

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable James O. Spence
Master-In-Equity

Case No. 2011-CP-32-1781

Appellate Case No. 2015-002048

RECEIVED
JUN 25 2018
SC Court of Appeals

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon...Appellants,

v.

Marjorie E. Temple.....Respondent.

RECORD ON APPEAL

Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Road
Lexington, SC 29072
(803) 957-5333
(803) 957-7717 facsimile
rick@sctrilattorneys.com
S.C. Bar No. 2591
Attorney for Appellant

Rolland E. Greenburg, III
712 Calhoun Street, Suite D
Columbia, SC 29201
(803) 256-4408
Attorney for Respondent

Spencer Andrew Syrett
P.O. Box 7403
Columbia, SC 29202
(803) 765-2110
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable James O. Spence
Master-In-Equity

Case No. 2011-CP-32-1781

Appellate Case No. 2015-002048

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon...Appellants,

v.

Marjorie E. Temple.....Respondent.

RECORD ON APPEAL

Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Road
Lexington, SC 29072
(803) 957-5333
(803) 957-7717 facsimile
rick@setrialattorneys.com
S.C. Bar No. 2591
Attorney for Appellant

Rolland E. Greenburg, III
712 Calhoun Street, Suite D
Columbia, SC 29201
(803) 256-4408
Attorney for Respondent

Spencer Andrew Syrett
P.O. Box 7403
Columbia, SC 29202
(803) 765-2110
Attorney for Respondent

INDEX

Order Granting Summary Judgment of May 14, 2013	3
Order Terminating Conditional Sales Agreement and Bond for Title of August 5, 2014.....	14
Order Denying Attorney's Fees of June 4, 2015.....	19
Order Denying Rule 59(e) Motion of September 1, 2015.....	29
Notice of Entry of Order Denying Attorney's Fees.....	33
Complaint.....	34
Answer.....	54
Deposition Testimony of Marjorie E. Temple Gentry	
Cross Examination by Mr. Mack.....	64
Cross Examination by Mr. Hall.....	65
Cross Examination by Mr. Peace.....	66
Hearing Transcript, December 11, 2014.....	67
Hearing Transcript, July 29, 2015.....	142
Plaintiff's Motion for Summary Judgment of November 19, 2012.....	163
Plaintiff's Memorandum in Support of Motion for Summary Judgment of January 18, 2013.....	167
Plaintiff's Motion for Rule 11 Sanctions of April 17, 2014.....	261
Defendant's Reply Brief in Opposition to Plaintiff's Motion for Rule 11 Of July 25, 2014.....	280
Plaintiff's Memorandum in Support of Motion for Rule 11 Sanctions of October 13, 2014.....	285

Defendant's Reply Brief in Opposition to Plaintiff's Motion for Rule 11 of December 9, 2014.....	297
Plaintiff's Reply to the Defendant's Memorandum in Opposition to Plaintiff's Pending Motion for Attorney Fees and Rule 11 Sanctions of March 10, 2015.....	300
Plaintiff's Motion to Alter Judgment dated June 26, 2015.....	305
Defendant's Memorandum in Response to Plaintiff's 59(e) Motion dated July 27, 2015.....	308
Amended Affidavit of Attorney's Fees and Costs of July 15, 2014.....	311
Property Plat.....	342
Correspondence to Defense Counsel of January 26, 2012.....	343
Correspondence to Defense Counsel of August 9, 2012.....	345
Letter by Judge Spence dated March 26, 2015.....	347
Email from Mona Huggins attaching Order dated June 16, 2015.....	358

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON)
 2013 MAY 20 A 1:38) CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,)
)
)

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant)

**Order Granting Summary Judgment on
 Defendant's Counter Claims and
 Referring Plaintiff's Claim for Breach of
 the Conditional Sales Agreement and
 Foreclosure to the Master In Equity**

Marjorie E. Temple,)

Third-Party Plaintiff,)

vs.)

Russell Koivu, ERA Wilder Realty, Inc.,)

Gary A. Pickren, Rex Casterline, and)

Harvey Casterline & Vallini, LLP,)

Third-Party Defendants.)

THIS MATTER IS BEFORE THE COURT on Plaintiffs' Motion for Summary Judgment on their causes of action for breach of a Conditional Sales Agreement and Bond for Title. I find as follows:

FACTS/BACKGROUND

This action arises out of a written contract of sale of a parcel of residential real estate located in Lexington County and a subsequent Conditional Sales Agreement and Bond for Title (collectively, "the agreement"). The parties had originally contemplated that Defendant would obtain traditional mortgage financing. However, because Defendant did not qualify for traditional mortgage financing, the parties entered into the agreement to finance the sale and purchase of the property. The parties agreed that the property would be sold "As-Is."

Paragraph 15(b) of the agreement contained a provision disclosing that the property was located partly or entirely within designated "Special Flood Hazard Area."¹ The agreement also indicates that there was dam on the property. Defendant read and initialed the agreement.² Defendant did not speak with Plaintiffs before she signed the agreement. She could not remember any statements that were made about the condition of the property.³

Defendant went to the property with her real estate agent to view it and spent between an hour to an hour and a half on the first visit. She visited the property again before the closing. During one of these visits, she saw the dam and pond on the. She also received a plat prior to closing which disclosed the existence of the dam and pond on the property. The plat also noted that a portion of the property was located in the flood zone. The plat disclosed that there were approximately two and eight-tenths (2.8) acres of land classified as wetlands and that approximately an one and one half (1.5) acres is not wetlands. Similarly, Defendant did make an inspection and conduct a final walk through prior to closing.

Plaintiffs' complaint seeks foreclosure and sale of the property or, alternatively, the termination of the contract and Defendant's equitable interest in the property and an order of possession. Defendant answered and counterclaimed for Fraud, Rescission, Negligent Misrepresentation, Unconscionability, and violation of the Unfair Trade Practices Act (UTPA). Defendant alleges that Plaintiffs failed to disclose that: (a) the property has a dam on it; (b) a significant portion of the property is in a flood zone or is protected wetlands, and; (c) that Defendant advised all parties that she intended to build a residence

¹ Although the mobile home on the property is not in a flood zone, the portions of the property proximate to the dam and the pond are in the flood zone.

² Defendant has both an undergraduate liberal arts degree and a master's degree from the State University of New York. She has worked at the Veteran's Administration as a veteran's advocate and as a social worker. Defendant took the opportunity to read the documents pertaining to this transaction before she signed them, and the court presumes she read and understand them.

³ The Residential Property Condition Disclosure Statement indicates that the Plaintiffs did not have any knowledge of the property being located in a flood plain or any flood hazards, as they had not lived on the property.

on the property in place of the mobile home.⁴ However, her counterclaim does not allege any hidden or latent defects in the property which were undisclosed to her other than the dam, the pond, and the property's partial location in a flood zone.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. S.C. Dept. of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001). Once the moving party meets its initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998); *Regions Bank v. Schmauch*, 354 S.C. 648, 659-60, 582 S.E.2d 432, 438 (Ct. App. 2003).

LAW/ANALYSIS

⁴ The court notes that this statement would be barred by the parole evidence rule as it is not contained in the agreement and is not set forth as something that was disclosed to her but rather something she intended to do, which is not a representation in itself. *See Iseman v. Hobbs*, 290 S.C. 482, 351 S.E.2d 351 (Ct. App. 1986) (holding that the parole evidence rule prohibits the introduction of extrinsic evidence of agreements or understandings contemporaneous with, or prior to, the execution of a written instrument when the extrinsic evidence is used to contradict, vary, or explain the written instrument).

ans

A. Summary judgment is appropriate as to the fraud and misrepresentation claims

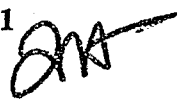
To survive a motion for summary judgment, Temple must offer some evidence that a genuine issue of material fact existed as to each element of fraud and negligent misrepresentation. *See Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct. App. 1992) (explaining the plaintiff has the burden to prove each element of the cause of action). Moreover, general allegations of fraud are insufficient and must be pled with particularity. Rule 9(b), SCRCP. To maintain a claim for fraud, Defendant must show:

(1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008). Although "the two causes of action differ, both fraud and negligent misrepresentation contain the necessary element that the hearer had the right to rely upon the misrepresentation or fraud." *Id.* at 457, 665 S.E.2d at 670 (internal quotes omitted).

In this case, the only allegations which the Defendant has set forth with any particularity at all are that the Plaintiffs failed to disclose that: (a) the property has a dam on it and (b) a significant portion of the property is a flood zone or is protected wetlands. The evidence all shows that this information was disclosed prior to the closing. Because Defendant knew the dam was present, saw it prior to closing, and received full disclosure in writing that a portion of the property contained wetlands, she is barred as a matter of law from a claim of fraud or a rescission of the contract on the basis of fraud. Our court of appeals has noted:

It is largely because the law of fraud requires [a claimant] to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must



read it and avail himself of every reasonable opportunity to understand its content and meaning.

PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 180, 375 S.E.2d 331, 333 (Ct. App. 1988) (citing *Parnell v. United Am. Ins. Co.*, 246 S.C. 26, 142 S.E.2d 204 (1965)). See also *Schmauch*, 354 S.C. at 673, 582 S.E.2d at 445. Because the only allegations of fraud pertain to problems with the property that were disclosed and clearly apparent upon the inspection, there is no evidence of fraud. While the Defendant may claim she relied on the disclosure statement, "there can be no reasonable reliance on a misstatement if the [the claimant] knows the truth of the matter." *Gruber v. Santee Frozen Food, Inc.*, 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct. App. 1992) "Thus, if the undisputed evidence clearly shows that the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact." *McLaughlin*, 379 S.C. at 458, 665 S.E.2d at 671. Therefore, Defendant is presumed to have had knowledge at the time of signing the agreements of the conditions of which she now complains.⁵

While "a buyer has the right in South Carolina to rely on a seller of a home to disclose latent defects or hidden conditions which are not discoverable on a reasonable examination of the property and of which the seller has knowledge," it is equally true that where the conditions are open and obvious, as they were here, there can be no right to rely. *May v. Hopkinson*, 289 S.C. 549, 557, 347 S.E.2d 508, 513 (Ct. App. 1986). The Defendant saw the dam and the pond, and she was given a plat prior to closing which revealed that a portion of the property was in a flood zone and contained wetlands. Therefore, Defendant's claim for Fraud and Negligent misrepresentation fail as a matter of law. Accord *McLaughlin*, 379 S.C. at 457, 665 S.E.2d at 67.

⁵ See also *PPG Indus.*, 297 S.C. at 180, 375 S.E.2d at 333 (holding that a party who "is a successful businessman," similar to defendant here, then she can "by no means can be excused from reading the contract which [she] signed."

B. Summary judgment is appropriate for Defendant's rescission claim

South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement. *See Scott v. Mid Carolina Homes, Inc.*, 293 S.C. 191, 359 S.E.2d 291 (Ct. App. 1987); *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). Rescission of a contract is therefore essentially allowed only when there is evidence of misrepresentation or concealment. *Jumper v. Queen Nab Lumber Co.*, 115 S.C. 452, 106 S.E. 473 (1921); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 101-02, 399 S.E.2d 22, 23 (Ct. App. 1990). In this case, Defendant essentially bases her entire claim to rescission of the contract solely upon the basis of fraud or non-disclosure of the existence of the dam and flood plain.

However, as stated above, Defendant's claims of fraud and non-disclosure cannot be supported because these matters, about which she complains, were in fact disclosed.⁶ She did not allege mistake as a grounds for rescission or breach of contract. Like fraud, claims of mistake must be pled with particularity, including the essential matters as to time and place of the mistake. *See* Rule 9(c), SCRPC. Therefore, Defendant cannot rescind the contract.⁷

C. The terms of the agreement are not unconscionable

Defendant raises the equitable defense of unconscionability in her Answer and Counterclaim, and asserts that the agreement is unenforceable. The question of whether or not a contract by its terms is

⁶ Regardless of actual disclosure, Defendant is surely on inquiry notice regarding the condition of the property. *See O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 371 S.C. 340, 638 S.E.2d 96 (Ct. App. 2006); *Ten Woodruff Oaks, LLC v. Point Dev., LLC*, 385 S.C. 174, 683 S.E.2d 510 (Ct. App. 2009).

⁷ The court notes that Defendant's pleadings do not address the issue of her statement she wished to construct a new home on the property. To the extent she relies on those statements in arguing for rescission, the statements are barred by the parole evidence rule. *See* Footnote 4, *supra*.

unenforceable on the grounds of unconscionability is a matter for law for the court to determine. S.C. Code Ann. § 36-2-302; *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E. 2d 898 (1998). As such, the Court finds that this question, on these facts, is appropriate for determination on summary judgment.

Defendant does not specify the reasons she contends the contract is unenforceable, but does cite the case of *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E. 2d 361 (2002), which held that a provision in installment sale contract for real property was unenforceable on the grounds that it constituted a "forfeiture" and did not allow for an opportunity for the purchaser to redeem the property as a matter of equity. However, a forfeiture or liquidated damages clause in a contract is not *per se* unenforceable and is a fact specific determination for the Court. The South Carolina Supreme Court has held that:

[a] provision in an installment land contract declaring forfeiture in the event of purchaser default can, *in particular circumstances*, constitute a penalty. In those circumstances, as in other contractual instances where a stipulated sum amounts to a penalty, we conclude it would be inequitable to enforce the forfeiture provision without first allowing the purchaser an opportunity to redeem the installment contract by paying the entire purchase price.

351 S.C. at 172, 568 S.E.2d at 364. The Court in *Lewis*, however, did not hold that forfeiture clauses or liquidated damages provisions are always unenforceable or unconscionable. The Court observed:

Parties to a contract may stipulate as to the amount of liquidated damages owed in the event of nonperformance. Where, however, the sum stipulated is plainly disproportionate to any probable damage resulting from breach of contract, the stipulation is an unenforceable penalty.

Id., 568 S.E.2d at 363.

Under the facts of this case, the stipulated liquidated damages provision should be enforced and the court finds it not to be unconscionable for two reasons. First, the Defendant has not made the final installment payment due under the contract in the approximate amount of \$72,000 dollars and has lived

essentially rent free for the past twenty-two (22) months when one considers the monthly payment she agreed to make in the amount of \$1000.00 dollars. As such the amount the Defendant would pay as liquidated damages is the amount of her down payment or roughly 16% of the purchase price. Secondly, if this was a mortgage foreclosure, a home owner would most certainly lose their down payment and be barred from the equity of redemption for failing to pay their mortgage payment for twenty-two (22) months.

The court here contrasts the facts of this case with facts in *Lewis*, as well as *Cody Disc., Inc. v. Merritt*, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006), where the purchasers had accumulated substantial equity and made payments over a great period of time. In *Cody Discount*, the purchaser had "almost paid the entire original balance on the contract." 368 S.C. at 574, 629 S.E.2d at 699. In *Lewis* the Court noted: "At the time of default (August 1988), Purchaser had made 141 of the approximately 182 monthly payments and owed \$2,440.14. The balance as of August 31, 1998, was \$7,726.33." 351 S.C. at 169, 568 S.E.2d at 362.

In *Cody Discount* the court indicates that a number of factors should be considered: "the amount of equity the purchaser has accumulated, the length and number of, the amount of the forfeiture, and the speed with which equity is sought." 368 S.C. at 575, 629 S.E.2d at 700. Moreover, the Plaintiffs do not seek here to deprive the Defendant of the equity of redemption, but to terminate it if she does not pay the balance of the purchase price, together with attorney fees and costs. When these factors are considered, enforcement of the liquidated damages clause on these facts is certainly not unconscionable.

The Supreme Court has defined unconscionability as follows:

Unconscionability is characterized by the "absence of meaningful choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them."

Lackey, 330 S.C. at 395, 498 S.E.2d at 902. In this case, Defendant did not qualify for a traditional mortgage and made a conscious choice to enter into an installment sale contract to purchase this property. She is an educated woman with a master's level and undergraduate degree. She received the agreement for review a full ten (10) days prior to closing. As the Court noted in *Lewis*:

Real property is often sold under contracts that provide for the payment of the purchase price in a series of installments. These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid ... Also typically, the purchaser is entitled to immediate possession ... Installment contracts almost always contain forfeiture clauses.

351 S.C. at 170-71, 568 S.E.2d at 363 (quoting 15 Richard R. Powell, Powell on Real Property § 84D.01 at 3 (2000)).

The agreement in this case, on these facts, is neither unfair, unenforceable, nor unconscionable. To hold otherwise would call into serious question when and under what circumstances a seller could enforce a bond for title agreement or installment sale contract.

D. Summary judgment is appropriate on the claim for violation of the UTPA

To be actionable under the UTPA, an allegedly "unfair or deceptive act or practice must have an impact upon the public interest." *Columbia E. Assocs. v. Bi-Lo, Inc.*, 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989). "The act is not available to redress a private wrong where the public interest is unaffected." *Id.* (citing *Noack Enters. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct.App.1986)). Furthermore, alleged deliberate or intentional breaches of a contract do not constitute a UTPA violation *Id.* (citing *Key Co., Inc. v. Fameco Distribs.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987)).

Defendant alleges that Plaintiffs are engaged in the business or trade of selling houses. However, Defendant has presented no evidence other than these bare allegations to support this claim. Therefore, Defendant has not proven that this transaction is anything more than a private act or that Plaintiffs are

ans

even subject to the UTPA. Even if she had, the only reasonable inference to be drawn from the evidence presented is that the Plaintiffs fully disclosed all material facts concerning the dam, the pond, and the existence of wetlands and the property's partial location in a flood zone. Therefore, there is no evidence of a deceptive act here.

To the extent the Defendant is referring to flipping property, illegal property flipping has been defined by the South Carolina Supreme Court as:

An illegal property flip generally requires the conspiracy of at least one of the buyers, an appraiser, and a mortgage broker or loan officer. It also requires the assistance of an attorney who is aware of the fraud, chooses to look the other way, or who fails to supervise non-lawyer assistants engaging in the unauthorized practice of law. In order for the flip to work, the same attorney has to close both transactions. If an attorney conducts a closing on property for a certain sales price and funds that closing with proceeds from the immediate resale of the same property for a significantly higher amount, the attorney has constructive notice that the second sale might be based on a fraudulently inflated appraisal of the property. This is particularly true when the buyer leaves the closing with both the property and with money from the loan.

In re Lattimore, 361 S.C. 126, 131-32, 604 S.E.2d 369, 372 (2004). Clearly, the act of "flipping" property requires a host of allegations against a fairly large group of individuals. Simply put, the Defendant's counterclaims are insufficient regarding any factual allegations which would constitute illegal property flipping.

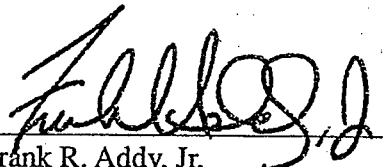
Finally, other than her allegations of failing to allegedly disclose the existence of the dam, wetlands, and flood zone, Defendant has set forth no other conduct which can be described as illegal, unethical, immoral or against public policy. See *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 396 S.E.2d 105 (Ct. App. 1989), *reversed on other grounds*, 309 S.C. 263, 422 S.E.2d 103 (1992). Therefore, Defendant's UTPA claim fails and Plaintiffs are entitled to summary judgment.

CONCLUSION

For the reasons set forth herein, and because the Defendant knew of the matters about which she complains pertaining to the property, the Defendant has no basis in law or in fact for any of the claims she has asserted.

Therefore, the Court GRANTS Plaintiff's motions for summary judgment on the Defendant's defenses and counterclaims. The Plaintiff's claim for breach of the agreement and to foreclose or terminate any equitable interest in the property is REFERRED to the Master In Equity for Lexington County for the purpose of determining whether or not the Defendant retains any equitable interest in the property. Plaintiff shall prepare an order of reference.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Judge, Eighth Judicial Circuit

May 14, 2013
Lexington, South Carolina

BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, S.C.

2013 MAY 20 A 11:38

FILED

11-1
AUG 1 2014

ORIGINAL

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
2011 AUG -5 P 3:51
) CIVIL ACTION NO.: 2011-CP-32-01781

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC
Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

COPY

FINAL ORDER TERMINATING
CONDITIONAL SALES AGREEMENT
AND BOND FOR TITLE

This matter came before the Court for a final hearing on July 3, 2014 pursuant to an Order of Reference entered by the Circuit Court for the purpose of determining whether or not the defendant has any equitable interest in the real property which is the subject of this action. Plaintiff seeks to terminate and/or foreclose an installment contract for the purchase of real estate. Frederick I. Hall III, Esquire appeared on behalf of the plaintiffs, with Latisha D. Strickland and Charles E. Strickland, III. Attorneys Spencer Andrew Syrett, Esquire and Rolland E. Greenburg II, Esquire also appeared on behalf of the Defendant Marjorie E. Temple, who was present for the hearing. Prior to the hearing, the Court held a status conference, during which counsel for the defense informed the Court that their client conceded that she had had no

equitable interest the property and would not contest the termination of the contract and agreed to an Order of Termination and Agreement to Vacate the premises by August 4, 2014. The issue of whether or not the plaintiffs are entitled to attorneys fees, either under the currently pending Rule 11 Motion or pursuant to the purchase agreement or both, shall be held in abeyance pending submission of each parties' respective legal position by way of memorandum to the Court. The Court finds based upon the agreement of the parties, which was put on the record before the undersigned, the conditional sales agreement and bond for title between the parties should be terminated on the grounds that the defendant, Marjorie E. Temple, concedes she has no equity in the real property or mobile home. The Circuit Court previously granted summary judgment on all the defenses and counterclaims raised by the defendant and the only material issue remaining for the Court to decide is whether or not there are grounds to terminate the contract and the amount of reasonable attorney's fees and costs requested by the plaintiff.

Based upon the agreement of the plaintiffs and the defendant as announced to the Court and this Court's review of the pleadings, including the Complaint and the Answer, as well as the Court's previous Order Granting Summary Judgment, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The plaintiffs are citizens and residents of the County of Lexington, State of South Carolina, and are the owners of the real property hereinafter described in this action.
2. The defendant, Marjorie E. Temple, is a citizen and resident of the County of Lexington and resides at the real property which is the subject of this action at 1730 Nazareth Road.

- FILED
AUG - 5 - 2009
BETHA C. CARP
CLERK OF COURT
LEXINGTON, S.C.
3. That on the 6th day of April 2009, the plaintiffs entered into a conditional agreement and bond for title with the defendant, the terms of which provided, among other things, that the defendant would pay to the plaintiffs the sum of \$85,000 on an installment basis, according to the terms and conditions of the conditional agreement and bond for title, a copy of which is on file with the court and attached to the plaintiffs' complaint and hereinafter referred to as "The agreement."
 4. That according to the terms and conditions of the agreement, the defendant agreed to pay to the plaintiffs the sum of \$13,000 at closing and the balance of \$72,000 to be paid in monthly installments with the first payment beginning on May 3, 2009 and the final installment payment to be paid on or before April 1, 2011, the failure of which to pay would constitute a default under the agreement, pursuant to which the defendant would forfeit all monies paid in the event of default as liquidated damages. The defendant was to receive a \$50 dollar per month credit toward the purchase price on each installment payment.
 5. That the real property which is the subject of this action is hereinafter described as follows:

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Lot 16, containing 4.33 acres, more or less, on a plat of Partridge Hill Subdivision, Phase I, prepared by Civil Engineering of Columbia, Inc., dated October 5, 1988, revised August 5, 1989, and recorded in the office of the Register of Deeds for Lexington County in Plat Book 233 at page 7. Being further shown and delineated on a plat prepared for Lawrence D. Wright and Sharon B. Wright by D.B. Sproles & Associates, Inc., dated January 30, 1990 and recorded in Plat Book 235 at page 152-A. Reference to said plat is made for a more complete and accurate description. Be all measurements a little more or less.

Address 1703 Nazareth Road, Lexington, S.C. 29073.

6. That pursuant to the terms and conditions of the agreement, the defendant agreed to vacate the premises without notice from the plaintiffs in the event of default and has now agreed per the agreement which was put on the record before the undersigned to vacate the premises no later than August 4, 2014.

7. Based the Court's review of the pleadings, and Orders filed herein, the Court makes the following conclusions of law:

Conclusions of Law

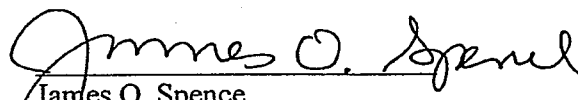
1. In the Court's Order Granting Summary Judgment, the Circuit Court concluded that this contract is, indeed, an enforceable contract subject to any equitable interest that the defendant may have. Specifically, the Court granted summary judgment on the defendant's claims that the terms of this agreement were unconscionable. Pursuant to the case law of this State, Cody Disc. Inc. v. Merrit, 368 S.C. at 574, 629 S.E. 2d (Ct. App. 2006) and Lewis v. Premium Inv. Corp., 351 S.C. 167, 568 S.E. 2d 361 (2002) and the Circuit Court Order Granting Summary Judgment, the courts have held that when an agreement is not unconscionable, the contract may be terminated and the defendant ordered to vacate the property in the event that the amount of debt is not paid or sold if there is sufficient equity. This Court has independently reviewed and considered all of the factors listed in the case law in accepting the agreement of the parties to terminate the contract and finds the same to be equitable.
2. Because the Circuit Court has already ruled that the agreement is enforceable and the defendant concedes and agrees that there is no equity in the property, this Court hereby finds as a matter of law that the plaintiffs are entitled to terminate the agreement and this Court finds that the same has been breached.

3. Therefore this Court finds that there is no equity in the property and the defendant shall vacate the same no later than August 29, 2014 pursuant to this Order and failing the same, the Lexington County Sheriff's Department is hereby Ordered and Directed to put the plaintiffs in possession of the property.

It is further Ordered that the issue of attorney fees is hereby held in abeyance pending submission of memoranda by the both parties. Plaintiffs shall submit their memoranda by July 15, 2014. Defendant shall submit her response within 10 days thereafter.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED, AND DECREED that the bond for title and sales agreement is hereby terminated and that the defendant shall vacate the property no later than August 29, 2014. If the defendant refuses to vacate the property within by August 29th, 2014, then in that event, the Lexington County Sheriff's Department is Ordered to put the plaintiffs in possession of the real property and the mobile home situated thereon, which are located at 1730 Nazareth Road Lexington, S.C. 29073.

IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

August
JULY 5, 2014
Lexington, South Carolina

CREEL COURT REPORTING, INC.

ALEXANDRA A. PATRICK
COURT REPORTER

(803) 252-3445
1-800-822-0896
FAX: 803-799-5668
WWW.CREELREPORTING.COM CONTACT@CREELREPORTING.COM
1230 RICHLAND STREET
COLUMBIA, SC 29201

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT
CASE #: 2011-CP-32-1781

Charles E. Strickland, III,
Latisha Strickland, and
Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant.

COPY

**ORDER
(ATTORNEY FEES)**

Marjorie E. Temple,

Third Party Plaintiff,

vs.

Russell Koivu,
ERA Wilder Realty, Inc.,
Gary A. Pickren,
Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third Party Defendants.

FILED
2015 JUN -4 A 11:16
JULIA A. CANNON
CLERK OF COURT
LEXINGTON SC

While this court earlier terminated the underlying Conditional Sales Contract/Bond for Title because the Defendant admitted that she had not made sufficient payments to create a right of equitable redemption the property, Plaintiffs' claim for a separate award of attorney fees under two theories: 1) the contract provides for attorney fees and 2) the Defendant's Rule 11 violations entitled the Plaintiffs to sanctions was held in abeyance pending submission of memos by respective parties.

FACTS: PROCEDURAL HISTORY

May 10, 2011 Plaintiff files an Action to Foreclose on Equitable interest in real property and or terminate a conditional sales agreement and bond for title. Attached to the complaint was a recorded fourteen (14) page Conditional Sales Agreement/Bond for Title containing language that Attorney represented the Seller, and that Purchase could obtain attorney, independent title search etc.

Defendant responded with eleven (11) count Answer, Counterclaim and Third Party Complaint against Real Estate Agents and Law Firm involved in closing.

The Complaint, Answer and other pleadings detail how the Plaintiffs and Defendant entered into their agreement on April 6, 2009. The property was sold "as-is." The agreement noted that there was a pond and dam on the property. The first payment was to be May, 2009. One of Defendant's responses was that the (1) property had a dam on it (2) the Association which was to manage the pond was defunct (3) Defendant had told Plaintiffs that Defendant wanted to build or locate a home on the property. (4) That a significant portion of the property was subject to flood plain which meant a home could not be built or placed there,

Hearing testimony and a review of case history reveals that extensive discovery, discovery motions and dispositive motions, mediation and other process occurred. (See attached CMS Case History Screen Shot)

May 28, 2013 the Order referring the case to the Office of Master-in-Equity was filed.

June 20, 2013 the Order was submitted to the Master-in-Equity Office with a request for a hearing.

July 3, 2014 the case was heard pursuant to agreed date between attorneys and court. Plaintiffs argue that the Circuit Court grant of Summary Judgment and Defendant's failure to withdraw claims timely pursuant to Plaintiffs 'demand, warrant a court imposition of sanctions. Defendant's counsel responds that he had duty to represent client, fully investigate, conduct discovery etc and that all delays in case were not directly caused by Defendant. Defendant also claims that Plaintiff has failed to prove case law specific six (6) factors entitling them to award of attorney fees or if so entitled, the attorney fees are not a separate award, but simply added to the debt.

August 5, 2014, Order entered terminating contract and finding no equity.

ISSUES

- I. Contractual Attorney Fee Claim**
- II. Rule 11 Attorney Fee Claim**

LAW/ ANALYSIS

I. Contractual Attorney Fees Issue

Plaintiff argues that they are entitled to attorney fees because there is a contractual provision in the contract that states " Purchaser agrees to pay all costs and expenses, including a reasonable sum for attorney's fees incurred by Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all rights of the terms of this Agreement, and in

appropriate judicial proceedings, if any or initiated to establish(ed) or maintain Seller's right or title to, and possession of said property after breach by Purchaser." Contract Page 6.

This clause is a similar clause to those routinely found in promissory notes and mortgages—that is the Plaintiff is entitled to a reasonable attorney fees for the cost of foreclosing the specific lien.

Once it is determined that there is a contractual right to attorney fees, the court must make a determination that the fees are reasonable according to a six factor test. "When determining what constitutes a "reasonable" attorney's fee, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

Consideration should be given by the trial court to all six factors; none of the factors is controlling. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

The Court must make a finding on all six factors. When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in Collins [v. Collins], 239 S.C. 170, 122 S.E.2d 1 (1961)]." Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). (The Honorable Judge Ralph King Anderson, 2010 South Carolina Master-in-Equity Bench /Bar Seminar 6-25 (10-41 2010)).

Plaintiff has submitted three (3) attorney fees affidavits and an affidavit by Attorney John Koon to support their attorney fee claim. A review of the case file, the affidavits, the court's knowledge of these actions and fees charges, and the trial testimony dictates that attorney fees be awarded because (a) Defendant did not contest nor choose to cross examine Plaintiff counsel about the hours worked or claimed to have been worked, and (b) Plaintiff submitted affidavits satisfying the six factor attorney reasonableness test.

1. The Nature, Extent and Difficulty of the Legal Services Rendered.

As noted above the pleadings, CMS status report, and counsels hearing arguments indicate that this was a well-contested case about the sale of property that contained a pond. There were counterclaims, defenses, third party claims etc, extensive discovery, mediations, motions filed and argued before various trial courts.

2. The Time and Labor Necessarily Devoted to the Case

Plaintiff documented time. Defendant did not cross Plaintiff about time allocations contained on affidavit nor argue that he believed Plaintiff had not worked the time he claimed on affidavit.

3. The Professional Standing of Counsel.

Plaintiff counsel's affidavits and attorney John Koon's affidavit noted his work experience, his length of practice, various trial and appellate work, legal associations and his Martindale-Hubbard AV attorney rating.

4. The Contingency of Compensation.

Not applicable since this was not a contingency case.

5. The Fee Customarily Charged in the Locality for Similar Legal Services.

The various affidavits contained the fee contract and hourly rates of \$200.00 etc. The court has reviewed nine years of attorney fee hourly rates from attorneys in this geographical area for not only foreclosures, but actions to foreclose on bonds for title, equitable mortgages, contracts for deeds, installment sales contracts etc. There is no question in this judge's mind that the court's knowledge plus matters contained in affidavits confirm that the fees based on a \$200 hourly rate satisfies this criteria for such a case and an experienced attorney.

6. The Beneficial Results Obtained.

Plaintiff won. He successfully prosecuted his action; defended against defenses and counterclaims through discovery, and filed and argued motions.

While Plaintiff had demonstrated both a contractual right to attorney fees and that the fees are reasonable, the attorney fee claim is not a separate damage award.

The underlying action was to terminate any equitable interest Defendant had in the property, not to obtain a money or damage award. An Installment Land Contract has been described as the "poor man's mortgage." The two main cases governing these contracts are Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006).

These cases make it clear that the purchaser in an Installment Land Contract may have an equity of redemption in the property after there is a default in payment. After the default, the Court must pursuant to case law and Rule 71, SCRPC determine if there is the Defendant has equity in the property. The first step in this analysis is for the court to determine the debt owned just like in a standard mortgage foreclosure. The principle, interest, allowable attorney fees and cost, escrows if applicable are calculated. Here, as in a mortgage foreclosure, the attorney fees are simple part of the debt calculation, not an independent damage award.

After the debt is calculated and the other factors such as property value, any defendant improvement or property are examined, case law and various legal journals basically explain that there are three possible fact scenarios: (a) if defendant has no equity in property, then proper remedy is to terminate equitable interest. (b) if some equity, then a 30 day (or some time period)

is granted to defendant to redeem or tender a full pay-off. (c) if substantial equity, then a court could order a public sale as in the case of a legal foreclosure. (See Andrew S. Radeker, Esq." 2008 South Carolina Master-in-Equity Bench /Bar Seminar 45-49 (08-41 2008).

The foreclosure of the Installment Land Contract is most closely related to the mortgage foreclosure process in which the Plaintiff does not seek a deficiency judgment. While S.C. Code § 29-3-660 (1976 as amended) allows a Mortgagee the right to seek a deficiency judgment, there is no similar statute or case law which would allow a Plaintiff to obtain a separate judgment for attorney fees in an action to foreclose an Installment Land Contract.

I further note that this argument, granting a separate award of attorney fees or an assignment of the attorney fees award from client to law firm has been made and universally rejected by our state trial courts over the last nine years.

II. RULE 11 Attorney Fee Claim

Plaintiff's argument that attorney fees as sanctions should be imposed against defendant because the counsel raised or continued to prosecute improper defenses, failed to dismiss them after demand, and ultimately had summary judgment granted against them, is not persuasive.

While Plaintiff's case law does allow for sanctions in certain cases, I do not believe the facts and actions in this matter warrant sanctions under any Plaintiff theory.

Plaintiffs and Defendant both made a business decision to enter into this Conditional Sales Contract/Bond for Title. This arrangement often referred to as 'Owner-financing' results in the buyer paying the seller payments of a fixed period of time pursuant to the payment agreements of the sales document. The benefit to the Seller/Owner is that the seller, if all goes according to plan, will receive a long stream of interest and principal payments of a period of time. The benefit to the purchaser is that the purchaser who is often unable to afford conventional financing, can purchase the home and pay less closing cost type fees.

However, there is always the risk of non-payment which then requires a law suit in circuit court to foreclose the lien. Each decision made thereafter by both attorneys can, and often does, delay the trial date.

The parties could have filed no discovery and simply have waited until the case came up on the court administration benchmark (six months) and asked for a trial before a circuit court judge. Each decision to (1) file discovery or (2) Motions had to be carefully weighed by each attorney, in consultation with their respective clients, to best serve their case.

Trial delays generally can result from things such as (1) 7 month discovery time allowance (2) Attorney or court conflicts while establishing a scheduling Order (3) delays in court time scheduling, hearing and ruling on discovery motions (4) delay in court time scheduling, hearing and ruling on SJM (5) mediations (6) attorney generated request for continuances (7) Court conflict rules-which trial does first if conflict between courts etc.

As noted above, the Action page from the CMS system is attached. This list does not include discovery filed but not requiring court action (ie. Interrogatories, Request to Admit, Produce, etc.)

Rule 407 and the comments reflect the tension between the attorney's responsibility to represent his clients interest and his duty to the not use the legal system improperly. The rules discuss that a lawyer has responsibilities to (a) his client (b) to the legal system and to (3) the lawyer & firm's interest. These rules are designed to provide guideposts advising such things as:

Attorney must have basis in law and fact to plead or act.

Attorney has duty to use the legal procedure for the fullest benefit of the clients cause but also a duty not to abuse the legal system.

Comment 2 notes that an action is not frivolous even if lawyer doesn't believe his client will ultimately win so long as layer can in good faith believes law can by changed or modified, but cautions that attorney can't do things just for delay.

Comments to Rule 3.3 regarding duty to expedite litigation does not seem to indicate that defense attorney has duty to push case forward, but rather that attorney cannot do overt/improper acts to delay. Normally, a lawyer does not have an obligation to dismiss a claim or to quit based upon a request by another lawyer. Trials exist so that parties can argue their case before a judge and or jury to receive a decision pursuant to rules of law, evidence and procedure.

While Plaintiffs claim certain defense were not proper, defendant points out that the failure to raise possible defense could well have been malpractice. Defendant did file a Third Party Complaint against multiple Third Party Defendants which did complicate the case. Several of the Third Party Defendants paid the Defendant sums to settle the claims made against them.

