have not used it for anything other than
21 to maintain it.

22 Q. Now, when you went back through your Family Court
23 process and you had to provide certification to the
24 Family Court as to what your assets were and what
25 property you owned, is there any reason why you

1 didn't list this property on the Family Court
2 Financial Declaration?

3 A. I didn't own it.

4 Q. Did you -- at the time did you believe you had an
5 interest in it?

6 A. Definitely.

7 Q. Okay. So when you believe that you had a -- when
8 you believed that you had interest in this property
9 back in 2009 when you completed the Financial
10 Declaration -- and I'm going to show you a document
11 that's not yet marked, okay, and ask if you could
12 take a look at that and look through all the pages
13 and tell me if that's your signature on the back.

14 A. That appears to be my signature.

15 Q. Okay. And that's -- there's a signature where it
16 looks like a notary swore you in and took that as
17 your sworn statement; is that correct?

18 A. It appears to be, yes.

19 Q. And drawing your attention on page No. 4, there are
20 two boxes; one says all marital property and one
21 that says any non-marital property. I guess it's
22 true that -- that you left all that blank.

23 A. Correct.

24 Q. And either box put 235 Holder Road or any interest;
25 is that correct?

1 A. Appears to be, yes.

2 MR. SNELL:

3 Your Honor, at this time I'd like to offer this as
4 Defendant's 5, Defendant Hicks 5.

5 THE COURT:

6 Any objections?

7 MR. VERENES:

8 No, Your Honor.

9 MS. RUSHTON:

10 No, sir.

11 MR. SWANN:

12 No, sir.

13 THE COURT:

14 With no objection, so admitted Hick's No. 5. And
15 what -- can you identify what that document is?

16 MR. SNELL:

17 Oh, I -- thank you. Thank you, Your Honor. This
18 is a -- it's a copy of the Financial Declaration,
19 dated October 26, 2009, signed by Patricia Hite in
20 -- in an Aiken County Family Court, Case 08-DR-02-
21 205.

22 THE COURT:

23 Thank you.

24 EXAMINATION BY MR. SNELL RESUMES:

25 Q. I now show you a document that's been marked as

1 Defendant's 2.

2 MR. SNELL: And, Your Honor, this is the
3 divorce decree from the Final Order which has
4 been previously admitted by stipulation.

5 THE COURT: Do we have that as just
6 Defendant's 2 or the Hicks Defendant?

7 MR. SNELL: It will be Defendant Hicks 2.

8 THE COURT: Okay, thanks. Go ahead.

9 EXAMINATION BY MR. SNELL RESUMES:

10 Q. And, ma'am, I'll just show you a copy of the Final
11 Order from your divorce. We stipulated that is the
12 Final Order of your divorce from -- from John Hite,
13 Aiken County Family Court case. And would you
14 agree with me that no where in that Final Order
15 does it reference anything about 235 Holder Road?

16 A. Just scanning through it, no; it doesn't appear to.

17 Q. Thank you so much. Now, during this time, I think,
18 you testified in your deposition it'd been a number
19 of years since you had any correspondence or
20 communications with Jerry Swann or Sandra Swann; is
21 that correct?

22 A. Correct.

23 Q. And, I think, you testified it might have been, I
24 guess -- I guess, a number of years. Would you say
25 it's been at least eight or nine years?

1 A. No. It's probably been about two years, max.

2 Q. Okay. And which of the Swanns did you speak to
3 last?

4 A. I always speak with Jerry.

5 Q. And at any point in -- you testified that you first
6 discovered or found out about the assignment from
7 Jerry and Sandra Swann to John Hicks back in 2009?

8 A. One on one. Yes, I did.

9 Q. And you also testified that -- that -- that at no
10 point after you discovered that in 2009 did you go
11 back to Atlantic Coast and ask for your money back?

12 A. I don't ever recall having that conversation.

13 Q. And you -- I think, you told me at your deposition
14 that you did not, ever went back to Atlantic Coast
15 and said --

16 A. Correct.

17 Q. -- you know, I paid you all this money and give it
18 back.

19 A. Correct. I never.

20 Q. Is your deal with Atlantic Coast, or is your deal
21 with Jerry Swann and Sandra Swann?

22 A. I never really gave it much thought. I would -- I
23 would have presumed that it was between Jerry and
24 I, being he was the one in distress.

25 Q. But you made all your payments to Atlantic Coast?

1 A. Correct, through our verbal agreement.

2 Q. And didn't get anything in writing from Atlantic
3 Coast or Jerry Swann or Sandra Swann?

4 A. No.

5 Q. And, Ms. Hicks, one -- one final. And at your
6 deposition you testified that you had no knowledge
7 one way or the other about any payments between Mr.
8 Hicks and of the parties or Mr. Hite and any of the
9 parties in regard to this transactions; is that
10 correct?

11 A. I had no knowledge of what was going on other than
12 what Jerry and I discussed.

13 Q. All right. No other questions. Thank you so much.

14 THE COURT: Mr. Swann, any questions?

15 MR. SWANN: No, sir.

16 THE COURT: Ms. Rushton, on behalf of the
17 Plaintiff?

18 MS. RUSHTON: No questions, Your Honor.

19 THE COURT: Okay. Anything on re-direct?

20 MR. VERENES: No, Your Honor.

21 THE COURT: Ma'am, you can step down.

22 MR. VERENES: Your Honor, I would request a
23 break because I'm getting overheated and --

24 THE COURT: Okay. I'll ask them, but --
25 apparently, we've got to make a call into the

1 maintenance to come by and adjust the
2 temperature. But I'll ask that, so maybe
3 we'll have something -- let's take a five
4 minutes, then.

5 (Off the record from 11:34
6 a.m. until 11:44 a.m.)

7 THE COURT: All right. Mr. Verenes, any other
8 witnesses?

9 MR. VERENES: Yeah. I need to call Roxanne
10 Maffett briefly --

11 THE COURT: Okay.

12 MR. VERENES: -- to authenticate one of the
13 exhibits that we put in.

14 THE COURT: All right. Ma'am, please come
15 forward.

16 (Witness sworn)

17 THE COURT: Have a seat and state your full
18 name for the court reporter, please.

19 MS. MAFFETT: My name is Roxanne Williams
20 Maffett, and I am the business manager for
21 Atlantic Coast Properties.

22 THE COURT: Spell that last name for me,
23 please.

24 MS. MAFFETT: M-a-f-f, as in Frank, e-t-t.

25 THE COURT: Thank you, ma'am.

1 EXAMINATION BY MR. VERENES:

2 Q. Ms. Maffett, you said that you worked with Atlantic
3 Coast Properties?

4 A. Yes, I do.

5 Q. The whole -- the time frame that we've been
6 discussing here from '03 until now, you were
7 employed?

8 A. Yes.

9 Q. I mean, you were -- you were there when all this
10 started with the Swanns, and you've been involved
11 throughout?

12 A. That is correct.

13 Q. Okay. I'm going to show you what's been marked as
14 Defendant Hite Exhibits 1 and 6, and ask if you
15 recognize these two documents without -- don't read
16 the content until we --

17 A. Yes, sir. I do.

18 Q. Okay. And is that something -- did those documents
19 come from your file at Atlantic Coast?

20 A. That is correct. When I -- when we have accounts
21 -- we have over 900 accounts that I help manage.
22 When I get telephone calls from customers, I make
23 notations in the file.

24 Q. Okay. And is this -- are there notations on these
25 two letters?

1 A. Yes, sir.

2 Q. Okay. The letters are addressed to who?

3 A. They were letters that were mailed out to Mr. and
4 Mrs. Swann.

5 Q. Concerning their loan?

6 A. Their payments. Yes, sir.

7 Q. Okay. Does it -- does it state that they were
8 delinquent?

9 A. Yes, sir. They were.

10 Q. Okay. And there's a notation in handwriting on
11 those documents?

12 A. That is correct. I recall having a conversation
13 from Mr. Swann one day. He told me that Patricia
14 Hite would be taking over the payments on this land
15 and account.

16 MR. VERENES: All right. Your Honor, we would
17 -- we're offering -- I think we stipulated to
18 the two letters, but was not stipulated to the
19 handwritten notation on there.

20 MR. SNELL: Can I take a look at --

21 MR. VERENES: Oh, I'm sorry. Yes.

22 MR. SNELL: No, no.

23 MR. VERENES: We would offer the 1 and -- 1
24 and 6, Your Honor.

25 THE COURT: And parties stipulating to, but

1 with the notations we're talking about now,
2 any objections?

3 MR. SNELL: No objections.

4 MS. RUSHTON: No, Your Honor.

5 MR. SWANN: No, sir.

6 THE COURT: All right. And those are
7 notations that this witness made based on a
8 conversation with Mr. Swann? Is that what I'm
9 understanding the testimony?

10 MR. VERENES: That's -- that's -- well, I'm
11 not trying to put words in her mouth, but
12 that's what I understand.

13 THE COURT: Ma'am, is that correct?

14 MS. MAFFETT: That is correct.

15 THE COURT: Okay. I just wanted to make sure
16 who made the notations. Okay, thank you.
17 With no objection, so admitted.

18 MR. VERENES: All right.

19 EXAMINATION BY MR. VERENES:

20 Q. And did Ms. Hite make all the payments after that
21 point?

22 A. She did.

23 Q. Okay. And no one else?

24 A. No one else.

25 MR. VERENES: All right. That's all I have of

1 this witness, Your Honor.

2 THE COURT: Thank you.

3 MR. VERENES: And I have no other questions --

4 THE COURT: All right.

5 MR. VERENES: -- of this witness, Your Honor.

6 THE COURT: Mr. Snell, any questions for this
7 witness?

8 MR. SNELL: Just -- just very briefly.

9 EXAMINATION BY MR. SNELL:

10 Q. And -- and, Ma'am, just -- just for our benefit.
11 Do you have any, I guess, relationship with any
12 party in this case other than the single
13 transaction involved in this real estate?

14 A. No, I do not.

15 Q. Okay. Are you Facebook friends with any party or
16 any kind of social network or birthday parties or
17 go out or any kind of socialization at all?

18 A. No. I do not Facebook.

19 Q. Do you have any kind of social interaction with any
20 of the parties?

21 A. No.

22 Q. Okay. No other questions. Thank you so much.

23 THE COURT: Ma'am, just hold your seat one
24 second.

25 MS. MAFFETT: Okay.

1 THE COURT: Mr. Swann, any questions?

2 MR. SWANN: Good, sir. No, sir.

3 THE COURT: Okay.

4 MS. RUSHTON: No, Your Honor.

5 THE COURT: None from the plaintiff, okay.

6 Ma'am, you may, just had to check.

7 MS. MAFFETT: Okay.

8 THE COURT: All right. Mr. Verenes, any other
9 witnesses?

10 MR. VERENES: No, Your Honor.

11 THE COURT: All right. Mr. Snell?

12 MR. SNELL: Thank you so much, Your Honor.

13 And, Your Honor, if I may just as a point of
14 order, because doing a trial like this, would
15 in between the parties be a directed verdict
16 stage; or would that be delayed until the end?

17 THE COURT: Well, you know, normally you may
18 make at the time of the Plaintiff's
19 presentation or you have counterclaim against
20 the other parties. But considering what we're
21 got with stipulations, why don't we hold those
22 motions until the end.

23 MR. SNELL: Thank you.

24 THE COURT: Unless you have some reason not to
25 do that, I would say procedurally and given

1 where we're at right now, that's probably the
2 best idea. And so we'll -- we'll save those
3 until the end.

4 MR. SNELL Thank you so much. Your Honor, at
5 this point I'd like to call Jerry Swann.

6 THE COURT: Okay. Mr. Swann, if you'll come
7 forward.

8 (Witness sworn)

9 THE COURT: Please have a seat and state your
10 name for the court reporter.

11 MR. SWANN: Jerry Eugene Swann, Jr.

12 THE COURT: All right. Mr. Snell, go ahead.

13 MR. SNELL: Okay. Thank you so much.

14 EXAMINATION BY MR. SNELL:

15 Q. First of all, Mr. Swann, are you the same fellow
16 that entered into the contract and Bond for Title
17 with Atlantic Coast Properties in regard to the 235
18 Holder Road property?

19 A. Yes, sir.

20 Q. Okay. And you entered in that agreement with your
21 wife?

22 A. Yes, sir.

23 Q. And, I guess, can you tell the court where she is
24 today.

25 A. She has had three spinal surgeries in the last two

1 years, so she can't travel; and that's why she's
2 not here.

3 Q. How far? How long does it take you to get up here?

4 A. It's four hours.

5 Q. Okay. I guess, can you, first of all, describe the
6 property for the court, just kind of where is it
7 and what kind of property is it.

8 A. It's frontage property on Holder Road, only half a
9 mile in off of whatever highway that is, Exit 33.

10 Q. And what was your purpose of buying that property?

11 A. We lived in Florida and we wanted to get to a
12 better area, so I transferred my job from in
13 Florida and moved to Batesburg; and I worked in
14 Columbus -- Columbia.

15 Q. Were you -- you were living on the property?

16 A. Yes, sir. At one time, yes.

17 Q. I guess, what -- from what months and year? What
18 was the time range that you lived on the property
19 approximately?

20 A. I'm going to say '99 we probably moved there until
21 -- it was either '99 or 2000 to 2003. We were
22 there for three years.

23 Q. Okay. When you -- to the best of your knowledge
24 when you moved out, how -- what -- what kind of
25 standing was your account -- your account with

1 Atlantic Coast?

2 A. At that time when we moved, it should have been
3 current.

4 Q. After you moved out, did you make payments?

5 A. No, sir.

6 Q. Okay. What was the -- what was your understanding
7 or -- or the arrangement about the payments that
8 would be made after that time?

9 A. They would be made by the Hites.

10 Q. All right. I guess, tell us -- tell us what kind
11 of agreement you had and when you had it.

12 A. It was just pretty much a verbal agreement that
13 they would make the payments, and I moved to
14 Georgia.

15 Q. Okay. Did you -- did you make that agreement with
16 Patricia Hite?

17 A. That would be both in my house.

18 Q. And the other Hite was John Hite?

19 A. Yes, sir.

20 Q. And that's the fellow seated back row?

21 A. Yes, sir.

22 Q. Okay. And what exactly -- I guess, what was -- I
23 guess, can you -- what was the full scope of that
24 agreement?

25 A. I guess, that they would make the payments until

1 they paid the property off; and then, I guess, in
2 return and I would sign the deed. It wasn't -- it
3 was kind of a -- it was probably pretty
4 unprofessional on my side. I probably shouldn't
5 have done that.

6 Q. Well, did they make payments?

7 A. Yes, sir.

8 Q. Okay. What kind of payments did they make?

9 A. Mortgage payments.

10 Q. And did they pay the property off?

11 A. Yes, sir, to my knowledge.

12 Q. Okay. Now, did you ever have any written -- well,
13 first of all, was there a deal to -- to give the
14 property to Patricia Hite?

15 A. No, sir.

16 Q. Okay. Was there ever anything in writing to give
17 the -- signed by you and your wife, to the best of
18 your knowledge, to give it to Patricia Hite?