The evidence does not support Plaintiff's claim that Defendant improperly or wrongful delayed court action required to impose sanctions.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

June 4, 2015

	
CREEL COURT REPORTING, INC.	
NADINE A. GARRETT COURT REPORTER	
(803)-252-3445 1-800-822-0896 FAX: 803-799-5668 WWW.CREELREPORTING.COM	1230 RICHLAND STREET COLUMBIA, SC 29201 CONTACT@CREELREPORTING.COM

Page 6 of 6

FILED
2015 JUN -4 A 11:16
JAMES A. CARRIGS
CLERK OF COURT
LEXINGTON SC

24 6-

Master in Equity
CASE HISTORY FOR CASE 2011CP3201781

Charles E Strickland III , plaintiff, et al VS Marjorie E Temple , defendant, et al

FILED DATE: 5/28/2013

CASE TYPE: CP/Foreclosure 420

STATUS: Dismissed

JUDGE: Spence, James O

CASE PARTIES:

Plaintiff Strickland, Charles E III

Plaintiff Attorney Hall, Frederick Ivey III
PO Box 1898, Lexington, SC 29071

Defendant Temple, Marjorie E

Plaintiff Strickland, Latisha D

Plaintiff Dillon, Justin R

Defendant Koivu, Russell

Defendant ERA Wilder Realty

Defendant Pickren, Gary A

Defendant Casterline, Rex

Defendant Harvey Casterline & Vallini LLP

Defendant Attorney Greenburg, Rolland E. III
712 Calhoun St., Ste. D, Columbia, SC 29201

Defendant Attorney Syrett, Spencer Andrew
PO Box 7403, Columbia, SC 292027403

Defendant Attorney Peace, M. Alan
PO Box 11656, Columbia, SC 292111656

Defendant Attorney Mack, Francis Marion
1900 Barnwell St., Columbia, SC 29201

Defendant Attorney Peace, Taylor Anthony
1331 Elmwood Avenue, Columbia, SC 292011656

Strickland, Charles E III

Age: Unknown
DL#:DOB: Unknown
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
1/11/2011	10:07 AM	Filing recorded: Lis Pendens Filed
1/11/2011	10:03 AM	Filing recorded: Summons & Complaint
1/3/2011	12:00 AM	Filing recorded: Acceptance Of Service for M Temple
1/28/2011	12:00 AM	Filing recorded: Answer Counterclaim & 3rd Party Sums & Comp
1/18/2011	12:00 AM	Filing recorded: Service/Acceptance Of Service
1/25/2011	12:00 AM	Filing recorded: Acceptance Of Service/Reg Agt for Harvey Casterling etc
1/9/2011	12:00 AM	Filing recorded: Answer/Wilder & R Koivu to 3rd party Comp
1/22/2011	9:24 AM	Filing recorded: Reply to Answer and Counterclaim
1/15/2011	12:00 AM	Filing recorded: Amended/Amended Certificate of Service
2/30/2011	12:54 PM	Motion/Motion Filing Fee
1/19/2012	3:11 PM	Order/Form 4
1/23/2012	12:00 AM	Filing recorded: AmendReply to Answ & Counter Claim and Third Party Compliant
1/31/2012	3:29 PM	Order/Form 4
1/21/2012	3:49 PM	Motion/Motion Filing Fee
1/4/2013	4:43 PM	Order/Order
1/22/2013	12:00 AM	Filing recorded: Affidavits in Support of Motion
1/22/2013	12:00 AM	Filing recorded: Memo in Support
1/7/2013	12:00 AM	Filing recorded: Affidavit of Charles Strickland III
1/30/2013	12:00 AM	Order/Protective Order
1/13/2013	10:18 AM	Order/Form 4
1/22/2013	4:41 PM	Motion/Motion Filing Fee
1/18/2013	9:50 AM	Order/Form 4
1/17/2013	2:10 PM	Filing recorded: Stipulation Of Dismissal of 3 3rd party defendants
1/20/2013	12:00 AM	Order Grantin SJ on Def Count Claim/Refer to Master
1/28/2013	12:00 AM	Order/Referred to Master
2/16/2011	11:40 AM	Notice of Motion Roster Publication Sent
2/30/2011	12:00 AM	Motion/Compel
1/7/2012	3:53 PM	Notice of Motion Roster Publication Sent
1/2/2012	10:49 AM	Notice of Motion Roster Publication Sent
1/13/2012	10:10 AM	Notice of Motion Roster Publication Sent

Print Date: 05/04/2015
 Print Time: 11:14:18AM
 Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

Page 2 of 4

CASE HISTORY FOR CASE 2011CP3201781

1/21/2012	12:00 AM	Motion/Summary Judgment
1/11/2013	11:37 AM	Notice of Motion Roster Publication Sent
2/25/2013	3:17 PM	Notice of Motion Roster Publication Sent
1/4/2013	1:15 PM	Notice of Motion Roster Publication Sent
2/8/2013	3:30 PM	Motion/Motion Filing Fee
5/21/2013	2:28 PM	Motion/Motion Filing Fee
5/21/2013	12:00 AM	Motion/Summary Judgment
3/20/2012	4:03 PM	Motion/Motion Filing Fee
1/14/2014	12:32 PM	Motion/Motion Filing Fee
1/26/2014	12:52 PM	ADR/Mediation Results Report
1/26/2014	12:52 PM	Filing recorded: ADR/Mediation Results Report/Filing
1/17/2014	3:27 PM	Motion/Motion Filing Fee
1/15/2014	10:30 AM	Filing recorded: Amended/Amended
1/15/2014	4:33 PM	Filing recorded: Memo/Memo in Support
1/15/2014	4:35 PM	Filing recorded: Affidavit/Attorney Fees
1/29/2014	10:08 AM	Filing recorded: Memo/Memo in Opposition
1/5/2014	1:44 PM	Order/Order
10/20/2014	12:04 PM	Filing recorded: Affidavit of John Koon
10/13/2014	12:05 PM	Filing recorded: Plt Reply Memo in Support of Motion to Award Fees and Sancti
10/23/2014	1:32 PM	Motion/Motion Filing Fee
10/13/2014	3:46 PM	Filing recorded: Certificate of Service
10/23/2014	4:28 PM	Plaintiffs Motion for Expedited Hearing
1/10/2014	10:33 AM	Filing recorded: Notice of Hearing
1/17/2015	3:45 PM	Filing recorded: Reply/Reply
2/11/2014	10:42 AM	Filing recorded: Transcript of Motion Hearing (original filed)
1/31/2015	8:52 AM	Filing recorded: Proof of Mailing
1/26/2015	2:36 PM	Filing recorded: Letter from Judge Spence to Parties
1/9/2013	12:00 AM	CMAY recorded the following Case Note: Case created via Master In Equity Case Transfer from agency 32002: Common Pleas
1/20/2012	12:00 AM	CMAY recorded the following Case Note: Motion to Make More Definate and Certain is granted by consent of the parties
1/2/2012	12:00 AM	CMAY recorded the following Case Note: Defendant Motion for Protective order is continued to the next term of court.
1/14/2013	12:00 AM	CMAY recorded the following Case Note: Case not to be called for trial before April 1, 2013.
1/22/2013	12:00 AM	CMAY recorded the following Case Note: Summary Judgement
1/22/2013	12:00 AM	CMAY recorded the following Case Note: Motion for Summary Judgement
1/13/2013	12:00 AM	CMAY recorded the following Case Note: Motion to Compel is granted.
1/29/2013	12:00 AM	CMAY recorded the following Case Note: Plaintiffs Motion for sj against the defendant is granted.
1/17/2013	12:00 AM	CMAY recorded the following Case Note: Dismissal of ALL CLAIMS OF 3RD PARTY DEFENDANTS Gary Pickren, Rex Casterline and Harvey Casterline & Vanilli LLP
1/1/2013	12:00 AM	CMAY recorded the following Case Note: Moved to 2/07/2013 @ 2:00 p.m.
1/9/2013	12:00 AM	CMAY recorded the following Case Note: Costs rect & disb before August 1, 2013
1/14/2014	12:00 AM	WHENSON recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
1/26/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "ADRRPT" - ADR/Mediation Results Report for associated case 2011CP3201781 in court agency 32002
1/26/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "ADRMRS" - ADR/Mediation Results Report/Filing for associated case 2011CP3201781 in court agency 32002

Print Date: 06/04/2015
 Print Time: 11:14:18AM
 Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

Page 3 of 4

CASE HISTORY FOR CASE 2011CP3201781

/17/2014	12:00 AM	WHENSON recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
/17/2014	12:00 AM	JMCCARTHA recorded the following Case Note: Creation of this action was triggered by the add of action "AMENDA" - Amended/Amended for associated case 2011CP3201781 in court agency 32002
/18/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MEMSUP" - Memo/Memo in Support for associated case 2011CP3201781 in court agency 32002
/18/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "AFFFEE" - Affidavit/Attorney Fees for associated case 2011CP3201781 in court agency 32002
/7/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MEMOPP" - Memo/Memo in Opposition for associated case 2011CP3201781 in court agency 32002
/8/2014	12:00 AM	PBENTON recorded the following Case Note: Creation of this action was triggered by the add of action "ORDER" - Order/Order for associated case 2011CP3201781 in court agency 32002
0/20/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "AFFDVT" - Affidavit of John Koon for associated case 2011CP3201781 in court agency 32002
0/20/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "REPREP" - Plt Reply Memo in Support of Motion to Award Fees and Sancti for associated case 2011CP3201781 in court agency 32002
0/23/2014	12:00 AM	JMARSHALL recorded the following Case Note: Creation of this action was triggered by the add of action "MOTION" - Motion/Motion Filing Fee for associated case 2011CP3201781 in court agency 32002
0/23/2014	12:00 AM	CFREE recorded the following Case Note: Creation of this action was triggered by the add of action "CERTSERV" - Certificate of Service for associated case 2011CP3201781 in court agency 32002
0/28/2014	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "MOTMOT" - Plaintiffs Motion for Expedited Hearing for associated case 2011CP3201781 in court agency 32002
1/13/2014	12:00 AM	CFREE recorded the following Case Note: Creation of this action was triggered by the add of action "NOTICE" - Notice of Hearing for associated case 2011CP3201781 in court agency 32002
/17/2015	12:00 AM	CROSA recorded the following Case Note: Creation of this action was triggered by the add of action "REPREP" - Reply/Reply for associated case 2011CP3201781 in court agency 32002
/27/2015	12:00 AM	CEDWARDS recorded the following Case Note: Creation of this action was triggered by the add of action "TRANSR" - Transcript of Motion Hearing (original filed) for associated case 2011CP3201781 in court agency 32002
/1/2015	12:00 AM	CEDWARDS recorded the following Case Note: Creation of this action was triggered by the add of action "SPROOFC" - Proof of Mailing for associated case 2011CP3201781 in court agency 32002
/12/2015	12:00 AM	MHUGGINS recorded the following Case Note: Creation of this action was triggered by the add of action "LETTER" - Letter from Judge Spence to Parties for associated case 2011CP3201781 in court agency 32002

Print Date: 06/04/2015
 Print Time: 11:14:18AM
 Requested By: GFAIRCLOTH

CaseHistory.rpt V6.1

Page 4 of 4

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant.)

ORDER DENYING RULE 59(e) MOTION

2011-CP-32-1781

Marjorie E. Temple,)
Third Party Plaintiff,)

vs.)

Russell Kolvu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third Party Defendants.)

FILED
2015 SEP -1 P 1:09
JETH A. CARRIGGS
CLERK OF COURT
LEXINGTON SC

This matter came before the Court on Plaintiffs' Motion to Reconsider this Court's Order dated June 4, 2015. For the reasons set forth below, the Court denies the Motion.

TIMELINESS

The Defendant argued that the Plaintiffs' motion was not timely. The Court rejects this argument.

The Court signed the Order on June 4, 2015, and clocked the order in the Clerk's Office on June 4, 2015. Although this Court sent out a courtesy copy (without a filed Form 4) of the clocked Order to counsel on June 4, 2015, this courtesy copy was not notice of the entry of the judgment. The Clerk's Office notified the parties of the entry of

the Order on June 16, 2015. Judgments are entered pursuant to Rule 58, SCRCP:

(2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

The Plaintiffs' Motion to reconsider was timely served and filed.

DENIAL OF RULE 11 SANCTIONS

The Plaintiffs assert that the Court's Order fails to set forth the "good grounds" which support the Defendant's Answer and Counterclaim. The Court has reviewed the Order and finds that it adequately addresses the issue.

ATTORNEY FEES ISSUES

IMPAIRMENT OF THE OBLIGATIONS OF CONTRACT

Plaintiffs claim that the Court's order impairs the obligations of contract in violation of the Constitutions of the United States and South Carolina.

The Court has reviewed the record in the case and does not find any prior trial presentation of this argument to the Court. The court did not understand this claim to be at issue at trial and did not request that the parties brief the issue in their respective post trial memos. Thereafter, the issue was not addressed in the (a) post trial memos (b) court's decision memorandum (c) Plaintiff's letter addressing perceived shortcomings in Defendant's proposed Order. The issue was first clearly raised in Plaintiff's Rule 59 Motion. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Cl. App. 1995).

HOW ATTORNEY FEES AFFECT DEBT IN FORECLOSURE ACTIONS

Although the Plaintiffs claim that the Order is a denial of an award of attorney fees, the Court awarded the fees that Plaintiffs sought.

While Plaintiff pled two causes of action, both requested termination of the defendant's equitable interest in the property. This action is a foreclosure of an equitable mortgage of real estate. Although based on a contract, it is not a breach of contract action. A plaintiff in this type of action cannot change the equitable mortgage into a simple lease agreement. The Supreme Court has made it clear that foreclosure is only proper way to adjudicate this issue. Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002); Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006)

In order to foreclose a lien, the Plaintiff must first establish the amount of the debt. Rule 71(a), SCRPC. The Rule requires the Court to determine the total debt: Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53. In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due upon default, the rate of interest and interest from date of default to hearing date, any other relevant interest charged, any amounts due or to be credited on escrow items, the taxable costs of collection prior to hearing, and the amount of allowable attorneys fees due and anticipated through conclusion of the action.

As set forth in the cases described above, in the foreclosure of an installment land contract, a court should examine various factors to determine the appropriate remedy. A court may compare the amount of the debt with the value of the property. If the property is worth more than the amount of the debt, then the property may be sold by the Court. If the property is worth less than the amount of the debt, the Court may terminate the contract and any equity of redemption. Or, if there is some equity, allow a time period for the Defendant to pay the debt and redeem the property. Plaintiff did not

claim nor plead any right to a deficiency judgment in this foreclosure of an installment land contract.

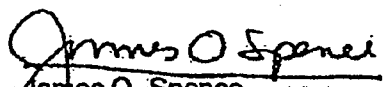
Once the principal, debt, interest, attorney fees etc. were considered, the Defendant conceded, and Plaintiff did not contest, that there is no equity in the property. Just as a Plaintiff in a traditional mortgage foreclosure must plead and prove it's entitlement to attorneys fee, the attorney fees in this case were not a separate damage award, but these fees are, as described above, elements of the debt that must be established to determine the debt, so as to determine the proper remedy which was terminating the equitable interest in the property.

Therefore the appropriate relief in this case, as plead, and argued, is termination of the Contract.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons set forth above, the Plaintiffs' Motion is denied.

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

September 1 2015

FILED
2015 SEP - 1 P 1:09
JERRY A. CAMPBELL
CLERK OF COURT
LEXINGTON SC

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

Charles Strickland III et al

PLAINTIFF(S)

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011CP3201781

Marjorie E Temple

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on June 15, 2015 and a copy mailed, emailed or placed in the appropriate attorney's box on this June 15, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Frederick I Hall III
Jennifer Cooper
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kelland Greenbush
ATTORNEY(S) FOR THE DEFENDANT(S)

Beth Camacho
CLERK OF COURT

Spencer Syrett
MAhan Place
Jaylor Peace

Francis M Mack

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED

) CIVIL ACTION NO.:

) 2011 MAY 11 A 9:52

COPY

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

ACTION TO FORECLOSE ON
EQUITABLE INTEREST IN
REAL PROPERTY AND/OR
TERMINATE A CONDITIONAL SALES
AGREEMENT AND BOND FOR TITLE

2011CP3201781

THE PLAINTIFFS, COMPLAINING AGAINST THE DEFENDANT, ABOVE-NAMED, would respectfully show unto the Court as follows:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiffs are citizens and residents of the County of Lexington, State of South Carolina, and are the owners of the real property hereinafter described in this action.
2. The Defendant, Marjorie E. Temple, is, upon information and belief, a citizen and resident of the County of Lexington and resides at the real property, which is the subject of this action, at 1730 Nazareth Road.
3. That on or about the 6th day of April, 2009, the Plaintiffs entered into a Conditional Sales Agreement and Bond for Title with the Defendant, the terms of which provided, among other things, that the Defendant would pay to the Plaintiffs the sum of eighty-five thousand dollars, on an installment basis, according to the terms and conditions of the Conditional Sales Agreement and Bond for Title, a copy of which is attached hereto as Exhibit A, and hereinafter referred to as "the Agreement."
4. According to the terms and conditions of the Agreement, the Defendant was to pay to the Plaintiffs the sum of fifteen thousand dollars at closing, and the balance of seventy-two thousand dollars was to be paid in monthly installments, with the first payment beginning on May 3, 2009, and a final

installment payment to be paid on or before April 1, 2011, the failure of which to pay would constitute a default under the Agreement, pursuant to which the Defendant would forfeit all monies paid in the event of default, as liquidated damages.

5. That the real property, which is the subject of this action, is hereinafter described as follows:

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Lot 16, containing 4.33 acres, more or less, on a plat of Partridge Hill Subdivision, Phase I, prepared by Civil Engineering of Columbia, Inc., dated October 5, 1988, revised August 5, 1989, and recorded in the office of the Register of Deeds for Lexington County in Plat Book 233 at page 7. Being further shown and delineated on a plat prepared for Lawrence D. Wright and Sharon B. Wright by D.B. Sproles & Associates, Inc., dated January 30, 1990 and recorded in Plat Book 235 at page 152-A. Reference to said plat is made for a more complete and accurate description. Be all measurements a little more or less.

6. Furthermore, pursuant to the terms and conditions of the Agreement, as aforesaid, the Defendant would forfeit all monies paid to-date as liquidated damages and agree to vacate the premises without notice from the Plaintiffs.

7. That, pursuant to the terms and conditions of the agreement, time is of the essence under the agreement and if default be made and continues for a period of thirty-days in the payment of any of the installments of principle, interest, or any other items stipulated in the agreement, or the same become severably due, then, in that event, at the option of the Plaintiffs or the sellers the whole unpaid balance due under the Agreement becomes immediately due and payable, and the Plaintiffs would have the right to terminate the purchaser's rights under the Agreement and all the purchaser's obligations hereunder in any appropriate proceedings, legal, or equitable.

8. Pursuant to the terms of the Agreement, the Plaintiffs do hereby exercise their option, as sellers under the agreement, to accelerate the balance due. Therefore, Plaintiffs allege that the Defendant is in breach of the installment agreement and that there is now due and owing seventy-one thousand, eight-hundred and fifty dollars (\$71,850.00), which includes all past-due installment, adjustments, and credits,

plus interest thereon, at the rate allowed by law, together with the Plaintiffs reasonable attorneys' fees and court costs in connection with the enforcement of this agreement.

9. That the Plaintiffs believe that they are entitled to foreclosure of any and all equitable interest that the Defendant may have, pursuant to the attached agreement and that the Defendant's equitable interest of redemption be foreclosed, and barred, pursuant to law.

FOR A SECOND CAUSE OF ACTION
Termination of Contract and Equitable Interest

10. Each and every allegation of the first cause of action is incorporated herein as if set forth herein verbatim.

11. According to the terms and conditions of the Agreement, the Plaintiffs and Defendant agreed that in the event the Defendant did not make the final installment payment due on or before April 1, 2011, then the same failure to make the payment would constitute a default and that the Defendant would forfeit all monies to be paid as liquidated damages and agreed to vacate the premises without any notice from the seller.

12. That, upon information and belief, the Defendant has refused to vacate the premises.

13. That the Defendant's refusal to vacate the premises also constitutes a default under the Agreement, as she has not made the final installment payment.

14. Upon information and belief, the Plaintiffs are entitled to an Order of this Court determining the Defendant to be in default and that the Plaintiffs are entitled to possession, and an Order of possession from this Court and such other further and equitable relief that this Court may deem just and proper.

WHEREFORE, having fully set forth their complaint herein, the Plaintiffs pray as follows:

That the amount due under the said installment contract of sale be ascertained and declaring under the direction of this Court, together with attorney's fees and the costs of this action;

That the Plaintiffs be declared to be the lawful owners of the property by virtue of their legal title which has not been transferred;

The subject property be sold under the direction of this Court, and the equity of redemption be barred;

That the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale;

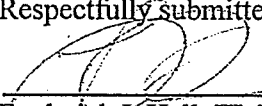
Second, to the payment and discharge of the Plaintiffs' legal interest in the property and the debt due and owing under the Plaintiffs' installment contract of sale and interest therein, together with attorney's fees as aforesaid;

Third, the surplus, if any, be distributed according to law.

In the alternative, the Defendant's equitable interest in the contract be terminated and that the Plaintiffs be granted an order of possession;

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

Respectfully submitted,

BY: 

Frederick I. Hall, III (Fed. I.D. # 7941)
The Rick Hall Law Firm, LLC
Attorney for the Plaintiffs
301 Gibson Rd.
Lexington, SC 29072
Tel: (803) 957-5333
Fax: (803) 957-7717
rick@sctrialattorneys.com

Lexington, South Carolina
May 10, 2011

FILED
2011 MAY 11 A 9:52
PETT A. CARRIG
CLERK OF COURT
LEXINGTON SC

20090170 FILED, RECORDED, INDEXED
 2009-04 10:13:58:020
 REC FEE: \$0.00 ST FEE: \$0.00
 CD FEE: \$0.00 Pages: 14
 Lexington County R.O.D. Debra M. Gunter
 BOND FOR TITLE Bk:Pg 13525:64

Prepared/Recorded by and return to:

Gary A. Pickren
 Harvey, Casterline & Vallini, L.L.P.
 Post Office Box 8382
 Columbia, SC 29202
 Our File No. 09-40791

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

CONDITIONAL SALES AGREEMENT
BOND FOR TITLE
(FIXED RATE PAYMENTS)

WHEREAS, the Purchaser desires to purchase and Seller desires to sell the property described herein; and

WHEREAS, the Seller is willing to convey possession of the premises and retain title for the convenience of the Purchaser, and whereas the Purchaser understands the risks associated in this type of transaction;

NOW, THEREFORE, for Five Dollars (\$5.00) and other valuable consideration, each paid to the other, the receipt of which is hereby acknowledged, as well as the exchange of the mutual promises set forth herein.

Agreement entered into this 6th day of April 2009, by and between the undersigned **Charles E. Strickland, III**, **Latisha D. Strickland** and **Justin R. Dillon** hereinafter referred to collectively as "SELLER"; and **Marjorie E. Temple**, hereinafter referred to as "PURCHASER", for purchase of the property described and referred to below, hereinafter referred to as "PROPERTY".

The Property shall be delivered by the Seller to the Purchaser upon the execution hereof, but title thereto shall not pass to the Purchaser until the purchase price, together with the interest thereon, and all notes given to evidence the purchase price, or any renewal notes, shall be paid to the Seller in cash.

Legal Description

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Lot 16, containing 4.33 acres, more or less, on a plat of Partridge Hill Subdivision, Phase I, prepared by Civil Engineering of Columbia, Inc., dated October 5, 1988, revised August 5, 1989, and recorded in the office of the Register of Deeds for Lexington County in Plat Book 233 at page 7. Being further shown and delineated on a plat prepared for Lawrence D. Wright and Sharon B. Wright by D.B. Sproles & Associates, Inc., dated January 30, 1990 and recorded in Plat Book 235 at page 152-A. Reference to said plat is made for a more complete and accurate description. Be all measurements a little more or less.

This being the same property conveyed to Justin R. Dillon and Latisha D. Strickland by deed of the Secretary of Housing and Urban Development, of Washington, D.C., a/k/a United States Department of Housing and Urban Development, an Agency of the United States of America, dated October 18, 2006, and recorded October 24, 2006, in the office of the Register of Deeds for Lexington County in Record Book 11483 at page 41; subsequently, Justin R. Dillon and Latisha D. Strickland conveyed their interest

WDS JD [Signature]
 38

to Justin R. Dillon, Latisha D. Strickland and Charles E. Strickland, III, by deed dated April 20, 2007, and recorded April 24, 2007, in Record Book 11939 at page 300.

TMS: 007523-01-016 and 018

The terms governing the said Agreement shall be as follows: That it is made subject to: (1) Zoning and building laws or ordinances, and (2) Restrictions or easements of record. The six parcels are hereinafter collectively referred to as "the property".

"As Is" Condition

Purchaser expressly accepts the property and improvements thereon in "AS IS" condition and Seller expressly excludes all warranties as to the premises excepting the limited warranty of title which is set forth herein. The Purchaser acknowledges that she will be solely responsible for maintaining and repairing the improvements as needed and will not look to the Seller for any contribution.

The Purchaser may from time to time, at her sole discretion, make improvements to or add fixtures to the property and the house thereon. Any improvements or maintenance made to the property or house by the Purchaser will be made for the Purchaser's benefit and not the benefit of the Seller. The Purchaser will not receive any credit or discount toward the purchase price or monthly installment payments due hereunder for the costs of the improvement even if the improvement increases the value of the Seller's property or is done with the Seller's consent. In the event of the Purchaser's default, the improvements shall remain with the property and the Seller will not be required to pay for the reasonable value of same, credit or offset Purchaser's debt, or reimburse the Purchaser in any manner. Any improvement to the property other than cosmetic changes must be approved by the Sellers in writing prior to the undertaken of such improvements.

Purchase Price

That Purchaser shall pay over to the Seller the sum of Eighty-Five and no/100 (\$85,000.00) Dollars as follows:

The Purchaser shall pay to Seller the sum of Thirteen Thousand and no/100 (\$13,000.00) Dollars at closing. The balance of Seventy-Two Thousand and 00/100 (\$72,000.00) Dollars shall be paid in monthly installment payments. The payments will begin on May 1, 2009. The monthly payment will be One Thousand and no/100 (\$1,000.00) Dollars. Each

month an additional payment in the above-referenced amount shall be made on the first day of each calendar month. The Purchaser shall receive \$50.00 credit toward the outstanding balance of this contract with each monthly installment payment made. If the monthly payments are not paid by the fifteenth day of each month, a five (5%) percent late fee shall be assessed.

The Purchaser shall also be responsible for the payment of any and all regime fees, a prorated share of all *ad valorem* taxes, assessments, and insurance against all hazards on the property which shall be inclusive of the \$1,000.00 monthly payment. Such payments shall be made as due or upon demand of the Seller and failure to make said payment within ten (10) days of demand shall constitute a default as described hereunder. After a default, the Seller may demand that the regime fee, *ad valorem* tax and hazard insurance be paid on a monthly basis by Purchaser by Purchaser paying 1/12 of the amount due. In the case where the actual bill has not been issued, the payments will be based on the previous year's bill.

On or before April 1, 2011, the Purchaser will pay the remaining balance of the contract due hereunder as stated in this agreement. Failure to make the payment on or before April 1, 2011 will constitute default and the Purchaser will forfeit all monies paid to date as liquidated damages and agree to vacate the premises without any notice from the Seller. No other extensions of the deadline will be allowed without the express written approval of the Seller.

Regime Fees, Insurance and Property Taxes

Purchaser covenants and agrees: (a) to pay, before delinquency or penalty, all taxes when due, and all special taxes or assessments hereafter levied, and special assessments, water and sewage charges, levies, liens, encumbrances and other costs on charges affecting the property and when requested by Seller, to deliver receipts or certificates, in form satisfactory to Seller, evidencing such payments; and (b) to maintain hazard insurance of such type or types and amounts as the Seller may from time to time notify Purchaser to obtain on the improvements now or hereafter on said premises, and to pay promptly when due any premiums therefore. All insurance shall be carried in companies approved by Seller. Insurance premiums which maintain coverage in an adequate amount and property taxes shall be paid by the Purchaser. The Seller shall be named on the fire and casualty insurance policy as insured with the Seller's rights limited to any amounts owed to

him under this contract. PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER SHALL NOT MAINTAIN INSURANCE COVERAGE ON PURCHASER'S CONTENTS, AND THAT SELLER RECOMMENDS THAT PURCHASER SEEK PROFESSIONAL INSURANCE ADVICE ON INSURANCE COVERAGES, INCLUDING "ADDITIONAL LIVING EXPENSES" IN THE EVENT THAT STRUCTURE MAY BE UNINHABITABLE FOR A PERIOD IN THE FUTURE.

Sales Commission

Seller warrants that a real estate commission of two percent (2%) is due and payable on this transaction at the completion of the term set forth herein provide the Purchaser completes the purchase obligation. The seller shall pay ERA Wilder Realty one percent (1%) of the two percent (2%) commission at the signing of this document.

Failure to Perform (Purchaser)

In the event the Purchaser fails, neglects, or refuses to perform, in whole or in part, any of the covenants, agreements or obligations herein provided upon the part of Purchaser to be performed, Seller is hereby authorized and empowered at its option, upon reasonable notice to cause to be performed, any or all of said covenants, agreements and obligations, and expend such sum of money as may be reasonable therefore, or for any other purpose which in the opinion of Seller is reasonably necessary for the protection of Seller. Seller is authorized to charge Purchaser for any such amounts. All such sums of money so expended by Seller, together with interest thereon, at the rate of Ten (10%) percent, from the several dates of expenditure thereof until paid, shall become so much additional indebtedness under this Agreement and shall be repaid by Purchaser to Seller, in lawful money of the United States of America, immediately upon demand, at the address of Seller as determined in accordance with the terms of this Agreement. Any failure, neglect, or refusal by Purchaser to repay such sums as herein provided shall constitute default under this contract. Any payment made under the terms of this Agreement may, at the election of Seller, be applied first to the repayment of any sums Seller shall have expended in accordance with the terms hereof. Purchaser agrees to pay all of Seller's reasonable attorneys' fees and court costs incurred by the Seller in her enforcement of the contract.

LA LPS JD  41

In the event that the Purchaser fails to make payments on a timely basis as set forth herein or fail to perform obligations set forth under this contract, the Purchaser waives right to any notice as the law shall allow.

Failure to Perform (Seller)

That in the event Seller fails, neglects, or refuses to perform, in whole or in part, any of the covenants, agreements or obligations herein provided upon the part of the Seller to be performed, Purchaser is hereby authorized and empowered, at his option, with reasonable notice and at the cost of Seller, to perform or cause to be performed, any or all of said covenants, agreement and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which in the opinion of Purchaser is reasonably necessary for the protection of Purchaser. All such sums of money so expended by Purchaser, from the several dates of expenditure thereof until paid, shall become indebtedness under this Agreement and shall be repaid by Seller to Purchaser, in lawful money of the United States of America, immediately upon demand, at the address of Purchaser as determined in accordance with the terms of this Agreement. Any failure, neglect, or refusal by Seller to repay such sums as herein provided shall constitute default hereunder. Purchaser may deduct from any payments due Seller under the terms hereof any sums due from Seller to Purchaser as a result of Seller's breach of any of the terms and/or conditions of this Agreement.

Waste

Purchaser covenants not to commit, permit, or suffer any waste to the property, to keep the property in good repair and not suffer any mechanic's or materialmen's liens to attach thereto. Purchaser further covenants and agrees to comply with all laws and ordinances which may in any manner affect the property.

Time of the Essence

Time is of the essence of this Agreement and if default be made and continue for a period of Thirty (30) days in the payment of any of the installments of principal, interest or any other items herein stipulated, when the same becomes severally due hereunder, or in the payment of any other sums herein agreed to be paid by the Purchaser, or if default be

CA LDS JD 

made in the performance by Purchaser of any other agreement, covenant, or obligation of Purchaser hereunder, then in either, or any of said events, the whole unpaid balance due under the terms of this Agreement shall, at the option of Seller, immediately become due and payable and Seller's may at his option, terminate all of Purchaser's rights under this Agreement and all of Purchaser's obligations hereunder in any appropriate proceedings, legal or equitable. Purchaser agrees to pay all costs and expenses, including a reasonable sum for attorney's fees incurred by Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all of the terms of this Agreement, and in appropriate judicial proceedings, if any are initiated to establish or maintain Seller's right or title to, and possession of said property after breach by Purchaser. Purchaser further covenants and agrees that in the event of default all monies paid to the Seller through the date of default will be considered liquidated damages and is not refundable in part or in whole.

Conveyance of Title

That upon full payment of the purchase price in accordance with the provisions of this Purchase Agreement, if Purchaser shall have complied with all other terms and provisions of this Agreement and upon written request of the Purchaser, the Seller shall execute and deliver a General Warranty Deed, with stamps affixed, conveying to Purchaser fee simple title to the previously described property. Said General Warranty Deed shall be issued in the name of **Marjorie E. Temple** or other name as she directs.

Seller's title is satisfactory to Purchaser as of the date hereof, provided, however, that Seller's existing mortgages or other liens shall be paid off or if assumed, given as a credit to Purchaser upon delivery of a deed as provided herein. Purchaser reserves the right to prepay the purchase price at any time without penalty and Seller agrees to apply such portion of the prepayment to existing mortgage notes owed by the Seller so that the balance due to the Seller on the Purchaser's obligation shall be less than the balance due on the obligations owed by the Seller.

CS WDS JD 

Attorney's Fees

That Purchaser shall pay Purchaser's attorney's fees, all recording, transaction, transfer, conveyance, and other taxes assessed pursuant to the terms of this Agreement. Seller shall pay closing costs consisting of Deed documentary stamps, deed preparation, and any Seller's attorney fees.

Notices

That any notices from one party hereto to the other party shall be in writing and delivered in person or forwarded by certified mail. Notices to Purchaser shall be addressed to her at 1730 Nazareth Road, Lexington, South Carolina 29073, unless she shall have previously furnished to Seller written notice of a different address, in which event notice shall be sent to the latest address as furnished Seller. Notices to the Seller shall be addressed to the Seller at 148 Royal Creek, Lexington, South Carolina 29072, or such other address as may be designated from time to time by Seller in writing.

Waiver

That failure or delay of the Seller or Purchaser to enforce any right or to exercise any option hereunder available because of any default shall not operate as a waiver of the right of the Seller or Purchaser to thereafter enforce such right or to exercise such option or any other right or option, for the same or for any subsequent default.

Tax Considerations

That in the event of a disallowance by the Internal Revenue Service and/or the South Carolina Tax Commission, which prevents both parties from the benefit of a deduction for interest or depreciation or capital gain on the Property, then in that event it is hereby agreed by and between the parties hereto that those deductions disallowed both parties resulting from transactions occurring after the date hereof shall accrue to the benefit of the Purchaser.

Status of Seller

It is agreed by the parties hereto, that in the event of a default by Purchaser which default results in the Seller seeking to divest the Purchaser of his interest under the terms of the Purchase Agreement, the Seller's interest in the Property shall be treated as the interest of a landlord and the Purchaser shall be treated as a tenant.

Condemnation

Should any party that possesses the power of eminent domain give notice to Seller of its intent to take all or any portion of the Property, Seller shall immediately give notice thereof to Purchaser. Seller hereby assigns to Purchaser, in the event of a taking of all or substantially all of the property, all amount by in excess of the amount that Seller would have received upon the conveyance of the Property by deed as set forth in this Agreement. In the event of a partial taking, Purchaser and Seller agree that the respective amounts due each party shall be determined by the Court determining the award. In any event, it is agreed that neither party shall agree to any amount of compensation offered as settlement without the consent of the other party.

It is not the intent of the parties that the Seller be required to refinance any indebtedness of the first mortgage in the event this agreement is paid in full by the Purchaser.

Assignment

This contract is not assignable by Purchaser without the express written consent of the Seller. Seller may assign this contract subject only to written notice to Purchaser. SELLER MAY, AT SELLER'S SOLE OPTION, ALLOW THIS CONTRACT TO BE ASSIGNED TO A NEW PURCHASER UPON: (1) MINIMUM THIRTY DAY NOTICE TO SELLER AND (2) PAYMENT TO SELLER OF TRANSFER FEE EQUAL TO 1.5% OF OUTSTANDING PRINCIPAL BALANCE AT THE TIME OF TRANSFER.

CE LPS JD 

Law Governing

This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Venue on any action hereunder is agreed to be proper only in Lexington County.

Presumption

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Computation of Time

In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday or a legal holiday.

Titles and Captions

All article, sections, and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Pronouns and Plurals

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

Entire Agreement

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

LS LDS JD 
46

Prior Agreements

This document is the entire, final and complete agreement of the parties pertaining to the option to purchase of the Property, and supersedes and replaces all prior or existing written and oral agreements (including any earnest money agreement) between the parties or their representatives relating to the Property.

Agreement Binding

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

Good Faith, Cooperation and Due Diligence

The parties hereto covenant, warrant, and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

Parties in Interest

Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

CR LDS JD 

Legal Representation.

The Purchaser acknowledges that the attorney represents the Seller in this transaction and the attorney has provided no legal advice to the Purchaser. Purchaser warrants that she has had the opportunity to have her attorney examine this Contract and that she has received no legal representation or advice on this Contract from the Seller or his agents or attorney. Purchaser acknowledges that a title search or abstract has been performed by Harvey, Casterline & Vallini, LLP. The attorneys, however, are making no representation of ownership, marketability, or the validity of existing liens on the property as set out herein. The attorneys have prepared this agreement at the instructions and request of the Seller. Purchaser and Seller understand the risk of closing this transaction.

Existing Liens.