19 A. Not to my knowledge. Like I said, I'm not very law
20 literate; so if paperwork would come, to tell you
21 the truth, we just -- we wanted to take care of it.
22 If we did it right, you know, terrific. But I --
23 you know, we probably did the wrong things, you
24 know. I don't know.

25 Q. All right. Now, there's a -- okay, Mr. Swann, I'm

1 going to show you a document that's marked
2 Defendant's -- Defendant Hite Exhibit 2, which is
3 titled a "Release and Quitclaim of Equitable
4 Interest." So I want to show you that and ask if
5 you could tell the court the story about that
6 document.

7 A. I can't -- I can't remember how I got it, but it
8 came in the mail. And I -- I didn't have any
9 guidance on it. I might have talked to somebody
10 from Atlantic Coast. We were in Georgia and
11 they're in South Carolina, so did the -- I didn't
12 know if we were taking care of our responsibilities
13 to the property to John or Patricia or together,
14 and I -- I guess, we did it -- we did it wrong.

15 Q. Okay. Did anyone pay you anything in exchange for
16 that document?

17 A. In exchange for this document?

18 Q. Yes, sir.

19 A. No, sir.

20 Q. And, Mr. Swann, I'm going to hand you a document
21 marked Defendant Hicks No. 1, which is the
22 assignment of Bond for Title, and ask you to take a
23 look at that. And that's a document that bears
24 your signature and your wife's signature?

25 A. Yes, sir.

1 Q. And that's a document what -- what's the date of
2 that document?

3 A. November 2009, November 25th, 2009.

4 Q. And is your understanding that document assigned
5 and transferred your interest in the property to
6 John Hicks?

7 A. Yes, sir.

8 Q. Okay. Now, why did you -- why did you do that?

9 A. That when I -- this when I had communicated with
10 one of the Hites, and I had directions on actually
11 how to fill this out and what I needed to do with
12 it to properly take care of the property; and
13 that's why this one's signed.

14 Q. Okay. Now, that transfers your interest to John
15 Hicks?

16 A. Yes, sir.

17 Q. Okay. Now, did anyone -- did either of the Hite --
18 either Hites or Mr. Hicks ever give you any money?

19 A. Yes, sir.

20 Q. Okay. Tell the court, I guess, who gave you money
21 and when and how much.

22 A. That would be John Hite. How he got the money, I
23 have no clue, \$18,000.

24 Q. Okay.

25 A. This is when I moved back in 2002 or 2003. That

1 was to help me move.

2 Q. And was that in cash?

3 A. Yes, sir.

4 Q. And did that assignment when you gave the money to
5 -- when you transferred the property to Mr. Hicks,
6 was that in exchange for that -- that debt or that
7 payment?

8 A. Yes, sir.

9 Q. Now, why did you assign the property to Mr. Hicks
10 rather than the Hites?

11 A. That was -- I thought that was requested by the
12 Hites. They didn't communicate with me very much.
13 So, like I said, in the last three years, I haven't
14 had a phone in my house; so the only way to get
15 hold of me would be my cell phone, and I haven't
16 communicated very much with either parties.

17 Q. Now, at this time is it your understanding the
18 property ought to be in the name of John -- John
19 Hicks?

20 A. That's what was requested from the Hites.

21 Q. Okay. And is this the only document you signed --

22 A. Yes, sir.

23 Q. -- or that your wife signed transferring your
24 interest or giving it to anyone?

25 A. Yes, sir.

1 Q. I have no other questions. Answer anything that
2 one of these parties or the Judge may have.

3 EXAMINATION BY MR. VERENES:

4 Q. Mr. Swann --

5 A. Yes, sir.

6 Q. -- when did you receive the \$18,000?

7 A. It would have been August, September either the
8 year 2002 or 2003, right when I moved. It should
9 have been right when the Hites started making
10 payments on the property.

11 Q. Okay. And you said that was in cash?

12 A. Yes, sir.

13 Q. Do you mean by that dollar bills or a check?

14 A. Dollars bills, actually, sir. I went straight to
15 the bank.

16 Q. I mean, so a hundred dollar bill, whatever, but
17 money not -- not a -- not a check of any kind?

18 A. Cash money.

19 Q. Okay. Did -- did you give anyone a receipt for
20 that money?

21 A. No, sir.

22 Q. Okay.

23 A. I did not.

24 Q. And who handed you the money?

25 A. John Hite, sir.

1 Q. John Hite?

2 A. Yes, sir.

3 Q. Okay. And did you know that Patricia Hite was
4 still making payments to Atlantic Coast during that
5 time?

6 A. Actually, Patricia Hite or John Hite had not made a
7 payment when this money was handed to me.

8 Q. Okay. Did you know that they -- that payments were
9 made to Atlantic Coast after that?

10 A. Yes, sir, except for when they were delinquent and
11 then --

12 Q. Well, but, I mean, you were aware that Atlantic
13 Coast was still receiving payments?

14 A. Oh, yes, sir.

15 Q. All right. Did you -- what did you think the
16 \$18,000 represented?

17 A. I mean, we -- we're all friends, and we were in the
18 Air Force together as friends helping friends. I
19 mean -- I mean, if I had \$18,000 and you needed it,
20 I would loan it to you to help you do what you
21 needed to do; and that's what it's all about.

22 Q. So this was a loan to you?

23 A. I don't know how you would look at it.

24 Q. Well --

25 A. Yes. I guess, you could say --

1 Q. -- I'm asking whether --

2 A. -- it was, yes.

3 Q. -- it was a loan or a purchase price.

4 A. Yes, sir. I'd say a loan.

5 Q. A loan? Sir? A loan?

6 A. A loan.

7 Q. Okay. All right. Now, the assignment document
8 that you signed, the -- the -- that you signed in
9 November of '09 --

10 A. November 25th, '09?

11 Q. Yes, sir.

12 A. Yes, sir.

13 Q. You said that was done at the direction of the
14 Hites, the term you used. Who told you how to sign
15 and -- or talked to you about signing that?

16 A. I received instructions, and I can't remember who
17 the instructions were from; but it told me exactly
18 where to sign and what to do.

19 Q. Okay. Well, do you -- do you know who sent you the
20 instructions?

21 A. Had to be either John Hite or John Hicks.

22 Q. Okay. So either -- one of the two?

23 A. Yes, sir.

24 Q. Either John Hite or John Hicks sent that? It
25 wasn't Patricia Hite?

1 A. I can't remember if her name was on any of the
2 paperwork or not. I don't --

3 Q. Okay. All right.

4 A. Like I said, I haven't talked to her in awhile. I
5 haven't had a phone.

6 Q. All right. Now, I'm going to show you, let's see
7 -- do you recognize this document?

8 A. Yes, sir.

9 Q. And what is that?

10 A. It's a bill contract with Atlantic Coast
11 Properties.

12 Q. Okay.

13 MR. VERENES: And, Your Honor, I believe
14 that's attached to the Summons and Complaint
15 as an exhibit to the -- to the --

16 THE COURT: Okay.

17 EXAMINATION BY MR. VERENES RESUMES:

18 Q. I'll ask you to look at paragraph 14 of that
19 document. Can you read that to us, please?

20 A. Okay.

21 Q. Could you read that out loud?

22 A. "Purchaser shall not assign this Bond for Title or
23 other words transfer any right or interest herein
24 without sellers prior consent. If seller gives his
25 consent, such approval shall not release

1 purchaser's obligations."

2 Q. Okay. When you signed the assignment that was
3 referred to in favor of John Hicks, did you
4 communicate with Atlantic Coast?

5 A. No, sir.

6 Q. So you did not seek their permission?

7 A. No, sir.

8 Q. Now, did you -- you heard the testimony of the
9 young lady from Atlantic Coast --

10 A. Uh-huh.

11 Q. -- about a telephone conversation with you?

12 A. Right.

13 Q. You know, the handwritten notation she made on the
14 letter. Did you talk with her and tell her about
15 the Hite, about Patricia Hite making the payments?

16 A. Well, as far as I was concerned, Patricia Hite and
17 John Hite were doing this together.

18 Q. Okay.

19 A. So what Patricia would have done would have been --

20 Q. Okay.

21 A. -- actually --

22 Q. But you talked to Atlantic Coast and told them the
23 Hites were -- were making the payments?

24 A. Correct, sir.

25 Q. John Hicks was not involved in that conversation,

1 was he?

2 A. No, sir.

3 Q. So you never -- you never said anything to Atlantic
4 Coast about John Hicks?

5 A. No, sir.

6 Q. Okay. The \$18,000 that you got, what was that used
7 for?

8 A. Myself and my family moving from 235 Holder Road to
9 Georgia.

10 Q. Okay. Did you ever pay any of that money back to
11 John Hicks?

12 A. No, sir.

13 Q. Okay. And never signed a promissory note?

14 A. No, sir.

15 Q. Or anything either -- either showing you received
16 it or any obligation to pay it back?

17 A. No, sir.

18 Q. When you received it in -- you said '03 or so? Was
19 that about the time?

20 A. Yes, sir.

21 Q. Was there any discussion about -- about paying that
22 money back?

23 A. There was no questions asked, no discussion. No,
24 sir.

25 Q. Okay. And it was John, John Hite you said handed

1 you the money?

2 A. Correct, sir.

3 Q. Okay. What was John Hicks' involvement in that, if
4 any?

5 A. I'm pretty sure -- I don't think Mr. Hite had all
6 the money and --

7 Q. But do you know?

8 A. -- Mr. Hicks -- Mr. Hicks, the rest of it came from
9 Mr. Hicks.

10 Q. Do you know that --

11 A. I don't --

12 Q. -- or is that an assumption on your part?

13 A. I know that.

14 Q. How do you know that?

15 A. Because I know John had just got back from the
16 desert, and I knew he had -- actually had to sell
17 something to actually give me some of the money.

18 Q. When you said -- we've got two John's, so.

19 A. Oh, I'm sorry. Mr. Hite --

20 Q. Okay.

21 A. -- actually had to sell something to actually give
22 me some of the cash; so, yes, I'm positive that the
23 other portion in cash came from John Hicks.

24 Q. Did you ever have a discussion with John Hicks
25 about that?

1 A. No, sir.

2 Q. Okay. So what makes you positive of that?

3 A. Because he's good friends with John. I mean, we're
4 all friends.

5 Q. Did anyone -- I'm just asking did anyone tell you
6 that.

7 A. John Hite told me that happened, so --

8 Q. Told you that John Hicks gave him some of the
9 money?

10 A. The rest of the money. Yes, sir.

11 Q. Okay. Did he tell you how much?

12 A. No, sir.

13 MR. VERENES: That's all I have, Your Honor.

14 THE COURT: All right. Ms. Rushton?

15 MS. RUSHTON: Yes, Your Honor, just a couple
16 of questions.

17 EXAMINATION BY MS. RUSHTON:

18 Q. I believe you testified that you received the
19 18,000 about 2003.

20 A. If we look and we know when the Hites started
21 making the payments, I left the month before that;
22 so that's when the money would have been involved.
23 It's been awhile. I don't know exactly what year.

24 Q. Was there any discussion at that time that that
25 money was to pay you for any interest you might

1 have in 235 Holder Road?

2 A. No, sir. No, ma'am.

3 Q. No mention at that time that --

4 A. No.

5 Q. As far as you were concerned, it was a gift, a
6 loan; it was just something to help a fellow
7 soldier out?

8 A. Yes, sir. I mean, yes, ma'am.

9 Q. And at the time that you signed the release over in
10 Georgia, and I believe you indicated that there are
11 different laws in different --

12 A. There was two different ones. I don't know how to
13 --

14 Q. But did you understand at that time that you were
15 basically giving up any interest you had in that
16 property?

17 A. Yes, ma'am.

18 Q. And that was done in 2006?

19 A. 2006 or 2009?

20 Q. 2006 the Release and Quitclaim of Equitable
21 Interest that was signed incorrectly, Defendant's
22 Exhibit 2.

23 A. All right. This one I probably thought we were
24 getting ready to take care of it and the land was
25 going to be taken care of and finally out of my

1 name. I guess, I did it wrong. I didn't hear
2 nothing about it until 2009 when I received --

3 Q. But you were just getting it out of your name, and
4 you were going to have nothing else to do with the
5 property; you were under no more obligation to pay
6 Atlantic Coast?

7 A. Correct.

8 Q. And I believe you testified that when it was paid
9 off, that you would sign a deed or do whatever was
10 necessary.

11 A. Right. Yes, ma'am.

12 Q. So you surrendered all your interest in this
13 document, you thought?

14 A. Yes, ma'am. I thought.

15 Q. So what interest did you have in 2009 to assign to
16 Mr. Hicks?

17 A. Again, I'm in the middle. I had the paper to sign;
18 I think I'm taking care of my responsibility by
19 signing it.

20 Q. So you just did what Mr. Hite and Mr. Hicks told
21 you to do?

22 A. Or whoever. I mean, I don't even know who the
23 first one came from Atlantic Coast, so -- but they
24 -- the Hites had paid for the property. I have no
25 clue who --

1 Q. But you had surrendered your interest in --

2 A. Yes, ma'am

3 Q. -- 2006 or 2003, actually, when you called Ms.

4 Maffett and told her that the Hites or Ms. Hite,

5 whoever, would be paying --

6 A. They were going to be responsible for the payments.

7 Q. -- the property? Right. And you thought you were

8 out of it?

9 A. Yes, ma'am.

10 Q. And you thought you were doing the right thing just

11 getting out of it?

12 A. Yes, ma'am.

13 MS. RUSHTON: No further questions.

14 THE COURT: Re-direct?

15 MR. SNELL: Thank you so much, Your Honor.

16 RE-EXAMINATION BY MR. SNELL:

17 Q. And, Mr. Swann, I guess, to ask you this. When you

18 -- you and your wife bought the property for

19 \$30,220, y'all also put down \$865?

20 A. Is that what it says on the contract? Did I put
21 down?

22 Q. As a down-payment.

23 A. That's what it says, \$865.

24 Q. Okay. Does that match your recollection?

25 A. I would say yes. It's a long time.

1 Q. Has anyone other -- other than John Hite and the
2 money he delivered you, has anyone paid you
3 anything or given you any kind of value for your
4 interest in this property?

5 A. No, sir.

6 Q. Okay. When these documents were presented to you,
7 like the original Bond for Title that I just showed
8 you, was that done in a lawyer's office with any
9 kind of lawyer's help?

10 A. No, sir.

11 Q. Where did you sign these papers?

12 A. At Atlantic Coast Properties land management
13 office, I guess you could call it.

14 Q. Who -- who was -- who was preparing them? Do you
15 know? You know -- do you know actually if a lawyer
16 was involved in preparing them?

17 A. No. It would have been the -- the salesman for the
18 property and maybe one of their guys was in there.

19 Q. I'm going to show you a document and a letter, part
20 of Plaintiff's Exhibit No. 1; and it's dated
21 February 27th, 2004. Let me ask you just a couple
22 of questions. Have you ever seen that letter
23 before?