A title search was performed at the Lexington County Register of Deeds Office. The search period was from March 9, 1969 to March 9, 2009. The title abstract reveals the following matters of record which would be listed as requirements to satisfy in order to receive title insurance and the following matters that would be excepted on a title insurance policy that would be issued by this law firm. (i.e., no title insurance coverage would be offered on the listed exceptions). **THIS IS NOT TO BE CONSTRUED AS A TITLE INSURANCE POLICY OR A PROMISE TO ISSUE TITLE INSURANCE. THIS IS MERELY A REPORT ON TITLE AND WHAT WOULD BE REQUIRED TO PURCHASE TITLE INSURANCE:**

1. Mortgage from Charles D. Strickland, III, Justin R. Dillon and Latisha D. Strickland to 1st Choice Mortgage/Equity Corp. of Lexington as recorded in said ROD's Office on June 26, 2008, in Mortgage Book 12993 at page 36 securing an indebtedness of \$63,800.00, and any other amounts payable under the terms thereof, together with any assignments thereof.
2. Payment of taxes for the year 2008 (on both TMS numbers), plus all costs, penalties and interest.
3. Matters as shown on a plat prepared for Lawrence D. Wright and Sharon B. Wright by D.B. Sproles & Associates, Inc., DATED March 30, 1990:
 - a) Minimum building setbacks of 5 ft. on the southeastern and southwestern sides of lot; 10 ft. on the northeastern side of lot, and 15 ft. increasing to 40 ft. along the pond on the northwestern side of lot.

CA WOS JD 
48

5. The number of acres contained in the legal description is neither guaranteed nor insured.
6. Subject to the rights of others in and to the bed and waters of the pond crossing the premises and the dam as shown on survey prepared by D.B. Sproles & Associates, Inc., FOR Lawrence D. Wright and Sharon B. Wright DATED March 30, 1990.

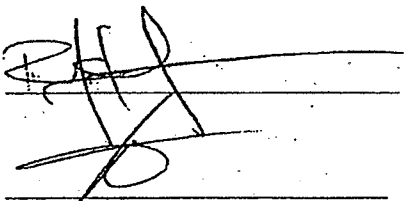
*******THESE "EXCEPTIONS" ARE FOR USE FOR THE BOND FOR TITLE ONLY AND NOT FOR TITLE COMMITMENT/INSURANCE PURPOSES. THEY ARE INCOMPLETE AS TO THE REQUIREMENTS FOR TITLE INSURANCE**

(Remainder of page is intentionally blank)

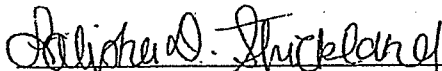
THIS AGREEMENT ENTERED INTO THIS 6th DAY OF April 2009, shall inure to the benefit of and be binding upon the parties hereto, their heirs, legal representatives and assigns.

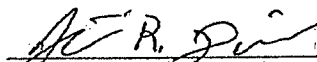
WITNESSES:

AS TO SELLER



 4-6-09
CHARLES E. STRICKLAND, III,


LATISHA D. STRICKLAND


JUSTIN R. DILLON

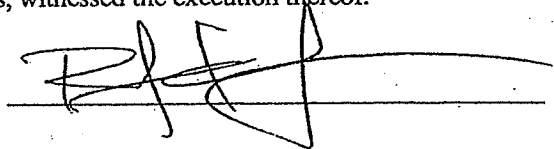
STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF RICHLAND)

Personally appeared before me the undersigned and made oath that s/he saw the within named seller, Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon, sign, seal and as their act and deed, deliver the within written Conditional Sales Agreement, and that s/he with the other witness, witnessed the execution thereof.

SWORN TO and subscribed before me
This 6th day of April 2009.



NOTARY PUBLIC FOR SOUTH CAROLINA

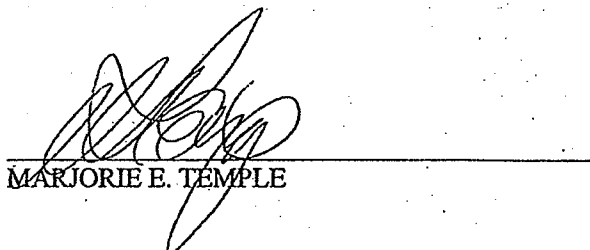
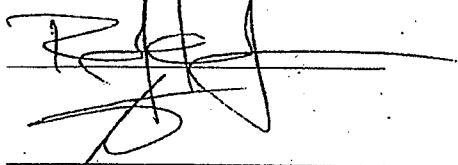
My Commission Expires: 11/7/16

CR UPS JD 50 

THIS AGREEMENT ENTERED INTO THIS 6th DAY OF APRIL 2009, shall inure to the benefit of and be binding upon the parties hereto, their heirs, legal representatives and assigns.

WITNESSES:

AS TO PURCHASERS:



MARJORIE E. TEMPLE

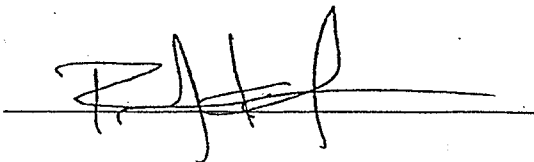
STATE OF SOUTH CAROLINA

)
)
)
PROBATE

COUNTY OF RICHLAND

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Marjorie E. Temple, Purchaser, sign, seal and as her act and deed, deliver the within-written Conditional Sales Agreement, and that s/he with the other witness, witnessed the execution thereof.

SWORN TO and subscribed before me
this 6th day of April, 2009.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 11/7/14

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2011 MAY 11) CIVIL ACTION NO.: 152

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,)
BETH A. CARRIGG)
CLERK OF COURT)
LEXINGTON SC)

COPY

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant)

NOTICE OF PENDING ACTION
(Lis Pendens)

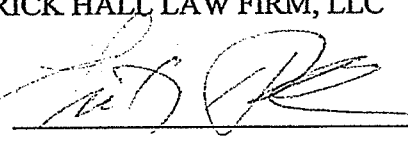
2011CP3201781

2011-LP-32-707

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court upon Complaint of the above-named Plaintiffs against the above-named Defendant for the purpose of obtaining an Order of the Court granting the Plaintiff to foreclose on the equitable interest in the property described herein and/or terminating a conditional sales agreement and bond for title to the subject property. The premises covered and affected by this action is at the time of the filing of this Notice, described as follows:

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Lot 16, containing 4.33 acres, more or less, on a plat of Partridge Hill Subdivision, Phase I, prepared by Civil Engineering of Columbia, Inc., dated October 5, 1988, revised August 5, 1989, and recorded in the office of the Register of Deeds for Lexington County in Plat Book 233 at page 7. Being further shown and delineated on a plat prepared for Lawrence D. Wright and Sharon B. Wright by D.B. Sproles & Associates, Inc., dated January 30, 1990 and recorded in Plat Book 235 at page 152-A. Reference to said plat is made for a more complete and accurate description. Be all measurements a little more or less.

THE RICK HALL LAW FIRM, LLC

By: 

Frederick I. Hall, III, Esquire
301 Gibson Road
Post Office Box 1898
Lexington, South Carolina, 29071
(803) 957-5333
(803) 957-7717 Facsimile
ATTORNEY FOR PLAINTIFFS

Lexington, S.C.
May 70 2011

SETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011 MAY 11 A 9:52

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)
Plaintiffs,)

vs.)

Marjorie E. Temple,)
Defendant.)

ANSWER, COUNTERCLAIM AND
THIRD PARTY COMPLAINT
2011-CP-32-1781

Marjorie E. Temple,)
Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)
Third Party Defendants.)

The Defendant respectfully alleges:

FOR A FIRST DEFENSE:

1. The Defendant admits the allegations of Paragraph 1 of the Complaint.
2. The Defendant admits the allegations of Paragraph 2 of the Complaint.
3. The Defendant admits the allegations of Paragraph 3 of the Complaint.
4. The Defendant admits all of the allegations of Paragraph 4 of the Complaint except that the Defendant paid the Plaintiffs \$13,000.00 at closing.
5. The Defendant admits the allegations of Paragraph 5 of the Complaint.
6. The Defendant admits so much of the allegations of Paragraph 6 of the Complaint

as alleges terms of the agreement, but the Defendant denies that such terms are enforceable and will further show that by virtue of her down payment and monthly payments, the Defendant has an equity of redemption.

7. The Defendant admits so much of the allegations of Paragraph 7 of the Complaint as alleges terms of the agreement, but the Defendant denies that such terms are enforceable and will further show that by virtue of her down payment and monthly payments, the Defendant has an equity of redemption.
8. The Defendant denies the allegations of Paragraph 8 of the Complaint.
9. The Defendant denies the allegations of Paragraph 9 of the Complaint.
10. Paragraph 10 requires no response.
11. The Defendant admits so much of the allegations of Paragraph 11 of the Complaint as alleges terms of the agreement, but the Defendant denies that such terms are enforceable and will further show that by virtue of her down payment and monthly payments, the Defendant has an equity of redemption.
12. The Defendant admits the allegations of Paragraph 12 of the Complaint.
13. The Defendant denies the allegations of Paragraph 13 of the Complaint.
14. The Defendant denies the allegations of Paragraph 14 of the Complaint.

FOR A SECOND DEFENSE:

15. The Complaint does not comply with the requirements of Rule 10, South Carolina Rules of Civil Procedure. Therefore the Clerk should not have filed the action and the action should be dismissed.

FOR A THIRD DEFENSE:

16. The Complaint fails to state a Cause of Action for which relief can be granted.

FOR A FOURTH DEFENSE:

17. The Defendant denies each and every allegation of the Complaint and demands strict proof thereof.

FOR A FIFTH DEFENSE (UNCONSCIONABILITY):

18. The allegations of the preceding Defenses are incorporated herein as if set forth verbatim.
19. The terms of the Conditional Sales Agreement and Bond for Title are

unconscionable and it would be inequitable for the document to be enforced according to its terms.

20. As a result, Defendant is entitled to have the Court revise the terms of the agreement or in the alternative, invalidate the agreement and order the Plaintiffs to refund all sums paid by the Defendant.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM (RESCISSION):

21. The allegations of the preceding Defenses are incorporated herein as if set forth verbatim.
22. The Plaintiffs failed to disclose the following relevant facts:
- a. The property has a dam on it. There is an Association which was to manage and maintain the dam but it is apparently defunct.
 - b. A significant portion of the property is in a flood zone or is protected wetlands.
 - c. The Plaintiff advised all parties that she intended to build a residence on the property in place of the mobile home. The flood plain and wetlands conditions make that impossible.
23. These are material facts, the disclosure of which was critical to the transaction.
24. Defendant is therefore entitled to rescission of the agreement with a refund of all monies paid by the Defendant.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM (NEGLIGENT MISREPRESENTATION):

25. The allegations of the preceding Causes of Action are incorporated herein as if set forth verbatim.
26. The Plaintiffs knew or should have known of the conditions set forth in the Sixth Defense.
27. The Plaintiffs failed to disclose these material facts.
28. Had the Defendant known of the facts, she would have refused to close the transaction.
29. The Defendant is informed and believes that she is entitled to an award of actual and punitive damages on the grounds of negligent misrepresentation.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM (FRAUD):

30. The allegations of the preceding Causes of Action are incorporated herein as if set forth verbatim.
31. The Plaintiffs knew or should have known of the conditions set forth in the Sixth Defense.
32. The Plaintiffs intentionally failed to disclose these adverse conditions on the Property Disclosure report and many of the representations on the report were false.
33. The representations made on the Property Disclosure report were made with the intention that the Defendant rely upon them.
34. The Defendant had a right to rely on the representations made by the Plaintiffs and those set forth on the Property Disclosure Report.
35. The Defendant did rely upon those representations to her damage.
36. The Defendant is entitled to an award of actual and punitive damages on the grounds of fraud.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM (UNFAIR TRADE PRACTICES):

37. The allegations of the preceding Causes of Action are incorporated herein as if set forth verbatim.
38. The Defendant is informed and believes that the Plaintiffs are in the business of buying and selling real estate.
39. The actions of the Plaintiff in inducing the Defendant to enter into the Conditional Sales Agreement Bond for Title constitute an Unfair Trade Practice as set forth in the South Carolina Unfair Trade Practices Act in that they are injurious to the public and capable of repetition.
40. The Defendant is informed and believes that she is entitled to an award of her actual damages, such damages to be trebled as provided by the act and an award of attorney fees.

FOR A TENTH DEFENSE AND BY WAY OF THIRD PARTY CLAIM AGAINST
RUSSELL KOIVU AND ERA WILDER REALTY, INC. (BREACH OF FIDUCIARY DUTY):

41. The allegations of the preceding Defenses are incorporated herein as if set forth verbatim.
42. Russell Koivu acted as real estate agent for the Defendant in the transaction.
43. Russell Koivu was licensed with ERA Wilder Realty.
44. Defendant was inexperienced in real estate matters.
45. Koivu and ERA Wilder Realty had a fiduciary duty to the Defendant to advise her in a competent manner.
46. Koivu and ERA Wilder failed to advise the Defendant in a competent manner and as a result Defendant entered into an unconscionable transaction.
47. Defendant is informed and believes that she is entitled to judgment against the Defendants for actual and punitive damages.

FOR AN ELEVENTH DEFENSE AND BY WAY OF THIRD PARTY CLAIM AGAINST GARY A. PICKREN, REX CASTERLINE AND HARVEY, CASTERLINE AND VALLINI, LLP (MALPRACTICE):

48. The allegations of the preceding Defenses are incorporated herein as if set forth verbatim.
49. Defendant Harvey, Casterline & Vallini, LLP is a Limited Liability Partnership engaged in the practice of law in the State of South Carolina.
50. Defendant Gary A. Pickren is an attorney licensed to practice law in the State of South Carolina.
51. Defendant Rex Casterline is an attorney licensed to practice law in the State of South Carolina.
52. At all times relevant hereto, Gary A. Pickren was an employee of or member of Harvey, Casterline & Vallini, LLP.
53. At all times relevant hereto, Rex Casterline was an employee of or member of Harvey, Casterline & Vallini, LLP.
54. On March 19, 2009, Defendant, Harvey, Casterline & Vallini, LLP, sent a letter to the Defendant advising her that it was acting as her attorney to close the transaction, a copy of the letter is attached hereto and incorporated by reference.
55. When Defendant appeared at the closing, Third Party Defendant Casterline advised

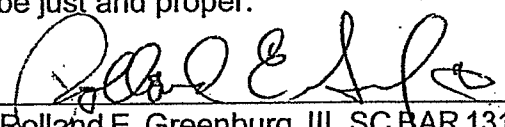
the Defendant that he and Harvey, Casterline and Vallini, LLP were acting as attorneys for the Plaintiffs only.

56. Third Party Defendant Pickren drafted the Conditional Sales Agreement and Bond for Title that contained unconscionable terms.
57. Third Party Defendants Casterline and Harvey, Casterline & Vallini, LLP had no right to terminate their representation of the Defendant.
58. Defendant had a right to rely upon Defendants Pickren, Casterline and Harvey, Casterline & Vallini, LLP to protect her interests in the transaction and advise her in a competent manner.
59. The Third party Defendants charged the Plaintiff an attorney fee.
60. As a result Defendant entered into an unconscionable transaction.
61. Defendant is informed and believes that she is entitled to judgment against the Defendants for actual and punitive damages.

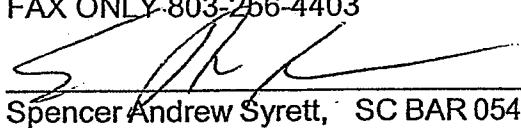
WHEREFORE DEFENDANT PRAYS:

1. That the Complaint be dismissed.
2. That the Court protect the rights of the Defendant.
3. That the Court rescind the Agreement and order the Plaintiffs to refund all monies paid by the Defendant.
4. For judgment against the Plaintiffs, jointly and severally, for actual and punitive damages.
5. For judgment against the Plaintiffs pursuant to the South Carolina Unfair Trade Practices Act, such damages to be trebled under the Act.
6. For an award of attorney fees against the Plaintiffs.
7. That the Defendant have judgment against the Third Party Defendants for actual and punitive damages.

8. For such other and further relief as may be just and proper.



Rolland E. Greenburg, III SC BAR 13161
Attorney for the Defendant
712 Calhoun, Suite D
Columbia, SC 29201
803-256-4408
FAX ONLY 803-256-4403



Spencer Andrew Syrett, SC BAR 05459
Attorney for the Defendant
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950

July 26, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

AFFIDAVIT OF HUGH M. COOPER

Pursuant to §15-36-100 of the South Carolina Code of Laws, Hugh M. Cooper, acting as an expert witness, makes this affidavit on behalf of Marjorie Temple "Temple"), contemporaneous with the filing of a Third Party Complaint against Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP ("attorneys") in an action brought against Temple to foreclose an Installment Land Contract.

Hugh M. Cooper, being first duly sworn, hereby deposes and states as follows:

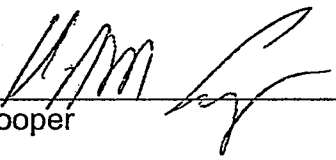
1. My name is Hugh M. Cooper. I am over the age of twenty-one (21) and am competent to make this Affidavit.
2. I am a duly licensed attorney authorized to practice law in the State of South Carolina." I have actual professional knowledge and experience in the area of practice in which the opinion in this Affidavit is to be given as a result of having been regularly engaged in the active practice of law, and particularly in the practice of real estate matters and having been a title agent, for at least three of the last five years immediately preceding this opinion.
3. I am an attorney and title insurance agent who is qualified to give an opinion as to the acceptability of the conduct of Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP that is in issue in the Third Party Complaint being filed in connection herewith.
4. Through my education, training and experience as a licensed attorney and title insurance agent in the State of South Carolina, I am familiar with the standard of skill, care, competence and diligence ordinarily possessed and exercised by attorneys and title insurance agents in the performance of legal services and representation of clients in connection therewith.
5. At the request of Temple, and for the purposes of making this Affidavit, I have served as a consulting expert in order to evaluate the professional conduct of, and legal services performed by Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP.

6. This Affidavit is given solely for the purpose of stating at least one negligent act or omission claimed to exist on the part of Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP and the factual basis for such claim based on available evidence at the time of the filing of this Affidavit, as required by §15-36-100 of the South Carolina Code of Laws. This Affidavit does not include all of my opinions or conclusions relative to this matter. I am aware that this Affidavit is being filed, as required by §15-36-100 of the South Carolina Code, with the Complaint in the action for professional malpractice against Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP as described herein.
7. I make this Affidavit based upon my review of the Third Party Complaint, discussions with representatives of Temple, documents provided to me, and from my knowledge, education, training and experience as a licensed attorney in the State of South Carolina.
8. The negligent act(s) or omission(s) which in my opinion exist are based on the following factual basis:
 - a. The law firm sent an engagement letter for legal services relating to the closing at least a week before closing. At the closing, Casterline stated that the law firm was representing only the Seller and failed to give Temple time to seek other counsel.
 - b. Neither Rex Casterline, Gary Pickren nor Harvey Casterline & Vallini, LLP disclosed that a significant portion of the property is either in the flood plan or protected wetlands, making development difficult or impossible.
 - c. Neither Rex Casterline, Gary Pickren nor Harvey Casterline & Vallini, LLP disclosed that the property has a dam on it which subjects Temple to significant legal exposure and expense.
 - d. The Installment land Contract contains a number of provisions which make it unconscionable.
9. I base my expert opinion upon the assumption that the factual allegations of the

Complaint referred to in paragraph 8, above, are true. In my opinion, if such allegations are true, then Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP would have failed to have exercised due professional care in performing legal services for Temple and the negligent acts and/or omissions of Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP would constitute professional malpractice.

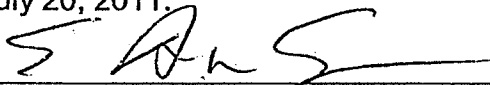
10. In my opinion, if the factual allegations in the Third Party Complaint, referred to in Paragraph 8, above, are true, then Rex Casterline, Gary Pickren and Harvey Casterline & Vallini, LLP failed to perform legal services on behalf of Temple with the reasonable degree of care, skill, and ability which generally is taken and considered to be such a degree of care and skill as, under similar conditions and like surrounding circumstances, is ordinarily employed by a reasonably skilled attorney and title agent in South Carolina.

THIS COMPLETES MY STATEMENT.



Hugh M. Cooper

SWORN TO BEFORE ME
July 20, 2011.



Notary Public for the State of South Carolina
My Commission Expires: 1/14/2015

1 confusing or seem to be unclear or for any reason
2 you can't give a good responsive answer, would you
3 let me know so that I can rephrase the question?

4 A. Yes, thank you.

5 Q. Okay. Are you taking any medications or
6 do you have any medical conditions or any conditions
7 or any issues that would prevent you from giving
8 good responsive answers today?

9 A. No, I'm not.

10 Q. Okay. What is your current address?

11 A. 1730 Nazareth Road, Lexington.

12 Q. And that's the property that's involved
13 in this litigation?

14 A. Yes, sir.

15 Q. Tell me about your educational
16 background.

17 A. I have a master's degree from the State
18 University of New York in social work.

19 Q. I assume you had a bachelors at some
20 point?

21 A. Yes.

22 Q. And where did you get that?

23 A. The State University of New York.

24 Q. When did you get your bachelors?

25 A. Oh, gosh. I -- I'm going to guess. The

1 Q. Okay.

2 A. Sometimes an associated hardship form
3 regarding their situation in terms of finances and
4 otherwise.

5 Q. Okay. So part of the paperwork you fill
6 out in advocating for veterans pertains to financial
7 paperwork; is that correct?

8 A. Yes, sir.

9 Q. And when you fill out that paperwork
10 what is important regarding their finances?

11 A. What their income was last year and
12 currently.

13 Q. Okay. And do they have to sign the
14 application?

15 A. Yes, sir.

16 Q. Okay. How long is the application?

17 A. Two to three pages.

18 Q. Okay. Any other paperwork that you have
19 to fill out in connection with your job?

20 A. Not regularly, no.

21 Q. Okay. What about from time to time do
22 you have to fill out reports for your job?

23 A. Yes, sometimes.

24 Q. Okay. What kinds of reports?

25 A. Reports on my activities in the field.

1 wooded area.

2 Q. Okay. And you had a final walk through
3 on the property; is that right?

4 A. In the house.

5 Q. Yes. Did you?

6 A. Yes.

7 Q. Okay. And then you went in and you
8 closed the property; is that right?

9 A. With a document stating that there were
10 still things to be repaired even after we closed,
11 yes.

12 Q. Is that the list that you've given us?

13 A. No, sir.

14 Q. All right. Where is the list of things
15 that were supposed to be done after the closing?

16 A. There was a handwritten list by Rusty.

17 Q. I haven't seen that document.

18 MR. SYRETT: I believe there's an
19 addendum attached to the contract.

20 MR. PEACE: There is.

21 MR. HALL: I just want to make sure
22 we've identified it.

23 MR. SYRETT: One -- one of two addendums
24 to the contract.

25 MR. HALL: Make sure I understand that.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) C/A #: 2011-CP-32-01781

Charles E. Strickland, III,
Latisha D. Strickland and Justin R.
Dillon,

Plaintiffs,

v.

Marjorie E. Temple,

Defendant.

COPY

MOTION

Thursday, December 11, 2014
1:50 p.m. - 3:14 p.m.

The Motion was heard before The Honorable James O. Spence, at the Lexington County Judicial Center, 205 East Main Street, Suite 204, Lexington, South Carolina, on the 11th day of December, 2014, before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

Rick Hall, Esquire
 The Rick Hall Law Firm, LLC
 301 Gibson Road
 Lexington, South Carolina 29071
 Attorney for the Plaintiffs

Spencer Andrew Syrett, Esquire
 712 Richland Street
 Columbia, South Carolina 29201
 Attorney for the Defendant

Rolland E. Greenburg, III, Esquire
 712 Calhoun Street
 Suite D
 Columbia, South Carolina 29201
 Attorney for the Defendant

Also Present:
 Latisha Strickland
 Tina Dillon

INDEX

	<u>PAGE</u>
Certificate	75

EXHIBITS

(No exhibits were marked during this motion.)

STIPULATIONS

It is stipulated and agreed that this motion is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 THE COURT: We're here on Strickland vs. Temple.
2 It's case 2011-CP-32-1781. We're here, I
3 believe, on Mr. Hall's, who is the Plaintiff,
4 his motion. And we've got Mr. Syrett and
5 Mr. Greenburg. Are y'all both for Ms. Temple
6 or --

7 MR. SYRETT: We both represent Ms. Temple, Your
8 Honor.

9 THE COURT: Both for Ms. Temple. Okay. Mr. Hall,
10 your motion.

11 MR. HALL: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 MR. HALL: First of all, present with me in the
14 courtroom today is Ms. Tish Strickland. She is
15 here and may have to leave. She's on call as
16 a nurse down at the NICU at -- I believe it's
17 Palmetto Richland. So I just wanted to let the
18 Court know we didn't want to interfere with the
19 Court, but she may have to get up and leave.

20 THE COURT: Certainly. Thank you for telling me.

21 MR. HALL: May it please the Court. Your Honor, I'm
22 here today, as the Court noted, on a motion for
23 Rule 11 sanctions, as well as a motion for
24 attorney's fees in connection with an action
25 that was filed in order to terminate equitable



1 interest in real property. The Defendant,
2 Ms. Temple, had entered into a bond for title
3 or sales and purchase agreement. She was
4 unable, of course, to qualify for traditional
5 financing. And they entered into a real estate
6 installment sales contract, otherwise known as
7 a bond for title. And the Court's very
8 familiar with those. In any event, the
9 property was sold as is. And there was a dam
10 on the property. Part of the property was
11 located in some wetlands. You know, there was
12 -- the dam on the property was visible. All of
13 this information was disclosed in writing
14 according to the purchase agreement. There was
15 a plat that Ms. Temple received. She walked
16 the property. She saw that there was a dam on
17 the property. She saw that there was a pond on
18 the property. And she is an educated woman.
19 She signed the purchase agreement of the bond
20 for title. All of this information was
21 disclosed to her. It was determined by this
22 Circuit Court in this action that there was no
23 good basis for her to bring what she ultimately
24 brang (sic) through her Defense Counsel in this
25 case, Mr. Syrett and Mr. Greenburg, allegations



1 of fraud, allegations of unfair trade practice,
2 allegations of unconscionability. All of which
3 the Court found that there was absolutely no
4 basis in law or in fact to have brought these
5 claims because all of it was disclosed in
6 writing to parties that were essentially on
7 equal terms and equal bargaining power and
8 educated people, arm's length transaction. So
9 in any case, once the action was filed and we
10 reviewed the counterclaims that were brought, I
11 wrote to Defense Counsel and I said, this is
12 not a basis for you to go forward in this case.

13 **THE COURT:** All right. Can I ask y'all one thing?
14 Are we here on all your outstanding motions or
15 just the motion for the expedited hearing?

16 **MR. HALL:** Well, I thought Your Honor granted the
17 hearing. I'm sorry.

18 **THE COURT:** What are y'all here -- are y'all here to
19 argue attorney fees today?

20 **MR. SYRETT:** Well, I don't know much time the Court
21 has allowed for this hearing. If it's 15
22 minutes, I don't think it's enough time. If
23 it's an hour, we probably can do it in an hour.

24 **THE COURT:** Okay. Well, continue on. I just --
25 somebody stuck on the top of my notebook a



1 motion for an expedited hearing --

2 MR. HALL: I can explain that.

3 THE COURT: -- which I assumed was to hear the
4 attorney fees.

5 MR. HALL: Yes.

6 THE COURT: All right.

7 MR. HALL: Judge, what I did was, we were supposed
8 to confer.

9 THE COURT: Right.

10 MR. HALL: Within ten days I heard nothing from the
11 Defense Counsel. I filed a motion to expedite
12 the hearing. I got a return e-mail from the
13 Court setting the hearing for a period of three
14 hours. That's what I understood this hearing
15 was set for, for a period of three hours, that
16 we were to split the cost of the court
17 reporter. So my understanding is that the
18 Court granted essentially the motion that I
19 filed for an expedited hearing because I had
20 heard nothing from the Defense Counsel.

21 THE COURT: All right. I'm fine with that. There
22 was some confusion back at my office over what
23 it was. And I thought it was the attorney fee
24 hearing because we had set three, but I have
25 this motion on top. And I just wanted to make



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 sure everybody was on the same page.

2 MR. HALL: Sure. It was my impression that the
3 Court granted the motion and set the hearing,
4 so if I'm incorrect, I'm sorry.

5 THE COURT: No, no, no. I don't know that we
6 granted it. I think we just scheduled it.

7 MR. HALL: Okay.

8 THE COURT: So it just came up.

9 MR. HALL: Okay.

10 THE COURT: Either way, everybody's here, everybody's
11 ready to go, and we've got three hours to argue
12 it. We're good. Everybody's good.

13 MR. HALL: Okay. All right. Thank you, Your Honor.

14 THE COURT: Yes, sir, thank you.

15 MR. HALL: So in any case, as I was indicating to
16 the Court, I wrote Defense Counsel. I said,
17 please withdraw these claims. I did that not
18 only once, I did it twice. That -- they
19 essentially didn't respond and so the case went
20 forward and lengthy depositions were taken in
21 the case. There were other parties to the case
22 which have now either settled or been
23 dismissed. I think there was a summary
24 judgment motion filed by the lawyers in the
25 case. And it's my understanding they've also



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 moved for summary judgment. And that's just
2 collateral, but I still think it's an
3 indication of the overall protractedness of
4 this litigation. But that motion for summary
5 judgment was not heard and was withdrawn or it
6 was agreed to be dismissed against the lawyers.
7 So in any case, the purchase and sale agreement
8 was drawn by a lawyer. And Ms. Temple read it,
9 initialed it, understood it. I took her
10 deposition and she said I knew all this
11 information. And yet we got these
12 counterclaims for fraud saying that we did not
13 disclose the existence of the dam, the
14 existence of the pond, the existence of the
15 wetlands. In deposition she ended up admitting
16 that, in fact, all of that had been disclosed.
17 And, of course, it's plain as the driven snow
18 because the written agreement says that it was.
19 I understand that they brought -- one of the
20 allegations that they may raise in the case,
21 well there was a residential property
22 disclosure statement that didn't mention that.
23 But the Court's order granting summary judgment
24 plainly said, look, if you've got documents
25 that are contemporaneous and you can read all



1 of those documents and understand the truth of
2 the matter, the fact that some small error may
3 have been made is no basis whatsoever for
4 alleging fraud, unfair trade practice. All of
5 that, of course, was dismissed. So I wrote him
6 again. I wrote him twice. I said, please
7 withdraw these things. It didn't happen. And
8 so extensive time, extensive litigation, you
9 know, I've got a box full of materials over
10 here. This really should have amounted to no
11 more than a simple termination of the contract,
12 she should have moved out. As a consequence,
13 my clients have been deprived of the use of
14 this property for, what, nearly three -- this
15 thing's been going on nearly three years now
16 and here we are going into maybe the fourth
17 year. And as to my understanding, she's now
18 out of the property, she moved out in August
19 after Defense Counsel finally conceded that
20 there was no -- there was no issue ripe for an
21 equitable interest. And so, Judge, I brought
22 our motion for attorney's fees on two grounds.
23 First of all, we actually alleged that we were
24 entitled to recover attorney's fees against the
25 Defendant. We also have sought recovery



1 against Defense Counsel by way of Rule 11 for
2 attorney's fees, number one, the Court can
3 grant attorney's fees; number two, under the
4 law, under Rule 11 and the case law, the Court
5 can grant a monetary fine to be paid to the
6 Court; number three, the Court can award a
7 monetary penalty to the Plaintiffs for having
8 to have engaged in the defense of frivolous
9 litigation. And, now, the general rule is that
10 attorney's fees are not recoverable unless
11 authorized by contract or statute. One of the
12 arguments that they make, is this analogous to
13 a deficiency judgment. Judge, I don't think
14 that's accurate. First of all, the parties
15 have a right to contract as long as it's not an
16 illegal contract, as the Court well knows. And
17 in this case we said if we have to enforce this
18 contract, that is the Plaintiffs, against the
19 Defendant, we reserve the right to recover
20 attorney's fees, and, you know, you will
21 forfeit your interest as long as you have no
22 equitable interest in the property, and it was
23 conceded that she did not --

24 **THE COURT:** So in your contract it says, we can
25 recover attorney's fees?



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 MR. HALL: Absolutely. In multiple different
2 places.

3 THE COURT: All right.

4 MR. HALL: Now, something that I wanted to point out
5 to the Court as well, in a brief, I guess, that
6 I got yesterday is that -- and it was filed
7 actually yesterday. Filed actually yesterday.
8 And it's my position that they're not actually
9 entitled to sur-reply because under the rules
10 of evidence and the rules of procedure I'm
11 entitled to open and close on a motion. I
12 filed a motion, they filed a reply -- or filed
13 an opposition and I filed a reply, as I'm
14 entitled to do. But it's interesting. One of
15 the things that they've told the Court is that
16 I didn't ask for attorney's fees or there was
17 not a request for attorney's fees in the
18 complaint. Well that's just not true. If you
19 -- in the complaint, Your Honor, on page three
20 of the complaint, after I set forth both causes
21 of action, I said wherefore having fully set
22 forth their complaint, the Plaintiff's pray as
23 follows that the amount due under the
24 installment contract of sale be ascertained and
25 declaring the owner under the direction of this



1 Court, together with attorney's fees and costs.
 2 So I asked for the Court to determine
 3 attorney's fees in the prayer of the complaint.
 4 So one of the things they told the Court is
 5 just not true. So in any event, we're
 6 entitled, if we ask for attorney's fees under
 7 the contract, to get them there. And the fact
 8 that it's not strictly a foreclosure action,
 9 they cited no case that says we're not entitled
 10 to attorney's fees if we seek to terminate an
 11 equitable interest in a piece of real estate.
 12 The second thing is is that attorney's fees are
 13 recoverable by statute if they're allowed. And
 14 in this case the statute is the rule that has
 15 been approved by the South Carolina Supreme
 16 Court under Rule 11 of the South Carolina Rules
 17 of Civil Procedure. And this is an important
 18 distinction in this case I make, Your Honor,
 19 for this reason. First of all, we didn't ask
 20 for attorney's fees or sanctions under the
 21 South Carolina Frivolous Proceedings Act.
 22 They're two separate and distinct vehicles,
 23 procedural vehicles, that the Court rules allow
 24 --

25 THE COURT: Right. Right. I know that.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 MR. HALL: -- in order to recover attorney's fees.
2 And Rule 11 stands on its own. It's not a
3 post-trial motion, as they have argued that it
4 is. I do concede, under one of the cases that
5 they handed up, that the Court must still have
6 jurisdiction of the case in order to make an
7 award of the fees. One of the cases they
8 handed up to the Court was the case -- and if
9 I may, Your Honor, approach.

10 THE COURT: Certainly.

11 MR. HALL: Bear with me. It looks like I may have
12 left that -- oh, here it is. Is the *Pitman v*
13 *Republic Leasing* case. May I approach?