24 A. No. No, sir.

25 Q. Okay. That letter references a \$85 document

1 preparation fee. Were you ever charged document
2 preparation fees --

3 A. No, sir.

4 Q. -- by Atlantic Coast --

5 A. No.

6 Q. -- for anything?

7 A. Yeah. The only contracts I ever remember signing,
8 when we bought a mobile home and signed those and
9 bought the property and signed that. Other than
10 that, I haven't signed anything else from Atlantic
11 Coast.

12 Q. Why do you think the Hites were interested in the
13 235 Holder Road property?

14 A. Because my property was on the road frontage and
15 their property was behind me, so somebody could
16 move in right on top of them basically.

17 Q. So to control their -- their --

18 A. Control their area.

19 Q. Now, was it your understanding that when you signed
20 that assignment in 2009 to Mr. Hicks that that
21 satisfied your loan obligation to John Hite or the
22 Hites for that \$18,000?

23 A. Until I started getting paperwork. I thought I was
24 done.

25 Q. Okay. No, other questions. Thank you so much.

1 THE COURT: All right. Anything else from any
2 parties for this witness?

3 MR. VERENES: No, Your Honor.

4 MS. RUSHTON: No, sir.

5 THE COURT: Mr. Swann, you can step down.

6 MR. SWANN: Thank you, sir.

7 MR. SNELL: Your Honor, we call John Hicks.

8 THE COURT: Mr. Hicks, step forward, please.

9 (Witness sworn)

10 THE COURT: All right, sir. Please have a
11 seat and state your full name.

12 MR. HICKS: John Spencer Hicks, Jr.

13 THE COURT: Mr. Snell, go ahead.

14 MR. SNELL: Thank you so much.

15 EXAMINATION BY MR. SNELL:

16 Q. Mr. Hicks, I guess, first of all, can you just tell
17 -- tell the Court first of all how you know John
18 and Patricia Hite.

19 A. Well, mostly I know Patricia because Patricia was
20 John Hite's wife. And I've -- I've worked with
21 John, even as boys when they were young. Desert
22 Storm was over in '90, so it would been -- the
23 months after Desert Storm when I got back, I almost
24 shot him in the woods; and that's how we met back
25 in 1990.

1 Q. So y'all have a, I guess -- is it fair to
2 categorize as a friendly relationship?

3 A. Yes, sir.

4 Q. Okay. And, I guess, what kind of work are you
5 doing now?

6 A. I'm retired from the military. I did 25 years and
7 got into law enforcement after I had retired.

8 Q. What exactly do you do now?

9 A. I am class-1 law enforcement police officer for the
10 State of South Carolina for the City of Newberry.

11 Q. Now, did you receive a document, an assignment of
12 Bond for Title, which is marked as Defendant's No.
13 1 Hicks?

14 A. Are you asking if I received this?

15 Q. Yes, sir. Is that the -- are you that same John
16 Hicks that --

17 A. Oh, I'm sorry. It just looks different. Yes, I
18 am. It just looks different from the way I
19 received it.

20 Q. And is it your understanding that you have an
21 interest in this 235 Holder Road property?

22 A. Yes, sir.

23 Q. Okay. Did you ever have any -- well, first of all,
24 do you know Jerry or Sandra Swann?

25 A. I met him a few times before he moved out, but I

1 didn't know him real well. We -- we had a couple
2 of phone conversations, but nothing that pertained
3 to the land. It was dealing with military stuff.

4 Q. All right. Can you -- do you -- do you have any --
5 any knowledge of a -- of payments by John Hite to
6 Jerry Swann back around 2002 or 2003?

7 A. Yes, sir. Right when all that was going on, I -- I
8 also own property down the road, and that's the
9 reason why my interest in that land. I was
10 planning on building a house there, and I attempted
11 to try to purchase the property earlier before it
12 started getting into a mix. But at that moment, I
13 -- I loaned John Hite \$12,000 with the intent that
14 he's going to pay -- was going -- that money to go
15 to Jerry to help him move, later on for my interest
16 of the land possibly or be paid back in some
17 manner.

18 Q. And what other property do you own in the area?

19 A. Just right down the road I own 50 acres.

20 Q. On -- on --

21 A. Holder Road.

22 Q. -- on Holder Road.

23 A. I'm sorry. It's 46.9. I'm so used to saying 50,
24 but it would be accurate it's like just under 50.

25 Q. Now, has -- has anyone paid you that \$12,000 back?

1 A. No, sir.

2 Q. Okay. What did you get in return for that \$12,000?

3 A. So far nothing. I mean, nothing right now, but I
4 know John very well; and, you know, not to mix
5 words, but I'll get my money back from him either
6 or I'll get the interest in the land. That's what
7 the intention was.

8 Q. Now, since -- since the assignment in 2000 or -- or
9 since -- I guess, since this began in 2002 or 2003
10 --

11 A. Yes, sir.

12 Q. -- have you made any payments or property tax
13 payments on the house -- or excuse me -- on the
14 property?

15 A. Y'all mentioned something earlier about 2008. I
16 think, I made a part, but I can't remember. But
17 since I own land there, I go down to the courthouse
18 to pay my taxes or either -- well, most of the time
19 I pay it at the courthouse. And every time I
20 inquire and make sure 235 was covered, and I kept
21 on mentioning, well, I thought I was supposed to be
22 covering it. But, you know, John -- John and the
23 Hites, John and Patricia Hite were covering it for
24 a certain of period; and then after a certain
25 period, I started covering once I got the interest

1 to that letter, the letter saying Jerry giving the
2 property rights over to me. You know, I -- I don't
3 know if I'm articulating the correct words, but
4 basically him giving the interest over to me. I
5 was intending to pick up the tax payments. That's
6 -- went down in 2008 and paid part of it, but I'd
7 just visit and they kept on being covered. And I
8 even went to Atlantic Coast to inquire why -- why
9 I'm not, why am I not getting the bill. I mean, I
10 was in a fog of why I wasn't getting the bill.

11 Q. When did you go to Atlantic Coast?

12 A. A lot of things happened in 2003 to that, but it
13 was '8, '9. And that would have been -- might have
14 been a couple -- one time in '10.

15 Q. Who did you -- how -- how -- approximately how many
16 times did you try to contact Atlantic Coast?

17 A. Oh, several times by phone. I would say I'm
18 guessing and it's purely a guess. Well, I wouldn't
19 say 10, but I would -- I would say it's more than 5
20 times I've called.

21 Q. What did they tell you?

22 A. Basically they didn't tell me a whole lot, that it
23 was kind of like none of my business kind of thing
24 and didn't give me any kind of satisfaction. I
25 don't remember the exact words; but it was like

1 what I was calling about I wasn't getting any kind
2 of satisfaction from them, so I started getting
3 concerned.

4 Q. Now, have you had any conversations with Patricia
5 Hite about this property?

6 A. No, sir. Never was brought up.

7 Q. Have all your --

8 A. I didn't even feel that I needed to talk to her
9 about it. I would have, I mean --

10 Q. Have all your conversations been with John Hite?

11 A. That's correct.

12 Q. All right. Other -- other than -- other than the
13 -- the -- the written assignment to you that's
14 recorded, are you aware of any other writings or
15 contracts or anything else about this property or
16 these dealings?

17 A. I was not aware of it all until today. I mean, I
18 knew something was going on, but I -- I wasn't
19 aware of anything, no. No written contracts or
20 anything like that.

21 Q. Okay. And you're not aware of any other
22 assignments or --

23 A. No, I wasn't.

24 Q. Okay.

25 A. I mean, obvious that -- Atlantic Coast did tell me

1 that they were confused on who to sign it to and --
2 and they mentioned several times that they thought
3 it should go to Patricia Hite. And I was asking
4 them how did she have ties to it, and they told me
5 things about she was making payments to them.

6 Q. All right.

7 A. That's about all I knew. I didn't know anything
8 particular.

9 Q. Did anybody provide you with -- anybody at Atlantic
10 Coast provide you with copies of any of the
11 documents?

12 A. Negative.

13 Q. Did anybody provide you with a copy of the --

14 A. Yes, if you could ask me -- I mean, show it to me,
15 I would appreciate it.

16 Q. Sure.

17 A. Jog my memory but --

18 Q. And just -- and just -- just so we're clear, I'm
19 going to hand you a document marked Defendant's
20 Exhibit 2 Hite, which is the Release and Quitclaim
21 of Equitable Interest.

22 A. Oh, yeah. This is the one I thought you showed me
23 earlier and that's the reason -- I didn't want to
24 get confused. I have never seen that document.

25 Q. Okay. So no -- no -- no one ever provided you with

1 a copy of this?

2 A. No, sir.

3 Q. It's not -- okay. And you're asking the Court to
4 award you or find that you've got an interest in
5 this 235 Holder Road property?

6 A. That's correct. And I -- I've heard a lot of words
7 about \$30,000. I wouldn't have paid 30 for it. I
8 don't think it's worth. I'm sorry, Jerry. I don't
9 think it's worth 30, okay; but yes, I would like
10 him to award interest to me.

11 Q. Okay. I have no other questions. Answer anything
12 that --

13 A. Yes, sir.

14 Q. -- either of the folks have for you or the Judge.

15 THE COURT: Mr. Verenes.

16 MR. VERENES: Thank you, Your Honor.

17 EXAMINATION BY MR. VERENES:

18 Q. Mr. Hicks, what do you think your interest is in
19 the property? You said -- you told -- you answered
20 the question and said you wanted an interest
21 awarded to you. What interest do you feel you're
22 due?

23 A. Ownership of the property, sir.

24 Q. In full?

25 A. Yes, sir. I think it --

1 Q. Well, I just -- well, you asked an interest. I
2 didn't know if you --

3 A. Again, like I identified earlier, sometimes I'm
4 getting mixed up with the definition of some of
5 these words. And, if anything, that's the reason
6 why I'm kind of a little nervous and I'm not --

7 Q. It's all right.

8 A. This is a different --

9 Q. I just want to make sure I understand --

10 A. -- environment for me, so I'm not trying to be -- I
11 just don't -- might not be using my words
12 correctly.

13 Q. I just want to make sure I'm clear that you feel
14 that --

15 A. Yes, sir. Please ask.

16 Q. -- that you should own it 100 percent.

17 A. Yes, sir.

18 Q. Okay. All right.

19 A. I -- I believe I paid fair value for it based on
20 the value I consider it and everything, yes.

21 Q. Okay. Well, you paid the \$12,000?

22 A. Right, the \$12,000.

23 Q. All right. What about -- now, Mr. Swann testified
24 he received \$18,000.

25 A. Yes, sir. Again, I was working with John Hite

1 mostly. And I hadn't talked much with Jerry
2 because he was up and out of here real quick, and I
3 know John Hite helped him move. The 12,000 I gave
4 was to assist him to move out for later on down the
5 road I would gain interest. I was still in the
6 Army, planning on retiring and planning on building
7 there, but all the other mess happened.

8 Q. So, well, was the 12,000 a loan to John Hite, or
9 was it a loan to Jerry Swann?

10 A. I -- I would say both. They were -- they were
11 working on -- yes, I would say the loan was to --
12 the benefit of that money was to Jerry, but I
13 worked through John Hite. So my understanding the
14 money was going to Jerry to help move, for later on
15 for me to gain interest of the land. I wasn't
16 interested that moment for several years, and I was
17 hoping to have ownership of it by the time I
18 retired.

19 Q. Okay. And when did you -- when did you learn about
20 the additional \$6,000?

21 A. Actually, I could say I did know about it right
22 then. John Hite told me he had six and Jerry
23 needed eighteen. He asked me if I could help with
24 the other twelve.

25 Q. Okay. And was that, that money literally cash --

1 A. Yes, sir.

2 Q. -- cash money?

3 A. Yes, sir.

4 Q. In hundred-dollar bills?

5 A. Yes, sir.

6 Q. Not -- not -- not by check, a --

7 A. No checks. It was --

8 Q. -- certified check --

9 A. It was give per cash.

10 Q. -- or anything like that?

11 A. Yes, sir. I had the -- had the cash there at the
12 time.

13 Q. Okay. And was there a receipt of any kind from
14 Jerry Swann or from John Hite or any kind of
15 document memorializing this transaction?

16 A. I'm almost embarrassed to say because now I'm a
17 police officer, and I know certain things I didn't
18 know back then. Then I was just a young -- or
19 older soldier.

20 Q. Yes, sir.

21 A. It was pretty stupid of me, but no. It was pure
22 cash.

23 Q. Okay. So there was -- there -- so there's no
24 document, nothing written down, nothing scribbled
25 on a napkin or -- or typed up --

1 A. I actually --

2 Q. -- or anything?

3 A. I actually had dropped it off on -- in route back
4 to my unit in Fort McPherson.

5 Q. Okay. Now, we had testimony about a handwritten
6 note.

7 A. Do you need me to come over there and get that,
8 sir?

9 Q. No. I've got it.

10 A. Okay.

11 Q. That note -- and this note that Patricia Hite
12 testified that -- that John Hite --

13 A. Okay.

14 THE COURT: What's that exhibit number?

15 MR. HICKS: Seven.

16 MR. VERENES: Defendant Hite's No. 7, Your
17 Honor.

18 THE COURT: Thank you.

19 MR. HICKS: Okay, yeah.

20 EXAMINATION BY MR. VERENES RESUMES:

21 Q. All right. I mean, I understand you didn't write
22 the note.

23 A. Yes, sir.

24 Q. Okay. But that note says that you have -- that you
25 do not have any interest in the property, doesn't

1 it?

2 A. Yes, sir.

3 Q. Okay.

4 A. You want me to articulate the reason why that
5 states that?

6 Q. Sir?

7 A. I mentioned it earlier in my comments why. You
8 have that letter, and I understand where they're
9 getting at that. My first attempt to buy the land
10 was buying it all straight out with mortgage and
11 the whole bit.

12 Q. Right.

13 A. Patricia had a heart attack about it, and I pulled
14 out.

15 Q. Right.

16 A. Later on they moved out and I -- well, actually,
17 they already had moved out, but later expressed
18 interest that I can borrow the money that way and
19 later on down the road I'll get interest.

20 Q. Okay. When --

21 A. Not knowing everything that happened in between
22 that time.

23 Q. When was it -- when did the second interest arise?

24 A. That's what I'm -- I'm trying to remember. I think
25 it was '4, 2004 or 2005 things started settling

1 down. They even had a trip down to Destin or
2 something and -- you know, things were -- but I
3 wasn't going to go through the whole of having a
4 survey, this done, that done, and all the sudden
5 Trish change her mind again.

6 Q. So in '04 or '05 is when you believed that --

7 A. No. I think -- no. It was before that. I just
8 don't remember exact date. It's right when he --
9 you know, all the stuff that had been going on and
10 he moving out.

11 Q. Okay. But --

12 A. It may have been --

13 Q. When --

14 A. -- right in that time frame.

15 Q. When Mr. Swann was moving?

16 A. Right, when he was moving out.

17 Q. All right.

18 A. This happened right at the time and later on they
19 had, you know, whatever. And I said I wasn't going
20 to go pay for a survey and do this and do this
21 again, so I did it this route.