14 THE COURT: Certainly.

15 MR. HALL: That was --

16 THE COURT: That's y'all's case.

17 MR. HALL: Yeah, it is. They cite it.

18 THE COURT: They cited it, okay.

19 MR. HALL: So, in any case, first of all, Judge, it
20 wasn't a Rule 11 case. It wasn't a Rule 11
21 case. It was an action to terminate a lease.
22 The Court granted summary judgment. The
23 Republic Leasing, the Plaintiff in the case,
24 didn't file its motion before the Court
25 essentially went sine die or left the



1 jurisdiction. And so the premise of that case
2 is, first of all, it's not a Rule 11 case.
3 It's a case under the South Carolina Frivolous
4 Procedures Act. And what the Court held was
5 not -- it analogized it to a post-trial motion,
6 but it did not hold that Rule 11 is a
7 post-trial motion. And what it said was that
8 absent specific statutory language vesting the
9 trial judge with continuing jurisdiction, we
10 hold (sic) that a trial judge retains
11 jurisdiction to consider a motion for sanctions
12 beyond ten days after the entry of the
13 judgment. Such an interpretation would run
14 counter to our established law that a trial
15 judge loses jurisdiction. He loses
16 jurisdiction after the time that post-trial
17 motions have lapsed. This case is entirely
18 different, Your Honor, because of this reason:
19 First of all, the action was not -- the order
20 granting summary judgment was not a final
21 determination of the case because the matter
22 was referred to Your Honor for the purpose of
23 determining whether or not Ms. Temple had an
24 equitable interest that remained in this
25 property. And so the matter continued on until



1 this Court, after Ms. Temple basically withdrew
 2 her claim, and then -- and then determined that
 3 -- the Court then issued its final order saying
 4 she must leave the property, number one; and
 5 number two, that she had no equitable interest.
 6 So that court order was entered. But this
 7 motion, Your Honor, was filed -- this Rule 11
 8 motion was filed within 30 days -- or just
 9 beyond 30 days after the order granting summary
 10 judgment. This is a Rule 11 motion. This
 11 Court still has jurisdiction. This Court has
 12 jurisdiction to continue determining matters
 13 including attorney's fees, which were held in
 14 abeyance, Your Honor, as I recall, under the
 15 order granting summary judgment. So in any
 16 event, the issue of attorney's fees and
 17 sanctions are still ripe, this motion is
 18 timely, it was brought prior to the time that
 19 this Court issued its final order terminating
 20 Ms. Temple's equitable interest in the
 21 property. There are a number of other matters.
 22 One of the things that -- one of the bases for
 23 the Rule 11 motion is, of course -- and the
 24 Court can see from the examination of the
 25 evidence on file and the detailed order



1 granting summary judgment that they just failed
2 to investigate this case. Or if they had --
3 these are seasoned lawyers. I know Mr.
4 Syrett's been doing this nearly as long as I
5 have, if not maybe a year or two longer. I've
6 been doing this 32 years. If he had read the
7 papers as he should have, there would have been
8 no basis to have asserted these claims of
9 fraud, unconscionability, and the like. And so
10 we think we fit squarely within Rule 11,
11 squarely within Rule 11. Now, I need to
12 address a couple of other things that they have
13 brought up. And I understand that I may need
14 to be examined. First of all, Your Honor, on
15 the issue of fees, I would argue in this case
16 that we're not entitled simply just for the
17 fees for defending the frivolous action, but
18 also as a matter of a fine or a penalty, we
19 should be entitled to all of it, all of our
20 fees, all of our costs for having to engage in
21 otherwise protracted litigation, which would
22 have otherwise likely have been over had they
23 not filed these contexts. And so the Rule 11
24 motion, again, is timely. I think my affidavit
25 is sufficiently detailed. I've laid forth in



1 the affidavit we had a contract that was
 2 entered into for fees. They said that that
 3 wasn't -- that there wasn't an agreement for
 4 fees. That the case that they cite, Your
 5 Honor, is really -- was cited for the
 6 proposition or really was based that there
 7 would be no fees recoverable in that case, the
 8 *Williams v. Middleton* case, simply because
 9 Defense Counsel admitted in that case that no
 10 fees were incurred. There were substantial
 11 fees that had been incurred and paid in this
 12 case. We're asking for an award of fees based
 13 on the affidavit that I filed with the Court.
 14 And it's not up to date because, I mean, I
 15 didn't know how long we were going to be here
 16 today. And so I would ask at this moment in
 17 time, if the Court sees sufficient to grant our
 18 motion, a leave to supplement for the time that
 19 I incurred today preparing for the hearing as
 20 well as the time that we're going to spend here
 21 today. But in any event, what happened in the
 22 -- one of the other cases that they cite saying
 23 that I wasn't entitled to fees in this case
 24 actually was the *Baron Data Systems* case. And
 25 the Court actually upheld a substantial award



1 of attorney's fees in that case for turning a
 2 relatively straightforward action into
 3 protracted litigation. That's just exactly
 4 what has been done in this case. Now I've
 5 never brought such a motion against Defense
 6 Counsel for an award of fees. I have filed one
 7 or two motions for sanctions in relationship to
 8 discovery abuse. But I've never had to do this
 9 before. And so I would just simply ask the
 10 Court to take into consideration the fact that
 11 we think the attorney's fees that we're asking
 12 for are reasonable. You know, my hourly rate
 13 in the case was \$200 an hour. That's a
 14 discounted rate. My fees now are \$300 an hour
 15 or more, depending on the complexity of the
 16 case. This was really a straightforward case,
 17 should not have been turned into this. So in
 18 any event, we have costs totaling \$3,485.82 to
 19 date. That was at the time that I filed the
 20 affidavit. That consisted of postage, copies,
 21 court filing actions, deposition costs.
 22 Attorney's fees for the initiation of
 23 prosecution in the action as of the time that
 24 I filed my affidavit or amended affidavit was
 25 \$15,751. So we're asking and asked in the



1 affidavit that I filed for \$19,236.82 for
 2 attorney's fees, paralegal time, and costs.
 3 I've provided them with an affidavit. I do
 4 concede that there was an error in there
 5 regarding another case of a similar name as
 6 Strickland and I concede that. There was one
 7 time entry, one and a half hours. So I concede
 8 to remove that. But I do think, Your Honor, I
 9 may have also been consulting in that case
 10 because in a case I filed in Richland County
 11 that I had with Judge Strickland, he granted me
 12 an order awarding costs. And I brought that
 13 with me today. And I had a brief that I filed
 14 in that case with respect to the costs that are
 15 authorized by statute, which include service of
 16 process fees, fees for exemplification of
 17 papers necessarily obtained for trial in this
 18 brief that I did. And the Court also awarding
 19 deposition costs in the case for the taking of
 20 depositions. That's by statute, South Carolina
 21 Code 15-37-40. And I have that brief if the
 22 Court would care to look at a copy of it. But
 23 depositions taken by commissioners, which is
 24 nothing more than a notary public who's
 25 commission expires in -- or required to --



1 you're required to be a notary public in order
2 to take a deposition. Certified court reporter
3 must also be -- have the commission of a notary
4 public. So, Judge, I think that I fully
5 addressed everything that I care to address,
6 you know, and I'm willing to answer questions
7 that the Court may have or Defense Counsel may
8 have concerning fees.

9 **THE COURT:** Thank you. Before you all respond, I
10 want to kind of -- I want to find out two
11 things. Because there's a factual component to
12 this, there can be a factual component, and
13 there's obviously some legal issues. Are y'all
14 -- are Defendants, do you want to examine
15 Plaintiff about the bill and the affidavit he
16 submitted as if he really did the work that he
17 has sworn that he's done?

18 **MR. SYRETT:** Not really, Your Honor.

19 **THE COURT:** Okay. All right. So there is no --
20 there is no challenge from Defendant as to the
21 affidavit that is submitted about the time that
22 he has spent, that his hourly rate and to the
23 cost. And that's just -- again, I understand
24 we're going to talk about legal argument, a
25 bunch of legal stuff in a second. But as to



1 the actual stuff he submitted, you're not --
2 you don't wish to cross examine him about when
3 he said I did work and what I did?

4 MR. SYRETT: I don't see any useful purpose to be
5 served --

6 THE COURT: All right.

7 MR. SYRETT: -- by doing that. I think the fee, the
8 total fees that he's charged are certainly not
9 reasonable, but I'm not questioning that he --
10 I'm not -- I will not assert that he didn't --
11 that he put down time that he didn't spend.

12 THE COURT: All right. Thank you. Mr. Greenburg.
13 And you all are co-counsel?

14 MR. GREENBURG: That's correct, Your Honor.

15 THE COURT: And y'all are -- y'all are then, I
16 assume, under the normal rule that you don't
17 get two shots at it, that's y'all's -- both of
18 y'all's answer.

19 MR. GREENBURG: It is. With the exception of the
20 1.5. And Mr. Hall agrees he overcharged.

21 THE COURT: Well, he's -- he's conceded that's out.
22 Okay. So that --

23 MR. HALL: That's correct, Your Honor.

24 THE COURT: So that issue is -- that issue is done
25 then.



1 MR. GREENBURG: We're in agreement. Our position is
2 it's just unreasonable based on all the work
3 done, the total hours.

4 THE COURT: Okay. All right. Okay. All right.
5 What I want -- and y'all can either -- y'all
6 can stand up or you can remain seated, however
7 you're most comfortable. All right. I want to
8 -- before I get to y'all, I want to rephrase
9 and make sure I understood, Mr. Hall, what you
10 said.

11 MR. HALL: Sure.

12 THE COURT: However you want to do. You can stand
13 or --

14 MR. HALL: Your Honor, I've just been trained.

15 THE COURT: I understand. All right. I think what
16 I understand you're saying is is that we had an
17 installment sales contract, contract per deed --

18 MR. HALL: Right.

19 THE COURT: -- that type of document. And in the
20 contract it said -- it said I'm due attorney
21 fees.

22 MR. HALL: That's correct.

23 THE COURT: I have the right to recover attorney
24 fees.

25 MR. HALL: That's correct.



1 THE COURT: That you pled that.

2 MR. HALL: I did.

3 THE COURT: And that in the course of the action,
4 the Circuit Court Judge granted the summary
5 judgment and then it was referred to me to
6 determine if there was any equitable interest
7 in it --

8 MR. HALL: That's true.

9 THE COURT: -- that the Defendant would have had.
10 And as y'all know, in determining whether there
11 is an equitable interest in which the Defendant
12 had, there's a lot of factors that you have to
13 consider. You know, the payment, improvements,
14 rents. But you basically have to figure out a
15 debt number --

16 MR. HALL: True.

17 THE COURT: -- in order to determine if there's
18 equity in it that would -- that could lead a
19 judge upon a determination of equity to either
20 say there's so much equity in it I'm going to
21 order a sale, or there's some equity in it that
22 I'm going to order a 30-day right to redeem, or
23 there's no equity in it and we're terminating.
24 Because that's generally the three type
25 remedies you get in an installment sales



1 contract once you determine if there's no
2 equity, some equity, or a lot of equity.
3 That's what the case law kind of says. But
4 that issue never got to me because Defendant,
5 in essence, as I understand, said we're not --
6 we're not claiming any equity in the property.
7 Is that --

8 MR. HALL: That's the way I understand it. And of
9 course the Court actually reflected those --
10 that issue or those findings in a final order.

11 THE COURT: Okay. So then -- so you're saying, I --
12 the amount in here, the 19,000 whatever it is,
13 I'm entitled to that, one basis because the
14 contract said I did, I got it.

15 MR. HALL: That's true. Attorney's fees and costs.

16 THE COURT: And the other basis are the fine and the
17 rule.

18 MR. HALL: Correct. The fine --

19 THE COURT: Right.

20 MR. HALL: As a fine and/or a monetary penalty. If
21 the Court were to decide under Rule 11 that it
22 had been violated --

23 THE COURT: Right.

24 MR. HALL: -- the Court has some elasticity in what
25 it can do within its discretion. And just to



1 briefly recount that, the Court can award fees,
2 it can award a fine, it can fine the party that
3 brought the frivolous or unmeritorious action
4 in bad faith, and then it can also award as a
5 monetary penalty to the party that had to
6 endure the defense of the action. Those three
7 remedies are available to the Court under the
8 rule and the case law as it has been
9 interpreted.

10 THE COURT: But a component of that can be attorney
11 fees?

12 MR. HALL: Sure.

13 THE COURT: Okay. All right.

14 MR. HALL: I think the Court has discretion as to
15 whether it's going to do one, two, three, or
16 none.

17 THE COURT: All right. That's the question. Okay.
18 All right. Mr. Syrett.

19 MR. SYRETT: All right. First of all, Your Honor,
20 with regard to an award of attorney's fees.
21 Under *Lewis v. Premium Investment and Cody*
22 *versus* -- what is it, *Merritt vs. Cody Discount*
23 --

24 THE COURT: Right. All that.

25 MR. SYRETT: -- the analysis is is there equity in



1 the -- is there an equity of redemption in the
2 property. In order to determine that you look
3 at the value of the property and you look at
4 what's owed under the contract. The contract
5 is what they originally agreed to pay. It also
6 includes attorney's fees, costs, everything
7 else that goes into the litigation. You don't
8 get a separate award of attorney's fees. It
9 goes into the determination of how much is owed
10 on the contract. It's analogous to a standard
11 or strict foreclosure of the property where the
12 mortgage company says we've got this debt,
13 we've got attorney's fees, we've got everything
14 there, and they sell the property, whatever,
15 you know, they bid their standard bid, they're
16 prepared to bid up to the amount of the debt,
17 if somebody overbids them, it goes, but there's
18 no deficiency judgment. If you're doing a
19 deficiency judgment, there's the statutory
20 provisions for a deficiency judgment. And
21 that's not what's being done here. You have to
22 have the 30 days, the upset bid, the bidding
23 stays open. But the statutes refer to a
24 mortgage foreclosure, not a foreclosure of an
25 installment land contract. So our first



1 position is simply the attorney's fees is
2 simply an element of whether or not there's
3 equity in the property. And in this case we
4 agreed that there was no equity in the
5 property.

6 **THE COURT:** All right. Let me ask a question here.
7 In a mortgage foreclosure case when you --
8 pursuant to Rule 71, you have to establish the
9 debt.

10 **MR. SYRETT:** That's correct.

11 **THE COURT:** In the equitable mortgage, and that's --
12 I'm going to refer to it as equitable mortgage
13 as a generic phrase because the courts have
14 called them contract for deeds, installments.
15 So I'm just using that not to mean anything
16 specifically or legally, but that's just -- in
17 an equitable mortgage document it says -- the
18 cases say you have to determine if there's
19 equity. One of the factors is is how much do
20 you owe on it. That's correct?

21 **MR. SYRETT:** That's correct.

22 **THE COURT:** One of the components about how much you
23 owe on it is the attorney fees incurred.

24 **MR. SYRETT:** That's our position, yes.

25 **THE COURT:** Okay. All right. In a regular



1 foreclosure case if you do not ask for a
2 deficiency, what happens to the attorney fees?
3 Is there a separate award of attorney fees or
4 is it part of the overall debt?

5 MR. SYRETT: It is a part of the overall debt when
6 it's determined.

7 THE COURT: All right. Is that the same thing as an
8 equitable mortgage?

9 MR. SYRETT: I think it is and I just don't think
10 there's any provision for any kind of debt owed
11 -- well, first of all, in an installment land
12 contract there's one document. In a mortgage
13 situation there are two documents. There is a
14 note, there is a mortgage. The deficiency
15 mortgage situation comes up when there is a
16 disconnect between what's owed on the note
17 versus the value of the property that's secured
18 by the mortgage. And that's why the deficiency
19 judgment comes up.

20 THE COURT: All right. Well let me ask a follow-up.
21 And, Mr. Hall, make notes or stand up because
22 I don't want to get into too many issues
23 without you being able to respond. Could he
24 have sued you just on the note under the
25 installment sale -- not on the note. Could he



1 have sued you under the contract for money
2 damage?

3 MR. SYRETT: No.

4 THE COURT: Okay.

5 MR. SYRETT: No. He can -- he can terminate the
6 buyer's interest in the property.

7 THE COURT: All right. So there was no language in
8 it that said I promise to pay?

9 MR. SYRETT: No. There was no promise --

10 THE COURT: In the installment sales contract.

11 MR. SYRETT: It says I'm going to pay you X amount
12 of dollars for the property and it sets up the
13 terms under which that's going to be paid, but
14 he could not simply sue us on the debt. He
15 still has title to the property.

16 THE COURT: No, no, no, no. I don't mean now. I
17 mean earlier --

18 MR. SYRETT: But I mean all through this whole thing
19 he's had title to the property.

20 THE COURT: Right. But I mean earlier before could
21 he have sued you on the debt and gotten a
22 judgment and tendered you title? Could he do
23 that?

24 MR. SYRETT: I don't think so.

25 THE COURT: Okay. Just --



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MR. SYRETT: I don't think so.

2 THE COURT: Just trying to work the whole --

3 MR. SYRETT: I don't think that's any -- I don't
4 think *Lewis* allows you to do that. I don't
5 think *Cody* allows you to do that. It simply
6 says you have to determine whether the
7 purchaser has any kind of equity of redemption.
8 That's all your -- that's your only remedy.

9 THE COURT: Okay.

10 MR. SYRETT: And what he's trying to do is
11 essentially do a deficiency judgment by saying,
12 oh, well the property -- I have these
13 attorney's fees that are separate from. Now,
14 if you look at the specific language that he
15 put in his pleadings, he asks for a
16 determination of the amount owed together with
17 attorney's fees and the costs of the action.
18 That is what he's saying. He's saying find out
19 what's remaining due under the contract, add
20 attorney's fees, add the costs. And then he
21 goes on to have the property -- wanting the
22 property sold under the -- by the Court like
23 you would a foreclosure.

24 THE COURT: All right. But you -- I mean, you would
25 have to admit, on standard pleadings and form



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 books it says "I pray that the Court determine
2 costs together with -- and award together with
3 attorney fees." That's the generic way to
4 phrase it.

5 MR. SYRETT: But I'm saying he's not asking in his
6 pleadings for a separate judgment for
7 attorney's fees. The way we do it is, you
8 determine what's owed together with attorney's
9 fees and costs. You then compare that number
10 with what the value of the property is.

11 THE COURT: All right. I understand what your
12 argument is, but I also understand what he
13 pleaded. He said attorney fees.

14 MR. SYRETT: He mentioned it, but in the way he
15 mentioned it, he says -- and I think he's stuck
16 with the language -- is find out what's owed.
17 And he's saying find out what's owed together
18 with attorney's fees and costs. I think he's
19 asking for a total lump sum number. And I
20 think that's the only way you can do it in an
21 installment land contract foreclosure. There
22 is no right to a deficiency judgment. And
23 essentially that's what he's asking for.

24 THE COURT: All right.

25 MR. HALL: He's saying I get attorney's fees even



1 though I get to keep the property. And that's
2 just not the way it works. You know, if he had
3 wanted to do that, to seek a deficiency
4 judgment, there should have been a sale with a
5 mortgage back and then he would have had the
6 right to seek a deficiency judgment.

7 **THE COURT:** Can an attorney in any kind of
8 foreclosure, whether deficiency demanded or
9 deficiency waived, ever get a separate order of
10 attorney fees against the defendant?

11 **MR. SYRETT:** I don't think so. I don't think so. I
12 think if you sue on the note --

13 **THE COURT:** I mean, under the note.

14 **MR. SYRETT:** No.

15 **THE COURT:** Not the rule of -- not the punishment,
16 but the rule.

17 **MR. SYRETT:** I think you can -- you can sue -- if
18 you have a note and a mortgage, you can elect
19 to sue and get a judgment. The judgment would
20 be for the amount of the debt, plus the
21 attorney's fees, plus the costs. And that
22 would be a total judgment.

23 **THE COURT:** All right.

24 **MR. SYRETT:** Then if you decide to foreclose later,
25 you can elect to either take -- do a deficiency



1 judgment on the foreclosure based on your
2 judgment or you can elect to just take the
3 property back or have it sold and bid it in at
4 the sale or if somebody overbids you, then they
5 go off. But there's no statute that allows you
6 to seek a deficiency judgment in the
7 foreclosure of an installment land contract.

8 **THE COURT:** All right. I understand your argument.

9 **MR. SYRETT:** And I've been in front of five or six
10 other masters who, in fact, the party comes in
11 and says I'm entitled to the property back but
12 I'm also entitled to attorney's fees and the
13 response has uniformly been no, you get to keep
14 the property, but you don't get any separate
15 award of any fees, costs, or anything else, and
16 there's no right to get a deficiency. Because
17 that's essentially what he's doing. He's
18 trying to create a debt in addition to the
19 rights that he has under the installment land
20 contract. Now, if we were 30 years into -- or,
21 you know, 20 years into a 30 year installment
22 land contract and the amount remaining on the
23 contract was \$20,000 and he's got \$15,000 in
24 attorney's fees, he's going to -- the total is
25 going to be 35 against the value of the



1 property, so he's going to get -- he would get
2 paid that way.

3 THE COURT: I understand how all that works.

4 MR. SYRETT: So there's simply -- I think there's
5 just simply no basis for an award of attorney's
6 fees by virtue of what's provided in the
7 installment land contract.

8 THE COURT: All right.

9 MR. SYRETT: None. Okay. Now, with regard to the
10 Rule 11 issue as argued in our original brief
11 -- now Mr. Hall said it was done within 30
12 days. No, the summary judgment was issued in
13 May of 2013. This motion was filed in April of
14 2014, 11 months later.

15 THE COURT: The Rule 11?

16 MR. SYRETT: The Rule 11 motion was filed 11 months
17 after the summary judgment motion was issued.
18 Now --

19 THE COURT: All right. When was the order -- all
20 right --

21 MR. SYRETT: The summary judgment issue was in May
22 of 2013.

23 THE COURT: All right. The summary judgment and
24 order of reference were one order, wasn't it?

25 MR. SYRETT: No, it was not, I don't think.



1 MR. HALL: Judge, I think it was one order. And I
2 stand corrected on whatever -- you know,
3 whatever the time is, it is.

4 THE COURT: I mean didn't it -- didn't it grant
5 summary judgment and refer it to me?

6 MR. HALL: Right.

7 THE COURT: Or how did we --

8 MR. SYRETT: Yes, I think it did.

9 THE COURT: Okay.

10 MR. SYRETT: And refers the -- but that's May 14,
11 2013.

12 THE COURT: Okay. So --

13 MR. SYRETT: Now --

14 THE COURT: All right. Well, hold on.

15 MR. SYRETT: Okay.

16 THE COURT: Because I want to -- I want to get the
17 timeline in my head based on what y'all are
18 both arguing. So the summary judgment motion
19 that says he wins but it's referred to me, to
20 the Master-in-Equity, to find damages ---

21 MR. SYRETT: Correct.

22 THE COURT: --- all right, that was filed when?

23 MR. SYRETT: In May of 2013. It's dated May 14th or
24 May 13th of 2013. Here's a copy of that order
25 if you'd like, Your Honor. It's May 14, 2013.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 THE COURT: All right. So in essence that's a --
2 that's a summary judgment as to liability --

3 MR. SYRETT: I believe so.

4 THE COURT: -- as an analysis --

5 MR. SYRETT: Well, it basically struck the
6 counterclaims.

7 THE COURT: Right. Because it was sent to me to
8 determine if there were damages --

9 MR. HALL: That's correct.

10 THE COURT: -- or equity in essence --

11 MR. HALL: That's correct, Your Honor.

12 THE COURT: -- in essence. Okay. All right, so,
13 loosely, liability has been established, but
14 you've got the issue of damages or equity in it
15 that still have to be decided. So that's in
16 2013. And then the motion is filed --

17 MR. SYRETT: In April of 2014.

18 THE COURT: Okay.

19 MR. SYRETT: And I think looking at the language
20 that's in the order of reference, it's not --
21 the Rule 11 is not properly before you. It was
22 never referred to you.

23 THE COURT: All right. So if my limited order of
24 reference is to find if there's equity in the
25 property, then that motion should be heard back



1 in front of Circuit Court since Circuit Court
2 would still keep jurisdiction over it?

3 MR. SYRETT: I think so. But if you believe that
4 you still have retained authority to rule on
5 the motion for attorney's fees with regard to
6 Rule 11. Because I don't think there's any
7 right to attorney's fees under the contract
8 separate from retaining the property.

9 THE COURT: Well you're not arguing that under the
10 order of reference, under the order of
11 reference that was sent to me, to the Master-
12 in-Equity, to determine if there was equity,
13 the issue of an attorney fee award would be
14 included in that order of reference because
15 it's part of equity.

16 MR. HALL: Yeah. For purposes of determining
17 whether there was equity in the property, you
18 have a right to determine attorney's fees under
19 --

20 THE COURT: In a contract.

21 MR. SYRETT: He's asking for attorney's fees under
22 two -- two circumstances.

23 THE COURT: I understand. But you're not arguing I
24 don't have it under the contractual fees.

25 MR. SYRETT: You have it under that.



1 THE COURT: All right. Okay.

2 MR. SYRETT: But I don't think you have it under the
3 Rule -- for Rule 11 purposes.

4 THE COURT: All right.

5 MR. SYRETT: And I -- for several reasons. Number
6 one, if you look at it, if we had decided to
7 challenge the grant of summary judgment, we
8 would have had ten days to file a 59(e) motion
9 post order and we would have had no more than
10 30 days to file an appeal because it is a final
11 order as far as those claims. And I think
12 right at that point, any right to Rule 11
13 sanctions attaches and he's subject to the same
14 time frames that we are, that he has ten days
15 to file. The *Pitman* case, the other cases that
16 we've cited, say that the rule time frames are
17 the same under Rule 11 as they are under the
18 Frivolous Proceedings Act, and it's ten days.
19 It's a post-order motion. The rights were
20 created on that order. He can't wait 11 months
21 to come and say, oh, by the way I'm entitled to
22 Rule 11 sanctions. He has ten days to file
23 that motion. He didn't do it. So his right to
24 seek those sanctions end. Because once that
25 order has been issued with regard to the



1 summary judgment, then he proceeds on with his
2 case. He's not -- he's no longer defending
3 what is arguably -- and I'm got saying he was
4 -- but arguably a frivolous action.

5 **THE COURT:** But under your first argument -- but
6 under your first argument, that's the argument
7 you're making back to the Circuit Court because
8 you don't believe I have authority to hear it?

9 **MR. SYRETT:** I don't think you have authority to
10 hear the Rule 11.

11 **THE COURT:** But that's --

12 **MR. SYRETT:** And I don't think that any judge has a
13 right to hear the Rule 11 because ten days has
14 past since the entry of the summary judgment
15 motion.

16 **THE COURT:** But under your theory, I don't have
17 authority to make that -- I don't even have
18 authority to say if you're right or wrong
19 because of the limited order of reference? I
20 mean, is that -- that's what you're arguing?

21 **MR. SYRETT:** That's -- yeah, that's my first
22 position, yes.

23 **THE COURT:** All right.

24 **MR. SYRETT:** Now, I can go into the merits of his
25 argument for attorney's fees at this point. I



1 think legally he doesn't have a right to
2 proceed for Rule 11 because he's without time.
3 He's beyond the time. Now, with regard to the
4 merits of his plea for attorney's fees, he has
5 got to, under -- under the contract, he's got
6 to comply with Baron Data and he hadn't done
7 that. He hasn't shown that his fees are
8 reasonable and normal with regard to other
9 attorneys in the Lexington area. The only
10 affidavit that he has with regard to fees that
11 support, other than his own affidavit, is Mr.
12 Koon. Mr. Koon doesn't opine anything with
13 regard to the reasonableness of the fees,
14 whether the services were necessary. In fact,
15 I think his affidavit basically says he doesn't
16 do this kind of work, but he thinks Rick's a
17 nice fellow. And I agree Rick's a nice fellow,
18 but that's not a basis for attorney's fees. So
19 if you look at the requirements of Baron Data,
20 he hadn't -- he hasn't complied with the Baron
21 Data. If you don't comply with Baron Data, you
22 don't get fees.

23 **THE COURT:** All right. I want to make sure I
24 understand what you just said in relationship
25 to what you said earlier about his attorney



1 fees. As I understood what you said earlier
2 about his attorney fees, is you're not -- you
3 were not contesting the time element.

4 MR. SYRETT: That's correct.

5 THE COURT: That I spend this amount of time and
6 this is my -- you're not -- I will assume
7 you're contesting his hourly rate.

8 MR. SYRETT: No. The hourly rate is reasonable.

9 THE COURT: Okay. But what you're saying is is
10 under the case law that there are either the
11 five or six --

12 MR. SYRETT: Six.

13 THE COURT: -- six requirements under all the case
14 law that says you got to make a finding under
15 all six and they haven't proven all six
16 sufficiently.

17 MR. SYRETT: Right. He hasn't met the nature,
18 extent and difficulty of the legal services.
19 That's the first thing. He has an itemized
20 statement regarding to the time that he spent
21 and the fees, but *Baron Data* says the time and
22 labor necessarily devoted to the case. He has
23 no affidavit, no support for the fact that all
24 the time that he spent was necessary to the
25 case. You know, just because you put in the



1 time doesn't necessarily mean that that time is
2 productive or that it was necessarily, you know
3 -- if it's-- it's like what I liken it is, you
4 get in a cab at Central Park and say take me to
5 LaGuardia and suddenly you look out the window
6 and you're in Westchester. I don't know if you
7 know much about the -- but let's -- I'll put it
8 in Columbia. Let's say --

9 **THE COURT:** Yeah. Bad analogy.

10 **MR. HALL:** You get in the cab at the Columbia
11 Metropolitan Airport and you say take me to the
12 State House. And you look at the window 15
13 minutes later and you're in Pelion, okay. Then
14 he finally gets you to the State House and he
15 says the fare is \$150. But if he had come
16 directly to the State House, it would have been
17 15. So just because you go through all this
18 stuff and you put all this time in and
19 everything -- I'm not saying he didn't put the
20 time in. I'm not saying that he has proved
21 that all of the work that he did was
22 necessarily devoted to the case. That's number
23 two. Number three, he does say he's an AV
24 lawyer. I guess that requires professional --
25 but his original submission to the Court didn't



1 address that issue. Subsequently he does
2 another affidavit. But I think he's required
3 to support all this from the get-go.
4 Contingency of a compensation, he didn't really
5 address that because he didn't produce his fee
6 agreement until we challenged it later. He
7 doesn't address number five, which are the fees
8 customarily charged in the locality. You know,
9 there's nothing -- he hasn't met any of the
10 requirements that Baron Data says you've got to
11 meet in order to justify the fees.

12 **THE COURT:** Does a Court have to find all six?

13 **MR. SYRETT:** Yes, it does. You have to address all
14 six.

15 **THE COURT:** All right.

16 **MR. SYRETT:** And I think if you look at the --
17 there's a new family court case, Buist I think
18 it is, that came out this week. They set forth
19 a procedure by which courts are going to --
20 family courts are going to try to determine how
21 to award attorney's fees because you do have a
22 right to attorney's fees in family court on any
23 case if you can show you're justified. They
24 have the Glasscock factors or the T.A.M.
25 factors. And they're the same basically as the



1 Baron Data. They just happen to be in family
2 court. So he hasn't -- as far as his overall
3 award of fees, if he's not barred by virtue of
4 the fact that it's an installment land contract
5 foreclosure, he hasn't presented to the Court
6 a sufficient basis for awarding any fees
7 because he hasn't met the -- in our brief we've
8 set forth the requirements that Baron Data
9 says. And if you don't meet all the
10 requirements, all five, all six, you don't get
11 fees.

12 THE COURT: All right. So what you're saying then
13 is that for a court then to award -- to be able
14 to do an award of attorney fees -- and there
15 was an unpublished decision just last week in
16 which Judge Strickland was reversed for
17 awarding attorney fees on a less than full
18 attorney fee affidavit. But are you telling me
19 then under your theory then if an attorney
20 says, I did the following work; on Monday I did
21 a deposition with the party on the other side,
22 on Tuesday I did research on it, on Thursday I
23 filed written discovery, on Friday I sent a
24 deposition notice, on six I did -- I mean,
25 standard legal stuff, are you saying that under



1 the affidavit that the attorney -- it is
2 further incumbent upon the attorney then to say
3 why that was necessary?

4 **MR. SYRETT:** I think it's -- I think it's important
5 that an independent attorney express an opinion
6 as to whether the work that was done was
7 necessary. You know, he's going to say
8 everything's necessary, but that doesn't that
9 doesn't get him there.

10 **THE COURT:** All right. Well, let's follow it up
11 then. So you then think that for any type of
12 attorney fee affidavit that has to go in, the
13 submitting attorney has to have a second
14 attorney file an affidavit that says, I've
15 reviewed this and I think it's reasonable?

16 **MR. SYRETT:** I think that's the case, yes. You've
17 got to have some kind of way to judge whether
18 the services that were provided were
19 necessarily devoted to the case. The attorney
20 himself is not a good source of that
21 information. You've got to have some
22 independent party express an opinion on that.

23 **THE COURT:** I guess what I'm trying to say is is if
24 the attorney says, I filed a complaint, here's
25 the time, well you've got to have a complaint.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 If the attorney says, I read their answer and
2 filed a reply to their counterclaim, that seems
3 self-evident. If I -- I mean --

4 MR. SYRETT: What I'm saying, if you've got -- if
5 it's a standard foreclosure case, just a
6 run-of-the-mill foreclosure case, you've heard
7 thousands of them, and the guy comes in and --

8 THE COURT: And I nor any of these other masters in
9 equity, to my knowledge, have ever gotten one
10 in an uncontested case where it says -- where
11 another attorney has come in and saying, I've
12 review it.

13 MR. SYRETT: I understand that. But I think the
14 Court can look and say \$1,500 or \$2,000 is a
15 reasonable fee for an uncontested foreclosure
16 case. You've got enough experience with those.
17 But if you get an uncontested foreclosure case
18 and the guy comes in and says, I need \$25,000,
19 here's the time I put in, the Court's not going
20 to give him \$25,000 unless they have some
21 independent basis for saying, yes, those
22 services were necessarily devoted to the case.
23 You know, \$1,500 for an uncontested foreclosure
24 is pretty streamline, that's pretty standard
25 stuff. But if you've got a case that's --



1 you're claiming fees in excess of some
2 basically minimal amount, I think you have an
3 obligation to show the Court and justify why
4 the services that you put in, why the time you
5 put in, why the things you've spent were
6 necessary to the case. You can't just come in
7 and say, I put in 100 hours at \$200 an hour,
8 I'm entitled \$20,000.

9 **THE COURT:** Well I understand that. But does his
10 attorney fee affidavit say things like
11 complaint, answer, reply, deposition or does it
12 just say 12 hours, ten hours, five hours, four
13 hours, three hours?

14 **MR. SYRETT:** Well there's a very, very bare-bones
15 description of the work that he did in --
16 because it's basically his billing records.

17 **THE COURT:** Right.

18 **MR. SYRETT:** It's not any kind of detail in it. And
19 I'm not saying that he has to give me a five
20 page --

21 **THE COURT:** I mean, if you say answer, you know --
22 or if you say reply, you know that's in
23 response to something the other party did.

24 **MR. SYRETT:** Okay. But if you say answer and you
25 charge 20 hours for it, you've got to have



1 something more than I put 20 hours in to
2 prepare this answer, if you want to get paid
3 for that 20 hours. And I think that's saying
4 -- extrapolates to the whole case. Again, this
5 is a, as he said, relatively run-of-the-mill.
6 And once the summary judgment was issued, there
7 was no real fight. We did mediate it because
8 we had third-party defendants. But there --
9 you know, the fact that it dragged on was
10 simply because the Plaintiff didn't push it.
11 And we did have these third-party defendants
12 who, in fact, settled. Several of them settled
13 with Ms. Temple. We let the attorneys out, but
14 the real estate agent settled and the real
15 estate agent's company settled with her and
16 paid her a settlement. So she had a valid
17 claim with them because they didn't push it to
18 summary -- they didn't even file a summary
19 judgment motion on that.

20 **THE COURT:** Okay. I understand what you're arguing.

21 **MR. SYRETT:** All right. So, now, with regard to
22 Rule 11. I disagree with Mr. Hall that says
23 that the Court can issue some sort of fine or
24 something based on the total fees for the
25 entire case. I think the Rule 11 -- and once



1 you have a summary judgment, the frivolous --
2 if the thing was frivolous, which I don't think
3 it was, but let's assume that for the sake of
4 argument that he's right, that the answer and
5 counterclaims were frivolous, that ended with
6 the summary judgment. He's no longer defending
7 a frivolous claim. I don't think he can then
8 bootstrap the rest of the services on that
9 basis.

10 **THE COURT:** So he has to have asked for a frivolous
11 in his complaint?

12 **MR. SYRETT:** No.

13 **THE COURT:** He can't wait until after it's over?

14 **MR. SYRETT:** No. What I'm saying is that he's
15 got attorney's fees -- you know, I don't think
16 for purposes of Rule 11 he can get fees for
17 drafting the complaint. He might be able to
18 get fees, if he timely filed, for preparing the
19 motion for summary judgment.

20 **THE COURT:** Well I understand. Like in the --
21 there's got to be an allocation where you can
22 make a determination of what fees went to what
23 part.

24 **MR. SYRETT:** That's correct. And what I'm telling
25 you is that he's made no effort in his



1 submission to the Court to show what he
2 necessarily devoted to that particular -- those
3 particular things. He's just said here are my
4 -- here's my affidavit and all my fees for
5 everything; oh, Court, you've got to go in
6 there and figure out what I spent for the
7 summary judgment motion and what I spent on
8 everything else. And I don't think that's your
9 job. I think that's his job is to say, I spent
10 ten hours on dealing with the summary judgment.
11 And what he's saying is, oh, even after the
12 summary judgment motion is granted, I should
13 get fees for everything because they filed an
14 answer that got struck at summary judgment.
15 Now, I will say that just because an answer and
16 counterclaim gets struck at summary judgment
17 doesn't make it frivolous.

18 **THE COURT:** I don't think Mr. Hall was arguing that.
19 That that was a legal point.

20 **MR. HALL:** That's correct, Your Honor. I don't
21 think -- merely summary judgment on a good
22 faith claim is not --

23 **THE COURT:** Right. And I don't -- I don't think
24 because it's struck it legally means it's
25 frivolous either.



1 MR. SYRETT: And the judge doesn't find it
2 frivolous. He just says it doesn't have any
3 support based on the facts. Now, that puts the
4 attorney representing the defendant in a
5 terrible position because if he puts forth
6 these defenses, then he's running the risk of
7 somebody saying, oh, you're Rule 11 and all
8 that. And if he doesn't, then his client is --
9 can say, I lost the case because you didn't
10 present my defenses. You know, a malpractice
11 --

12 THE COURT: I understand.

13 MR. SYRETT: I mean, the Scylla of malpractice
14 versus the Charybdis of Rule 11.

15 THE COURT: I understand all that.

16 MR. SYRETT: I don't think this case merits that
17 even if he were timely. And, again, we've
18 argued both in our brief and then in our reply
19 brief those same issues. So to the extent that
20 I have not argued those things, I certainly
21 intend for the Court to consider those, those
22 matters that are put forth in our brief. So I
23 don't think he has supported sufficiently any
24 claim for attorney's fees. He certainly
25 doesn't have independent counsel giving any



1 kind of opinion other than he wouldn't put
2 forth something that was frivolous. That's
3 just not enough.

4 **THE COURT:** All right. So your -- I want to
5 rephrase what I understand your response to be.
6 Your response is is, number one, because it's
7 an equitable mortgage, the attorney fee is part
8 of the debt, you don't get a separate award.
9 Even if it says attorney fees, attorney fees
10 are there as a debt component just like it
11 would be in a mortgage note without a
12 deficiency.

13 **MR. SYRETT:** I think the Supreme Court has basically
14 said we're going to analogize the situation in
15 an installment land contract to be just like a
16 strict foreclosure case.

17 **THE COURT:** All right. So you're saying he
18 doesn't -- he's not entitled to it as a
19 separate award.

20 **MR. SYRETT:** That's correct.

21 **THE COURT:** It's only part of the debt.

22 **MR. SYRETT:** That's correct.