22 Q. All right. When you loaned the \$12,000, did you --
23 was it your belief that Patricia was interested in
24 the property at that time and -- or had she -- or
25 did -- I'm sorry for stumbling, but I'm trying to

1 understand the sequence here. All right. This
2 note, the reference to you pulling out --

3 A. Right.

4 Q. -- was when you were told that Patricia was upset
5 because she wanted the property?

6 A. Right.

7 Q. Okay.

8 A. Well, she didn't want me to have the property.

9 Q. Okay.

10 A. The reason why she didn't want me to have the
11 property was because they had their well on that
12 property; and she was afraid if she gave the
13 property to me, I wouldn't allow them to have
14 water.

15 Q. Okay. So --

16 A. I mean, that was really the reason.

17 Q. All right. So at that point in time, you did pull
18 -- you said no, I'm not --

19 A. At that very point, yeah.

20 Q. -- I don't -- I don't want the property?

21 A. But very shortly after when I worked it out --
22 well, basically, John and I -- that I would give
23 him the money for down in the future to get
24 interest of that land so it wouldn't be sold to
25 somebody else.

1 Q. Okay. And do you know when that was?

2 A. When that time will be?

3 Q. When it was that your second interest arose.

4 A. Very shortly right after that. I'm talking about a
5 couple of months or so, within that year. 2003 is
6 when it all happened, so it would have been in that
7 year or the beginning of 2004. I can't remember
8 which.

9 Q. Okay. Do you know when it was you turned over the
10 \$12,000?

11 A. It was in that time frame. I do not know exact
12 dates. I wish I did.

13 Q. You didn't have to withdraw that from a bank
14 account and you just had the cash? You just had
15 that much cash?

16 A. Yes, sir. I drew it from a bank account --

17 Q. All right.

18 A. -- some time ago. I mean, I don't even have that
19 account anymore, but --

20 Q. I'm just wondering where the 12,000 came from.

21 A. From me.

22 Q. Okay. Was it cash you had been saving, or was it
23 money that was in a bank that you had to draw out?

24 A. A combination of both. Cash I did have on hand,
25 and I drew out -- I don't remember if it was eight

1 or nine thousand from my account at Fort Jackson
2 Credit Union.

3 Q. Okay. And have you checked the records to try to
4 determine when that was drawn out?

5 A. Well, when Fort Jackson Credit Union changed to All
6 South, I pulled out and dropped that account for
7 that reason.

8 Q. So you don't know when you drew the money out?

9 A. Not exactly. No, sir.

10 Q. Okay.

11 A. I'm -- that's the reason why I'm kind of vague on
12 the time frame.

13 Q. So you don't know for sure when you gave the money
14 to John Hite?

15 A. Well, in that -- right around the -- the close
16 proximity of when -- using that as a reference
17 point, when Jerry moved out; correct.

18 Q. And you told us, I believe, that you had called
19 Atlantic Coast a number of times.

20 A. Yes, sir.

21 Q. And in one of those conversations, you were told
22 about Patricia Hite making payments to Atlantic
23 Coast?

24 A. Yes, sir. I believe I -- I believe I did. I don't
25 think I -- I think, I called after the property was

1 paid off.

2 Q. All right.

3 A. Which, I think, was in 2007 was my first call or
4 somewhere in that -- maybe 2008.

5 Q. Well, because it was paid off in '06.

6 A. Okay. Because I don't know when -- when the Hites
7 paid it off.

8 Q. Okay. So '07 would have been the first time you
9 contacted Atlantic Coast?

10 A. I believe so, yes. It's somewhere in '7 or maybe
11 '8. I do not remember. I know I physically went
12 down there like in '9 or '9 and '10 and talked to
13 Ms. Maffett.

14 Q. Okay. Prior to this lawsuit being filed, have you
15 -- had you done anything to -- other than make
16 phone calls, to attempt to get a deed?

17 A. Other than what I just told you, went down to talk
18 to Ms. Maffett --

19 Q. Okay.

20 A. -- to see if they would give me the deed.

21 Q. And would they?

22 A. No.

23 Q. Did they tell you why?

24 A. They -- yes. They informed me that Patricia had --
25 they were -- she was the one that made payments on

1 it.

2 Q. Okay.

3 MR. VERENES: That's all I have for this
4 witness, Your Honor.

5 THE COURT: All right.

6 EXAMINATION BY MS. RUSHTON:

7 Q. Mr. Hicks, you testified that you gave John Hite
8 \$12,000 --

9 A. Yes, sir.

10 Q. -- is that correct?

11 A. Yes, ma'am.

12 Q. And you had discuss -- you barely knew Mr. Swann;
13 is that correct?

14 A. That's correct. I knew him, knew him by name.

15 Q. Knew him by name.

16 A. That kind of thing.

17 Q. And any discussions you had with Mr. Swann were not
18 pertaining to the land?

19 A. Exactly. He actually called me many times because
20 of my job in the Army to ask questions about stuff
21 he needed to do in order to get activated.

22 Q. But there was never any discussion about 235 Holder
23 Road?

24 A. Actually, no. Because most of the time he called,
25 he called my military phone, that kind of thing.

1 Q. So you made a loan to Mr. Hite?

2 A. Yes, sir. Yes, ma'am.

3 Q. And now you're trying to claim an interest in the
4 land that you --

5 A. That was -- that was my -- my -- my agreement that
6 I had with John Hite, that this money was going to
7 go to help Jerry move, okay, and down the road
8 because -- the truth is Patricia was giving a lot
9 of stuff because she wasn't -- she didn't want me
10 to own it when I tried to purchase it earlier. So
11 the truth of the matter is, I kind of went behind
12 the backdoor and give him the money so Jerry could
13 get -- be taken care of and get where he's going;
14 and me knowing the friendship I had with John Hite
15 so many years, he would give me my interest back
16 down the road. And that what I -- is what I did.

17 Q. And when you testified that you tried to buy the
18 land, and you had already had an appraiser done?

19 A. Yes, ma'am. I believe I did, yeah.

20 Q. And incurred costs?

21 A. Ma'am?

22 Q. And didn't you say that you had incurred costs?

23 A. Not much. I mean --

24 Q. Okay.

25 A. -- it was -- it was just a survey, and I'm not sure

1 if I got to the estimate stage or not.

2 Q. Who were you trying to buy the land from at that
3 time?

4 A. Well, at that time I was going to buy it from
5 Atlantic Coast. They still had control of the
6 land. I thought I -- I didn't know how I was going
7 to work it out, but I was going to have it all
8 ready for the bank. And then I was going to see if
9 I could work out an agreement to buy out from under
10 them.

11 Q. Did you enter into any contract with Atlantic Coast
12 to buy the land?

13 A. No. No, ma'am.

14 Q. So they were kept in the dark as to your plans with
15 Mr. Hite?

16 A. All I did, was I did preparatory stuff. I hadn't
17 talked to anybody. I knew he was -- Jerry left
18 already, and I knew I could probably pick up the
19 land. And the truth is, I thought I could pick it
20 up pretty inexpensive. And I was going to buy it
21 to relieve Jerry, relieve John and Patricia from
22 making the payments, and hopefully wouldn't get any
23 opposition from Patricia because she got so mad
24 about it at the onset. And so -- but I -- but I
25 knew it would take a number of years, so I expected

1 down the road I would see it.

2 Q. Okay.

3 A. But it didn't happen.

4 Q. So bottom line, you had loaned the money to John
5 Hite?

6 A. Yes, ma'am.

7 Q. And you had had communication with Atlantic Coast
8 Properties when they had finally told you that
9 Patricia Hite had paid off the land, and they
10 couldn't give you a deed because they really
11 weren't sure to whom --

12 A. Exactly.

13 Q. -- it should go?

14 A. Yes, ma'am.

15 Q. So you knew that it had been paid for?

16 A. Oh, yes, ma'am.

17 Q. So the assignment of the Bond for Title that the
18 Swanns signed, where they convey any interest that
19 they may have to you, was that prepared at your
20 direction?

21 A. Was it prepared at my direction?

22 Q. Yes.

23 A. In a sense I wanted -- I wanted the -- the thing in
24 my name. I wanted the land in my name; or if they
25 put it in Jerry's name, I was going to see about

1 getting it changed over to my name.

2 Q. Did you send the assignment to the Swanns for their
3 execution?

4 A. No. I actually know John Hite mailed it to them.
5 I'm pretty sure.

6 Q. John Hite mailed it?

7 A. I'm pretty sure he did. And there's been -- many
8 things have transpired since then. I've even spoke
9 with you by e-mail and stuff, making sure --

10 Q. Did you have -- did you have an attorney to prepare
11 this assignment, or was this all Mr. Hite's work?

12 A. I'm pretty sure Mr. Hite had an attorney done one
13 because our agreement we had.

14 Q. So what interest did you think that the Swanns had
15 at this particular time in 2009 when you knew that
16 Ms. Hite or the Hites had paid this property off?

17 A. My understanding on how these things work once the
18 loan is satisfied, which I didn't get an exact time
19 when it was satisfied, that Atlantic Coast would
20 cut the title to the person that did the loan,
21 which would have been Jerry. I would -- had that
22 agreement with Jerry already in writing. I would
23 speak to Jerry, have it transferred over or me and
24 him would work it out; but I didn't know there was
25 any other interests. I didn't do a full-fledged

1 title search of the property until -- actually, I
2 think you're the person that advised me. And
3 that's where the whole story started coming out.

4 Q. Did you ever file an action against John Hite to
5 try to collect that \$12,000 that you loaned to him?

6 A. No, ma'am. And I wouldn't; I wouldn't.

7 Q. So there was no judgement against him and there was
8 no judgement against Jerry Swann? You never
9 started an action against Jerry Swann to collect
10 the \$12,000?

11 A. I wouldn't. No, I wouldn't.

12 Q. But you're claiming an interest in something that
13 you thought they might have an interest in?

14 A. Exactly.

15 Q. Okay. Are you and -- and John Hite still good
16 friends?

17 A. Yes, ma'am.

18 Q. You talk on a regular basis?

19 A. Yes, ma'am.

20 Q. Were you aware of his marital problems?

21 A. Oh, yes, ma'am. I sure was.

22 Q. Were you aware when he received his divorce or when
23 the divorce -- when they were in court?

24 A. No. I wouldn't have -- I wasn't that deeply into
25 it, no. When I say yes I was aware of it, having a

1 friend tell me he's getting divorced, I was --
2 yeah, I was -- I didn't know all of their dealings
3 in court. I just know of that, that he was getting
4 a divorce and --

5 Q. Would it surprise --

6 A. -- it was taking a long time.

7 Q. I'm sorry. Would it surprise you that their
8 divorce hearing was October the 26th, 2009, which
9 is one month prior to the date that the Swanns
10 signed the assignment that Mr. Hite sent to the
11 Swanns? In other words, after the divorce --

12 A. Uh-huh.

13 Q. -- he decided to assign any interest that the
14 Swanns may have to you.

15 A. I did not -- I was not aware it was that close, no.

16 Q. Okay. No further questions.

17 MR. SNELL: No questions, Your Honor.

18 THE COURT: Anything else? Okay.

19 MR. SWANN: No, sir.

20 THE COURT: Mr. Swann, I don't think I asked
21 you. Do you have any questions?

22 MR. SWANN: No, sir.

23 THE COURT: All right. Thank you, sir. You
24 may step down.

25 MR. HICKS: Thank you.

1 MR. SNELL: Your Honor, we call John Hite.

2 THE COURT: John Hite?

3 MR. SNELL: Yes, sir.

4 THE COURT: Okay.

5 (Witness sworn)

6 THE COURT: All right. Please have a seat and
7 state your name for the court reporter,
8 please.

9 MR. HITE: John Russell Hite.

10 EXAMINATION BY MR. SNELL:

11 Q. And, Mr. Hite, I guess, what's your address?

12 A. 261 Holder Road.

13 Q. Is that right next to this 235 Holder Road
14 property?

15 A. Yes, sir.

16 Q. Okay. Do you still live out there today?

17 A. Yes, sir.

18 Q. And you used to be married to Patricia Hite --

19 A. Yes, sir.

20 Q. -- in the courtroom, the -- the lady in the
21 courtroom with us?

22 A. Yes, sir.

23 Q. Okay. Well, first of all this, I guess, when did
24 you first meet Jerry and Sandra Swann?

25 A. When they moved in on 235 Holder Road in front of

1 our house.

2 Q. Do you know approximately when that was?

3 A. 2000. I -- I don't know for sure.

4 Q. Now, let me ask you this. Your -- your property at
5 261, was that purchased from Atlantic Coast?

6 A. No, sir.

7 Q. And what -- what year did y'all move in? What year
8 did you move in?

9 A. Approximately -- a long time ago. Maybe around
10 '02, maybe, maybe '01. I'm -- I'm not sure. We
11 bought the land before and didn't move onto it
12 right, right away.

13 Q. Now, there was some testimony before about a well
14 on 235. Can you tell the court about that?

15 A. Yeah. We -- I -- I -- we had set up a single-wide
16 trailer on 261, and I had orders to leave like in
17 one day and didn't have time to put a well in. We
18 pulled a pipe from Jerry's well so Patricia -- so
19 Patricia would have water, and I shipped overseas
20 for --

21 Q. And --

22 A. I don't know how many months it was.

23 Q. And were you in the military?

24 A. Yes, sir.

25 Q. And tell us what -- what -- what branch.

1 A. U.S. Air Force.

2 Q. Where -- where were you shipped?

3 A. I went -- that trip I went to Qatar.

4 Q. Now, to the best of your knowledge, when did Jerry
5 and Sandra Swann move?

6 A. '02, '03, maybe in that time frame.

7 Q. All right. Did they -- what kind of help did they
8 ask from you about to help them move?

9 A. Jerry came to me. He had the chance to move to
10 Butler, Georgia on some farm land and help take
11 care of some old people that were really good
12 friends of ours, and he didn't have the money to
13 move. And he told me about how much it would take;
14 and I told him we didn't have that much, but I
15 probably could come up with it if he needed it.
16 Jerry's a very good friend, and I wanted to help
17 him out.

18 Q. Okay. And how much did you come up with?

19 A. I came up with \$18,000.

20 Q. Where did that come from?

21 A. Sold the motorcycle and John Hicks gave me the rest
22 to help him.

23 Q. How much did John Hicks give you?

24 A. \$12,000.

25 Q. And how was that 18,000 delivered to the Swanns?

1 A. I gave that to Jerry myself.

2 Q. What was your understanding about -- was it a gift?
3 Was it a loan, or what were the terms?

4 A. I told Jerry, I said that -- I give him the money
5 and helped him move, and we would pay for the land
6 and take the land over and that that would be the
7 payment.

8 Q. Was any of this put in writing?

9 A. Sir?

10 Q. Was any of this in writing?

11 A. No, no. Me and Jerry's real good friends and me
12 and John being good friends the same, and we just
13 shook our hands. It was very fortunate that I
14 could do that.