23 **THE COURT:** All right. If he is, he still has to
24 prove the six Baron Data. And you're not
25 challenging the fact that he did the work or



1 the hours or his cost, the voracity of that.
2 What you're challenging is is your argument as
3 to the various components or the six factors,
4 that he has not met all six factors for the
5 case law.

6 MR. SYRETT: Yeah. To complete my analogy, yes,
7 there's time on the meter, on the cab.

8 THE COURT: All right. And then the --

9 MR. SYRETT: But we question whether or not the
10 entire trip was necessary.

11 THE COURT: All right. And then the third point is
12 as to the sanctions or Rule 11, either it's
13 untimely -- let's back up. Either I don't have
14 jurisdiction.

15 MR. SYRETT: You don't have jurisdiction.

16 THE COURT: If I do, it's untimely.

17 MR. SYRETT: That's correct.

18 THE COURT: That's what your argument is.

19 MR. SYRETT: Yes.

20 THE COURT: And that goes to Rule 11 and the generic
21 power to issue a fine, I think was also argued.

22 MR. HALL: Correct, Your Honor.

23 THE COURT: And there is some old case law about
24 that that doesn't warrant that.

25 MR. SYRETT: That's correct.



1 THE COURT: Okay. All right. Mr. Hall.

2 MR. HALL: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. HALL: First of all, just to address the
5 arguments raised by Defense Counsel about the
6 *Cody Discount* analysis, they cite no case
7 whatsoever that indicates to the Court that
8 would be instructive to the Court that
9 attorney's fees are not recoverable under this
10 bond for title contract separately. I don't
11 see how any contract that provides for
12 attorney's fees and the right to recover
13 attorney's fees for the enforcement of the
14 contract can be set aside by the Court. The
15 parties have a free right to contract. And the
16 Court's not free to impair that contract. And
17 when we brought this action, if we bring it,
18 bring an action to enforce the contract.
19 That's what the terms of the contract say; to
20 recover the property, we're entitled to
21 attorney's fees. That's separate and apart.
22 And I don't think there's the analogy to a
23 mortgage foreclosure, although I do understand
24 it, impairs the right of the Plaintiff under
25 the contract that she reached with the



1 Defendant. And so I don't think that argument
2 stands.

3 **THE COURT:** All right. Well let me just --

4 **MR. SYRETT:** Let me respond. Mr. Hall is the one
5 seeking the award. Mr. Hall has the obligation
6 to show where in an installment land contract
7 foreclosure he's entitled to a separate award
8 of attorney's fees over and above. Our burden
9 is not to say it's not there. It's his burden
10 to show it is. And there's simply no cases.

11 **THE COURT:** All right. Back up. All right.
12 Continue on because I'm going to go through
13 some issues when y'all are finished about how
14 we're going to address this.

15 **MR. HALL:** All right. With respect to the argument
16 that the findings are not sufficiently detailed
17 and I've not met the findings, well the Court
18 has my affidavit. I don't need to go line by
19 line. In the affidavit, in the bills, in the
20 time recordings, I describe the description of
21 the services. Been doing it this way for 30
22 years. Don't know -- I've never had any kind
23 of a problem with that beforehand. To address
24 the argument that I have to separately set
25 forth and allocate the amount of the time that



1 was specifically dedicated to defeating the
 2 motion for summary judgment, what I would tell
 3 the Court is that time is in there where I
 4 spent that time. But what I would also say to
 5 the Court, the Court should not confine itself
 6 to that in this case because this case reaches
 7 beyond simply the recovery of attorney's fees
 8 for defeating a motion for summary judgment or
 9 for successfully prosecuting a motion for
 10 summary judgment. This is really going to bad
 11 faith in the bringing of the overall action.
 12 And I would simply ask the Court in its
 13 discretion --

14 **THE COURT:** You mean in defending the action.

15 **MR. HALL:** Yeah. Well defending the counterclaims,
 16 but bringing the overall action. I had to
 17 defend the counterclaims, but I had to defend
 18 counterclaims that we've contended were -- that
 19 there was no good ground to support it, that
 20 they were essentially brought in bad faith.
 21 And they continued to prosecute the action,
 22 even all the way through -- I had to go to
 23 mediation, we had to do all of this stuff. All
 24 of this should have been withdrawn. Eventually
 25 I would just ask the Court to take into



1 consideration the fact that they eventually
2 came to this Court several months ago and just
3 basically capitulated after nearly three and a
4 half years, depriving the clients -- my client
5 of the right to recovery of this property on
6 bad faith counterclaims. But I want to also
7 address the issue of the factors, okay? It's
8 my understanding and has been my understanding
9 that the Court itself has the right, judicial
10 notice from the types of cases that it hears
11 day in and day out, the Court can glean from an
12 examination of the file itself whether or not
13 I've met these factors. The complexity of the
14 case, the Court hears cases all the time. The
15 time necessarily spent, the Court can see that
16 from my affidavit. These factors, I suggest to
17 the Court, the Court can determine from an
18 examination of the overall file by looking at
19 the file as well as the affidavit of counsel as
20 to the time necessarily spent. And I've given
21 an affidavit that I necessarily spent this
22 time. So, you know --

23 **THE COURT:** I don't think they're arguing about the
24 time.

25 **MR. HALL:** I understand that. They're saying that I



1 haven't addressed the factors. So, he was
2 saying -- we agree that the time was there, but
3 he's saying I didn't necessarily do it. So --

4 **THE COURT:** Well, no, I don't -- I don't think he's
5 arguing that you spent the time. As I
6 understand what the argument is is they're
7 arguing that, in essence, you have to bring in
8 somebody else who says, I've looked at all of
9 this and everything you did was necessary.

10 **MR. HALL:** I've just never --

11 **MR. SYRETT:** That's one of the things that I think
12 he has to do.

13 **MR. HALL:** And I've just never -- I'm not aware of
14 any case of that nature.

15 **THE COURT:** I understand. I understand what the
16 argument is and I understand your response.

17 **MR. HALL:** So in any case, you know, and back to the
18 issue of the Rule 11, I want to just say this,
19 that the order of --

20 **THE COURT:** Hold on. Hold on. Do you -- so you're
21 argument is under the coding -- not on the
22 coding, but under the attorney fee lines of
23 cases, that if you have separate components to
24 it, that the Court -- do you believe that there
25 is sufficient information in your attorney fee



1 affidavit to allow the Court to examine it and
2 say, this amount of time was allocated to the
3 foreclosure, this amount was allocated to the
4 summary judgment, this is time that was
5 allocated post-summary judgment being granted?

6 MR. HALL: I think so. I think so.

7 THE COURT: I mean, is the time sheet chronological?

8 MR. HALL: It is.

9 THE COURT: Okay. All right.

10 MR. HALL: It is. And, you know, a lot of time was
11 spent. And the amount of time I spent on the
12 summary judgment and all is recorded there.

13 THE COURT: All right. I mean, it doesn't say three
14 hours, four hours, five hours. It specifies --

15 MR. HALL: Sure.

16 THE COURT: -- the event that was being worked on?

17 MR. HALL: It does, Your Honor.

18 THE COURT: Okay. All right.

19 MR. HALL: It does, Your Honor.

20 THE COURT: All right.

21 MR. HALL: So in any event, you know, on the issue
22 of jurisdiction, the order of reference -- I
23 had -- a separate order of reference was signed
24 in this particular case by the judge. I was
25 instructed to prepare an order of reference.



1 And it said, of course -- it says on May 14,
 2 2013, this Court granted summary judgment. And
 3 I'm reading the Court's order, just the Court's
 4 order of reference. This Court grants summary
 5 judgment in favor of the Plaintiffs on all the
 6 Defendant's counterclaim and defenses addressed
 7 in the order. Pursuant to the same order, the
 8 Court indicated it would refer the -- refer to
 9 the Master-in-Equity for Lexington County for
 10 the Plaintiffs' claim for breach of the
 11 agreement and to foreclose or terminate any
 12 equitable interest in the property. In
 13 accordance with the Court's order of the
 14 granting of summary judgment, the Court
 15 requests Plaintiffs' counsel to prepare an
 16 order of reference. And of course it goes on
 17 to say that the Court is -- the matter is
 18 referred to the Master-in-Equity for Lexington
 19 County to determine the issues involved and
 20 report its findings of fact and conclusions of
 21 law with the authority, enter final judgment
 22 herein with any appeal to be made directly to
 23 the South Carolina Court of Appeals. And so,
 24 Judge, in this case this action -- Your Honor
 25 has not lost jurisdiction in this case.



1 There's been no final order. And --

2 **THE COURT:** No, I don't think I've understood
3 anybody to say I've lost jurisdiction. What I
4 think I understood Mr. Syrett to argue was in
5 the original order I guess signed by Judge --

6 **MR. HALL:** Addy.

7 **THE COURT:** -- Judge Addy, he's got the add on down
8 there at the bottom that says it's referred to
9 find the equitable interest. But then we've
10 got this May 28th order of reference that does
11 not limit it to --

12 **MR. HALL:** Correct.

13 **THE COURT:** It says to take testimony, determine the
14 issues involved and report findings of facts,
15 which you don't do. But you're arguing that
16 this in effect enlarges the scope of what I'm
17 going to do as opposed to the limited
18 description of it earlier.

19 **MR. HALL:** Well, correct. I mean, it was clear from
20 the order granting summary judgment that I was
21 to prepare a separate order of reference.

22 **THE COURT:** Right.

23 **MR. HALL:** So, but even -- even so, Judge, you know,
24 the rules itself don't -- there's nothing in
25 either of these orders that restrict the Court



1 from hearing a Rule 11 motion. And the Rule 11
2 -- I've already argued this and I don't want to
3 belabor it. There's no time limit brought --
4 I can see -- whenever it was brought, it was
5 brought. But it was brought prior to the
6 determination of this Court's final order in
7 this case. And I'm not aware of any time limit
8 in the rule itself. And, you know, that's the
9 proper time really to bring -- you know, to
10 bring an order is when the things are about to
11 wind up. You know, there was nothing
12 instructing me to bring the motion any earlier.
13 It's not a post-trial motion. They've not
14 cited one case that says it is. Not one.
15 They've argued that it is. But if you'll read
16 these cases, not one of these cases says that
17 Rule 11 is a post-trial motion.

18 **THE COURT:** All right. So what your argument is is
19 that if your ten days starts, it would start
20 from --

21 **MR. HALL:** It would start from the time Your Honor
22 entered the final order. Of course, my motion
23 is --

24 **THE COURT:** The final order.

25 **MR. HALL:** Right. But my motion was filed prior to



1 that.

2 THE COURT: It says it's terminated and all that.
3 Not back when the summary judgment was done.

4 MR. HALL: Right.

5 THE COURT: It would be the order I did.

6 MR. HALL: Right.

7 THE COURT: Okay. All right.

8 MR. HALL: And of course my motion was filed prior
9 to that order.

10 THE COURT: Right.

11 MR. HALL: So, and in contemplation of the fact that
12 we were going to have to have another, you
13 know, another hearing and more testimony and
14 this type of thing, so. And, Judge, you know,
15 I think I've addressed everything. Unless the
16 Court has questions for me, I don't know that
17 I can add anymore to what I've said.

18 THE COURT: All right, thank you. All right.

19 MR. SYRETT: Your Honor, I think Rule 11 clearly is
20 a post-order motion. It may not be a
21 post-judgment motion, but it's a post-order.
22 Things are only frivolous once a court rules
23 that there's no basis for it. He certainly
24 couldn't file it prior to the summary judgment
25 being granted. And so therefore his right to



1 file one is necessarily predicated on the
 2 issuance of the summary judgment order. Now,
 3 are you telling me that if the Court issued --
 4 and I don't know that he can argue this. If
 5 the Court issued -- you issued a final order
 6 finding there was no equity in the property,
 7 can he wait five years after you issue that
 8 order and then suddenly file a Rule 11 motion?
 9 I don't think so. The Court has been pretty
 10 clear, it's ten days.

11 **THE COURT:** Did he file ten days after the
 12 determina- -- order I filed?

13 **MR. SYRETT:** No. He filed before you filed your
 14 order.

15 **THE COURT:** Okay.

16 **MR. SYRETT:** So his timing is wrong. He's either
 17 filed -- his Rule 11 is either too early or
 18 it's too late. But I think it's too late.
 19 It's ten days from the date that the summary
 20 judgment --

21 **THE COURT:** Because you believe it's tied back to
 22 summary judgment.

23 **MR. SYRETT:** And I think that if you look at his
 24 motion, it is. He's saying I had to do these
 25 things to get rid of frivolous -- what he says



1 are frivolous counterclaims. And so he had ten
2 days from the date that the Court, Judge Addy,
3 struck the counterclaims to file that Rule 11
4 motion. And he didn't do it. He waited 11
5 months to do it. And he didn't wait until
6 after you issued your order. He filed it ahead
7 of time. Well clearly he can't be relying on
8 your order if he files it ahead of time, so it
9 must relate back to Judge Addy's order because
10 there's no order in between. So, you know, his
11 timing is just -- he's -- you know, if you wait
12 35 days to file an appeal with the Court of
13 Appeals, you get kicked because you didn't file
14 timely. He didn't file timely.

15 **THE COURT:** All right. I understand your argument.
16 All right.

17 **MR. HALL:** I just have one final remark, Your Honor.
18 The best source of what the rule provides for
19 is the rule itself. Rule 59(e) -- Rule 59 and
20 60 address post-trial motions. Rule 11 is a
21 motion separate unto itself. And it just, it
22 doesn't prescribe the time limits. Certainly
23 if the case is over and there's no jurisdiction
24 left for the Court to decide, his argument may
25 be well taken, but it's not well taken, Judge.



1 And the fact of the matter is is that the
2 motion was filed while this Court had
3 jurisdiction to determine the issues ancillary
4 to this case. Thank you.

5 **THE COURT:** All right. Thank you.

6 **MR. SYRETT:** Your Honor, the Frivolous Proceedings
7 Act does not say ten days. It simply does not
8 have any time frame for seeking relief under
9 the Frivolous Proceedings Act. The report says
10 it's ten days. And I think the cases say it's
11 ten days either Rule 11 or Frivolous
12 Proceedings. They kind of a analogized the
13 same -- the two things and use pretty much the
14 same standard on either thing. And so it's ten
15 days from the date that the order was issued.
16 You know, I know Rule 11 doesn't say that, but
17 there has to be a cutoff.

18 **THE COURT:** All right. I understand your argument.
19 This is what I want y'all to do. Normal
20 procedure is Madam Court Reporter, when she
21 finishes the transcript, will mail it to me.
22 And she will courtesy copy both of y'all
23 because it is my duty to ensure that the
24 transcript gets filed. All right. So she's
25 going to send it to y'all. Y'all can talk with



1 her. I know it's almost Christmas and all
2 that. I want y'all to talk afterwards and send
3 me an email after you talk with Madam Court
4 Reporter, tell me when you propose to submit
5 your post-trial memo, post-motion memo. All
6 right? But I'm going to give y'all -- I'm
7 going to let y'all talk and with Court Reporter
8 because we're at Christmas. All right. And I
9 understand there's some timing stuff. And I'm
10 going to give great deference to y'all chatting
11 with Madam Court Reporter and her getting it
12 out and all of that. Now, your arguments,
13 there are -- and I'm going to do them very
14 loosely because you've got several
15 subcategories of them. The first issue is is
16 Plaintiff is claiming I have a right to
17 attorney fees because the contract says I do.
18 It says I get attorney fees.

19 **MR. SYRETT:** Correct.

20 **THE COURT:** Defendant's response is is, yeah, you
21 get attorney fees as part of your debt, not a
22 separate award. And the law in South Carolina
23 for, again, equitable mortgage, there's two
24 branches or there's two roots to it. There is
25 one line of cases that deal with mortgage



1 foreclosure issues and they tend to basically
 2 say it's just like a mortgage. There's another
 3 line of cases that deal with legal issues like
 4 easements and condemnation awards and things
 5 like that that kind of go a different way. So
 6 when you're reading your installment sales
 7 contract research to try to get your analogies,
 8 remember that because there's two branches.
 9 There is a good 2008 Master-in-Equity Bench Bar
 10 Seminar article written by Drew Radeker because
 11 he was my seminar speaker that year. I think
 12 you can call the Bar if you can't get it from
 13 Drew, and they'll send it to you for like ten
 14 bucks. But it goes through installments, the
 15 whole law on all those factors. There is
 16 another source called Restatement of Mortgages.
 17 It's a 1999 book that has a compendium of
 18 installment sales -- like contract stuff. That
 19 might be helpful because I don't -- I am not
 20 aware of any case law directly on point either
 21 for equitable mortgages or mortgages that talk
 22 about whether you can or can't get a separate
 23 award of attorney fees. So if there's not law
 24 here, you know, you always want to go to
 25 Am.Jur., CJS, something like that to see if



1 there's laws somewhere else that you can look
2 at. Now, so the first issue is contractual.
3 The second issue then is is if you are entitled
4 to it, then you have the right to attorney fees
5 under your clause based upon how it's written.
6 Under the *Middleton* case it basically says if
7 you have a contract with your client -- because
8 that's where they got stuck in that case. They
9 didn't have a contract. He was doing it for a
10 friend and then tried to get attorney fees
11 afterwards. And they said, well you don't have
12 a contract, so you don't get it even though you
13 spent the time. The clause is if they say
14 incurred, it means what the client has paid the
15 lawyer or is obligated to pay the lawyer
16 pursuant to their private contract. If it's
17 the reasonableness factor, which y'all have
18 argued today, then you're in under the factors.
19 The Judge Strickland case that is an
20 unpublished decision of November -- today is
21 the 11th, 10th -- November 3rd, it's about the
22 third one down, it sounds like a mortgage case.
23 He was reversed because there were two -- as I
24 recall, there were two -- he was remanded.
25 There were two notes and there was about a



1 paragraph-worth of discussion about the
2 attorney fee affidavit and the lack of
3 particularity and focusing between the two
4 notes and the mortgages about work done on each
5 one. So read that -- now, I understand it's
6 unpublished, but it's -- read that and both of
7 y'all make your arguments from it. You know
8 what your arguments are about the factors for
9 attorney fees. Plaintiff is saying I've met
10 it, I've said it, you can look at the
11 pleadings, you can do that. Defendant is
12 saying, no, you got to get somebody else to
13 come in on a couple of the factors at least and
14 say this was reasonable, you should have done
15 this. And that's how they're interpreting that
16 law. So that's something else you need to
17 address. As to the Rule 11 timing, just make
18 your argument on it was timely, it wasn't.
19 Because you're both -- you are arguing
20 something very, very, very opposite about --
21 you're saying my time, if there is one, comes
22 from the last order. He's saying your time
23 went to the first order. And you're arguing
24 very opposite but very definable points. So
25 make your argument and your policy as to those



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 two things. The whole -- this whole concept of
 2 it was frivolous and I had to spend time to it
 3 and then the other side's saying you spent too
 4 much time is sort of a circular argument for
 5 both of you. Because what Defendant is saying
 6 is they spent too much time and they're saying,
 7 yeah, because you raised frivolous stuff, I
 8 shouldn't have had to. So you're both kind of
 9 -- it's pot and kettle kind of a little bit, to
 10 be honest. In May of last year there was a
 11 seminar done by Sue Berkowitz in which Pat
 12 Frawley did the ethics part on how you defend
 13 in a foreclosure action under the ethical rules
 14 about what the rules say about when you can
 15 plead defenses and how far you fall and, you
 16 know, ghost writing and bailing out and all of
 17 that. There are ethical rules that talk about
 18 how you defend and what your duty is. And it
 19 was a well-examined thing that deal with these
 20 two issues about the reasonableness of what you
 21 do. So that might be something else to look
 22 at. Is there any other issue I've left out?
 23 I mean, because you've said the Rule 11, you've
 24 talked about the frivolous, and then you've
 25 also talked about that generic language that



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 says the Court can generically stick a fine on
2 somebody. I mean, I know there's some old law
3 that says that. And you're saying that, you
4 know, can't do that and it's not warranted.

5 MR. SYRETT: Well if he's seeking remedies under
6 Rule 11, he's stuck to whatever Rule 11 says.

7 THE COURT: But I don't think I heard him argue it
8 was just limited to Rule 11. I think what I
9 heard you say was the fine and penalty --

10 MR. HALL: There's case law on it.

11 THE COURT: Right. It's under the generic court --

12 MR. HALL: Well I think it falls under and the
13 notion of sanction.

14 THE COURT: Right.

15 MR. HALL: And the Court has great powers.

16 THE COURT: Right. But he's saying it's limited to
17 Rule 11 case law and you're saying, no, it's
18 the Court power. You're saying it's Rule 11
19 and the Court power.

20 MR. HALL: Well, yes. But what I'm saying it's Rule
21 11 as has been interpreted by the case law.

22 THE COURT: Okay. All right.

23 MR. HALL: Maybe that's the distinction --

24 THE COURT: You're not arguing then an independent
25 Rule 11 court authority to do fines and



1 penalties.

2 MR. HALL: I'm -- I'm saying that there -- as the
3 law has interpreted Rule 11, you're entitled to
4 those -- the Court is entitled to do any or
5 none.

6 THE COURT: Right. What I'm saying is, I just want
7 to make sure, is not confined to Rule 11, the
8 case law interpreting Rule 11.

9 MR. HALL: Correct.

10 THE COURT: It's not anything beyond in addition to
11 that.

12 MR. HALL: Correct.

13 THE COURT: Okay. All right. Anything further?

14 MR. HALL: Yes, Your Honor. I would just need to
15 ask the Court's guidance on this. I am
16 scheduled to try a federal case that I'm going
17 to be involved in the court for three weeks.
18 We've got 40 witnesses, people flying in all
19 over the country. I don't -- there's no way
20 reasonably I can get to any post-trial order
21 until well after -- or until probably March
22 really.

23 THE COURT: Well, that's why I'm letting y'all --
24 that's why I said I'm going to give y'all great
25 deference. Y'all talk about your schedules,



1 talk with Madam Court Reporter, and then just
2 come up upon an agreed thing. And, I mean, I
3 understand you've got other trials and things
4 scheduled. So I'm just saying is is y'all chat
5 and then send me a joint e-mail. Y'all can
6 work that out.

7 MR. SYRETT: I certainly don't want to interfere
8 with Mr. Hall trying a case that has 40
9 witnesses. He can have as much time as he
10 likes.

11 THE COURT: Right. All I want from all of us is an
12 agreed-upon date. I mean, whether it's in a
13 week or in three months, we just want an
14 agreed-upon timeline so it doesn't sit. That's
15 all. All right. Okay. Thank you all.

16 MR. SYRETT: Thank you, Your Honor.

17 MR. GREENBURG: Thank you.

18 MR. HALL: Thank you.

19 THE COURT: Everybody have a blessed month.

20 (There being nothing further, the motion concluded at
21 3:14 p.m.)
22
23
24
25



CERTIFICATE

This is to certify that the within hearing consisting of seventy-four (74) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 15, 2015.

N. Garrett
Nadine A. Garrett
Court Reporter

Notary Public for South Carolina
My Commission Expires: 8/11/2016



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) C/A No. 2011-CP-32-1781

Charles E. Strickland, III,
Latisha Strickland, and Justin
R. Dillon,

Plaintiffs,

v.

Marjorie E. Temple,

Defendant.

COPY

HEARING

Wednesday, July 29, 2015
1:52 p.m. - 2:14 p.m.

The hearing before the Honorable James O. Spence, Master-In-Equity for Lexington County, was taken at 205 East Main Street, Suite 204, Lexington, South Carolina on the 29th day of July, 2015 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

Frederick I. Hall, III, Esquire
 THE RICK HALL LAW FIRM, LLC
 301 Gibson Road
 Lexington, South Carolina 29072
 Attorney for the Plaintiffs

Jennifer M. Cooper, Esquire
 THE RICK HALL LAW FIRM, LLC
 301 Gibson Road
 Lexington, South Carolina 29072
 Co-Counsel for the Plaintiffs

James C. Sarratt, Esquire
 Sarratt & Clark, Attorneys at Law
 6 Brookside Circle
 Greenville, South Carolina 29609
 Attorney for the Defendant

INDEX

Certificate 21

EXHIBITS

(There were no exhibits marked during this hearing.)



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 THE BALIFF: We are on Strickland versus Temple.
2 It's Case 2011-CP-32-1781 pursuant to
3 Defendant's Rule 59, motion to reconsider. Mr.
4 Hall, your motion.

5 MR. HALL: May it please The Court, we're here today
6 on a motion for reconsideration that -- I
7 believe this is actually fairly
8 straightforward. It's our contention that the
9 Court's order, which granted attorney's fees
10 but did not award attorney's fees, should be
11 amended on the grounds that I cannot find a
12 case that says I am not entitled to them. The
13 contract says that I'm entitled to them if I
14 prevail and I bring an action to enforce the
15 contract. The case law that I understand says
16 that if you -- if a contract provides for the
17 award of attorney's fees, then you're entitled
18 to them. I found no case that says that you're
19 not entitled to them under the circumstances of
20 this case. I understand that the Court has
21 ruled, but I -- I can't find a case that --
22 that would -- would indicate that. And I think
23 a failure to award the attorney's fees, under
24 the circumstances of this case, since the
25 contract is plain, that the -- that -- that I'm



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 entitled to them if I bring an action to
2 enforce it and we were successful is -- to hold
3 to the contrary violates both the South
4 Carolina and the Federal Constitution says that
5 the Court's -- that -- that you're not allowed
6 to impair a contract, and I think it is an
7 impairment of a contract to fail to award the
8 attorney's fees. The other thing that I have
9 alleged is -- is very simply that, in this
10 particular case, that the Court needs to make
11 specific findings of fact on what were the good
12 grounds that they had to continue this action.
13 First of all, to bring the action but then also
14 to continue it, even after the point of a
15 summary judgment continue it, until this Court
16 eventually terminated the award based upon her
17 -- the admission many months later that she had
18 no equity in the property. So, I think our
19 motion is straightforward. Again I've looked,
20 and I understand the Court has indicated in its
21 -- in its order, that trial courts around the
22 State have denied it. I -- I'm not aware of a
23 decision. I haven't -- I have not seen one,
24 and -- and, even if that's true -- even if
25 that's true, I think it's improper.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE COURT: Mr. Sarratt.

2 MR. SARRATT: Your Honor, I have a -- a memorandum
3 I'd like to submit ---

4 THE COURT: Yes, sir.

5 MR. SARRATT: --- to the Court, and I would
6 basically give you the shorthand on the
7 memorandum. First of all, I don't believe that
8 the motion made by the Plaintiffs is timely.
9 Rule 59E requires that be made ten days after
10 receipt of written notice of the entry of the
11 order. The order that you signed was clocked
12 on the 4th of June and e-mailed out by your
13 assistant, Leslie Shealy, to all parties. I
14 received it on June the 4th. I assume that Mr.
15 Hall also received it on June the 4th. On June
16 the 15th, Ms. Huggins in the Clerk's office
17 also sent out the order with the order -- the
18 judgment form attached to it. And so I believe
19 that the Plaintiffs received notice of the
20 entry of the order on June the 4th and they
21 didn't file this petition until -- or their --
22 this motion until June the 26th, and so it's
23 simply beyond the ten days and should be
24 dismissed strictly upon that basis. But
25 assuming the Court will entertain the motion,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 with regards to his good grounds, I think it is
2 sufficient for the Court to find that it has --
3 - there were good grounds for the Plaintiffs to
4 continue the case. I will remind the Court
5 that, not only were their counterclaims, but
6 there were also third-party complaints against
7 other defendants which had to be resolved
8 before the case could be resolved. They were
9 settled, and then the case proceeded on the
10 Plaintiff's action. With regard the attorney's
11 fee issue, number one, they chose -- the
12 Plaintiff's chose to use the installment land
13 contract form of a transaction. They could
14 have taken a Note and Mortgage back, and if
15 that were -- if they had done that, then they
16 would have been entitled to pursue a deficiency
17 note. It states sufficiency judgment is
18 statutory. There is no provision for a
19 deficiency judgment in the installment land
20 contract provis- -- cases; and essentially, if
21 you were to award an attorney's fee as a
22 separate element, you would essentially be
23 awarding a deficiency judgment, which is simply
24 not statutorily provided. And his final
25 argument, with regard to impairing the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 obligations of the contract, should not be
2 considered because he is raising it today for
3 the very first time. And there is copious case
4 law that says you cannot raise an issue at --
5 a 59E motion that you could have raised within
6 the case prior to the entry of the order. And
7 the primary case on that is Reid versus
8 Patterson, and I can hand a copy of that up to
9 the Court ---

10 THE COURT: All right. I ---

11 MR. SARRATT: --- if the Court would like.

12 THE COURT: I don't need a case law.

13 MR. SARRATT: All right. But anyway it's ---

14 THE COURT: I'm familiar with it.

15 MR. SARRATT: It's clear that he's raising this for
16 the first time, the 59E motion, and it simply
17 can't be done.

18 THE COURT: All right. Thank you. Let me address
19 all of those issues. I'm going to kind of go
20 back for -- go back in reverse order. The
21 first thing is I don't know, sitting here
22 offhand, if the Constitutional argument was
23 made at trial. So if it was -- if it was made
24 at trial and it was part of the memo and part
25 of the -- then -- then y'all want to send me



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 something on that. I don't re- -- I don't know
2 if that was made. I just don't recall that
3 sitting here. You're indicating that it was
4 not.

5 MR. SARRATT: Your Honor, I reviewed the -- all of
6 the memorandums that were filed. I didn't see
7 an argument anywhere.

8 THE COURT: Okay.

9 MR. SARRATT: And I don't recall they orally argued
10 in any of the -- of our hearings.

11 THE COURT: Okay. All right. Mr. Hall?

12 MR. HALL: Judge, may I answer ---

13 THE COURT: Yes, sir.

14 MR. HALL: --- that really quick. I -- certainly it
15 was not raised and I was under no obligation to
16 raise it because there had been no adverse
17 ruling. There had been no adverse ruling to --
18 -

19 THE COURT: Well the issue wasn't raised, so there
20 couldn't be an adverse ruling if the issue
21 wasn't raised.

22 MR. HALL: No, sir.

23 THE COURT: There couldn't be any type of ruling if
24 the issue wasn't raised.

25 MR. HALL: Judge, what I'm saying is -- is this:



1 There had been no ruling that I was denied
2 attorney's fees until your written order, so
3 there was no -- no necessity for me to do that.

4 THE COURT: All right. All right. I understand
5 what each of your positions are on that.

6 MR. SARRATT: Your Honor, he argues that he was
7 denied attorney's fees. He was awarded every
8 ---

9 THE COURT: Well, I ---

10 MR. SARRATT: --- dollar that he was asking for.

11 THE COURT: I understand that. All right. The
12 second thing -- so, all right. The second
13 thing is -- is on the timing of whether this
14 motion is timely or not? I believe that, not
15 withstanding anything I sent out, I think the
16 rule says the Clerk's office is responsible to
17 send it out. So if the Clerk's office sent it
18 out, if it's beyond ten days then, then that
19 might be an issue. I think the Clerk is
20 responsible under the rule for sending that
21 out. I send stuff out just as a courtesy
22 because I know that there is a long time lag,
23 it seems, between when we file stuff and
24 something goes out. I just send it out
25 routinely as a courtesy.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 MR. SARRATT: The order -- the Rule 59E does not say
2 the Clerk. It just says receipt of ---

3 THE COURT: I understand, but there is an earlier
4 rule -- one of the Rules of Civil Procedure
5 talks about who's supposed to send out the
6 judgment and timing from stuff like that, so
7 y'all can look at that.

8 MR. SARRATT: Okay.

9 THE COURT: Okay? All right. Because I believe it
10 says the time runs from when the Clerk sends it
11 out. That makes sense because, to me, I
12 believe that is correct because the Clerk is
13 the -- is the person who is responsible for
14 filing the order and sending it out. Again, I
15 send mine out as a courtesy. If that's what
16 the -- the rule says, that's what it says, but
17 I believe it's when the Clerk sends it out.
18 That's when the time starts. Now, I could be
19 wrong, but that's my understanding. The
20 attorney fees issues, again, I -- I still --
21 Mr. Hall, your argument might be right if this
22 was a breach of contract case or if it was a
23 lease. This is an installment sales contract
24 or a contract for deed where an equitable
25 interest is created in it. Now, I'm going to



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 go through this again like I did in the order.
2 The basis of my legal ruling is four-fold. One
3 is the cases of Lewis Premium, all of those
4 installment sales contract, say these documents
5 are equitable mortgages, they have to be
6 foreclosed. If you look at the second and
7 third prongs of this analysis, if you look at
8 Rule 71A and if you look at -- and I believe
9 it's 293630, it says if you foreclose a
10 mortgage or an other security interest, you
11 have to establish the debt. In every routine
12 foreclosure action, the debt consists of the
13 principal, the interest, the late charges, the
14 escrows, and the attorney fees. The attorney
15 fees are part of the debt. Routinely, you do
16 not get a separate dollar award of attorney
17 fees. Attorney fees are awarded, but the only
18 thing that they do are they are a debt
19 component, just like principal is and just like
20 interest is. And the reason you have to
21 establish a debt in a foreclosure action,
22 whether it is a Note and Mortgage or an
23 Equitable Mortgage is because in a legal
24 mortgage, you have to establish a debt to sell
25 it because, when you sell it, if you've asked



1 for a deficiency, that number is needed to
2 determine a deficiency. If you waive a
3 deficiency, then that number is still needed to
4 determine if there is a surplus under the
5 statute because a surplus could go maybe to the
6 owner or the other creditors if they don't
7 file. In an equitable mortgage foreclosure,
8 under the -- the Lewis Premium, I think, those
9 -- those cases, what it says is, is you
10 establish your debt, of which attorney fees is
11 again a component of the debt. Based on what
12 your debt is and then what your equity is, your
13 remedies under South Carolina law are basically
14 like the Goldilocks and the Three Bears -- the
15 porridge thing. Case law says if there's no
16 equity because of your principal, your
17 interest, if you've paid taxes, if you've paid
18 insurance, and your attorney fees, then you
19 simply terminate the contract. If there is
20 some equity in the property, based on equity or
21 improvements that the own- -- the equitable
22 purchasers have made, you can give a set time
23 for equity of redemption, meaning you have 30
24 or 45 days to tender a full payoff. Or the
25 case law even says, if there is a lot of



1 equity, you can order it sold like a
2 foreclosure. So your attorney fees were
3 awarded, but just like in every standard
4 foreclosure action that has ever been in the
5 State of South Carolina, as a deficiency way,
6 it's awarded but it is at -- not a separate
7 dollar amount. The fourth thing I added just
8 as a trial thing, is foreclosure firms have
9 throughout -- periodically, will send a
10 separate order in that says we foreclosed, we
11 were awarded \$2,000 attorney fees, give us a
12 separate judgment. I have denied that
13 routinely; sent that back, mailed that back and
14 said you are not entitled to that, that's a
15 part of your debt. The only way you're
16 entitled to attorney fees or a money judgment
17 in a foreclosure is if you request a deficiency
18 judgment. If you request a deficiency judgment
19 then there are statutory protections, a second
20 bid and appraisal right, that present -- that
21 prevent gouging by a plaintiff. So your
22 attorney fees were awarded. Defendant claimed
23 you weren't entitled to them because your work.
24 I did a six-factor analysis. I said you had
25 earned the attorney fees. They went into the



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 debt, but the debt determined what the remedy
2 was, which was no equity and a termination of
3 the right. That's what the law is in South
4 Carolina as it relates to foreclosure of
5 equitable interest, in my understanding. Now,
6 if it was a contract case, then you might be
7 right about -- about getting damages. This was
8 not a contract case, this was a foreclosure of
9 an equitable lien. Yes, sir.

10 MR. HALL: My understanding just to -- I understand
11 the Court's ruling. I just wanted to make sure
12 my position is clear for the record. My
13 position is, on the record, that this was a
14 breach of contract case because it was not --
15 I brought this case under two alternative
16 theories. One was to foreclose, or in the
17 alternative, to terminate the contract. The
18 contract provision states, if I bring an action
19 to enforce the provisions of the contract, that
20 I'm in -- that -- that the Plaintiff is
21 entitled to attorney's fees. I very well
22 understand the foreclosure proceedings. I did
23 foreclosures for many years. So I -- I just
24 really want the record to clear -- make me
25 clear that I think this is a breach of contract



1 action, notwithstanding what the code of
2 discount says. I looked at those cases.

3 THE COURT: Do you -- do you have to then deed title
4 to this person because they made payment?

5 MR. HALL: Oh, no. I think the contract was
6 terminated and she was enforced to remove
7 herself from the premises. It's analogous to
8 an ejection action.

9 THE COURT: No, it's not. That's the point. That's
10 the point is there's law that says, no, it's
11 not. It is not the same thing as a rental
12 contract. You can't ---

13 MR. HALL: I understand.

14 THE COURT: Because, Mr. Hall, as you know, you
15 couldn't go to Magistrate. If you were right,
16 you could have gone to Magistrate's Court and
17 done this.

18 MR. HALL: All right. I just ---

19 THE COURT: But you -- you couldn't because it was
20 foreclosing an equitable interest.

21 MR. HALL: There's no quarrel, Judge. I understand
22 that, that -- that there -- that I had to bring
23 it here to ---

24 THE COURT: Right.

25 MR. HALL: --- terminate equitable interest.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE COURT: Right.

2 MR. HALL: I understand the case law indicates that
3 there is the possibility of an equitable
4 interest. As it turned out, she admitted that
5 she had no equitable interest. I understand
6 the Court's ruling. I just take exception to
7 it.

8 THE COURT: Okay. That's fine. I understand, I
9 think, your argument, and I agree. I agree.
10 The argument's very straightforward. Yes, sir.