15 Q. Now, Mr. Hicks, my client, had he showed any
16 interest, to the best of your knowledge, in the
17 property at that time?

18 A. No.

19 Q. Okay. When did -- when were you aware that he had
20 any interest in the property?

21 A. At the time I told -- told John when he gave me the
22 money that I'd give him his twelve back cash; or if
23 he wanted the property, I'd helped him just with
24 the property maybe later and see how things would
25 work out. And then he -- then I gave Jerry the

1 money, and then John decided he was going to try
2 and buy the property outright and he started a loan
3 procedure.

4 Q. All right. Approximately when was that?

5 A. Right after Jerry moved. It wasn't long. I paid
6 -- I paid a few payments myself, and then John
7 started his loan. And then Patricia found out
8 about John buying the property, and she showed her
9 fanny about it. And then John backed out because
10 he didn't want to cause no problems between me and
11 her.

12 Q. Now, starting -- starting after the Swanns moved
13 out -- well, first of all, were they in a mobile
14 home?

15 A. Yes, sir.

16 Q. Okay. When they moved out, did they take the
17 mobile home with them?

18 A. A double-wide. Yes, sir.

19 Q. Did anybody move in since the Swanns moved out?

20 A. No.

21 Q. All right. Who -- what's been done with the
22 property since --

23 A. Just been kept cut. We used the water, used -- I'm
24 still using the water off that property, and it's
25 been kept up until -- I left that property in '07,

1 I guess, when the divorce started and I was put out
2 of the house. And I moved back in '09 when the
3 divorce was final, and then I had to replace the
4 well because someone had snatched the well out of
5 it.

6 Q. All right. Does -- Patricia Hite, is she -- is she
7 -- to the best of your knowledge, does she do
8 anything with the property?

9 A. No.

10 Q. Does she do any kind of maintenance or grass
11 cutting or --

12 A. She might have cut it. I don't know if she did,
13 and I didn't see her.

14 Q. Okay. Has she done anything since your divorce has
15 been final?

16 A. Sir.

17 Q. Since your divorce has been final.

18 A. I didn't hear you.

19 Q. Since your divorce has been final --

20 A. Yes, sir.

21 Q. -- with Patricia, has she done anything with the
22 property?

23 A. Not nothing except -- like I say, someone snatched
24 the well out.

25 Q. All right. Now, what can you tell the court about

1 the payment history to Atlantic Coast after Jerry
2 and Sandra Swann moved out?

3 A. The way it started, I started making the payments.
4 Ms. Roxanne had a little memory lapse. I made
5 payments myself. I drove all the way to Johnson,
6 South Carolina and hand delivered them. I don't
7 know how many I made. It was a long time ago.
8 When John started his proceedings, I stopped making
9 the payments. It got behind a little bit, two or
10 three months maybe. And then when Patricia found
11 out, John backed out because she got upset with --
12 with what he was going to do, and then she started
13 making the payment.

14 Q. And that's when y'all were married or living
15 together --

16 A. We were married. It was marital funds, both. And
17 money I paid was marital funds and the money she
18 paid was marital funds.

19 Q. And how -- how -- how long did she make those
20 payments?

21 A. It rocked along maybe a year or so, and then she
22 got a -- I say she. We got a loan against our
23 house, and she said she was going to pay this 151
24 property off, and she wanted to pay the Hicks'
25 property -- I mean, the Swanns' property off. So

1 we paid those two properties off with the joint
2 money, and I bought a truck.

3 Q. Now, when did you get the -- how much money did
4 y'all borrow?

5 A. Borrowed around 120,000 from the credit union she
6 belonged to. And then as soon as I sold the piece
7 of lake property that I've been paying every
8 payment on, I paid that 120,000 off. So she
9 literally ain't paid nothing except a few payments.
10 So it was paid for by sale of a lake -- piece of
11 lake property out on Waterway Court or Waterway
12 Circle.

13 Q. And what county is that property in?

14 A. It's in Lexington. It was in Leesville. I don't
15 remember the address on it, but it was --

16 Q. Who's name --

17 A. The property was in mine and her name.

18 Q. When did y'all acquire it?

19 A. Acquired it -- I got back from Desert Storm in '92,
20 probably. I think in '93.

21 Q. All right. Now, after 2003, have you kept in
22 regular communication with Jerry Swann or Sandra
23 Swann?

24 A. Yeah. Yeah, we talk all the time.

25 Q. Okay. How -- how often do you talk to John Hicks?

1 A. All the time too.

2 Q. What do you know about the -- let me show you the
3 document. And again, I've got Defendant Exhibit 1,
4 which is the assignment of Bond for Title. Mr.
5 Hite, do you know anything about that document?

6 A. Yeah. This was -- this was prepared by Brian
7 Katonak in behalf of John Hicks for the Swann
8 property.

9 Q. Okay. Who is Mr. -- is Mr. Katonak a lawyer?

10 A. Yeah. He was a real estate, divorce lawyer.

11 Q. Okay. And it was your understanding that Mr.
12 Katonak mailed that to the Swanns?

13 A. Yes, sir. I don't know when Mr. Katonak mailed it.
14 I had nothing to do with it. He just made the
15 thing out for Mr. Hicks. And the reason that was
16 done was because during our -- our depositions
17 supposedly neither one of us was -- didn't have
18 interest in this property. It's not brought out in
19 our money list of things. So that's why I said
20 that I have no interest in it because I -- Patricia
21 had no interest in it either, and I figured it --

22 Q. Now, has -- has -- have you paid any of that
23 \$12,000 back to John Hicks?

24 A. No, I haven't.

25 Q. Has Jerry or Sandra Swann? How much money have

1 they given you back? How much have they paid you
2 back?

3 A. No, gave John no money back. And if this property
4 does not go to John, I will pay John his \$12,000.

5 Q. Have the Swanns -- how much money have the Swanns
6 given you?

7 A. None.

8 Q. To the best of your knowledge, is -- is -- other --
9 other than the assignment from Jerry and Sandra to
10 John Hicks that is up at the witness stand with
11 you, are there any writings or contracts, written
12 contracts or any kind of written documents
13 memorializing any of these agreements?

14 A. The only one I know of is the one Jerry signed to
15 Atlantic Coast that's in the -- in the exhibit
16 already, that was not signed correctly. I didn't
17 know he even signed it.

18 Q. So you --

19 A. I found out this later about that.

20 Q. Okay. Have you been in communication with anybody
21 from Atlantic Coast?

22 A. I talked to people, Roxanne a couple of times when
23 I was making the payments and but -- and that's --
24 to my recall, I can't recall anymore. That was
25 back early in the thing, though.

1 Q. Okay. So in the past several years, have you had
2 any communication with --

3 A. No.

4 Q. -- with anybody at Atlantic Coast? And let me ask
5 you this. When -- when was -- when -- when did the
6 agreement or the deal jell, if I can use that term,
7 that Hicks would get an ownership interest in this
8 property?

9 A. When I found out that nor myself or Patricia was
10 going to have involvement in the property. And I
11 said to John and Jerry, I said, "Just put the
12 property in John's name because he has money
13 involved in it."

14 Q. What do you think about how -- what kind of
15 neighbor would John Hicks make for you?

16 A. Oh, a great neighbor. I could trust him with my
17 life.

18 Q. All right.

19 MR. SNELL: One minute, please.

20 THE COURT: Okay.

21 EXAMINATION BY MR. SNELL RESUMES:

22 Q. And, Mr. Hite, just -- just to make sure I'm clear
23 on the chronology, was it your testimony that Mr.
24 Hicks had an interest in the property and then
25 withdrew the interest when he found out Ms. Hite

1 disagreed?

2 A. Oh, yeah, yeah. Ain't no doubt about that.

3 Q. Okay. And then now his interest is renewed?

4 A. Oh, yeah. He's renewed because he thought that we
5 were both out of the property.

6 Q. And no other questions. Answer anything that Ms.
7 Rushton or Mr. Verenes has for you. Okay, sir?

8 A. Yes, sir.

9 THE COURT: Mr. Verenes.

10 MR. VERENES: Yes, Your Honor.

11 EXAMINATION BY MR. VERENES:

12 Q. Mr. Hite, Brian Katonak represented you in your
13 divorce action, didn't he?

14 A. Yes, he did.

15 Q. Okay. Now, when did you give the \$18,000 to Jerry
16 Swann?

17 A. Before he moved in '02, '03 time frame.

18 Q. Okay. And were you aware -- and then you said --
19 and when did you make the payments to Atlantic
20 Coast?

21 A. Immediately after he quit making them, I started
22 making them.

23 Q. How many did you make?

24 A. I have no idea. That was too far. I can't
25 remember what I did yesterday, let alone back that

1 far.

2 Q. Well, more or less than ten?

3 A. Probably -- probably less than ten, maybe about
4 ten. I don't know for sure.

5 Q. All right.

6 A. Yeah.

7 Q. Were you aware that after you stopped making the
8 payments that Patricia Hite made payments?

9 A. She started after John withdrew his -- his -- his
10 attempt to buy the property, and then she started.

11 Q. Okay. So you're aware she was paying Atlantic
12 Coast?

13 A. Yeah, uh-huh.

14 Q. Okay. Were you aware that she paid Atlantic Coast
15 the \$26,000?

16 A. Of course, because I helped her get it.

17 Q. I know. That was the loan on your home, wasn't it?

18 A. That's exactly right.

19 Q. Okay.

20 A. My -- my home was -- my home was literally -- we
21 owed zero on it. And we had to get a loan, and
22 then we got a new payment.

23 Q. Right, I understand. But my only point is that
24 you're aware that she was making those payments to
25 Atlantic Coast.

1 A. Oh, yes, sir.

2 Q. Okay.

3 A. Yeah.

4 Q. And that was -- would have been after the \$18,000
5 had been given to the Swanns?

6 A. That's correct.

7 Q. Okay. I'm going to show you Defendant Hite's
8 Exhibit No. 7. I'm sorry. Did you write that?

9 A. That's my writing. I don't remember writing it,
10 but it's my writing.

11 Q. Okay.

12 A. That was like a long time ago, and I don't remember
13 what I did yesterday --

14 Q. Well, I -- I understand. But -- but that's your
15 handwriting?

16 A. Yeah, that's my handwriting.

17 Q. Okay. And -- and it says that John Hicks was no
18 longer -- at the time that John Hicks had pulled
19 out on the property?

20 A. He pulled out of his loan attempt, yeah.

21 Q. All right. So at the time you wrote it, that was
22 accurate?

23 A. Yes, sir, at that time.

24 Q. That he had no interest in the property?

25 A. I won't say he had no interest. Obviously, he

1 pulled his loan attempt out.

2 Q. Okay. Well, he was making no efforts to --

3 A. Right.

4 Q. -- purchase the property --

5 A. That's correct.

6 Q. -- at the time that you wrote that note?

7 A. That's correct.

8 Q. Okay. Now, the lake property that you sold --

9 A. Yes, sir.

10 Q. -- when was that sold?

11 A. '05, I guess, or '06, somewhere in the area. It
12 was sold --

13 Q. But --

14 A. -- yeah, probably '06.

15 Q. All right.

16 A. I think '06.

17 Q. Before you divorced?

18 A. Yeah.

19 Q. Okay. All right. So it -- so it was not -- it was
20 not owned by you and your -- your ex-wife at the
21 time you divorced?

22 A. No.

23 Q. It was already gone and --

24 A. Yeah. We sold it.

25 Q. And the debt was paid off?

1 A. Yes, sir.

2 Q. Okay. And then -- and that loan you did you said
3 was to payoff two loans, payoff the Atlantic Coast?

4 A. Yes, sir.

5 Q. Another loan on some property on Holder Road?

6 A. Yes, sir.

7 Q. And your -- and to buy a truck?

8 A. Yes, sir.

9 Q. Is that right?

10 A. That's exactly right.

11 Q. Okay. And how is the truck titled?

12 A. Sir?

13 Q. Was it bought by you or bought by both you and her
14 wife?

15 A. I think it was bought by me.

16 Q. Okay. Do you still have it?

17 A. Yeah.

18 Q. Okay. So that -- does that -- the other property
19 you paid off on Holder Road, do you know who owns
20 it today?

21 A. Patricia. I -- I guess she does. She owned it as
22 the time of the divorce. Now, whether she owns it
23 now or not, I have no idea.

24 Q. Okay. Was it -- was it part of the equation in
25 dividing up your marital property?

1 A. Yes, sir.

2 Q. That on Holder Road?

3 A. Uh-huh.

4 Q. Was the truck part of that equation?

5 A. Yes, sir.

6 Q. Okay. Were there -- was there any extra money from
7 the sale of the lake property over and above paying
8 off that loan?

9 A. Let me see. I can't really tell you that right
10 now. I have no records in front of me. I never
11 got the records back after the divorce.

12 Q. Do you remember how much you sold it for?

13 A. It was around 250.

14 Q. Well, it must have been because the loan you said
15 was 120.

16 A. We paid off other things besides those things.

17 Q. Okay.

18 A. We paid off all our debt.

19 Q. Okay. What other debts did you have?

20 A. I can't remember at this time without having all
21 those records in front of me.

22 Q. Well, were they -- was it mortgages? Was it credit
23 card loans?

24 A. I don't remember exactly. I remember the -- the
25 house loan for sure. I don't remember exactly how

1 we did it.

2 Q. Was that the only loan on the house at the time?

3 A. Yes, sir.

4 Q. Okay. Now, do you remember giving a deposition in
5 your divorce?

6 A. Yes, sir.

7 Q. I believe that it was Greg Harlow and -- and Brian
8 Katonak were the attorneys present.

9 A. That's correct.

10 Q. And this property that we're talking about, the
11 Swann lots, for lack of a better term, that
12 property was discussed?

13 A. Yes, it was.

14 Q. Is that right?

15 A. Uh-huh.

16 Q. And did you -- is it accurate to say that you
17 testified that you had no interest in the Swann
18 property?

19 A. At that time I did have no interest.

20 Q. That's right. And that's my point, I mean --

21 A. Yeah.

22 Q. I'm talking about the day that you were testifying
23 --

24 A. That day I had no interest in it, exactly.

25 Q. And that deposition was May 17 of '09?

1 A. That's correct.

2 Q. Is that right?

3 A. And the reason I had no interest in it is because
4 it was not up on the table for our divorce. It was
5 not part of our assets.

6 Q. Okay. All right. Since May 17 of '09, have you
7 paid any money to anyone for this property?

8 A. No.

9 Q. Now, the money that you gave, the \$18,000 you
10 handed over to Jerry Swann --

11 A. Yes, sir.

12 Q. -- was that -- we heard from Mr. Hite that that was
13 a loan to Jerry Swann. Is that what it was?

14 A. No. It was -- we helped Jerry Swann, is what I
15 did.

16 Q. Okay.

17 A. Like he would help me if I needed help, if he could
18 do it.

19 Q. Okay. So was it a gift?

20 A. No. I would say it was an agreement to help him
21 move, and I said we would either get the property,
22 somehow we will square up on it and we will.
23 Either take the property over, which we did -- and
24 then the divorce came to effect. We thought this
25 would never even come to this mess just like this

1 until divorce --

2 Q. I understand. I don't know many people that --
3 that plan to do something to end up in court.

4 A. Pretty much.

5 Q. Yeah, I don't know anybody that plans it.

6 A. You're exactly right.

7 Q. But -- but you -- all right. You gave the \$18,000
8 to him, and then you knew that Patricia gave --
9 paid Atlantic Coast the 26,000?