11 MR. SARRATT: Your Honor, I have always learned
12 that, when the judge is agreeing with you,
13 don't say anything.

14 THE COURT: All right.

15 MR. SARRATT: You might talk him out of it.

16 THE COURT: All right. Well, the -- the other --
17 the other matter and the final matter about the
18 Rule 11 or sanctions. I went back, I reviewed
19 on CMS the filings -- the pleadings that were
20 done. I went back and I read the pleadings
21 about what was alleged as a plaintiff and what
22 was alleged as a defendant. I don't think --
23 the only allegation the defendant said was, was
24 I didn't know there was a pond there. I think
25 there was other allegations about who was



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 maintaining the pond and other things like
2 that. There was also apparently some real
3 estate agent involvement in this case, whom I
4 assume the real estate agents were working for
5 your client; is that -- is that accurate?

6 MR. SARRATT: I believe so, Your Honor.

7 THE COURT: Okay. So -- and the -- the real estate
8 agents working for your client, I believe you
9 represented, paid money in part of the case.
10 But they were -- they were ---

11 MR. SARRATT: There was a settlement with the real
12 estate company, yes.

13 THE COURT: --- involved in the -- in the case, so
14 her agent was involved in the case?

15 MR. SARRATT: That's correct.

16 THE COURT: Okay. All right. So I just -- I just -
17 - we -- we've looked at the same facts, and
18 I've just come to a different conclusion on my
19 analysis of it on whether their actions
20 warranted sanctions. I just -- I just don't
21 think they do, and that's just a disagreement.

22 MR. HALL: I understand.

23 THE COURT: Yes, sir.

24 MR. HALL: And what -- I clearly understood that
25 when I brought the -- brought the motion. What



1 I'm asking the Court to do is specifically find
2 what -- to point out what the findings of fact
3 are, because I -- I think the order doesn't set
4 forth the factual basis for the denial of -- of
5 ---

6 THE COURT: Well, I -- I think what ---

7 MR. HALL: --- fees.

8 THE COURT: The way I read my order, my order said
9 all of these actions occurred. These steps
10 happened. The attorney's ethical
11 responsibilities are these. I don't find that
12 there is a breach in anything that you said he
13 did that warranted an -- an award of it. It
14 didn't rise to the level. I've looked at all
15 of the pleadings, the arguments you've made.
16 The -- the order terminated then, and it was
17 referred to me to -- to do a final hearing and
18 to do damages, which is what we did.

19 MR. HALL: I understand.

20 THE COURT: So -- all right. Okay. All right. If
21 you will draft a Form 4 -- not a Form 4 but an
22 order denying Rule 59. I'm not sure, again,
23 about the -- the timeliness of it. I believe
24 the time is controlled by when the Clerk sends
25 it out, not when the Court sends it out because



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 not all judges send out orders. Or you could
2 argue, theoretically, a law clerk could have
3 gotten it and he got notice of it. I don't
4 think there's anything that allows you to do
5 that. I think it's the Clerk's office.

6 MR. HALL: Well, I agree with the Court, and, just
7 so the record is made clear for -- for purposes
8 of ---

9 THE COURT: Sure.

10 MR. HALL: --- any future action. The rules clearly
11 make a distinction between filing, which this
12 Court did file this order and sent us a
13 courtesy copy, and the requirement of Rule 59E,
14 which specifically says that the time does not
15 begin until you receive written notice from the
16 entry of the order. And the entry was not made
17 by the Clerk until whatever date it did, and
18 that's the time I ---

19 THE COURT: Okay. Well, I -- again, I -- I believe
20 that is correct. I believe it's the Clerk,
21 because you could theoretically say, well, the
22 judge -- because this is -- here's the problem:
23 We could have clocked the order, their -- and
24 I could send you a clocked copy. It may not be
25 entered by the people in CMS until days later,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 so you've got a date on the order. You've got
2 a date when we enter it on the Master in Equity
3 module. You can have a different date with the
4 clerks when they enter it. You can have three
5 different dates based on when the Master in
6 Equity entered it, when the Clerk's office
7 entered it, and when it was clocked. So I
8 believe, in order to -- I believe Mr. Hall is
9 right on that issue. So anyway, if there's
10 anything different on that, y'all let me know.
11 But I believe it's the Clerk's -- when the
12 Clerk does it.

13 MR. HALL: Thank you.

14 THE COURT: Okay.

15 MR. HALL: And we appreciate you hearing it.

16 THE COURT: Okay. Thank y'all. All right.

17 (There being nothing further, the hearing concluded
18 at 2:14 p.m.)

19

20

21

22

23

24

25



CERTIFICATE

This is to certify that the within hearing consisting of twenty (20) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 17, 2015.



M. Sean Cary
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 29, 2023



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
2012 NOV 21 P 3:36) CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D. Carrigg
Strickland and Justin R. Dillon) CLERK OF COURT
LEXINGTON, SC)

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

TO: MARJORIE E. TEMPLE, THE DEFENDANT, AND HER ATTORNEYS, ROLAND E. GREENBURG, III, ESQUIRE AND SPENCER ANDREW SYRETT, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the matter can be heard, the undersigned counsel for the plaintiffs will move for an order granting summary judgment in this action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there has been a material breach of the defendant's conditional sales agreement and bond for title and, upon the further grounds, that the counterclaims alleged against the plaintiffs herein fail to establish any genuine issue of material fact as to the defendant's claims of unconscionability, set forth as a fifth defense; defendant's allegations as to negligence misrepresentation, set forth as a seventh defense; the allegations of

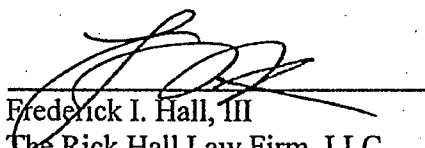
fraud set forth as an eighth defense; and defendants' claim for unfair trade practices, set forth as a ninth defense.

As further grounds for this motion for summary judgment on both the plaintiff's complaint and the defendant's allegations pertaining to unconscionability, fraud, negligent misrepresentation, and unfair trade practices, the plaintiff would show unto the Court that the pleadings, depositions, interrogatories, requests for admissions, and affidavits on file fail to establish that there was any misrepresentation or fraud by the plaintiffs, or claims upon which negligent misrepresentation could be based.

Additionally, the plaintiffs would show unto the Court that the basis of the defendant's claims upon which she alleges fraud, negligent misrepresentation, unfair trade practice, and rescission, are not established in the record and, to the contrary, the evidence of record establishes that the plaintiffs disclosed the existence of the dam on the property of which the defendant complains; that the survey which was furnished prior to the closing establishes that a significant portion of the property is in a flood zone and/or located in wetlands; and that the defendant was placed on inquiry notice of all material conditions on or relating to the property prior to the closing of this matter.

WHEREFORE, having fully set forth plaintiffs' Motion for Summary Judgment, the plaintiffs pray that the Court inquire about the matters herein and rule that there is no genuine issue of material fact as to the breach of the installment contract and bond for title agreement, and that there is no genuine issue of material fact which establishes the counter claims and defenses set forth by the defendant. This motion will be based upon the South Carolina Rules of Civil Procedure, the pleadings and discovery taken herein to date, as well as a Memorandum of Law to be filed with the Court prior to the date of the hearing.

FILED

By: 

Frederick I. Hall, III
The Rick Hall Law Firm, LLC

2012 NOV 21 P 3:36 301 Gibson Rd.
Lexington, SC 29072

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Tel: (803) 957-5333

Fax: (803) 957-7717

rick@sctrtrialattorneys.com

*Attorney for the plaintiffs Charles E. Strickland,
Laticia D. Strickland, and Justin R. Dillon*

Lexington, South Carolina
November 17, 2012

OPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
2012 NOV 21 5 38
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

CERTIFICATE OF SERVICE

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

The undersigned paralegal to The Rick Hall Law Firm, LLC does hereby certify that she has on the 19th day of November, 2012, served a copy of the Notice of Motion and Motion for Summary Judgement by placing a copy in the U. S. Mail, postage prepaid, to the person(s) at the address(es) listed below:

S. Andrew Syrett, Esquire
PO Box 7403
Columbia, SC 29202

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201

Francis M. Mack, Esquire
Richardson Plowden
1900 Barnwell Street
Columbia, SC 29202

M. Alan Peace, Esquire
Tyler, Cassell, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
PO Box 11656
Columbia, S.C. 29211-1656

Kate A. Johnson

Kate A. Johnson
Paralegal to Frederick I. Hall, III

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2013 JAN 18

CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

COPY

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

I. INTRODUCTION

This matter is before the Court on Plaintiffs' Motion for Summary Judgment on their causes of action for breach of a Conditional Sales Agreement and Bond for Title (hereinafter the "Agreement"). Plaintiffs seek, alternatively, foreclosure and sale of the property or the termination of the contract and Defendant's equitable interest in the property and an order of possession. A copy the Agreement is attached to this Memorandum as **Exhibit 1**. Because the Defendant has admitted under oath that she has not made the final installment payment called for under the Agreement, which payment has not been excused, the Plaintiffs contend that there is no genuine issue of material fact for the Court to consider and that Plaintiffs are entitled under Rule

56 of the South Carolina Rules of Civil Procedure to an Order granting the Plaintiffs summary judgment and an Order of the Court terminating the Defendant's equity of redemption and directing that the property be sold to satisfy the debt set forth herein and awarding the Plaintiffs their costs and reasonable attorney fees. In addition, Plaintiffs contend that they are entitled to summary judgment on the Defendant's counterclaims and alleged equitable defenses of fraud, negligent misrepresentation, rescission, and unconscionability because the essential conduct of which the Defendant complains to support these claims and defenses, the non-disclosure of the existence of a dam, wetlands, and pond on the existing property, were clearly set forth in written instruments associated with the sale and agreement. Therefore, these cannot serve as the basis for the Defendant's claims. Moreover, the Defendant's claims regarding fraud and misrepresentation regarding the condition of the house on the property are, based upon her own admission, speculative and/or have not been pled with particularity and should be dismissed. Finally, the Defendant agreed to purchase the property "As- Is," and the matters about which she now complains were open and obvious to the Defendant and she was on inquiry notice of all conditions related to the property.

II. FACTS

This action arises out of a written Contract of Sale pertaining to a piece of residential real estate located at 1730 Nazareth Road in Lexington County, South Carolina, and a subsequent Conditional Sales Agreement and Bond for Title – the Agreement. The parties had originally contemplated that the Defendant would obtain traditional mortgage financing, as can be seen in the Contract of Sale, attached as Defendant's exhibit 2 to Ms. Temple's deposition and hereto as **Exhibit 2**. The parties agreed according to the Contract of Sale that the property would be sold "As-Is." (See Contract of Sale, at p. 4 of 8) However, because the Defendant, Ms. Temple, could

either not qualify for or afford traditional mortgage financing, the parties entered into the Conditional Sales Agreement/Bond for Title to finance the sales and purchase of the property. The Defendant testified that owner financing was important to her because she was "unable to get a mortgage through the one lender and this [the Conditional Sales Agreement] was offered to me, and I thought, yes." (Temple dep. p. 23: 22-25; p. 24: 1-5) She understood that the property was being sold "As-Is." (Id. p. 27: 2-5)

a. Defendant's Educational Background and Understanding of the Contracts

The Defendant has both an undergraduate liberal arts degree and a master's degree from the State University of New York. (Temple dep. p. 6:17-23) She has worked at the Veteran's Administration as a veteran's advocate and as a social worker. (Id. pp. 8-9) During her employment career she had to fill out financial paper work associated with her job and prepare reports. (Id. p. 72) The Defendant understood that she had signed legal documents in connection with the purchase of the property and that it was important when you sign a legal document to read it and understand it. (Id. p. 76: 22-25; p. 77: 16-20) She took the opportunity to read the documents pertaining to this transaction before she signed them. (Id. p. 77: 22-24). The Defendant understood that the property was being sold in the condition that it was currently. (Id. p. 27: 2-5)

Ms. Temple admitted in her deposition that paragraph 15(b) of the Contract of Sale contains a provision which discloses that the subject property was located partly or entirely within designated "Special Flood Hazard Area." (Id. p. 30: 8-24; Contract of Sale, ¶ 15 B, Def. Ex. 2) She admitted that Plaintiffs disclosed to her in the contract that there was dam on the property. (Id. p. 95: 1-5) The Agreement or Bond for Title financing instrument which all parties initialed also discloses the existence of the dam and pond on the property. (Temple dep. p. 85:

20-25; 87: 7-13 and 22-25 and Conditional Sales Agreement/Bond for Title, Exhibit 1; at pp. 11-12) The Defendant admitted that she read and initialed this document and was bound by it. (Id. p. 87: 7-13, supra) It is important to note that the house which is located on the property is not in a flood zone, only portions of the property proximate to the dam and the pond, which the Defendant admits. (Id. p. 100: 12-19)

b. Defendant's Inspection of the Property

Ms. Temple went to the property with her real estate agent, Mr. Koivu, to view it, and spent, she guessed, between an hour and an hour and half on the first visit. (Temple dep. p. 17: 14 -18) She went out again before the closing. (Id. p. 19: 10 - 21) She received a plat prior to closing which disclosed the existence of the dam and pond on the property, which also noted that a portion of the property was located in the " 100 yr. Flood Zone Limit as shown on Subdivision Map." (Def. Ex. 1 to Temple dep.; Temple dep. p. 20: line 25 to p. 21: 1 - 10) The plat disclosed that there were approximately 2.8 acres of land that was wetlands. (Id. p. 65: 13 - 22) Approximately and acre and a half is not wetlands. (Id.) Ms. Temple saw dam and the pond on the property. (Id. pp. 35: 23- 25 to p. 36: 1-5)

c. Defendant's Alleged Claims of Misrepresentations

The Defendant has alleged as the basis for her claims of fraud and rescission that Plaintiffs failed to disclose that: a. the property has a dam on it. There is an association which was to manage and maintain the dam but it is apparently defunct, b. A significant portion of the property is in a flood zone or is protected wetlands, c. The Plaintiff (sic) advised all parties that she intended to build a residence on the property in place of a mobile home. However, this statement would be barred by the parol evidence as it is not contained in the contract and is not set forth as something that was disclosed to her but rather something she intended to do, which is

not a representation in itself. The parole evidence rule, as this Court well knows, prohibits the introduction of extrinsic evidence of agreements or understandings contemporaneous with, or prior to, the execution of a written instrument when the extrinsic evidence is used to contradict, vary, or explain the written instrument. See *Iseman v. Hobbs*, 290 S.C. 482 351 S.E.2d (Ct.App.1986).

Ms. Temple did not speak with the Plaintiff Charles Strickland before she signed the contract of sale. (Temple dep. p. 107: 23-25 to p. 108: 1-2) And she could not remember any statements that were made about the condition of the property. (Id. p. 108:) Ms. Temple did not speak to the Plaintiff Latisha Strickland regarding the property. (Id.) And Justin Dillon, one of the named Plaintiffs, who came to the property to make repairs made no statements regarding the dam or whether the property was in a flood zone. (Id. p. 108: 13-22) The State of South Carolina Residential Property Condition Disclosure Statement, on which Defendant ostensibly relies in part was executed on February 17, 2009 and does indicate that the Plaintiff, Charles Strickland, did not have any knowledge of the property being located in a flood plain or any flood hazards, as he had not lived on the property. (See S.C. Residential Property Condition Disclosure Statement, Exhibit 3) However, the Defendant was provided a copy of the plat prior to closing documenting the existence of wetlands and the flood-plain.

The Defendant alleges in her deposition, but not in her counterclaim, that there were misrepresentations and/or adverse conditions pertaining to the property. (See Answer and Counterclaim, at p 4 of 7, alleging "An Eighth Defense and By Way of Counterclaim (FRAUD))" However, she does not plead the these matters with particularity or set them forth in her counterclaim. Interrogatories were submitted to the Defendant in which she was asked in Interrogatory no. 11 to "Identify with specificity each and every representation made by the

plaintiffs which you contend to be false, and when and where the representation was made and by whom." Defendant identified the Property Disclosure Statement and alleged that it was "inaccurate as to the condition of the property, the flood zone and the dam." See Defendant's Answers to Interrogatories, at p. of 5. (Exhibit 4) She identified no other specific false representations or who made them or when and where. The interrogatory response and her pleading focus only on the alleged failure to disclose the dam on the property and that a substantial part of the property is in a flood zone, both of which were disclosed in the written agreements executed contemporaneously with the closing. A Final Walk Through Repair Checklist dated March 30, 2009 reveals that Ms. Temple had made an inspection of the property and that the condition of the property was personally made available to the Defendant, who did make an inspection and conduct a "final walk through," prior to closing. (See Final Walk Through Repair Checklist, Exhibit 5, Temple dep. p. 165: 2-8)

Her counterclaim does not allege any hidden or latent defects in the property which were undisclosed to her other than the dam, the pond and the property's partial location in a flood zone. The Defendant had a home inspection done on the property. (Temple dep. p. 26: 6-8) Ms. Temple in her deposition complains about a litany of items she contends are false representation on the Residential Property Condition Disclosure Statement. (Exhibit 3) For example, she claims that the statement where Plaintiffs indicated that they were not aware of any problems with item 1, which pertains in part to windows, is false. (Temple dep. p. 113: 5-12) However, she admits that she was told by Justin [Dillon], one of the Plaintiffs, why the holes and broken windows were there, and an agreement as to repairs to the windows in the front bedroom and master bedroom was made and entered into as an addendum to the purchase agreement. (Addendum to Purchase Agreement, April 6, 2009, Exhibit 6, prior to the closing. She testified that with

respect to item 3, pertaining to water seepage, leakage, dampness, or standing water or water intrusion from any source, that it would be speculation that the owners knew of a problem. (Temple dep p. 119: 7-25; p. 120: 1-3) She further testified as to this item that she was not certain how to answer the question because it was "*really obvious* that there was black mold, there were holes in the ceiling, the water was leading through the roof, the ceiling was missing, there were gaping holes, the plumbing as a problem." She testified to other items on the disclosure statement, including items 4, 5, 11, 14, and 19, which relate to electrical, plumbing, drainage, toxic mold, and a shared driveway, claiming the representations made by Plaintiffs as to lack of knowledge were false. She admitted, however, with regard to proof that she had made assumptions, was speculating or had no documentation. (Temple dep. pp. 117-123)

d. Defendant's Default Under the Agreement

Pursuant to the Agreement under the Bond for Title, the Defendant was to pay the sum of eighty five thousand dollars (\$85,000), thirteen thousand (\$13,000) of which was to be paid at closing and the balance in monthly installments of \$1000 each, with remaining balance [a balloon payment] to be paid on or before April 1, 2011. (Agreement at p. 2-3 under the heading Purchase Price) Defendant admits she has not made the final payment. (Temple dep. p. 101:1-11)

III. Summary Judgment Standard

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *see also Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C.

296, 301, 501 S.E.2d 746, 749 (Ct.App.1998). Under Rule 56(c), SCRCPP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c), SCRCPP; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct.App.1999). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998); *Regions Bank v. Schmauch*, 354 S.C. 648, 659-60, 582 S.E.2d 432, 438 (Ct. App. 2003)

IV. Argument

a. The Evidence of Record Fails to Establish Sufficient Evidence to Support the Defendant's Claims of Fraud, Rescission, Negligent Misrepresentation, Unconscionability and Unfair Trade Practices.

i. There is No Evidence from Which a Reasonable Jury Can Find Fraud

To survive a motion for summary judgment, [Temple] must offer some evidence that a genuine issue of material fact existed as to each element of fraud and negligent misrepresentation. *See Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct.App.1992) (explaining the plaintiff has the burden to prove each element of the cause of action). To maintain a claim for fraud, a plaintiff must show by clear and convincing evidence:

- (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon

the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008)

Moreover, general allegations of fraud are insufficient and must be pled with particularity. Rule 9 (b), S.C.R.C.P. "Whether the fraud be alleged in the declaration, complaint, or bill, or set up by way of defense in plea, answer, or replication, it is essential that the facts and circumstances which constitute it should be set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what he is called upon to answer." *State v. Jaques*, 65 S. C. 184, 43 S. E. 515; *Gem Chemical Co. v. Youngblood*, 58 S. C. 56, 36 S. E. 437; *Donaldson v. Temple*, 96 S.C. 240, 80 S.E. 437, 438 (1913)

In this case, the only allegations which the Defendant has set forth with any particularity at all are that the Plaintiffs failed to disclose that: a. "the property has dam on it" and b. "A significant portion of the property is a flood zone or is protected wetlands." (Counterclaim at p. 3 of 7) The contractual documents and the sworn testimony above cited all show that this was disclosed prior to the closing in the Contract of Sale, the Bond for Title Agreement, the plat that was furnished prior to the closing. Because Ms. Temple knew the dam was present and saw it prior to closing and received full disclosure in writing that a portion of the property contained wetlands, she is barred as a matter of law from a claim of fraud or a rescission of the contract on the basis of fraud. Our Court of Appeals has noted:

It is largely because the law of fraud requires [a claimant] to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning. *PPG Indus., Inc. v.*

Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 180, 375 S.E.2d 331, 333 (Ct.App.1988).

Regions Bank v. Schmauch, 354 S.C. 648, 673, 582 S.E.2d 432, 445 (Ct. App. 2003)

Because the only allegations of fraud which the Defendant pled with any reasonable degree of particularity pertain to the dam, the pond and the wetlands, which were all disclosed, there is no evidence of fraud. While the Defendant may claim she relied on the disclosure statement, "there can be no reasonable reliance on a misstatement if the [the claimant] knows the truth of the matter." *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 419 S.E.2d 795, 800 (Ct.App. 1992) "Thus, if the undisputed evidence clearly shows that the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact." *McLaughlin v. Williams, supra*, 379 S.C. 458.

While "a buyer has the right in South Carolina to rely on a seller of a home to disclose latent defects or hidden conditions which are not discoverable on a reasonable examination of the property and of which the seller has knowledge," it is equally true that where the conditions are open and obvious, as they were here, there can be no right to rely. *May v. Hopkinson*, 289 S.C. 549, 557, 347 S.E.2d 508, 513 (Ct.App.1986) The Defendant saw the dam, the pond, and was given a plat prior to closing which revealed that a portion of the property was in a flood zone and contained wetlands. *McLaughlin v. Williams*, 379 S.C. 451, 457, 665 S.E.2d 667, 671 (Ct. App. 2008)

ii. There is No Basis for the Defendant's Claim of Rescission

South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement. *Scott v. Mid Carolina Homes, Inc.*, 293 S.C. 191,

359 S.E.2d 291 (1987). *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (1984). A rescission of a contract is allowed when there is evidence of misrepresentation or concealment. *Jumper v. Queen Nab Lumber Company*, 115 S.C. 452, 106 S.E. 473 (1921).

State Farm Mut. Auto. Ins. Co. v. Turner, 303 S.C. 99, 101-02, 399 S.E.2d 22, 23 (Ct. App. 1990)

In this case, the Defendant essentially bases her entire claim to rescission of the contract solely upon the basis of fraud or non-disclosure of material facts. (See Answer and Counterclaim at p. 3 of 7) She testified in response to questioning:

132

11 What do you think -- what are the
12 false representations that you're basing your
13 lawsuit upon right now?

14 MR. SYRETT: Objection. Calls for a
15 legal conclusion. You have our answer in the
16 counterclaim.

17 BY MR. HALL:

18 Q. The reason I ask the question is I want
19 to know what's still at issue in the case. Is the
20 plumbing a problem still?

21 A. The most important problem is the -- the
22 flood plain, the issues with the dam and the land.
23 I mean, I can -- I cannot proceed with my plans that
24 I had when I bought this property because of the
25 lack of information, the lack of disclosure to me.
(emphasis added)

However, her claims of fraud and non-disclosure cannot be supported because these matters, about which she complains, were in fact disclosed. Moreover, Ms. Temple did not allege mistake as a grounds for rescission or breach of contract. Like fraud, claims of mistake must be pled with particularity, including the essential matters as to time and place of the mistake. See Rule 9(c), S.C.R.C.P. (See also, Answer and Counterclaim at ¶ 22 alleging non-disclosure of dam, flood zone and wetlands, and arguments set forth supra in Section 1)

Finally, the Defendant bought a piece of property with a home on it. There is no evidence in the written agreements signed contemporaneously with this transaction that indicate that the

building on the property was a contingency of the Agreement. The Bond for Title Agreement contains a merger clause at pages 9-10. And prior agreements, written or oral, are superseded and replaced. The parol evidence rule prohibits the introduction of extrinsic evidence of agreements or understandings contemporaneous with, or prior to, the execution of a written instrument when the extrinsic evidence is used to contradict, vary, or explain the written instrument. See *Iseman v. Hobbs*, 290 S.C. 482 351 S.E.2d (Ct.App.1986) This is especially true when the written instrument contains a merger or integration clause, as in the present case. See *United States Leasing Corp. v. Janicare, Inc.* 294 S.C. 312, 364 S.E.2d 202 (Ct.App.1998)

If the writing on its face appears to express the whole agreement, parol evidence can not be admitted to add a term thereto. See *Blackwell v. Faucett*, 117 S.C. 60, 108 S.E. 295 (1921). This has been held to be so even though the writing is silent as to the particular terms sought to be established by parol evidence in the case which I have enclosed, 32A C.J.S. *Evidence*, Section 1013(2) at 605-07 (1964).

A contract which contains language that, on inspection, imports a complete legal obligation prohibits the introduction of parol or extrinsic evidence, whatever its form, to add to or vary its terms of the agreement. See *Moss v. Porter Brothers, Inc.*, 292 S.C. 444, 357 S.E.2d 25 (Ct.App.1987).

b. Because the Defendant Had No Right to Rely on the Disclosure Statement, and In Fact Received Full Disclosure Concerning the Dam, Pond, and Wetlands, Her Negligent Misrepresentation Claim Must Fail.

“While the two causes of action differ, both fraud and negligent misrepresentation contain the necessary element that the hearer had the right to rely upon the misrepresentation or fraud” *McLaughlin v. Williams*, 379 S.C. 451, 665 S.E.2d 667 (2008) (internal quotes omitted) The evidence of record establishes only one reasonable conclusion. The Defendant had no right

to rely on the disclosure statement because other written documents clearly show that the Defendant knew that some portion of the property was in the flood zone, she was given the plat prior to the closing, and admits in her deposition that she knew this information before she closed. (Temple dep. p. 124: 16-19)

124

16 My question is, you have admitted
17 that you knew before the closing that some portion
18 of this property was in a flood zone; is that true?
19 A. Yes, sort of.

In a strikingly similar case, cited herein, *McLaughlin, supra*, the plaintiff was seeking to buy a piece of residential real estate. She received a Residential Property Disclosure Statement where several items were left blank, indicating possible problems with the property. She nevertheless had the property inspected, as did the Defendant in this case. A Home Inspection Report, a termite and moisture inspection was performed on the subject property and indicated the presence of wood-destroying fungi and moisture content of 28 % or more below the first main floor. The Court held that that plaintiff's negligent misrepresentation claim for failing to disclose moisture intrusion problems could not stand because the plaintiff knew of this problem prior to closing, and could not rely on the disclosure statement in the face of this evidence. The Court here should do likewise.

i. The Terms of the Bond for Title Contract are Valid and Enforceable

The Defendant raises the equitable defense of unconscionability in her Answer and Counterclaim, and asserts that the Terms of the Bond for Title Agreement are unenforceable. The question of whether or not a contract by its terms is unenforceable on the grounds of unconscionability is a matter for law for the Court to determine. *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E. 2d 898 (1998); S.C. Code § 36-2-302. As such, the Plaintiff

respectfully submits that this question on these facts is appropriate for determination on summary judgment. The Defendant does not specify the reasons she contends the contract is unenforceable, but does cite in her discovery responses the case of *Lewis v. Premium Investment Corporation*, 351 S.C. 167 568 S.E. 2d 361 (2002), which held under the facts of that case that a provision in installment sale contract for real property was unenforceable on the grounds that it constituted a “forfeiture” and did not allow for an opportunity for the purchaser to redeem the property as a matter of equity. However, a forfeiture or liquidated damages clause in a contract is not *per se* unenforceable and is a fact specific determination for the Court. The South Carolina Supreme Court has held that:

[a] provision in an installment land contract declaring forfeiture in the event of purchaser default can, *in particular circumstances*, constitute a penalty. In those circumstances, as in other contractual instances where a stipulated sum amounts to a penalty, we conclude it would be inequitable to enforce the forfeiture provision without first allowing the purchaser an opportunity to redeem the installment contract by paying the entire purchase price.

Lewis v. Premium Inv. Corp., 351 S.C. 167, 172, 568 S.E.2d 361, 364 (2002)

The Court in *Lewis*, however, did not hold that forfeiture clauses or liquidated damages provisions are always unenforceable or unconscionable. The Court observed:

Parties to a contract may stipulate as to the amount of liquidated damages owed in the event of nonperformance. *Tate v. Le Master*, 231 S.C. 429, 99 S.E.2d 39 (1957). Where, however, the sum stipulated is plainly disproportionate to any probable damage resulting from breach of contract, the stipulation is an unenforceable penalty. *Kirkland Distributing Co. of Columbia, S.C. v. United States*, 276 F.2d 138 (4th Cir.1960).

In this case, the stipulated liquidated damages provision, under the facts of this case, should be enforced and found not to be unconscionable for these reasons. First, the Defendant has not made the final installment payment due under the contract in the approximate amount of \$72,000 dollars and has lived essentially rent free for the past 22 months, when one considers the monthly payment she agreed to make in the amount of \$1000.00 dollars. As such the amount the

Defendant would pay as liquidated damages is the amount of her down payment or roughly 16% of the purchase price. Secondly, if this was a mortgage foreclosure, a home owner would most certainly lose their down payment and be barred from the equity of redemption for failing to pay their mortgage payment for 22 months.

The Court here should contrast the facts of this case with facts in *Lewis*, as well as *Cody Discount, Inc. v. Merritt*, where the purchasers had accumulated substantial equity and made payments over a great period of time. 368 S.C. 579, 629 S.E. 2d 697, (Ct. App. 2006) In *Cody Discount*, the purchaser had “almost paid the entire original balance on the contract.” In *Lewis* the Court noted: “At the time of default (August 1988), Purchaser had made 141 of the approximately 182 monthly payments and owed \$2,440.14. The balance as of August 31, 1998, was \$7,726.33.”

In *Cody Discount* the Court indicates that a number of factors should be considered, which the Plaintiffs would urge the Court to look at here: “amount of equity the purchaser has accumulated, the length and number of defaults (in this case nearly 22 months), the amount of the forfeiture, and the speed with which equity is sought.” Moreover, the Plaintiffs do not seek here to deprive the Defendant of the equity of redemption, but to terminate it if she does not pay the balance of the purchase price, together with attorney fees and costs. When these factors are considered, enforcement of the liquidated damages clause on these facts is certainly not unconscionable.

The S.C. Supreme Court has defined unconscionability as follows:

Unconscionability is characterized by the “absence of meaningful choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Fanning v. Fritz's Pontiac-Cadillac-Buick Inc.*, 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996) (emphasis added) (citing

Jones Leasing v. Gene Phillips and Assocs., 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984)).

Lackey v. Green Tree Fin. Corp., 330 S.C. 388, 395, 498 S.E.2d 898, 902 (Ct. App. 1998)

In this case, Ms. Temple could not afford or qualify for a traditional mortgage and made a conscious choice to enter into an Installment Sale Contract to purchase this property. She is an educated woman with a master's level and undergraduate degree. She received the Bond for Title Agreement to review by email on March 30th from her real estate agent (Ex. 1) 10 days prior to the closing. As the Court has noted in the *Lewis* case:

Real property is often sold under contracts that provide for the payment of the purchase price in a series of installments. These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid ... Also typically, the purchaser is entitled to immediate possession ... Installment contracts almost always contain forfeiture clauses.

The Bond for Title Agreement in this case, on these facts, is neither unfair, unenforceable nor unconscionable and the Court should so hold on summary judgment. To hold otherwise would call into serious question when and under what circumstances a seller could enforce a Bond for Title Agreement or installment and sale contract.

ii. There Is No Evidence that Supports a Claim to a Violation of the Unfair Trade Practices Act.

The Defendant was asked in interrogatories to "Identify and describe in detail the specific facts which you contend constitute an unfair trade practice." In response, the Defendant answered:

Since the Plaintiffs are in the business of buying and selling real estate, they are subject to the South Carolina Unfair Trade Practices Act. The Act prohibits any deception or fraudulent acts in the practice of one's trade or profession which affects the public interest or is capable of repetition. The Plaintiffs have a history of "flipping property."

Defendant's Response to Interrogatory No. 12, Exhibit 4.

The response provided by the Defendant does nothing more than set forth legal conclusions and does not describe at all how the Plaintiff's allegedly violated the S.C. Unfair Trade Practices Act in this case. Since the only reasonable inference to be drawn from the evidence presented is that the Plaintiffs fully disclosed all material facts concerning the dam, the pond, and the existence of wetlands and the property's partial location in a flood zone, there is absolutely no evidence of deception here. Her pleadings allege nothing at all regarding the "flipping of property" and do not set out any facts whatsoever that would substantiate this undefined term here. To the extent this is what the Defendant is referring to, illegal property flipping has been defined by the South Carolina Supreme Court thusly:

An illegal property flip generally requires the conspiracy of at least one of the buyers, an appraiser, and a mortgage broker or loan officer. It also requires the assistance of an attorney who is aware of the fraud, chooses to look the other way, or who fails to supervise non-lawyer assistants engaging in the unauthorized practice of law. In order for the flip to work, the same attorney has to close both transactions. If an attorney conducts a closing on property for a certain sales price and funds that closing with proceeds from the immediate resale of the same property for a significantly higher amount, the attorney has constructive notice that the second sale might be based on a fraudulently inflated appraisal of the property. This is particularly true when the buyer leaves the closing with both the property and with money from the loan.

In re Lattimore, 361 S.C. 126, 131-32, 604 S.E.2d 369, 372 (2004)

It is doubtful that the Defendant intended to implicate herself in this purchase and has certainly not alleged this in her pleadings. While the South Carolina Rules of Civil Procedure do not require elaborate factual pleading, they do require far more than what the Defendant has said here, which is nothing. (Rule 8 (a) (2), SCRCP, requires "a short and plain statement of the facts showing that the pleader is entitled to relief..." The Defendant's counterclaims allege *no facts* which would constitute illegal property flipping.

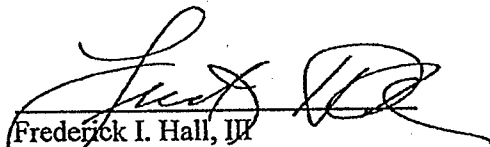
Finally, the South Carolina courts have held that "an act is unfair when it is offensive to public policy or when it is immoral, unethical, or oppressive." *Harris v. NCNB*, 85 N.C. App. 669, 355 S.E.2d 838 (1987) (cited in *Young v. Century Lincoln-Mercury, Inc.* 302 S.C. 320, 396 S.E.2d 105 (Ct. App. 1989), reversed on other grounds, 309 S.C. 263, 422 S.E.2d 103(1992).

Other than her allegations of failing to allegedly disclose the existence of the dam, wetlands and flood zone, which have been clearly shown to be not true, she has set forth no other conduct which can be described as illegal, unethical, immoral or against public policy. For these reasons, her UTPA claims must fail and the Court should grant Plaintiffs' Motion for Summary Judgment.

V. CONCLUSION

For the reasons set forth herein, and because the Defendant knew of the matters pertaining to the property as they were fully disclosed to her, the Defendant has no basis in law or in fact for any of the claims asserted, and therefore the Court should grant summary judgment in favor of the Plaintiffs on both their causes of action for breach of the Bond for Title Agreement and in favor of the Plaintiffs on all of the Defendant's alleged defenses and counterclaims.