10 A. Not then I didn't.

11 Q. Well, now, you just testified you knew she was
12 paying them off out of the loan on your home.

13 A. You didn't understand. I said that \$18,000 was
14 given to Jerry in '02 or '03. Patricia paid that
15 land off in '06.

16 Q. Correct.

17 A. That's three years difference.

18 Q. I understand --

19 A. I didn't know nothing about the land then being --
20 being paid off. I had no idea it was being paid
21 off then.

22 Q. You had no idea she was using that money to payoff
23 Atlantic Coast?

24 A. No, no, no. What you just said that I knew before
25 I gave him the money and that's wrong. I gave him

1 the money three years prior.

2 Q. Correct. But -- but you -- you said the eighteen
3 was for the land.

4 A. We gave him the \$18,000 to move, what we give it to
5 him for.

6 Q. Okay.

7 A. It cost a lot of money to move a double-wide that
8 far.

9 Q. I understand. So it was not the purchase price for
10 the land?

11 A. No, sir.

12 Q. Okay. Now, and then in '09 is when the assignment
13 was done?

14 A. That's correct.

15 Q. Okay. But you knew that in '06 Patricia had paid
16 off the land?

17 A. Of course. It was with my money --

18 Q. Well, it was y'all's --

19 A. -- or our money.

20 Q. It was y'all's money, wasn't it?

21 A. I would say our money, our money. Not mine, ours.

22 Q. Okay. But you knew Atlantic Coast had been paid
23 off in '06?

24 A. That's correct.

25 Q. Okay. So what interest did you think Jerry Swann

1 had in the land in '09?

2 A. It was still his land or still his name on the
3 deed, I thought.

4 Q. Well, that -- well, to this day there's not a deed.

5 A. That's correct, but I didn't know that until later
6 after the fact.

7 Q. Well, you -- well, but -- but the document Brian
8 Katonak sent was an assignment of the Bond for
9 Title. It wasn't a deed, was it?

10 A. I don't know. I guess, I don't know about lawyer
11 stuff. I have no idea.

12 Q. Because the deed never has been in Jerry Swann's
13 name.

14 A. Okay.

15 MR. VERENES: I don't have anything further,
16 Your Honor.

17 THE COURT: Ms. Rushton.

18 EXAMINATION BY MS. RUSHTON:

19 Q. Mr. Hite, did you borrow \$12,000 from Mr. Hicks?

20 A. Yes, I did.

21 Q. That was a loan?

22 A. I won't say it's a loan. I -- I asked John for the
23 money, and John said he would help me out to help
24 Jerry.

25 Q. And you were going to help a friend out, the

1 Swanns?

2 A. Exactly right.

3 Q. And nothing was ever said about the land?

4 A. At the time he gave -- he gave me the money, I told
5 him he'd get his money back one way or another,
6 maybe the property or it may be cash. I don't know
7 right now, but I wanted to help Jerry; and he
8 wanted to -- he wanted to help Jerry too. Jerry's
9 another soldier and that's what he wanted to do.

10 Q. Did Ms. -- did Patricia Hite know about this
11 \$12,000 loan?

12 A. No.

13 Q. But you knew all along that she wanted the land and
14 that --

15 A. Not then, no, not -- when the money was given to
16 Jerry, no.

17 Q. So it had nothing to do with buying an interest in
18 that land; it was just to help a soldier out?

19 A. Of course to help a soldier out.

20 Q. But you still owe John Hicks \$12,000; is that
21 correct?

22 A. If -- if he -- if this court doesn't give him the
23 deed to this property, I will pay him \$12,000.

24 Q. So at the time of your divorce in 2009, you had a
25 loan outstanding to John Hicks --

1 A. No.

2 Q. Oh, you didn't owe him anything?

3 A. No.

4 Q. Why didn't you?

5 A. Because I didn't owe him any money, no.

6 Q. Had you paid him back?

7 A. No, I hadn't paid him back. At that time I didn't
8 owe him the money. If this court doesn't give him
9 the deed to the title today, then I will owe him
10 \$12,000.

11 Q. So you basically assigned whatever interest you had
12 in this Swann property to Mr. Hicks --

13 A. No.

14 Q. -- in your mind?

15 A. No, huh-uh. What I did is help him, helping him
16 get his money back from helping Jerry move.

17 Q. So what you did, was you helped Mr. Swann with Mr.
18 Hicks' money which in turn you're trying to get
19 from Patricia Hite --

20 A. No.

21 Q. -- to pay back?

22 A. The money that Patricia Hite got was from both of
23 us on the sale of a piece of property at Waterway
24 Circle, okay.

25 Q. And all of the marital issues were resolved at the

1 time of the divorce?

2 A. Correct.

3 Q. And then immediately thereafter you had Mr. Katonak
4 send an assignment to Mr. and Ms. Swann; is that
5 correct?

6 A. No. Mr. Hicks did. Mr. Katonak just had it done.

7 Q. Mr. Katonak did it at your --

8 A. Yeah.

9 Q. -- direction or Mr. Hicks' direction?

10 A. Mr. Hicks.

11 Q. Oh, is that what he testified to?

12 A. I couldn't understand.

13 Q. Is -- is that what Mr. Hicks testified to?

14 A. I didn't --

15 Q. Okay.

16 A. I didn't understand that.

17 Q. Okay. But so far we have a loan of \$12,000 that
18 Mr. Hicks is going to get paid back one way or
19 another?

20 A. That's correct. One way or another he'll get his
21 money back.

22 Q. Okay. But it was never connected to the land, that
23 loan?

24 A. By contract, no.

25 Q. Okay.

1 A. By handshake.

2 Q. Okay. All right. I just want to make sure.

3 A. Okay.

4 RE-EXAMINATION BY MR. SNELL:

5 Q. Mr. Hite, just a second ago you said "by
6 handshake"; and what do you mean?

7 A. I mean, I shook the man's hand. My -- my handshake
8 is as good as signing my name on this piece of
9 paper right here.

10 Q. All right. So when you said no contract, you were
11 referring to a written contract --

12 A. Yes, sir.

13 Q. Okay. And is there -- is there any reason why you
14 and your wife didn't list all this down on your
15 Family Court filings at the time?

16 A. I didn't put it down because I didn't think it was
17 going to be an asset; and she didn't have it on
18 hers, so I didn't think it was going to be our asset.
19 I had no idea she was going to go after this
20 property, so now it is becoming an asset --

21 Q. How -- how was --

22 A. -- after the fact.

23 Q. How would you describe your relationship at the
24 time you and your wife separated and divorced?

25 A. It was hostile. She was -- she had been in and out

1 of Three Rivers, and she was very upset. You
2 couldn't talk to her and it just went south.

3 Q. Now, your Family Court case, did y'all have a
4 settlement or a trial?

5 A. We had a settlement.

6 Q. And was it your understanding that that --
7 actually, I'm going to hand you a better-looking
8 copy of Defendant's Exhibit 2, Defendant Hicks,
9 which is the "Final Order For Divorce," dated
10 October 26, 2009; and let me hand that to you. Is
11 this -- does that look like a copy of your Divorce
12 Decree?

13 A. Yes, it is.

14 Q. Okay. And if you look on page 2, those paragraphs,
15 is that your settlement?

16 A. I didn't understand.

17 Q. Is that the settlement? That's the terms of the
18 settlement?

19 A. Yes, sir.

20 Q. And when you settled your divorce, what was your
21 understanding about where your wife would be
22 staying and what property she would be using?

23 A. She was to get 151 Holder Road in cash and assets
24 in the house and whatever she wanted on -- on the
25 list she had.

1 Q. Okay. Can you tell us, just describe for us where
2 is 151 in relation to 261.

3 A. It's probably a quarter mile down the road,
4 probably, not too far.

5 Q. Does it -- does this 261 and 151, do they touch or
6 -- y'all share -- y'all -- does the properties
7 touch?

8 A. 261?

9 Q. And 151 --

10 A. No, huh-uh. It's a good walk down there.

11 Q. And was your -- was -- was it your understanding in
12 your divorce settlement that your wife could end up
13 being your next-door neighbor?

14 A. No.

15 Q. All right.

16 A. Did not understand that in my divorce settlement.
17 I wouldn't have agreed to that.

18 Q. No other questions. Answer any other questions.

19 THE COURT: Anything else on re-cross? Mr.
20 Verenes.

21 MR. VERENES: No, sir. No, Your Honor.

22 THE COURT: Ms. Rushton?

23 MS. RUSHTON: No, Your Honor.

24 THE COURT: Mr. Swann, you're a forgotten man.
25 I forgot you. Have you got any questions?

1 MR. SWANN: No, sir. Thank you.

2 THE COURT: All right. Sir, you can step
3 down. Thank you.

4 MR. SNELL: That's the case on behalf of John
5 Hicks, Your Honor.

6 THE COURT: All right. So we had a
7 stipulation on the Plaintiff. We had Mr.
8 Verenes present his case and had you present
9 yours. Mr. Swann, do you wish to take the
10 stand or call anybody in regards to your
11 position in this case?

12 MR. SWANN: No, sir.

13 THE COURT: Okay. All right. Before I
14 entertain any motions, are there any other
15 testimony that needs to be presented by any
16 party? And a little bit unusual situation,
17 but I'm assuming there's no re-direct
18 presented by the Plaintiff since we
19 stipulated; but I suppose we could have that
20 since we have live testimony. Ms. Rushton?

21 MS. RUSHTON: Nothing, Your Honor.

22 THE COURT: All right. In regards to any
23 counterclaims and cross-claims, Mr. Verenes,
24 anything else from you?

25 MR. VERENES: No, Your Honor.

1 THE COURT: All right. Mr. Snell, you
2 completed yours, so I assume none from you.

3 MR. SNELL: Correct. Correct, Your Honor.

4 THE COURT: All right. Now, let's take a
5 little housekeeping first. Is everybody in
6 agreement that the court reporter will
7 transcribe the stipulations that were related
8 by all the parties at the beginning of this
9 hearing? And I'm not saying that you agree
10 that she transcribe the entire transcribe at
11 this time, because we don't need -- I don't
12 think we need to go to that expense at this
13 time. I want to reserve the right, obviously,
14 to say if I think I need that for a decision.
15 But I am going to need those stipulations, so
16 is there any issue in regards to that?

17 MR. VERENES: No, Your Honor. I agree.

18 THE COURT: Okay.

19 MS. RUSHTON: None, Your Honor.

20 MR. SNELL: No, Your Honor.

21 THE COURT: Okay. Everybody's in agreement on
22 that. And that's not to say that if you want
23 a copy of this transcript from me, you can't
24 get that. I'm just saying that's what I would
25 need. And I certainly in evaluating the

1 evidence and the documents --

2 MR. VERENES: I would agree that she -- we
3 need to go ahead and initiate that and to make
4 that request that that be transcribed.

5 THE COURT: All right. Madam Court Reporter,
6 are you clear on that?

7 COURT REPORTER: (No verbal response.
8 Affirmative gesture.)

9 THE COURT: Okay. All right. I'll entertain
10 any motion at this time. Let me ask from the
11 Plaintiff first. Any motions?

12 MS. RUSHTON: None, Your Honor.

13 THE COURT: All right. Mr. Verenes, any
14 motions?

15 MR. VERENES: No, Your Honor.

16 THE COURT: All right. Mr. Snell, any
17 motions?

18 MR. SNELL: Your Honor, I think we'll just --
19 just one request. It may be helpful if -- if
20 the -- if the Court could allow, say, seven or
21 ten days for a post-trial memo, just --

22 THE COURT: For briefs or memorandum --

23 MR. SNELL: Please, Your Honor.

24 THE COURT: -- delivered by the parties? I
25 don't have any objection to that if it's

1 requested. I'll say -- well, given the time
2 of the year we're at, let's see, what's today,
3 the 8th? I'll say 14 days. I don't think
4 anybody's going to deliver anything on
5 Christmas Eve, but we'll see. I won't be
6 there.

7 MR. VERENES: You want that in the -- what
8 format do you --

9 THE COURT: Just a -- if you want to have a
10 memorandum clause stating your position in the
11 case based on testimony and documents,
12 basically you're going to have to come up with
13 an argument or you just want to argue what the
14 law is in regards to the case. I assume
15 that's what you're asking, Mr. Snell.

16 MR. SNELL: Please, Your Honor. Yes, sir.

17 THE COURT: Okay. And I'm not saying any
18 party has to, but I'll -- if it's requested,
19 and I usually leave that option open to
20 parties on a non-jury.

21 MR. VERENES: You said fourteen days?

22 THE COURT: Fourteen days. If I do not have
23 it in fourteen days, I'll just assume that
24 it's not going to be submitted or whatever's
25 been submitted is the only thing. Of course,

1 if you submit anything to me, you'll need to
2 send that to the other parties. And since Mr.
3 Swann's pro se, he would also get a copy of
4 that.

5 MR. VERENES: Can I ask? Mr. Swann, have you
6 been getting the mail? Do we have your
7 correct mailing address?

8 MR. SWANN: Yes, sir. For the most part, I
9 think so.

10 MR. VERENES: Okay. I just want to make sure
11 we're sending it to the right place.

12 THE COURT: Okay. That's a good, good point.
13 Thank you.

14 MR. VERENES: Okay.

15 MR. SNELL: And, I guess, Judge, following
16 (inaudible) discontinuing. One of the -- one
17 of the -- I think, Your Honor, testimony of
18 the evidence is closed. One of the
19 Plaintiff's prayers for relief, I think, all
20 Defendants (inaudible) on behalf of my client,
21 John Hicks, was for award of attorney's fees
22 and costs. I haven't heard any testimony or
23 any mention, and I sort of would dispute the
24 basis and contract or statutes of finding
25 attorney's fees against my client, Mr. Hicks

1 and just ask -- and just ask if I could have
2 that prayer for relief or (inaudible)

3 THE COURT: All right, Ladies and Gentlemen.
4 I believe attorney's fees awarded if it's an
5 element of your contract or there's a
6 statutory reference that allows for attorney's
7 fees of your claim. Does anybody have any
8 arguments they want to present that they're
9 entitled to the attorney's fees? I know we
10 talked about cost, but attorney's fees to be
11 paid. Ms. Rushton?

12 MS. RUSHTON: None, Your Honor.

13 THE COURT: Mr. Verenes?

14 MR. VERENES: I don't believe I have any basis
15 to --

16 THE COURT: Okay.

17 MR. VERENES: -- to --

18 THE COURT: I'll grant that motion as to all
19 parties, that everybody in this case is
20 responsible for their own legal fees.