By:

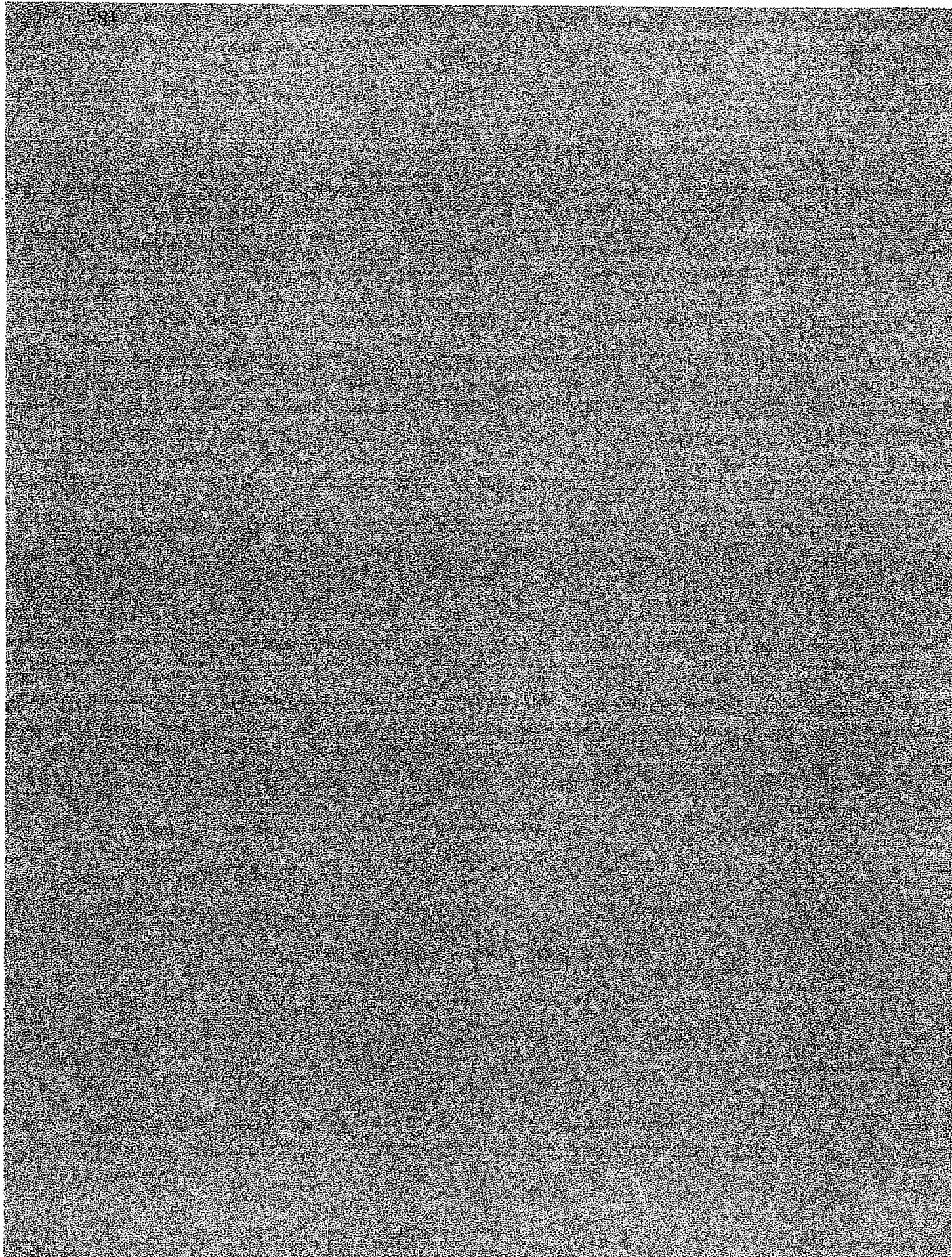


Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Rd.
Lexington, SC 29072
Tel: (803) 957-5333
Fax: (803) 957-7717

rick@sctrilattorneys.com

Attorney for the plaintiffs Charles E. Strickland,
Laticia D. Strickland, and Justin R. Dillon

FILED
JAN 18 2 44 32
LEXINGTON, SOUTH CAROLINA
January 18, 2013



Gary A. Pickren
Harvey, Casterline & Vallini, L.L.P.
Post Office Box 8382
Columbia, SC 29202
Our File No. 09-40791

WHEREAS, the Purchaser desires to purchase and Seller desires to sell the property described herein; and

WHEREAS, the Seller is willing to convey possession of the premises and retain title for the convenience of the Purchaser, and whereas the Purchaser understands the risks associated in this type of transaction;

Agreement entered into this 6th day of April 2009, by and between the undersigned **Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon** hereinafter referred to collectively as "SELLER"; and **Marjorie E. Temple**, hereinafter referred to as "PURCHASER", for purchase of the property described and referred to below, hereinafter referred to as "PROPERTY".

Legal Description

This being the same property conveyed to Justin R. Dillon and Latisha D. Strickland by deed of the Secretary of Housing and Urban Development, of Washington, D.C., a/k/a United States Department of Housing and Urban Development, an Agency of the United States of America, dated October 18, 2006, and recorded October 24, 2006, in the office of the Register of Deeds for Lexington County in Record Book 11483 at page 41; subsequently, Justin R. Dillon and Latisha D. Strickland conveyed their interest

✓ WDS JD 
185

to Justin R. Dillon, Latisha D. Strickland and Charles E. Strickland, III, by deed dated April 20, 2007, and recorded April 24, 2007, in Record Book 11939 at page 300.

TMS: 007523-01-016 and 018

The terms governing the said Agreement shall be as follows: That it is made subject to: (1) Zoning and building laws or ordinances, and (2) Restrictions or easements of record. The six parcels are hereinafter collectively referred to as "the property".

"As Is" Condition

Purchaser expressly accepts the property and improvements thereon in "AS IS" condition and Seller expressly excludes all warranties as to the premises excepting the limited warranty of title which is set forth herein. The Purchaser acknowledges that she will be solely responsible for maintaining and repairing the improvements as needed and will not look to the Seller for any contribution.

The Purchaser may from time to time, at her sole discretion, make improvements to or add fixtures to the property and the house thereon. Any improvements or maintenance made to the property or house by the Purchaser will be made for the Purchaser's benefit and not the benefit of the Seller. The Purchaser will not receive any credit or discount toward the purchase price or monthly installment payments due hereunder for the costs of the improvement even if the improvement increases the value of the Seller's property or is done with the Seller's consent. In the event of the Purchaser's default, the improvements shall remain with the property and the Seller will not be required to pay for the reasonable value of same, credit or offset Purchaser's debt, or reimburse the Purchaser in any manner. Any improvement to the property other than cosmetic changes must be approved by the Sellers in writing prior to the undertaken of such improvements.

Purchase Price

That Purchaser shall pay over to the Seller the sum of Eighty-Five and no/100 (\$85,000.00) Dollars as follows:

The Purchaser shall pay to Seller the sum of Thirteen Thousand and no/100 (\$13,000.00) Dollars at closing. The balance of Seventy-Two Thousand and 00/100 (\$72,000.00) Dollars shall be paid in monthly installment payments. The payments will begin on May 1, 2009. The monthly payment will be One Thousand and no/100 (\$1,000.00) Dollars. Each

month an additional payment in the above-referenced amount shall be made on the first day of each calendar month. The Purchaser shall receive \$50.00 credit toward the outstanding balance of this contract with each monthly installment payment made. If the monthly payments are not paid by the fifteenth day of each month, a five (5%) percent late fee shall be assessed.

The Purchaser shall also be responsible for the payment of any and all regime fees, a prorated share of all *ad valorem* taxes, assessments, and insurance against all hazards on the property which shall be inclusive of the \$1,000.00 monthly payment. Such payments shall be made as due or upon demand of the Seller and failure to make said payment within ten (10) days of demand shall constitute a default as described hereunder. After a default, the Seller may demand that the regime fee, *ad valorem* tax and hazard insurance be paid on a monthly basis by Purchaser by Purchaser paying 1/12 of the amount due. In the case where the actual bill has not been issued, the payments will be based on the previous year's bill.

On or before April 1, 2011, the Purchaser will pay the remaining balance of the contract due hereunder as stated in this agreement. Failure to make the payment on or before April 1, 2011 will constitute default and the Purchaser will forfeit all monies paid to date as liquidated damages and agree to vacate the premises without any notice from the Seller. No other extensions of the deadline will be allowed without the express written approval of the Seller.

Regime Fees, Insurance and Property Taxes

Purchaser covenants and agrees: (a) to pay, before delinquency or penalty, all taxes when due, and all special taxes or assessments hereafter levied, and special assessments, water and sewage charges, levies, liens, encumbrances and other costs on charges affecting the property and when requested by Seller, to deliver receipts or certificates, in form satisfactory to Seller, evidencing such payments; and (b) to maintain hazard insurance of such type or types and amounts as the Seller may from time to time notify Purchaser to obtain on the improvements now or hereafter on said premises, and to pay promptly when due any premiums therefore. All insurance shall be carried in companies approved by Seller. Insurance premiums which maintain coverage in an adequate amount and property taxes shall be paid by the Purchaser. The Seller shall be named on the fire and casualty insurance policy as insured with the Seller's rights limited to any amounts owed to

him under this contract. PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER SHALL NOT MAINTAIN INSURANCE COVERAGE ON PURCHASER'S CONTENTS, AND THAT SELLER RECOMMENDS THAT PURCHASER SEEK PROFESSIONAL INSURANCE ADVICE ON INSURANCE COVERAGES, INCLUDING "ADDITIONAL LIVING EXPENSES" IN THE EVENT THAT STRUCTURE MAY BE UNINHABITABLE FOR A PERIOD IN THE FUTURE.

Sales Commission

Seller warrants that a real estate commission of two percent (2%) is due and payable on this transaction at the completion of the term set forth herein provide the Purchaser completes the purchase obligation. The seller shall pay ERA Wilder Realty one percent (1%) of the two percent (2%) commission at the signing of this document.

Failure to Perform (Purchaser)

In the event the Purchaser fails, neglects, or refuses to perform, in whole or in part, any of the covenants, agreements or obligations herein provided upon the part of Purchaser to be performed, Seller is hereby authorized and empowered at its option, upon reasonable notice to cause to be performed, any or all of said covenants, agreements and obligations, and expend such sum of money as may be reasonable therefore, or for any other purpose which in the opinion of Seller is reasonably necessary for the protection of Seller. Seller is authorized to charge Purchaser for any such amounts.

All such sums of money so expended by Seller, together with interest thereon, at the rate of Ten (10%) percent, from the several dates of expenditure thereof until paid, shall become so much additional indebtedness under this Agreement and shall be repaid by Purchaser to Seller, in lawful money of the United States of America, immediately upon demand, at the address of Seller as determined in accordance with the terms of this Agreement. Any failure, neglect, or refusal by Purchaser to repay such sums as herein provided shall constitute default under this contract. Any payment made under the terms of this Agreement may, at the election of Seller, be applied first to the repayment of any sums Seller shall have expended in accordance with the terms hereof. Purchaser agrees to pay all of Seller's reasonable attorneys' fees and court costs incurred by the Seller in her enforcement of the contract.

LA LPS JD 
189

In the event that the Purchaser fails to make payments on a timely basis as set forth herein or fail to perform obligations set forth under this contract, the Purchaser waives right to any notice as the law shall allow.

Failure to Perform (Seller)

That in the event Seller fails, neglects, or refuses to perform, in whole or in part, any of the covenants, agreements or obligations herein provided upon the part of the Seller to be performed, Purchaser is hereby authorized and empowered, at his option, with reasonable notice and at the cost of Seller, to perform or cause to be performed, any or all of said covenants, agreement and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which in the opinion of Purchaser is reasonably necessary for the protection of Purchaser. All such sums of money so expended by Purchaser, from the several dates of expenditure thereof until paid, shall become indebtedness under this Agreement and shall be repaid by Seller to Purchaser, in lawful money of the United States of America, immediately upon demand, at the address of Purchaser as determined in accordance with the terms of this Agreement. Any failure, neglect, or refusal by Seller to repay such sums as herein provided shall constitute default hereunder. Purchaser may deduct from any payments due Seller under the terms hereof any sums due from Seller to Purchaser as a result of Seller's breach of any of the terms and/or conditions of this Agreement.

Waste

Purchaser covenants not to commit, permit, or suffer any waste to the property, to keep the property in good repair and not suffer any mechanic's or materialmen's liens to attach thereto. Purchaser further covenants and agrees to comply with all laws and ordinances which may in any manner affect the property.

Time of the Essence

Time is of the essence of this Agreement and if default be made and continue for a period of Thirty (30) days in the payment of any of the installments of principal, interest or any other items herein stipulated, when the same becomes severally due hereunder, or in the payment of any other sums herein agreed to be paid by the Purchaser, or if default be

made in the performance by Purchaser of any other agreement, covenant, or obligation of Purchaser hereunder, then in either, or any of said events, the whole unpaid balance due under the terms of this Agreement shall, at the option of Seller, immediately become due and payable and Seller's may at his option, terminate all of Purchaser's rights under this Agreement and all of Purchaser's obligations hereunder in any appropriate proceedings, legal or equitable. Purchaser agrees to pay all costs and expenses, including a reasonable sum for attorney's fees incurred by Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all of the terms of this Agreement, and in appropriate judicial proceedings, if any are initiated to establish or maintain Seller's right or title to, and possession of said property after breach by Purchaser. Purchaser further covenants and agrees that in the event of default all monies paid to the Seller through the date of default will be considered liquidated damages and is not refundable in part or in whole.

Conveyance of Title

That upon full payment of the purchase price in accordance with the provisions of this Purchase Agreement, if Purchaser shall have complied with all other terms and provisions of this Agreement and upon written request of the Purchaser, the Seller shall execute and deliver a General Warranty Deed, with stamps affixed, conveying to Purchaser fee simple title to the previously described property. Said General Warranty Deed shall be issued in the name of Marjorie E. Temple or other name as she directs.

Seller's title is satisfactory to Purchaser as of the date hereof, provided, however, that Seller's existing mortgages or other liens shall be paid off or if assumed, given as a credit to Purchaser upon delivery of a deed as provided herein. Purchaser reserves the right to prepay the purchase price at any time without penalty and Seller agrees to apply such portion of the prepayment to existing mortgage notes owed by the Seller so that the balance due to the Seller on the Purchaser's obligation shall be less than the balance due on the obligations owed by the Seller.

Attorney's Fees

That Purchaser shall pay Purchaser's attorney's fees, all recording, transaction, transfer, conveyance, and other taxes assessed pursuant to the terms of this Agreement. Seller shall pay closing costs consisting of Deed documentary stamps, deed preparation, and any Seller's attorney fees.

Notices

That any notices from one party hereto to the other party shall be in writing and delivered in person or forwarded by certified mail. Notices to Purchaser shall be addressed to her at 1730 Nazareth Road, Lexington, South Carolina 29073, unless she shall has previously furnished to Seller written notice of a different address, in which event notice shall be sent to the latest address as furnished Seller. Notices to the Seller shall be addressed to the Seller at 148 Royal Creek, Lexington, South Carolina 29072, or such other address as may be designated from time to time by Seller in writing.

Waiver

That failure or delay of the Seller or Purchaser to enforce any right or to exercise any option hereunder available because of any default shall not operate as a waiver of the right of the Seller or Purchaser to thereafter enforce such right or to exercise such option or any other right or option, for the same or for any subsequent default.

Tax Considerations

That in the event of a disallowance by the Internal Revenue Service and/or the South Carolina Tax Commission, which prevents both parties from the benefit of a deduction for interest or depreciation or capital gain on the Property, then in that event it is hereby agreed by and between the parties hereto that those deductions disallowed both parties resulting from transactions occurring after the date hereof shall accrue to the benefit of the Purchaser.

Status of Seller

It is agreed by the parties hereto, that in the event of a default by Purchaser which default results in the Seller seeking to divest the Purchaser of his interest under the terms of the Purchase Agreement, the Seller's interest in the Property shall be treated as the interest of a landlord and the Purchaser shall be treated as a tenant.

Condemnation

Should any party that possesses the power of eminent domain give notice to Seller of its intent to take all or any portion of the Property, Seller shall immediately give notice thereof to Purchaser. Seller hereby assigns to Purchaser, in the event of a taking of all or substantially all of the property, all amount by in excess of the amount that Seller would have received upon the conveyance of the Property by deed as set forth in this Agreement. In the event of a partial taking, Purchaser and Seller agree that the respective amounts due each party shall be determined by the Court determining the award. In any event, it is agreed that neither party shall agree to any amount of compensation offered as settlement without the consent of the other party.

It is not the intent of the parties that the Seller be required to refinance any indebtedness of the first mortgage in the event this agreement is paid in full by the Purchaser.

Assignment

This contract is not assignable by Purchaser without the express written consent of the Seller. Seller may assign this contract subject only to written notice to Purchaser. SELLER MAY, AT SELLER'S SOLE OPTION, ALLOW THIS CONTRACT TO BE ASSIGNED TO A NEW PURCHASER UPON: (1) MINIMUM THIRTY DAY NOTICE TO SELLER AND (2) PAYMENT TO SELLER OF TRANSFER FEE EQUAL TO 1.5% OF OUTSTANDING PRINCIPAL BALANCE AT THE TIME OF TRANSFER.

LS LOS JD 

Law Governing

This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. Venue on any action hereunder is agreed to be proper only in Lexington County.

Presumption

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Computation of Time

In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday or a legal holiday.

Titles and Captions

All article, sections, and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Pronouns and Plurals

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

Entire Agreement

This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

Prior Agreements

This document is the entire, final and complete agreement of the parties pertaining to the option to purchase of the Property, and supersedes and replaces all prior or existing written and oral agreements (including any earnest money agreement) between the parties or their representatives relating to the Property.

Agreement Binding

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

Good Faith, Cooperation and Due Diligence

The parties hereto covenant, warrant, and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

Parties in Interest

Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

CA LDS JD 

Legal Representation.

The Purchaser acknowledges that the attorney represents the Seller in this transaction and the attorney has provided no legal advice to the Purchaser. Purchaser warrants that she has had the opportunity to have her attorney examine this Contract and that she has received no legal representation or advice on this Contract from the Seller or his agents or attorney. Purchaser acknowledges that a title search or abstract has been performed by Harvey, Casterline & Vallini, LLP. The attorneys, however, are making no representation of ownership, marketability, or the validity of existing liens on the property as set out herein. The attorneys have prepared this agreement at the instructions and request of the Seller. Purchaser and Seller understand the risk of closing this transaction.

Existing Liens.

A title search was performed at the Lexington County Register of Deeds Office. The search period was from March 9, 1969 to March 9, 2009. The title abstract reveals the following matters of record which would be listed as requirements to satisfy in order to receive title insurance and the following matters that would be excepted on a title insurance policy that would be issued by this law firm. (i.e., no title insurance coverage would be offered on the listed exceptions). THIS IS NOT TO BE CONSTRUED AS A TITLE INSURANCE POLICY OR A PROMISE TO ISSUE TITLE INSURANCE. THIS IS MERELY A REPORT ON TITLE AND WHAT WOULD BE REQUIRED TO PURCHASE TITLE INSURANCE:

1. Mortgage from Charles D. Strickland, III, Justin R. Dillon and Latisha D. Strickland to 1st Choice Mortgage/Equity Corp. of Lexington as recorded in said ROD's Office on June 26, 2008, in Mortgage Book 12993 at page 36 securing an indebtedness of \$63,800.00, and any other amounts payable under the terms thereof, together with any assignments thereof.
2. Payment of taxes for the year 2008 (on both TMS numbers), plus all costs, penalties and interest.
3. Matters as shown on a plat prepared for Lawrence D. Wright and Sharon B. Wright by D.B. Sproles & Associates, Inc., DATED March 30, 1990:
 - a) Minimum building setbacks of 5 ft. on the southeastern and southwestern sides of lot; 10 ft. on the northeastern side of lot, and 15 ft. increasing to 40 ft. along the pond on the northwestern side of lot.

5. The number of acres contained in the legal description is neither guaranteed nor insured.
6. Subject to the rights of others in and to the bed and waters of the pond crossing the premises and the dam as shown on survey prepared by D.B. Sproles & Associates, Inc., FOR Lawrence D. Wright and Sharon B. Wright DATED March 30, 1990.

*******THESE "EXCEPTIONS" ARE FOR USE FOR THE BOND FOR TITLE ONLY AND NOT FOR TITLE COMMITMENT/INSURANCE PURPOSES. THEY ARE INCOMPLETE AS TO THE REQUIREMENTS FOR TITLE INSURANCE**

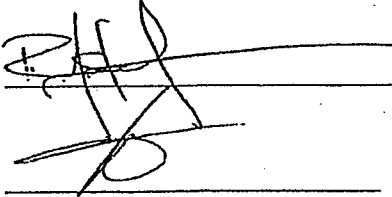
(Remainder of page is intentionally blank)

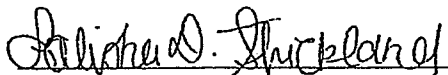
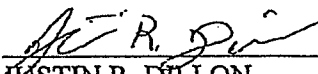
CH 425 JD

THIS AGREEMENT ENTERED INTO THIS 6th DAY OF April 2009, shall inure to the benefit of and be binding upon the parties hereto, their heirs, legal representatives and assigns.

WITNESSES:

AS TO SELLER



 4-6-09
CHARLES E. STRICKLAND, III,

LATISHA D. STRICKLAND

JUSTIN R. DILLON

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF RICHLAND)

Personally appeared before me the undersigned and made oath that s/he saw the within named seller, Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon, sign, seal and as their act and deed, deliver the within written Conditional Sales Agreement, and that s/he with the other witness, witnessed the execution thereof.

SWORN TO and subscribed before me
This 6th day of April 2009.



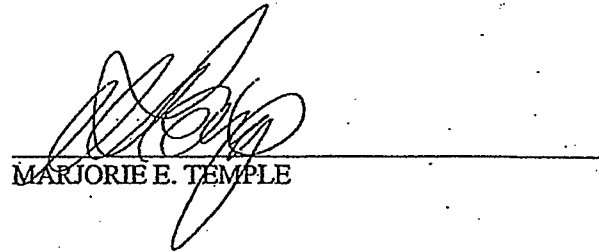
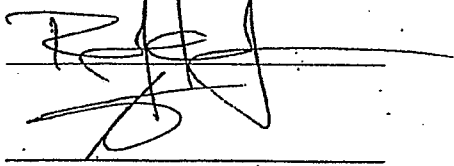

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11/7/16

THIS AGREEMENT ENTERED INTO THIS 6th DAY OF APRIL 2009, shall inure to the benefit of and be binding upon the parties hereto, their heirs, legal representatives and assigns.

WITNESSES:

AS TO PURCHASERS:


MARJORIE E. TEMPLE

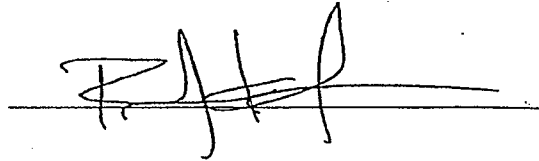
STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF RICHLAND

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Marjorie E. Temple, Purchaser, sign, seal and as her act and deed, deliver the within-written Conditional Sales Agreement, and that s/he with the other witness, witnessed the execution thereof.

SWORN TO and subscribed before me
this 6th day of April, 2009.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 11/1/16



CONTRACT OF SALE
RESIDENTIAL

Revised 09/08



[BUYER & SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.]

1. PARTIES: This Contract of Sale is entered into on February 23rd, 2009 between
Buyer(s) Margaret E. Temple (hereinafter called "Buyer"), and
Seller(s) Charles Strickland (hereinafter called "Seller").

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot 16 Block _____ Phase _____ Subdivision Partridge Hill
Address 1730 Nazareth Rd Unit # _____ City Luxington Zip 29145
TMS# 007523 010164016 County of Luxington State of South Carolina.

3. PRICE: The purchase price is \$ 89,000.

4. EARNEST MONEY:

A. \$ 1000 Earnest money is paid by Check (☒) Cash (☐) Other (☐)

B. \$ _____ Additional earnest money to be delivered on or before _____

C. Earnest money to be held in trust by ERA Wilder Realty, Inc. (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pro-rated to the day of closing and the real estate brokerage fee.
Buyer's and Seller's Transaction Costs will be paid as follows: (Select, initial and date only one of the options below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

D. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Seller will pay Buyer's Transaction Costs not to exceed \$ _____ which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

Form 100
02/08
1 of 8

BUYER

Initials

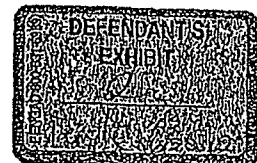
Date

SELLER

Initials

Date

Exhibit 2



6. FINANCING: Buyer's obligation under this Contract is (☒) is not () contingent on Buyer obtaining financing. All financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract. See Paragraph 21.

A. FINANCING TYPE. Financing type will be: Lender-provided Conventional () ; FHA () ; VA () ; Seller-provided () ; Cash (no financing required) () ; Other Owner Financing

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA-required termite (CI-100) inspection.

B. APPLICATION FOR FINANCING. If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Broker. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

3. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. APPRAISAL CONTINGENCY. This Contract is (☒) is not () contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have 24 hours after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If the Parties are unable to reach agreement within the prescribed time frame then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. SELLER'S MORTGAGE PAYOFF: (Seller/Date: / /) Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. CONVEYANCE DATE OF CLOSING/POSSESSION: (Buyer and Seller to initial and date Paragraph 7A) Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Marjorie E Temple or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before April 21, 2009, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. (Buyer/Date: / /) Seller/Date: / /) Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing () 24 hours after closing () 48 hours after closing () or in accordance with attached agreement ().

BUYER / / Date

SELLER / / Date

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" will mean a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD: (If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). [Note: If Buyer utilizes VA financing Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection.] Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property, then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

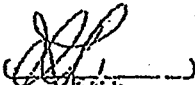
C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

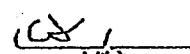
2. If Buyer, in his sole discretion, determines the results of any inspections, examinations or tests conducted to be unsatisfactory, Buyer may terminate this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from Seller's receipt of the Addendum to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

BUYER


Initials
Date 2/23/09

SELLER


Initials
Date 2-27-09

a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;

b. Buyer will have 24 hours after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;

c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released in Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD
All Parties agree that Property is being sold "As-Is" with all defects including but not limited to lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have the same ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Based on inspection results, Buyer may proceed under the terms of this Contract or void this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD
All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives the right to both request repairs and replacements and to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: After any inspections by Buyer and after any repairs or replacements made as a result of any such inspections, Seller agrees to maintain the Property (including lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

13. LEAD-BASED PAINT: Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

BUYER

Initials

2/23/09
Date

SELLER

Initials

2-27-09
Date

14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty will () will not ☒ be provided at closing. If applicable, the warranty premium will be paid by Buyer () Seller () in an amount not to exceed \$_____, provided by _____ (home warranty company) and written by the Buyer's Broker () Seller's Broker (). If the price of the warranty at closing exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing. Brokers may receive a fee for issuance of a home warranty.

15. PROPERTY DOCUMENTATION: (Initial and date after reviewing information in Paragraphs 15 A-D)
(Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and that Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:
Connected to public/community sewer system () septic tank ☒
Connected to public/community water system () well system ☒ Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is ☒ is not () partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is () is not ☒ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/region or otherwise. The special assessment fee is \$_____.

D. Seller represents that the Property is () is not ☒ subject to a mandatory association fee (i.e., homeowner's association/region or otherwise). If the Property is subject to a mandatory association fee, the fee is \$_____ per _____ and is payable to _____.

16. ADDITIONAL CONTINGENCIES: (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. SALE AND CLOSING CONTINGENCY

(Buyer/Date Initials / Date) (Seller/Date Initials / Date) This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____ Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept another offer to purchase as a Primary Contract, with this contingency Contract becoming a Back-up Contract upon agreement of both Parties to the Back-up contract. If agreement cannot be reached, this Contract will become null and void and earnest money will be released to Buyer. See Paragraph 4(D).

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will automatically become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for the Seller's closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

BUYER

Initials 2/23/09
Date

SELLER

Initials 2-27-09
Date

B. CLOSING CONTINGENCY

(Buyer/Date Initials / Date) (Seller/Date Initials / Date) This Contract is contingent on completion of the closing of the sale of Buyer's Property, the Contract for which has all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and a closing occurring at a date/time prior to the date/time specified for closing the Seller's property. Buyer's Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

(Buyer/Date Initials / Date) (Seller/Date Initials / Date) This Contract is contingent on: _____

17. **FIXTURES AND PERSONAL PROPERTY:** This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. **OTHER TERMS:** If conflicting with pre-printed portions of this Contract, the following terms will control:

Buyer agrees to 15% down Payment of 2090 for 36 months

Seller agrees to finance property up to ²⁴ month

Buyer & Seller do agree to negotiate terms of note & mortgage within 14 days

Seller agrees to close with Buyer's Attorney

19. **ADJUSTMENTS:** Real estate taxes, homeowner association/condo fees, and rents when applicable, will be adjusted as of the date of closing. Tax proration pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied through date of closing and Buyer will pay for those assessments levied after the date of closing.

20. **FIRE OR CASUALTY:** In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely notice of termination, the Parties will proceed according to its terms.

BUYER

Initials

Date

SELLER

Initials

Date

09/03
6 of 8

21. **DEFAULT:** If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. **MEDIATION:** Buyer and Seller agree to mediate any dispute between them arising out of or relating to this Contract, the breach of this Contract, services provided in relation to this Contract, or any resulting transaction, before resorting to arbitration or court action. Disputes will be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of REALTORS®. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.

23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-530 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.

25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at 12:01 o'clock P. M. (Eastern Time) on February 26th, 2009 unless accepted or countered by Seller in written form prior to such time.

26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. **DEFINITIONS:**

A. In this Contract, a single Business Day is defined as a twenty-four (24) hour period, beginning at the time of final acceptance of this Contract, excluding Saturdays, Sundays and Federal legal holidays.

B. Final contract acceptance will occur at the time and date when the Party making the last offer receives written Notice that the offer has been accepted. The Agent representing this Party will fill in the final contract acceptance date and time on the last page of this Contract. If the Party is unrepresented, they will assume responsibility for filling in the required information. All deadlines/timelines set forth in this Contract will begin at time of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

C. In this Contract, closing is defined as the time and date that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

BUYER

Initials

Date

SELLER

Initials

Date

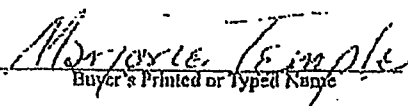
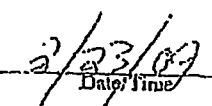
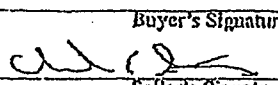
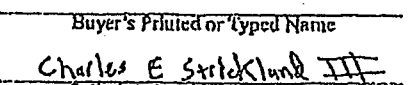
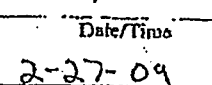
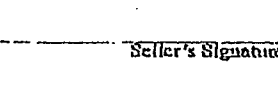
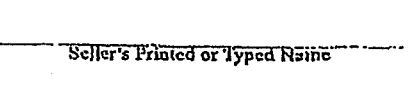
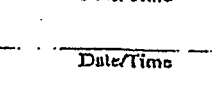
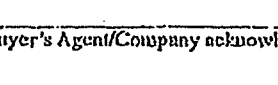
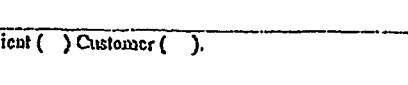
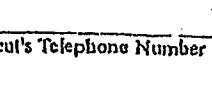
09/08
7 of 8

30. HUD-1 SETTLEMENT STATEMENT RELEASE: Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. MEGAN'S LAW: Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Brokers and all affiliated agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as real estate agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

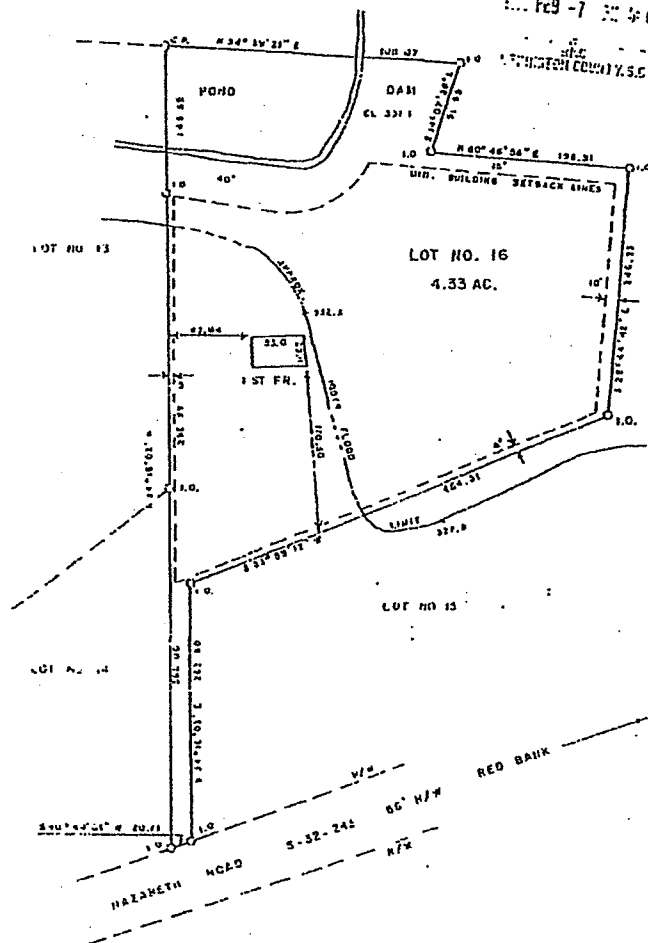
	0.03		
Buyer's Signature		Buyer's Printed or Typed Name	Date/Time
	0.51		
Buyer's Signature		Buyer's Printed or Typed Name	Date/Time
	0.51		
Seller's Signature		Seller's Printed or Typed Name	Date/Time
	0.51		
Seller's Signature		Seller's Printed or Typed Name	Date/Time

Buyer's Agent/Company acknowledges Buyer is a Client () Customer (). Agent's Telephone Number

Seller's Agent/Company acknowledges Seller is a Client () Customer (). Agent's Telephone Number

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT	O'CLOCK	M (ET) ON	DATE
ACCEPTANCE ENTERED BY	AGENT		

Copyright© 2008 by the Central Carolina REALTORS® Association. This is a Standard Form of the Central Carolina REALTORS® Association. This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice. This form may not be edited, revised or changed without the prior written consent of the Central Carolina Realtors Association and changes must be both bolded and italicized.



LEXINGTON COUNTY
PLANNING COMMISSION
FEB 07 1990
Barbara White

PLAT OF

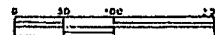
LOT NO. 16 OF THE PARKTRIDGE HILL SUBDIVISION PHASE I LOCATED 2.8 MILES WEST OF RED BANK, AS SHOWN ON THE SUBDIVISION PLAT THAT IS RECORDED IN THE LEXINGTON COUNTY, SOUTH CAROLINA, OFFICE OF DEEDS CONVEYANCES IN PLAT BOOK 233 PAGE 7.

PLAT PREPARED FOR

LAWRENCE D. & SHARON B. WRIGHT

SCALE: 1" = 100'

JANUARY 30, 1990



I HEREBY CERTIFY THAT THE MEASUREMENTS AS SHOWN ON THE ABOVE PLAT ARE CORRECT AND THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THE AREA WAS COMPUTED BY THE COORDINATE METHOD AND THE RATIO OF PRECISION IS 1" /

I HEREBY CERTIFY THAT I HAVE CONSULTED THE FEDERAL FLOOD HAZARD MAPS AND FIND THE SUBJECT PROPERTY TO BE IN ZONE "C" PANEL NO. 100 2c. FLOOD LIMIT AS SHOWN DATED: ON SUBDIVISION MAP

Ronald B. Spawles
RONALD B. SPAWLES, RLS. NO 11320

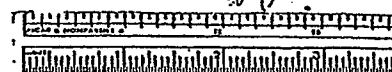
D.B. SPOILES & ASSOCIATES, INC.
618 SHADOW BROOK DR.
COLUMBIA, SC. 29210
TELE: 803-798-2032

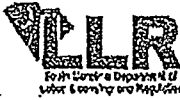
Page 152-A

7523-01-016

03947
Plot Bk 235

Page 152-A





STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: CS Seller _____ Date 9-08 Buyer [Signature] Date 2/17/09

Rev. 1/04

Page 1 of 4 Form 230

Phone:

Fax:

Produced with ZipForm™ by REI

Exhibit 3

101 40035 www.zipform.com

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No Representation	No
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure _____	☐	☒	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering _____	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ /cooling unit ___	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county ___ community system ___ private well ___ b. water pipes are: copper ___ galvanized ___ PVC/CPVC ___ polybutylene ___	☐	☒	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ___ c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☒	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___ exhaust fan ___ ceiling fan ___ sump pump ___ irrigation system ___ cable tv wiring or satellite dish ___ security system ___ or other systems ___	☐	☒	☐

Initials: LS Seller _____ Date 9-06 Buyer [Signature] Date 2/17/09
Rev. 1/04

Page 2 of 4 Form 230

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No Representation	No
13. Room additions or other structural changes?	☐	☒	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☐	☒	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☒	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

Owner has never lived in property

Initials: CO Seller _____ Date 9-06 Buyer OFF Date 2/17/09

Rev. 1/04

Page 3 of 4 Form 230

Produced with ZipFormSM by RE FormsNet, LLC 18025 Finest Mile Road, Clinton Township, Michigan 48035

www.zipform.com

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 1730 Nazareth Rd Lexington SC 29073

The property is currently: owner-occupied _____ leased ☒ In an estate _____ in foreclosure _____
vacant _____ (If vacant, how long?) _____

Owner's Name(s): Charles Strickland

Owner(s) acknowledge having examined this statement before signing and that all information is true and
correct as of the date signed.

Owner Signature: [Signature] Date: 9-17-88

Owner Signature: _____ Date: _____

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature:  Date: 2/17/09

Purchaser Signature: _____ Date: _____

MAY 24 2012

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant.)

DEFENDANT'S
RESPONSES TO INTERROGATORIES

2011-CP-32-1781

Marjorie E. Temple,)
Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third Party Defendants.)

1. Give the names and addresses of persons known to the parties or counsels to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response:

Marjorie Temple
1730 Nazareth Road
Lexington, SC 29073

Mike Gentry
1730 Nazareth Road
Lexington, SC 29073

Page 1 of 6

Exhibit 4



Rex Casterline
Rogers, Townsend and Thomas, PC
P.O. Box 100200
Columbia, SC 29202

Gary Pickren
Rogers, Townsend and Thomas, PC
P.O. Box 100200
Columbia, SC 29202

Charles E. Strickland, III
148 Royal Creek
Lexington, SC 29072

Latisha Strickland
148 Royal Creek
Lexington, SC 29072

Justin R. Dillon
148 Royal Creek
Lexington, SC 29072

Russell Koivu
TurnKey Realty
1921 Lake Murray Blvd.
Columbia SC 29212

2. Set forth a list of prepared documents that relate to the claim or defense of this case.

Response: Installment Land Contract, flood maps

Installment Land Contract

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Response:
None

4. List the names and addresses of any expert witnesses whom the parties propose to use as a witness at the trial of the case.

Response:

No experts have been selected

It is anticipated that Hugh M. Cooper may be called to give an opinion as to standard of practice in the legal malpractice claim.