21 MR. SNELL: All right. And, I guess, Judge,
22 at this point and under the -- under the guise
23 of a motion of directed verdict, I guess, I
24 could -- if I could make that now, and I
25 understand the Court may not rule until we

1 have a chance just to -- to look at the
2 memorandums.

3 THE COURT: You can make a motion, and I might
4 rule on it right now.

5 MR. SNELL: Well, I was going to say the --
6 the one directed verdict issue I had to raise
7 was just -- was just regarding the claim about
8 Patricia Hite to a title or an interest.
9 We're dealing with -- I think with an interest
10 in an estate or a lease that an assignment
11 which is -- there's a statute on this. It's
12 27-23-50. And I think the statute's
13 specifically to cover these kind of scenarios
14 or contingencies. And it says that the
15 assignments aren't valid unless there's a
16 writing signed by the party. It's a section
17 in the Statute of Frauds. So to the extent
18 that not only is there a statute of -- contend
19 there's a Statute of Frauds issue, above and
20 beyond legislation's got a specific statute on
21 (audible) requiring someone asserting to have
22 an interest some -- something in writing. And
23 I think we've got a writing from Atlantic
24 Coast to the Swanns, and we've got a writing
25 from the Swanns to Mr. Hicks. But as far as

1 third parties coming in, I think without a --
2 this type of contract or this type of deal
3 without a writing, I think, they're barred.
4 And I have some more (inaudible) they're not
5 the Statute of Frauds, but just put that --
6 reserve that particular section. Thank you.

7 THE COURT: All right. Ms. Rushton, in
8 response to that motion?

9 MS. RUSHTON: Your Honor, basically the Bond
10 for Title itself said that with the seller's
11 permission there could be. It didn't say
12 written consent. It just said that it could
13 be assigned with the permission of the seller.
14 And that permission was granted through the
15 telephone conversations with both Ms. Hite and
16 with Mr. Swann. So I think that, you know, if
17 we're talking about things in writing, I think
18 the fact that if there's proof of the 26,000
19 payment, that the Hite or the Hites had the
20 interest in the property far beyond whatever
21 anything that Mr. Hicks could ever claim for
22 nothing being assigned until after Mr. Swann
23 had already attempted to sign a release for
24 Quitclaim of interest. And that assignment,
25 the language on that assignment that was

1 purportedly going to Mr. Hicks, it plainly
2 says whatever interest there is. Well, he had
3 already given up his interest through the
4 testimony and through that earlier attempt
5 what he thought in good faith he was giving up
6 all of his rights and consideration being
7 forgiveness of any other indebtedness under
8 the terms of the Bond for Title. So, you
9 know, although Mr. Snell makes a good argument
10 about the statute, the whole thing is a matter
11 of what is right here and who's going to get a
12 windfall, who's going to get something for
13 nothing, who's going to get something for what
14 was a gift to a fellow soldier that now has
15 turned into a lien on property. I don't
16 really think that that statute -- I haven't
17 looked at it, but I don't think it applies
18 here.

19 THE COURT: Mr. Verenes?

20 MR. VERENES: Well, Your Honor, yes, there was
21 no -- nothing in writing to memorialize the
22 agreement between Patricia Hite and the
23 Swanns; but I believe under the Statute of
24 Frauds performance gets you by that
25 requirement of anything in writing. There's

1 been no dispute of the performance. The
2 payments were made by her to Atlantic Coast.
3 Both Mr. Swann and Atlantic Coast testified
4 that -- of the telephone conversation
5 confirming that -- Mr. Swann says the Hites,
6 plural. Atlantic Coast records say Patricia
7 Hite, but John Hite's not a party to this
8 litigation, so -- but there's no dispute that
9 she was making the payments and that -- and
10 that Mr. and Mrs. Swann by the improperly
11 witnessed document, but still Mr. Swann
12 acknowledged they signed it. And it's not --
13 it's not a reportable document because of the
14 witnessing. Mr. Swann testified today that --
15 that he signed that document and he felt that
16 as of that date in '05 that terminated any
17 interest in the property and that it was his
18 understanding that -- he used the term "Hites"
19 to include both John and Patricia, were the
20 ones that were purchasing the property. So I
21 don't think there's any -- any Statute of
22 Frauds barred to this and or under the other,
23 a statute regarding the assignment, that has
24 to do with giving notice to third parties as
25 far as recording it and to put it on record.

1 I don't think that in any bars Patricia Hite's
2 claim to be -- to receive property that she
3 has paid for. She's paid the owner for the --
4 for the property. Everyone knew she was
5 making the payments; the testimony nobody
6 disputed that. And so I don't think there's
7 any basis to grant the motion that Mr. Snell
8 has made. I think it's clear from the
9 testimony that -- that -- that neither the
10 Statute of Frauds nor the section regarding
11 assignments would be any bar to this
12 situation.

13 THE COURT: All right. Thank you. Mr. Swann,
14 anything you want to add?

15 MR. SWANN: No, sir.

16 THE COURT: All right. Given the documents
17 and both the evidence of stipulated documents
18 and the testimony that I've heard, I'm going
19 to deny a Directed Verdict Motion, given the
20 weight to be given in that type of motion.
21 However, that does not preclude you from
22 making an argument on that statute in regards
23 to any memorandum that may be submitted that
24 you inquire about, but I'm going to deny a
25 Directed Verdict Motion. Anything else? Any

1 other motion, Mr. Snell, or anything --

2 MR. SNELL: Nothing further, Your Honor.

3 THE COURT: Okay. All right. Ladies and
4 Gentlemen, if you will, please, make sure we
5 have all the exhibits of each of you on your
6 respective exhibits and make sure everything's
7 there, I would appreciate that and nobody
8 takes anything back to the table. It happens
9 sometimes, and I will -- for the parties
10 involved, please understand I'm not going to
11 make any decision today. There's going to be
12 a transcript prepared on the part of the
13 stipulations. I've got documents to look at
14 and review the notes that I've taken along
15 with those stipulations and try and reach a
16 decision. And the attorneys, as you've heard,
17 will have a chance to make any -- and if they
18 wish to submit legal arguments on that. So
19 we'll have a written decision, and the parties
20 will be notified after reviewing those items.
21 So I want to thank everybody for your
22 patience. I know it's a little warm in here
23 today, but I think it -- trust me when I tell
24 you that it would have been much warmer in the
25 small courtroom that I usually have my

1 hearings in. So I appreciate it and at this
2 point, then, we're adjourned. And the
3 attorneys, if y'all will check those exhibits,
4 please.

5 (Thereupon, there being no
6 further testimony, the hearing
7 was adjourned at 1:40 p.m.)

8 (*This transcript may contain quoted material.
9 Such material is reproduced as read or quoted
10 by the speaker.)

11 (**Certificate accompanies sealed original only.)

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE FAMILY COURT OF THE
SOUTH CAROLINA

JOHN RUSSELL III
Plaintiff,

FINANCIAL DECLARATION
OF PATRICIA A. HOLDER III

vs.
PATRICIA A. HOLDER III
Defendant.

CASE NO. 08-DR-02-205

WIFE/MOTHER: PATRICIA A. HOLDER III

Address: [REDACTED]
Age: 51
Occupation: Rural Entrepreneur
Employer: FSN
Employer Address: Church Street, Batesburg, SC 29006

Gross Monthly Income	Wife/Mother
Principal Earnings from Employment	\$988.31
Overtime, Tips, Commission, Bonuses	
Pensions, Retirement, and Annuity Income	
Additional Employment Income	
Social Security Benefits (SSA) and VA Benefits	
Disability and Worker's Compensation Benefits	
Unemployment and AFDC	
Spousal or Child Support from other marriage relationship	
Dividends, Interest, Trust Income, and Capital Gains	
Rental Income and Business Profits	
Other (Specify)	
TOTAL GROSS MONTHLY INCOME	2,955.31

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

DEC 08 2011

Liz Godard

CLERK OF COURT & G.A., Aiken County, S.C.

FILED
AIKEN COUNTY

OCT 2 9 2011

CLERK OF COURT

Payroll Deductions from Monthly Income	Wife/Mother
Federal Income Tax	154.63
State Income Tax	760.00
Social Security and Medicare Tax (10.4%)	200.84
Self-Employment Tax	
Health and Dental Insurance (Adult)	
Health and Dental Insurance (Child)	
Union Dues	
Voluntary Retirement Contribution (401(k), 457, IRA)	
Mandatory Retirement Contribution	
Savings Plan	
Other (Specify)	
TOTAL MONTHLY DEDUCTIONS	1,075.98
NET MONTHLY INCOME	1,930.33

Estimate monthly expenses. (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included.)

MONTHLY EXPENSES	Wife/Mother
Residential Rent Payment	
Note or Mortgage Payment on Residence(s)	
Food and Household Supplies	
Utilities - Water and Garbage Collection	280.00
Telephone and Cellular Phone	90.00
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)	
Child Support (from other relationship)	
Work Related Day Care	
Spousal Support (from prior marriage)	
Auto Payment	
Auto Insurance (taxes, licensing, and maintenance)	900.00
SUBTOTAL	1,280.00

Rent (Property Tax on Residence)	1,000.00
Maintenance for home held	
Utilities (Electric)	
Utilities (Gas/Heat)	
Cable Television, Satellite, and Internet/Online Services	
Laundry and Dry Cleaning	
Medical and Dental Expenses (not paid by insurance)	
Prescriptions, Glasses, and Contacts (not paid by insurance)	
Children's incidental expenses	
School lunches, supplies, field trips, and fees	
Entertainment	
Auto Incidental Expenses	
Auto Insurance Payment	1,000.00
SUBTOTAL:	1,000.00
TOTAL MONTHLY EXPENSES	2,288.00

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by
Bank of America	Credit Card	1,000.00	10,000.00	Patricia Hite

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section

Owner	Name of Institution	Type of Account	Balance

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)

Real Estate Section

Owner	Address	Value	Mortgage Balance	Mortgage Equity

William J. [illegible]
Signature

Sworn to before me this *21st* of *October*, 2017

William J. [illegible] (SEAL)
Notary Public for South Carolina
My Commission expires *May 12, 2018*

STATE OF SOUTH CAROLINA)

COUNTY OF Aiken)

BOND FOR TITLE

This Bond for Title made and entered into this 15 day of September, 1999, by and between Atlantic Coast Properties, Inc. (Seller), whose address is Route 2 Box 244, Johnston, SC 29832 (803-275-4755) and Jerry E. Svann, Jr. and Sandra A. Svann (Purchaser), whose address is 235 Holder Road Batesbury, SC 29006

1. Seller agrees to sell and Purchaser agrees to buy under the terms and conditions hereinafter set forth, the following described real estate:

All that certain piece, parcel, or tract of land consisting of 6.46 acres, located in Aiken County, S.C., fronting on Holder Road, better shown on a plat of Sparkleberry Hills Subdivision, prepared by R.M. Gaddy and Associates, Inc., RLS #C00243, dated February 9, 1996, recorded in Plat Book 38 at Pages 170, 171, & 172 in the records of the office of the REC for Aiken County, S.C., better known as Lots #18, 19 & 20 of Sparkleberry Hills Subdivision.

2. Purchase Price: \$30,220.00
3. Down Payment: 865.00
4. Amount Financed: 29,355.00
5. Annual Percentage Rate: 12.00%
6. Purchaser shall pay the balance of the purchase price in 360 equal monthly installments of principal and interest in the amount of \$ 301.95 per month commencing November 1, 1999 and continuing on the same date each month thereafter until the entire balance with interest has been paid. If any payment is in default for more than ten (10) days, Seller shall collect a late charge of Twenty Five (\$25.00) Dollars.
7. Prepayment. This debt may be prepaid in whole or in part at any time without penalty.
8. Special Stipulations. Final payment to be made in the form of a cashier's check or money order. Purchasers agree to abide by the Protective Covenants of Sparkleberry Hills Subdivision, Phase I.

9. Title Conveyed. When Purchaser is entitled to a deed to the property described herein, Seller shall deliver to Purchaser a fee simple title to the property by a general warranty deed, subject to the lien for current year property taxes, restrictions and easements of record which do not make the title unmarketable, and applicable zoning laws, and other laws and regulations.

10. Conditions of Property and Risk of Loss. Purchaser accepts possession of the property in its present condition as of the date of this Bond For Title. The risk of loss or damage to said property hereafter by act of God or other casualty until the delivery of the deed as herein provided is assumed by Purchaser. It is understood and agreed that Purchaser accepts and assumes any and all risk of loss to all trees, shrubs, or other damage to the property due to fire or other casualty, acts of God and the elements from the date hereof.

11. Improvements and Maintenance. Any fixtures or improvements which are attached to any part of the property shall be considered a part of the property and, if this Bond For Title becomes void as provided herein, Purchaser shall have no right or interest in same.

12. Indemnity. It is understood that Purchaser may have the full use and enjoyment of the property during the term of this agreement, provided, however, at all times while this Bond For Title is in effect or while said property is occupied by Purchaser, Seller shall not be liable or responsible for any activities or accidents that may occur on or in connection with Purchaser's use of said premises. Purchaser shall be solely responsible for any damage, injury or other loss, to persons or property, that may occur upon the property as a result of the negligent, unlawful or willful act or omission of Purchaser or their visitors and shall defend, indemnify and hold Seller harmless for any damage, loss or expense resulting therefrom.

13. Insolvency of Purchaser. If Purchaser becomes insolvent or if any judgment creditor or other party asserts any purported lien or seeks to attach the property or Purchaser's rights under this Bond For Title, Seller may reenter the property and expel Purchaser or anyone claiming under or through Purchaser and remove any property therefrom without notice, formal

AIKEN COUNTY ASSessor
CO-265-01-080
CO-265-01-081
CO-265-01-082
REC. 9-28-00
A.I.T. 9-15-00

DEED
VOL 2023 PAGE 145

claim or process, Seller being absolved of any liability or claim for damages in doing anything reasonable necessary or appropriate in connection therewith, and Seller shall not thereby waive any other right afforded by law, equity or this contract.

14. **Assignment.** Purchaser shall not assign this Bond For Title or otherwise transfer any right or interest hereunder without Seller's prior consent. If Seller gives its consent, such approval shall not release Purchaser's obligations hereunder.

15. **Entire Agreement.** This Bond For Title represents the entire agreement between the parties, and no warranties, representations, promises or statements have been made by Seller unless stated herein in writing and duly executed by an authorized representative of Seller.

16. **Construction of Agreement.** This Bond for Title shall be construed according to the laws of South Carolina. In the absence of a specific provision to the contrary, the party upon whom an obligation is imposed shall perform the obligation at his own expense. Headings related to the contents of particular paragraphs are inserted for reference convenience and are not to be construed as parts of the particular paragraphs to which they refer. Any waiver by Seller of any particular default under the terms and provision of this contract shall only be considered a waiver of the particular default, and not a waiver of any other defaults; provided, however, Seller may later declare Purchaser's act or omission to be a default of this agreement.

17. This is to certify further that this Bond For Title is issued subject to the terms and provisions heretofore provided; that when and if Purchaser makes full and timely payment of all sums payable as set forth in this Bond For Title and otherwise fully complies with all of the other terms and provisions hereof, Seller will deliver to purchaser a deed conveying title to the above described property as provided in this Bond For Title; and that if Purchaser fails or neglects to comply with any of the terms and provisions of this Bond For Title, Seller at his option may declare all rights of Purchaser under this Bond For Title voids, after which this Bond For title shall be deemed a lease agreement and Seller shall be deemed to be landlord and Purchaser shall be deemed to be a tenant unlawfully holding over after the expiration of a lease and notice to vacate; if said Bond For Title is deemed to be such a lease agreement, then, any and all sums previously paid by Purchaser pursuant to this Bond For Title shall be retained by Seller as rent for Purchaser's use and occupancy of the property and as reimbursement for any advancements made by Seller for the benefit of purchaser, and Purchaser shall promptly surrender possession to Seller and vacate the property and Purchaser hereby agrees to execute a Release and Quitclaim of Equitable Interest, or any other documents provided by Seller which are necessary to terminate this Bond For Title, and Seller may re-enter the property and expel Purchaser or anyone claiming under them and remove Purchaser's property without notice, formal claim or process, Seller being absolved of any liability or claim for damages in doing anything reasonable necessary and appropriate in connection therewith. Notwithstanding the foregoing, Seller may at its option institute a foreclosure action to extinguish any claim by Purchaser to any interest in the property.

18. **Attorney's Fees and Expenses.** In the event Purchaser defaults on its obligations hereunder, Purchaser shall pay all reasonable attorneys' fees and expenses incurred by Seller or its assignee in enforcing this agreement.

19. **Taxes.** Effective with the signing of this Bond For Title, Purchaser shall be responsible for payment of all future property taxes affecting the within-described property. Purchaser shall also pay a pro-rata share of property taxes for the current year. Purchaser is responsible for rollback taxes.

20. **Miscellaneous.** This Bond For Title shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. All rights and remedies given to Seller herein, or by law, shall be cumulative and alternative. If any provision of the Bond For Title is held invalid or unenforceable, the remainder of it shall not be affected thereby and to this end the provisions are declared severable. This agreement may not be amended except by instrument in writing executed by both parties hereto.

21. **Disclaimer.** SELLER AND BROKER DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES EXPRESS OR IMPLIED AS TO THE CONDITION OF THE PROPERTY OR ITS SUITABILITY FOR ANY PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS INSPECTED THE PROPERTY AND IS PURCHASING IT "AS IS". Purchaser acknowledges that Purchaser has not relied upon the advice or representations, if any, of Seller, Broker or Broker's associated salespersons relative to the legal and tax consequences of this contract, the purchase and ownership of the premises, the condition of the premises, the operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances in the premises, (if applicable), the availability of utilities to the premises or the investment potential or resale value of the premises. Purchaser acknowledges that if such matters have been of concern to Purchaser, Purchaser has sought and obtained independent advice with respect thereto.

In witness whereof, the foregoing Bond for Title is hereby duly executed the day and year first above written, and the undersigned hereby acknowledge receipt of a completed copy

DEED
VOL 2023 PAGE 146

hereof.

WITNESSES:

[Signature]

[Signature]
SELLER Atlantic Coast Properties, Inc.
by Jerry M. Holmes, President

[Signature]

[Signature]

[Signature]
PURCHASER Jerry E. Svann, Jr.

[Signature]

[Signature]
PURCHASER Sandra A. Svann

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)

PROBATE

Personally appeared the undersigned witness and made oath that s/he saw the within Purchaser and Seller sign the Bond for Title and that s/he, with the other witness subscribed above witnessed the execution hereof.

Sworn to before me this 15th day
of September, 1999, Witness

[Signature]

[Signature]
Notary Public for South Carolina
My Commission Expires: 08-24-2009
Pamela F. Horne

ASSIGNMENT:

Seller hereby assigns this agreement for value received to
this day of , 19 , in accordance with
the terms set forth herein.

Witness

Seller

Witness

Seller

RETURNED TO:

Atlantic Coast Prop.
Inc.
911 Atlantic Coast Blvd.
Spartanburg - Leesville, S.C. 29106

9-28-00 at 1040 hrs
[Signature]
RALE AIKEN COUNTY

STATE OF SOUTH CAROLINA

RELEASE AND QUITCLAIM OF
EQUITABLE INTEREST

COUNTY OF AIKEN

WHEREAS, THE UNDERSIGNED CONTRACT PURCHASER ENTERED INTO A BOND FOR TITLE WITH ATLANTIC COAST PROPERTIES, INC., THE CONTRACT SELLER, A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; AND

WHEREAS, UNDER SAID BOND FOR TITLE, THE CONTRACT PURCHASER AGREED TO PURCHASE FROM THE CONTRACT SELLER THE REAL PROPERTY DESCRIBED BELOW UPON THE TERMS AND CONDITIONS SET FORTH IN THE BOND FOR TITLE; AND

WHEREAS, THE CONTRACT PURCHASER HAS FAILED TO COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THE BOND FOR TITLE; AND

WHEREAS, IN CONSIDERATION FOR THE RELEASE BY CONTRACT SELLER OF THE REMAINING OBLIGATIONS OF THE CONTRACT PURCHASER UNDER THE BOND FOR TITLE AND TO QUITCLAIM AND FOREVER RELEASE ANY EQUITY OF REDEMPTION OR OTHER RIGHT, TITLE OR INTEREST CONTRACT PURCHASER MAY HAVE IN THE PROPERTY;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, CONTRACT PURCHASER HEREBY TERMINATES THE BOND FOR TITLE AND QUITCLAIMS AND FOREVER RELEASE TO CONTRACT SELLER THE CONTRACT PURCHASER'S EQUITY OF REDEMPTION AND ALL OTHER RIGHT, TITLE AND INTEREST THE CONTRACT PURCHASER MAY HAVE IN THE FOLLOWING PROPERTY:

All that certain piece, parcel or tract of land consisting of 6.46 acres, located in Aiken County, S.C., fronting on Holder Road, better shown on a plat of Sparkleberry Hills Subdivision, prepared by R. M. Gaddy and Associates, Inc., RLS C00243, dated February 9, 1996, recorded in Plat Book 38 at Pages 170, 171 & 172 in the records of the office of the RMC for Aiken County, S.C., better known as Lots 18, 19 & 20 of Sparkleberry Hills Subdivision.

TO HAVE AND TO HOLD ALL AND SINGULAR THE SAID PROPERTY TO THE CONTRACT SELLER, ITS HEIRS, SUCCESSORS AND ASSIGNS FOREVER.

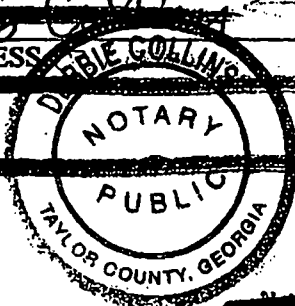
IN WITNESS WHEREOF, THE CONTRACT PURCHASER HAS CAUSED THIS INSTRUMENT TO BE EXECUTED THE 5th DAY OF December, 2006.

*
1ST WITNESS *sign here*

Jerry E. Swann, Jr.
JERRY E. SWANN, JR.

2ND WITNESS

Sandra A. Swann
SANDRA A. SWANN



2009030298

ASSIGNMENT
RECORDING FEES

\$10.00

PRESENTED & RECORDED:

12-03-2009 03:35 PM

JUDITH WARNER
REGISTER OF DEEDS CONVEYANCE
AIKEN COUNTY, SC

By: MARILYN SEIGLER DEPUTY

BK:RB 4286

PG:2202-2203

STATE OF SOUTH CAROLINA)

) ASSIGNMENT OF BOND FOR TITLE

COUNTY OF AIKEN)

WHEREAS, Jerry E. Swann, Jr. and Sandra Swann (hereinafter referred to as 'Swanns') entered into a Bond for Title with Atlantic Coast Properties, Inc. (hereinafter referred to as 'Atlantic') that is dated September 15, 1999 and is filed in Deed Book 2023, Page 144, records of Aiken County, South Carolina, and

WHEREAS, by this Bond of Title, Atlantic was selling to the Swanns certain real property consisting of 6.46 acres on Holder Road known as lots 18, 19 and 20 of Sparkleberry Hills Subdivision, located in Aiken County, South Carolina (hereinafter referred to as the 'Property'), and

WHEREAS, the Swanns now desire to assign and convey all of their rights and interest in this Bond for Title regarding the Property to John Hicks, and are executing this Assignment of Bond for Title which constitutes the full agreement between them.

THEREFORE,

FOR VALUE RECEIVED, the undersigned, Jerry E. Swann, Jr. and Sandra Swann, assigns all of their rights that they may have to the Bond for Title that is found in Deed Book 2023, Page 144, records of Aiken County, South Carolina with Atlantic Coast Properties, Inc. to John Hicks, his successors and assigns. In executing this Assignment, the Swanns acknowledge that all legal rights that they have in regards to this Property is being transferred to John Hicks.

WITNESS the execution hereof by the Swanns this 25TH day of

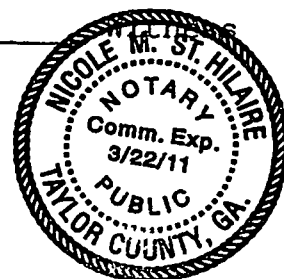
November, 2009.

WITNESSES: SWANS:

Jerry E. Swann, Jr.
One

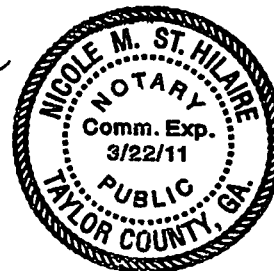
John Hicks

Jerry E. Swann, Jr.



Nicole M. St. Hilaire
Witness Two/Notary

Sandra Swann
Sandra Swann



STATE OF)

) PROBATE

COUNTY OF)

BEFORE ME personally appeared Witness One and made oath that s/he saw the within named Assignor sign, seal and, as its act and deed, deliver the within document; and that s/he, with Witness Two witnessed the execution thereof.

Rodney Hill

Witness One

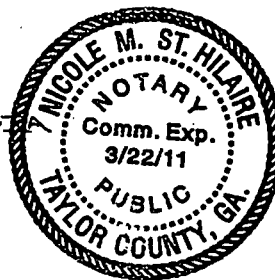
SWORN to before me this 25TH

day of NOVEMBER, 2009.

Nicole M. St. Hilaire

Notary Public for Taylor County, Georgia

My Commission expires 3-22-2011



JOHN HICKS HAS
PULLED OUT ON JEFF'S
PROPERTY. YOU NEED TO
GET STARTED AS SOON
AS POSSIBLE. PROPERTY
PAYMENTS ARE DUE FOR
OCT, + NOV.

I KNOW HAVE TO
PAY JOHN 450.00 FOR
APPRAISAL + BANK FEES
ON LOAN

A t l a n t i c C o a s t P r o p e r t i e s , I n c .

1934 Johnston Hwy.
Johnston, SC 29832

(803) 275-4755

November 04, 2003

MR. JERRY SWANN & MR. SANDRA SWANN 00041514
235 HOLDER ROAD
BATESBURG, SC 29006

Dear Mr. SWANN & Mr. SWANN:

Your account continues to be delinquent from your October 01, 2003 payment. Your credit is important to all of us. Payment is due immediately to avoid further action against your account.

If however, this is simply an oversight, please sit down immediately and mail us a certified check or money order for \$628.90 including late charges.

Very truly yours,

Atlantic Coast Properties, Inc.

ROXANA W. MAFFETT
BUSINESS MANAGER

A t l a n t i c C o a s t P r o p e r t i e s , I n c .
1934 Johnston Hwy.
Johnston, SC 29832

(803) 275-4755

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Very truly yours,

Atlantic Coast Properties, Inc.

ROXANA W. MAFFETT
BUSINESS MANAGER

*Per Jerry Swann
Patricia Hite to be
making the payments.
Fund will be put in
her name ??
Need to check Mrs. Hite's
Credit.*

Notice to Purchaser - In the event this check is lost, misplaced or stolen, a sworn statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days.

Date

VOID AFTER 90 DAYS
AUGUST 23, 2006

30-1/1140

(NTX)

Banking
Center

BATHEUR-LEESVILLE MAIN OFFIC

7236000 60002 000173565

PATRICIA HITE

Remitter (Purchased By)

26267.34

Pay

THIRTY SIX THOUSAND TWO HUNDRED SEVENTY SEVEN DOLLARS AND 34 CENTS

\$

To
The
Order
Of

ATLANTIC COAST PROPERTY INC.

Non-Negotiable

Authorized Signature

Customer Copy

Retain For Your Records

001641000272

Bank of America, N.A.
San Antonio, Texas

40-14-3774B 07-2003

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

Case No. 2011-CP-02-1375

Atlantic Coast Properties, Inc.,

Respondent,

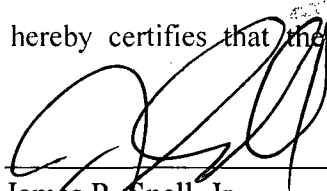
v.

Jerry E. Swann, Jr., Sandra A.
Swann, Patricia Hite and John
Hicks,

Of Which John Hicks is the Appellant.

CERTIFICATION OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that the Record on Appeal complies with Rule 210 SCACR.



James R. Snell, Jr.
Jennifer M. Clinkscales
Law Office of James R. Snell, Jr., LLC
316 South Lake Drive
Lexington, South Carolina 29072
Telephone: (803) 359-3301
Attorneys for Appellant

September 24, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

Case No. 2011-CP-02-1375

Atlantic Coast Properties, Inc.,

Respondent,

v.

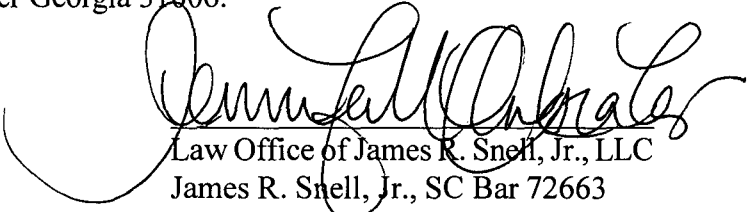
Jerry E. Swann, Jr., Sandra A.
Swann, Patricia Hite and John
Hicks,

Of Which John Hicks
is the Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal and Final Brief of the Appellant, John Hicks on the Respondents Atlantic Coast Properties, Inc. and on Jerry E. Swann, Jr., Sandra A. Swann and Patricia Hite by depositing a copy of it in the United States Mail, postage prepaid, on September 25, 2012 addressed to James L. Verenes, Esq., P.O. Box 328, Aiken, South Carolina 29802, Kathy O. Rushton, Attorney, 108 West Butler Street, Saluda, South Carolina 29138 and Jerry Swann and Sandra Swann, P.O. Box 452, Butler Georgia 31006.

September 25, 2012



Law Office of James R. Snell, Jr., LLC
James R. Snell, Jr., SC Bar 72663
Jennifer M. Clinkscales, SC Bar 100046
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
Attorneys for Appellant

RECEIVED

SEP 26 2012

SC Court of Appeals