Jay Barker, Lexington County Hydrologist, will testify to flood plain issue.

Chris Stone, Lexington County Flood Management will testify to flood plain issue.

Steve Copeland will testify to the repairs he made.

5. Set forth an itemized statement of all damages, claimed to have been sustained by the parties.

Response:

Because the property was not as it was represented to be, the Plaintiff has lost the value of her down payment and monthly payments made. In addition, the amounts she has lost the amounts she paid to close the transaction. She also incurred expenses to repair the dwelling in the approximate amount of \$3,945.00

Defendant took advantage of the Federal Home Purchase Tax Credit. She may have repay the \$8,000.00 credit.

6. For each person known to the parties or counsels to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Response:

Majorie Temple will testify to all aspects of the transaction and the representations made by Mr. Koivu.

Mike Gentry will testify to all aspects of the transaction.

Hugh M. Cooper will testify to the standard of practice for the transaction.

It is assumed that the Defendants will Each testify to their part in the transaction

7. List all former names and when you were known by those names. State all addresses where you have lived for the last ten years, the dates you lived for the last ten years, the dates you lived at each address, your Social Security number and your date of birth.

Response:

Born October 9, 1955

SSN 068-50-0011

1955-1977	Marjorie Manneck
1977-93	Marjorie Treto
1993-94	Marjorie Anaka
1994-2011	Marjorie Temple
2011-2012	Marjorie Gentry
2000-2004	4 North Shore Drive Chillicothe OH
2004-2005	250 Pacific Avenue #605 Long Beach, CA
2005-2005	2020 Carfax Rd Long Beach, CA
2005-2007	2111 Tevis Avenue Long Beach CA
2007-2008	5325 Brody Drive Madison WI
2008-2009	3422 Youngstown Road Fayetteville NC
2009-2009	Lake Murray Blvd. Irmo, SC
2009-2012	1730 Nazareth Road Lexington, SC

8. Please set forth all material facts that support your allegation that the terms of the agreement set forth in the Complaint are un-enforceable and the reasons you contend that the agreement is un-enforceable.

Response:

The document denies the Purchaser any credit for improvements made.

The document gives the Purchaser only \$50.00 credit for each payment made instead of providing for a direct amortization as is commonly provided in mortgage transactions.

There is no separate provision for payment of taxes and insurance which makes it impossible to determine the actual interest rate being charged.

The document simultaneously requires the Purchaser to make a payment which

includes taxes and insurance and requires the Purchaser to pay the taxes and insurance. This is an irreconcilable conflict.

The contract contains an unreasonable fee for the assignment of Purchaser's rights in the contract without providing for the Purchaser to be released from the contract.

If the Purchaser defaults, the contract provides for forfeiture of all monies paid without making any provision for the Purchaser's equity of redemption.

9. Please set forth the specific factual bases that you contend support your allegation that the Complaint fails to state a cause of action.

Response:

The Contract is unconscionable and therefore unenforceable.

The Complaint seeks forfeiture of all monies paid without making any provision for the Purchaser's equity of redemption.

10. Please set forth the important facts which you contend support your allegation that the agreement is unconscionable and all statutory and case law authority which you contend support your legal position

Response:

See answer to Interrogatory 8.

Fanning v. Fritz's Pontiac-Cadillac-Buick Inc., 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996)

Lewis V. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002)

Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006)

11. Identify and describe with specificity each and every representation made by the plaintiffs which you contend to be false, and when and where the representation was made and by whom.

Response:

The Plaintiffs made the following representations:

The Defendant dealt only with Rusty Koivu but Plaintiffs did furnish the Property Disclosure Statement

The property disclosure statement was inaccurate as to the condition of the property, the flood zone and the dam

The Plaintiffs failed to disclose the following:

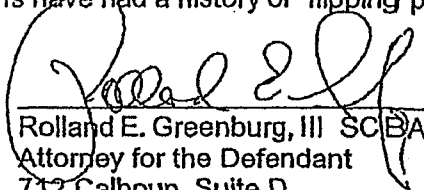
There is a dam on the property. Most of the property is in a flood zone.

The plat furnished to the Defendant was inaccurate as to the extent of the current flood zone area

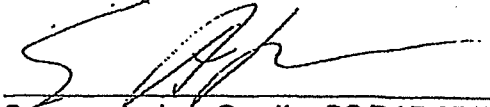
12. Identify and describe in detail the specific facts which you contend constitute an unfair trade practice.

Response:

Since the Plaintiffs are in the business of buying and selling real estate, they are subject to the South Carolina Unfair Trade Practices Act. The act prohibits any deception or fraudulent acts in the practice of one's trade or profession which affects the public interest or is capable of repetition. The Plaintiffs have had a history of "flipping property."



Rolland E. Greenburg, III SC BAR 13161
Attorney for the Defendant
712 Calhoun, Suite D
Columbia, SC 29201
803-256-4408
FAX ONLY 803-256-4403



Spencer Andrew Syrett, SC BAR 05459
Attorney for the Defendant
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950

May 23, 2012

1730 NAZARETH ROAD
LEXINGTON, SOUTH CAROLINA 29073

FINAL WALK THROUGH 3/30/09
REPAIR CHECKLIST

- ☐ Garbage in yard removed
- ☐ Ridges/hump on rear roof repaired
- ☐ Install missing vents boots
- ☐ Extend length of vent pipes (currently 2")
- ☐ Shingles on the roof ridge installed
- ☐ repair crack in foundation wall on the right front corner
- ☐ repair cracks in foundation wall
- ☐ Hole in vinyl siding repaired
- ☐ Replace missin handle on the hose bib, rear
- ☐ Repair leak at front hose bib
- ☐ Repair loose light fixture outside front
- ☐ Install enclosure on light fixture outside
- ☐ Power wash house for stains on vinyl siding
- ☐ Replace missing front storm door
- ☐ Replace missing on front patio door
- ☐ Repair rear door lower panel
- ☐ Install missing front storm door
- ☐ Install dead bolt missing on rear door
- ☐ Install screw missing on rear door handle
- ☐ Install shoe molding in kitchen
- ☐ Repair foam insulation under kitchen sink
- ☐ Repair drip in kitchen faucet
- ☐ Repair NM cable that has an exposed ground wire and has wire nuts on the hot and neutral wires
- ☐ Repair wiring used for dryer
- ☐ Replace missing enclosure on light fixture
- ☐ Repair hole in wall in kitchen
- ☐ Repair hole in wall in living room
- ☐ Replace missing knob on dimmer
- ☐ Repair hole in ceiling in rear bedroom
- ☐ Replace missing cover plate
- ☐ Repair cracks in ceiling in rear bedroom
- ☐ Repair cracks in ceiling in master bedroom

Exhibit 5



ADDENDUM TO PURCHASE AGREEMENT

This ADDENDUM, which is attached to and made a part of a Contract of Purchase dated February 23, 2009 between Charles Strickland Seller(s) and Marjorie F Temple Purchaser(s)

Provides:

Seller to repair or replace items highlighted in attached inspection report.

Seller to provide \$500 allowance for materials to repair Bathroom

CA - Seller to provide \$2,000 allowance for materials & labor to replace polybutylene pipes with CIVE lines

Payment of \$1,000 a month with 12% note, tax, and insurance (monthly), will lower purchase price \$50 per month of payment

WITNESS the following duly authorized signatures:

[Signature] 3-11-09
Seller Date

[Signature] 3/10/09
Purchaser Date

Seller Date

Purchaser Date

Exhibit 6

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CHARLES E. STRICKLAND, III, LATISHA
STRICKLAND, AND JUSTIN R. DILLON,
Plaintiffs,

vs.

CASE NO. 2011-CP-32-1781

MARJORIE E. TEMPLE,
Defendant.

MARJORIE E. TEMPLE,
Third-Party Plaintiff,

vs.

RUSSELL KOIVU, ERA WILDER REALTY,
INC., GARY A. PICKREN, REX
CASTERLINE, AND HARVEY CASTERLINE &
VALLINI, LLP,
Third-Party Defendants.

DEPOSITION OF: MARJORIE E. TEMPLE GENTRY

DATE: June 22, 2012

TIME: 9:59 A.M.

LOCATION: Law Offices of
Richardson, Plowden & Robinson
1900 Barnwell Street
Columbia, SC

TAKEN BY: Counsel for the Defendants
Pickren, Casterline and Harvey
Casterline & Vallini, LLP

REPORTED BY: LORI S. MORTGE,
Certified Court
Reporter, CCR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376
Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

A. WILLIAM ROBERTS, JR. & ASSOCIATES 800-743-DEPO
SCHEDULEDEPO.COM

1 confusing or seem to be unclear or for any reason
2 you can't give a good responsive answer, would you
3 let me know so that I can rephrase the question?

4 A. Yes, thank you.

5 Q. Okay. Are you taking any medications or
6 do you have any medical conditions or any conditions
7 or any issues that would prevent you from giving
8 good responsive answers today?

9 A. No, I'm not.

10 Q. Okay. What is your current address?

11 A. 1730 Nazareth Road, Lexington.

12 Q. And that's the property that's involved
13 in this litigation?

14 A. Yes, sir.

15 Q. Tell me about your educational
16 background.

17 A. I have a master's degree from the State
18 University of New York in social work.

19 Q. I assume you had a bachelors at some
20 point?

21 A. Yes.

22 Q. And where did you get that?

23 A. The State University of New York.

24 Q. When did you get your bachelors?

25 A. Oh, gosh. I -- I'm going to guess. The

1 knew you were working the whole time with the
2 children, but when did you go back to work outside
3 of the home?

4 A. When I graduated with my master's degree
5 in 2000.

6 Q. Okay. And where did you go to work
7 then?

8 A. At the VA.

9 Q. VA, Veterans Administration?

10 A. Yes, sir.

11 Q. Where was that located?

12 A. Chillicothe, Ohio.

13 Q. And what was your job with the VA?

14 A. Social worker.

15 Q. Were you working in a hospital setting
16 or an office setting or where were you?

17 A. Hospital setting.

18 Q. And how long were you in Ohio?

19 A. Four years.

20 Q. So that carries us to 2004?

21 A. Mm-hmm. Yes, sir.

22 Q. And what did you do after that?

23 A. I moved to Long Beach, California.

24 Q. And why did you move from Ohio?

25 A. I moved with my job to the VA in Long

1 Beach.

2 Q. And was that also in a hospital?

3 A. Yes, sir. The VA Medical Center.

4 Q. And how long were you in Long Beach?

5 A. Three years.

6 Q. So that carries us to 2007?

7 A. Yes, sir.

8 Q. And where did you go then?

9 A. I went to Madison, Wisconsin with my job
10 again, working in a hospital as a social worker.

11 Q. And how long were you in Wisconsin?

12 A. One year.

13 Q. Okay. And in 2008 where did you go?

14 A. Again with my job Fayetteville, North
15 Carolina, hospital situation working as a social
16 worker.

17 Q. And how long were you in Fayetteville?

18 A. About five months.

19 Q. And why did you leave Fayetteville?

20 A. Because I got my current job as a social
21 worker -- well, as a veterans advocate, actually,
22 working again with the VA in Columbia.

23 Q. Okay. When did you move to Columbia?

24 A. January 2009. Do you think I could get
25 some water?

1 listing was e-mailed to me on a certain date. I
2 don't recall what the date was, though.

3 Q. About how many properties had you looked
4 at before the Nazareth Road property?

5 A. Oh, gosh. It's been a long time. I
6 could only -- I could only guess. I mean, I know it
7 was more than three.

8 Q. More than ten?

9 A. I really don't recall. I'm sorry.

10 Q. At some point you went with Mr. Koivu
11 out to see the Nazareth Road property; is that
12 right?

13 A. Yes, sir.

14 Q. How long did you spend on that first
15 visit?

16 A. How long did we spend? I would -- I
17 mean, I -- I am guessing. It was sometime between
18 half an hour and an hour and a half. It's hard --
19 it's hard to recall that right now.

20 Q. And this isn't any kind of test on
21 anything. It's just what your best recollection is
22 and I realize this was three years ago.

23 A. Yeah.

24 Q. So just give us your best recollection
25 on things. So your first visit was 30 to 90.

1 Q. Was Mr. Gentry involved in the
2 negotiations or the dealings regarding this
3 property?

4 A. No, sir.

5 Q. After the first visit to see the
6 property what was the next thing that happened as
7 far as the transaction or looking at it in more
8 detail?

9 A. The next thing that happened?

10 Q. Did you go back out to visit again?

11 A. At some point we did go out again.

12 Q. Okay. About when was that in relation
13 to the actual closing? Couple of weeks before the
14 closing, a month before? Was it a week or two after
15 your first visit? Just some --

16 A. I'm sorry.

17 Q. -- time frame.

18 A. I don't recall the time frame.

19 Q. And...

20 A. Well, it was definitely before the
21 closing, I can say that.

22 Q. And how long did you stand out there
23 that time?

24 A. Not long.

25 Q. Again, an hour or so?

1 A. Well, I had a flat tire so I think most
2 of my focus was on my flat tire. I think -- I
3 honestly don't remember much -- I don't remember if
4 we went in the house again. I don't remember, I'm
5 sorry.

6 Q. You mentioned one of the things that you
7 told Mr. Koivu you were interested in was some land.
8 What did you mean by that?

9 A. Larger than a small little house next to
10 a house. I wanted something with, you know, a
11 little privacy.

12 Q. Something larger than a lot in a
13 subdivision?

14 A. That's right.

15 Q. Now, when you -- strike that. We've
16 talked about two visits before the closing. Did you
17 go out a third time or another time before the
18 closing?

19 A. I -- I'm really having trouble
20 remembering whether we went out two or three times.
21 I remember that we went out to -- to make sure the
22 repairs were done. I don't know if that was the
23 second time or the third time.

24 Q. Okay. You said you wanted some land,
25 something more than just a subdivision lot. This is

1 a plat that's been produced during discovery. Did
2 you get a copy of this to your lawyers or how did
3 you deal with the plat?

4 A. Which lawyers are you referring to?
5 What -- could you rephrase the question?

6 Q. The lawyers who are here representing
7 you today.

8 A. Yes, I believe they have a copy of this.

9 Q. Okay. Did you give them a copy of it?

10 A. I believe so.

11 MR. MACK: Okay. Let's mark this as
12 Exhibit 1.

13 (DFT. EXH. 1, Plat of Lot Number 16,
14 dated January 30, 1990, was marked for
15 identification.)

16 BY MR. MACK:

17 Q. Exhibit 1 is a plat dated January -- I
18 believe it's the 30th, it's a little unclear, 1990
19 by D.B. Sproles, S-P-R-O-L-E-S, & Associates, Inc.
20 When you told Mr. Koivu that you were interested in
21 acreage, did he give you this plat to show that this
22 would have 4.33 acres?

23 A. I remember Mr. Koivu gave me the listing
24 that told me it had that acreage.

25 Q. Okay. When did you get a copy of this

1 Exhibit 2.

2 (DFT. EXH. 2, Contract of Sale, dated
3 February 23, 2009, et al., was marked
4 for identification.)

5 BY MR. MACK:

6 Q. And if you will turn several pages in,
7 it's about five or six pages in where the signatures
8 are located. And is that your signature?

9 A. Yes, sir.

10 Q. And you signed it on February 23, 2009?

11 A. Yes, sir.

12 Q. Okay. Were you provided a copy of this
13 contract of sale before you signed it?

14 A. I don't -- I don't recall.

15 Q. Did you have a chance to read over it
16 and look through it before you signed it?

17 A. I'm sorry. I'm foggy on the specifics.
18 It's been a long time ago.

19 Q. Your initials are on each page; is that
20 right?

21 A. Yes, that's correct.

22 Q. Okay. Now, looking on Page 2 of the
23 document under Paragraph 6A it says Financing Type,
24 Owner Financing. Was owner financing something that
25 was important to you?

1 A. Yes.

2 Q. And why was that?

3 A. I was unable to get a mortgage through
4 the one lender that I had gone to and this was
5 offered to me and I thought, yes.

6 Q. Which lender did you go to?

7 A. I'm actually drawing a blank right now
8 on the bank. It was -- I'm sorry.

9 Q. I'd like for you to either try to recall
10 or go back and check in your records to determine
11 which lender that was and let your lawyers know so
12 that they can tell me. Would you do that?

13 A. Yes, sir.

14 (This page contains information to be
15 supplied by counsel and/or the deponent.)

16 BY MR. MACK:

17 Q. Why weren't you able to get a mortgage
18 from that lender?

19 A. I don't recall the specifics. Just
20 credit score.

21 Q. Did they send you a letter or some sort
22 of documentation your application hasn't been
23 approved for XYZ or whatever reasons?

24 A. I -- I don't recall a letter. I recall
25 just a verbal transaction.

1 Q. If you'll turn over to the third page of
2 the Contract of Sale, under Paragraph 8 it says --
3 the heading is Right of Buyer to Inspect/Reinspect
4 Property. Do you see that?

5 A. Yes, sir.

6 Q. And did you have the property inspected
7 before you purchased it?

8 A. Yes, sir.

9 Q. Okay. And who inspected it?

10 A. The man that inspected was a referral, a
11 name Rusty gave me, and I'm blanking on his name
12 right now. It might be -- Mouten?

13 Q. Was it a home inspection service or home
14 inspection company?

15 A. Yes, sir.

16 Q. Other than that company did you have
17 anyone inspect it?

18 A. No, sir.

19 Q. Did Mr. Gentry inspect it before you
20 purchased it?

21 A. No, sir.

22 Q. If you turn over to the next page, Page
23 10 or -- excuse me, Paragraph 10, it says: Property
24 Sold As-Is, and I see that there are initials under
25 Seller. Do you see that?

1 A. Yes, sir.

2 Q. And what was your understanding of the
3 property being sold as-is?

4 A. That it would be sold in the condition
5 that it was currently.

6 Q. And we'll look at some other things but
7 actually some repairs or some things were done
8 before the actual closing, weren't there?

9 A. As agreed upon, yes, sir.

10 Q. Then turning to the next page under
11 Paragraph 15, about the fourth -- middle of the
12 fourth line down says: The Buyer's and Seller's
13 Brokers also recommend that prior to closing of this
14 contract Buyer have a survey of the subject property
15 made to verify land size, so forth.

16 Do you see that?

17 A. Yes, sir.

18 Q. Okay. And did you have a survey made
19 prior to closing?

20 A. No, I did not.

21 Q. Okay. After you signed this contract --
22 actually, before or after you signed this contract
23 did you have anyone review it for you, any attorneys
24 or friends or neighbors, anything like that?

25 A. I'm sorry. Could you repeat the

1 about any questions you might have about the
2 contract that you had signed?

3 A. No.

4 Q. And did you pay those lawyers anything
5 other than what might be shown on the closing
6 statement?

7 A. No.

8 Q. Going back to the Contract of Sale, if
9 you'll turn to the next page -- excuse me, it's the
10 same page about the survey, Paragraph 15.

11 A. Fifteen?

12 Q. Down under 15B it says: Seller
13 represents that to the best of Seller's knowledge,
14 the Property -- and the block for is is checked.

15 Do you see that?

16 A. Yes, sir.

17 Q. So the property is partly or entirely
18 located within a designated special flood hazard
19 area (flood zone).

20 Do you see that?

21 A. Oh, gosh. I don't...

22 Q. First of all, do you see that in the
23 document?

24 A. I see that, yes.

25 Q. And your initials are at the bottom of

1 correct?

2 A. Yes, sir.

3 Q. And that is your signature on there?

4 A. Yes, sir.

5 Q. Okay. Then the next document is an
6 Extension Agreement. Do you recall seeing this,
7 saying that closing is postponed until April 6,
8 2009?

9 A. I recall there was an extension, but I
10 don't particularly recall this document.

11 Q. Okay. Then the next document is a Final
12 Walk Through, March 30, 2009. Do you recall doing
13 the final walk through for the property prior to
14 closing?

15 A. Yes.

16 Q. Then the next document that was produced
17 to us, Covenants and Restrictions for the Partridge
18 Hill Phase I Residential Subdivision. Did you get a
19 copy of these at some point?

20 A. Yes, sir.

21 Q. And when was that?

22 A. Before closing.

23 Q. Okay. One of the issues in the case,
24 question of the dam and the pond that's on the
25 property. Prior to the closing did you ever see the

1 dam or the pond?

2 A. Yes, sir.

3 Q. And was that on one of your visits to go
4 look at the property?

5 A. Yes, sir.

6 Q. Did Rusty tell you anything about the
7 dam or the pond?

8 A. No, sir.

9 Q. You just saw it was there?

10 A. From a distance.

11 Q. Okay. And did you walk around the
12 boundaries of the property since you were interested
13 in having some land?

14 A. No, sir.

15 Q. Now, the next document in the packet is
16 Conditional Sales Agreement Bond for Title.

17 Do you see that?

18 A. Yes, sir.

19 Q. I've got an e-mail that's basically --
20 the header in the lower part is from Gary Pickren
21 dated Monday, 30 March 2009 to Rusty Koivu, Subject:
22 Bond for Title. Here is the document. HUD to
23 follow. Then immediately above that is from Rusty
24 Koivu sent Monday, March 30, 2009 to Mia Temple, one
25 attachment Bond for Title.

1 Q. Okay. And that shows an outline of your
2 property; is that right?

3 A. Yes.

4 Q. Then it says total acreage of tract 4.3
5 acres. Do you see that?

6 A. Yes, sir.

7 Q. And that's consistent with the 1990 plat
8 and what you bought; is that right?

9 A. Not exactly.

10 Q. The plat says 4.33 and this says 4.3.
11 So just a slight variation?

12 A. Oh, I'm sorry. Yes, total acres, yes.

13 Q. And then approximately 2.8 acres of
14 wetlands. Do you see that?

15 A. Yes, sir.

16 Q. So that leaves about an acre and a half
17 on high ground?

18 A. When you say high ground, it's not --
19 it's different than flood zone.

20 Q. That leaves approximately an acre and a
21 half that is not wetlands.

22 A. Okay.

23 MR. HALL: What document are you on
24 there, Frank?

25 MR. MACK: Number 5, the map.

1 Q. Okay.

2 A. Sometimes an associated hardship form
3 regarding their situation in terms of finances and
4 otherwise.

5 Q. Okay. So part of the paperwork you fill
6 out in advocating for veterans pertains to financial
7 paperwork; is that correct?

8 A. Yes, sir.

9 Q. And when you fill out that paperwork
10 what is important regarding their finances?

11 A. What their income was last year and
12 currently.

13 Q. Okay. And do they have to sign the
14 application?

15 A. Yes, sir.

16 Q. Okay. How long is the application?

17 A. Two to three pages.

18 Q. Okay. Any other paperwork that you have
19 to fill out in connection with your job?

20 A. Not regularly, no.

21 Q. Okay. What about from time to time do
22 you have to fill out reports for your job?

23 A. Yes, sometimes.

24 Q. Okay. What kinds of reports?

25 A. Reports on my activities in the field.

1 community-based activities include?

2 A. Mostly it was their -- their ability to
3 integrate into civilian life, how they were doing
4 socially.

5 Q. Would that include helping them get a
6 job?

7 A. No, sir.

8 Q. What would it include?

9 A. It would include their ability to -- to
10 follow the rules of the housing that they were
11 living in, their ability to take their medications,
12 to -- to remain -- to communicate with those around
13 them, to sleep, to eat, their activities of daily
14 living.

15 Q. Okay. Were you conscientious in your
16 work?

17 A. Yes, sir.

18 Q. All right. Did that require you, when
19 you were filling out paperwork, to be thorough and
20 complete?

21 A. Yes, sir.

22 Q. Okay. Do you understand that you've
23 signed some legal documents in connection with the
24 purchase of this house on Nazareth Road?

25 A. Yes, sir.

1 Q. Did you understand that it was important
2 to be thorough and complete in your review of the
3 documents before you signed them?

4 A. Did I -- could you repeat that?

5 Q. Yeah. Did you understand that it was
6 important to be thorough and complete before you
7 signed a legal document?

8 A. Well, I did have questions about the
9 process and was assured by my realtor that I would
10 have an opportunity to review the documents, to make
11 sure that I was understanding and agreeable to
12 things. And I was -- I was assuming that that would
13 happen prior to closing.

14 Q. Okay.

15 A. And it didn't.

16 Q. Given those assumptions did you still,
17 nevertheless, understand that when you sign a legal
18 document it's important to read it and understand
19 it?

20 A. Yes, sir.

21 Q. Okay. And did you take -- did you take
22 the opportunity to read the documents before you
23 signed them?

24 A. I did.

25 Q. Okay. Did you tell anybody that you

1 collection of --

2 MR. SYRETT: Do you have any objection
3 to me handing her the pleading that you're talking
4 about?

5 MR. HALL: Of course not. Please.

6 MR. SYRETT: (Tendering.)

7 THE WITNESS: Thank you.

8 MR. HALL: I don't know if I have one
9 marked as an exhibit. All right.

10 Q. I want you to turn -- I guess it would
11 be Exhibit Number 2 which is the collection of
12 documents. Do you remember Mr. Mack asking you
13 about the Conditional Sales Agreement Bond for
14 Title?

15 A. You're asking if I remember Mr. Mack
16 asking me about it?

17 Q. Yes.

18 A. I'm not -- I'm not sure how to answer
19 that.

20 Q. Do you recall that you signed a document
21 called a Conditional Sales Agreement Bond for Title?

22 A. You're referring to -- okay. Yes.

23 Q. All right. And you initialed each page
24 of that document?

25 A. Yes, sir.

1 but what I mean to say is that when I read this
2 document there were a lot of things that I didn't
3 understand and I fully expected to sit down with an
4 attorney who would explain to me line by line what
5 this document meant. That never happened. I -- as
6 I've said before.

7 Q. Okay. You understand that you signed
8 this document?

9 A. I do understand that I've signed the
10 document, yes.

11 Q. And you understand that you're bound by
12 it?

13 A. Yes, sir.

14 Q. All right. Now, I'm simply asking you
15 did I read this correctly: This is merely a report
16 on title and what would be required to purchase
17 title insurance.

18 Did I read that part of the sentence
19 correctly?

20 A. Yes, sir.

21 Q. And then if you go to Item Number 6 on
22 Page 12 it reads, in part: Subject to the rights of
23 others and to the bed and waters of the pond
24 crossing the premises and the dam as shown on the
25 survey prepared by D.B. Sproles & Associates for

1 wrote this contract. We both signed the contract.
2 So if you want to conclude that by having the word
3 dam in the contract that we both signed that then --
4 therefore, that means that they disclosed to me that
5 there is a dam, then I would have to say yes.

6 Q. Okay. Thank you very much.

7 A. You're welcome.

8 Q. Now, further on in the contract --

9 MR. SYRETT: Mr. Hall, I would
10 appreciate it if you would refer to that as a Bond
11 for Title because there is a document also called a
12 Contract of Sale and I don't want there to be any
13 confusion. Because the Contract of Sale was signed
14 at a different time.

15 MR. HALL: I understand. I'm not going
16 to let there be any confusion and I haven't finished
17 asking my question.

18 Q. In the Contract of Sale that you signed,
19 which is the first document.

20 MR. HALL: And that's in Defense Exhibit
21 Number 2; is that correct, Mr. Mack?

22 MR. MACK: Contract of Sale is in Number
23 2 and the Bond for Title is also in Number 2.

24 BY MR. HALL:

25 Q. I think Mr. Mack asked you about on Page

1 BY MR. HALL:

2 Q. Okay. Is your testimony under oath,
3 ma'am --

4 A. Yes, sir.

5 Q. That the Plaintiffs failed to disclose
6 that this property was in a flood zone?

7 A. You're asking if, under oath, if the
8 seller -- I mean, we've been through the facts
9 before that the plat that was given to me disclosing
10 a flood zone is different than what was the truth at
11 the time.

12 Q. Okay. Now, you got the plat before
13 closing and it discloses the fact that the property
14 is in a flood zone, doesn't it?

15 A. Not the -- not the house.

16 Q. Okay. I'm talking about the land.

17 A. This -- this map showed a 100 year flood
18 line. There was a line on a map. I was told that
19 this was not in a flood zone. I did not have the
20 understanding to translate all of this information
21 into what the ramifications of all this would mean
22 to me as a landowner. I had no idea.

23 Q. Did you make the installment payment
24 that was required by the contract -- excuse me, by
25 the Bond for Title agreement that was required in

1 April of 2011?

2 A. Did I make the what?

3 Q. Did you make the final installment
4 payment on this property?

5 A. Installment payment?

6 Q. Yes.

7 A. You mean the monthly payment?

8 Q. I'm talking the final payment.

9 A. The balloon?

10 Q. Yes.

11 A. No, I did not make that payment.

12 Q. Have you ever been involved in any
13 lawsuits before?

14 A. Lawsuits. Small -- small claims court,
15 is that a lawsuit?

16 Q. Have you ever filed any kind of an
17 action in a court other than this case?

18 A. Does a divorce count?

19 Q. Sure.

20 A. I mean, I've been through two divorces.

21 Q. All right. Any lawsuits other than the
22 divorces and this lawsuit?

23 A. Small claims court issues. Nothing --
24 nothing that involved attorneys like this, no.

25 Q. Where have you filed claims in -- or

1 you have that would indicate that it is impossible
2 to put a house on any of this property?

3 A. The evidence that I have that shows that
4 there are restricted areas to build a house on are
5 enclosed in the DHEC and the Army Corps of
6 Engineers' documents.

7 Q. Okay. So you can build a house on this
8 property within a restricted area?

9 A. Absolutely not the house that I had
10 planned to build, no way.

11 Q. But my question is -- my question to you
12 is, is there a restricted area on this property
13 where you can build a house?

14 A. No.

15 Q. All right. What evidence do you have
16 that that's true?

17 A. I have the letter from DHEC, the letter
18 from the Army Corps of Engineers, the covenants,
19 the -- all -- I mean, some of the information I have
20 was in conversation with -- with -- you know, with
21 the guy from water management. I can't remember his
22 name.

23 Q. Did you ever speak directly with Charles
24 Strickland before you signed the contract in this
25 case? Contract of sale, that is.

1 A. Not to my recollection. I recall
2 everything went through Rusty. I -- I may have seen
3 Charles once but, really, was at closing is when I
4 met him.

5 Q. All right. Did you ever speak directly
6 with Latisha Strickland?

7 A. No.

8 Q. Did you ever speak with Justin Dillon?

9 A. Yes.

10 Q. When did you speak with Justin Dillon?

11 A. Justin was involved -- was -- came to
12 the house to do repairs on the house.

13 Q. Okay. Did he make any statements to you
14 about the condition of the property?

15 A. It's hard to remember. It's been three
16 years ago. I -- the condition in what way?

17 Q. Did he make any statements to you about
18 the dam on the property?

19 A. No.

20 Q. Did he make any statements to you about
21 whether or not the property was in a flood zone?

22 A. No, sir.

23 Q. In Paragraph 32 of your counterclaim, if
24 you would turn to Page 4 of 7, that's in the
25 document that your lawyers filed on your behalf.

1 disclosure -- disclosure statement and identify by
2 number as she goes through them the ones that she
3 says are misrepresented?

4 MR. HALL: However she wants to do it.

5 THE WITNESS: All right. Number 1, this
6 is -- this disclosure statement is saying that the
7 Seller of the property is testifying as to whether
8 they have knowledge of any problem with any of the
9 following things. And Number 1 is referring to
10 foundation, slab, fireplaces, doors, windows,
11 ceilings and he says no. But, you know, there were
12 broken windows.

13 BY MR. HALL:

14 Q. All right. What proof do you have that
15 he had knowledge of that?

16 A. There -- I was told by Justin about
17 that.

18 Q. Okay.

19 A. He gave me an explanation as to why
20 there were bullet holes and broken windows in the
21 house.

22 Q. Okay. Now, who signed this document on
23 behalf of the Seller?

24 A. Charles Strickland.

25 Q. All right. Now, do you have any proof

1 knowledge of the property. They had moved in there
2 to repair the roof.

3 Q. All right. What's the next item you
4 contend was false?

5 A. Number 3.

6 Q. Okay.

7 A. Water seepage, leakage, dampness or
8 standing water or water intrusion from any source in
9 an area of the structure.

10 Q. What proof do you have that the owners
11 knew that was false?

12 A. I'd have to think about that. I'm
13 blanking, I'm sorry.

14 Q. So you can't think of anything right
15 now?

16 A. The owner knew that the plumbing was
17 under a class action lawsuit for the type of
18 plumbing.-- certain joints in the plumbing. I can't
19 remember.

20 Q. All right. What proof do you have of
21 that?

22 A. What proof do I have that he knew about
23 it?

24 Q. Yes.

25 A. At a later point in time we spoke about

1 it and he seemed to be aware of it and he refused to
2 do any repairs on it.

3 Q. Who?

4 A. Mr. Strickland, as representative of the
5 owners.

6 Q. Now, did you tell me earlier that you
7 never spoke with Mr. Strickland until closing?

8 A. There -- this still was not a direct
9 conversation. It was a request for repairs done by
10 me through my real estate -- through Rusty to him
11 and -- okay. So it was...

12 Q. Let me explain why it's important that I
13 ask you these questions.

14 A. Please do.

15 Q. I only get to take your deposition one
16 time.

17 A. Okay.

18 Q. Unless there's extenuating
19 circumstances.

20 A. Okay.

21 Q. And so this is my only opportunity to
22 ask on behalf of my client what you know about this
23 case --

24 A. That's fine.

25 Q. -- and about the claims you made in the

1 case.

2 A. Okay.

3 Q. So that's why it's important for me to
4 cover all of these questions that I'm asking you.
5 Do you understand that?

6 A. Yes, sir.

7 Q. Okay. So let's go back to Number 3.
8 What proof do you have that the owners knew that
9 there was water seepage, leakage, dampness or
10 standing water or water intrusion from any source in
11 any area of the structure prior to this -- signing
12 of this disclosure statement?

13 A. See, I'm not exactly sure how to answer
14 your question because it was really obvious that
15 there was black mold, there were holes in the
16 ceiling, the water was leaking through the roof, the
17 ceiling was missing, there were gaping holes, the
18 plumbing was a problem.

19 Now, not to have known that --
20 especially considering that I found that
21 Mr. Strickland's job is as a home inspector would be
22 beyond belief. Actual documentation? No.

23 Q. I'm asking about any evidence that you
24 have other than just speculation. I just need to
25 know what it is.

1 A. I don't think I -- I don't think I have
2 actual documentation. I guess you would consider it
3 speculation.

4 Q. All right.

5 A. Okay.

6 Q. What about Item 4 --

7 A. Item 4, electrical system. I mean,
8 the --

9 Q. Let me finish my question.

10 A. Okay.

11 Q. What proof do you have that the owners
12 knew that there was any problems with the electrical
13 system prior to signing this disclosure statement?

14 A. Proof documentation? None. But the
15 problem that occurred -- the electrical box was
16 arcing, was an extreme fire hazard. It was in
17 terrible repair. Now, proof documentation, no.
18 But -- okay.

19 Q. All right. Now --

20 A. Number 5, plumbing. The plumbing that
21 existed in that house was under a class action
22 lawsuit. Now proof, no. Documentation, no. Okay.
23 Number 6.

24 Q. Let me just --

25 A. You want me to go on?

1 Q. Let me stop and ask you. Every item
2 you're telling me here you claim was a false
3 representation?

4 A. Absolutely.

5 Q. Okay. I just need to know. All right.
6 Number -- so what's the next one? Number 5, you
7 claim that's a false representation?

8 A. Yes.

9 Q. All right. What proof do you have that
10 the sellers knew that that was false prior to --

11 A. Again --

12 Q. Let me finish my question. What proof
13 do you have that that was false prior to the signing
14 of this disclosure statement that they knew it was
15 false?

16 A. I don't have any documentation.

17 Q. All right.

18 A. It's an assumption.

19 Q. All right. What's the next one? Would
20 it be speculation, then?

21 A. It would be speculation.

22 Q. What's the next item that you claim was
23 false?

24 A. (Reading.) Number 11.

25 Q. All right. What evidence do you have

1 that the sellers knew that that was false prior to
2 the execution of this disclosure statement?

3 A. It would have been obvious that
4 there's -- there's drainage problems on the
5 property.

6 Q. Was it obvious to you?

7 A. No.

8 Q. Okay.

9 A. No. But someone who's a home inspector,
10 who's a surveyor would probably see that.

11 Q. Is that just speculation?

12 A. Yes, sir.

13 Q. All right. What's the next item that
14 you claim that was a false representation?

15 A. (Reading.) Toxic mold -- 14.

16 Q. Okay. What evidence do you have that
17 the sellers knew that that was a problem and was
18 false prior to the execution of this disclosure
19 statement?

20 A. There was a gaping hole -- there were
21 two gaping holes in the ceilings, two or more, with
22 black mold dripping out of it.

23 Q. Wasn't that the subject of a small
24 claims matter that you filed?

25 A. No, sir.

1 Q. Okay. What evidence do you have that
2 they knew about it prior to this disclosure
3 statement?

4 A. I would assume they -- they had seen it.
5 It was an assumption.

6 Q. All right. That's speculation?

7 A. It's speculation, yes, sir.

8 Q. What's the next item?

9 A. (Reading.)

10 Q. That you claim was false.

11 A. (Reading.) Number 19. It was never
12 disclosed to me that there was a shared driveway.

13 Q. All right. What evidence do you have
14 that the owner knew that that was false or a
15 problem?

16 A. Because the house in front of me didn't
17 have its own driveway, and my driveway was the only
18 access to that house.

19 Q. Okay. What evidence do you have that
20 the sellers knew about that prior?

21 A. Again, speculation.

22 Q. All right. What's the next item?

23 A. Twenty-two.

24 Q. All right. What evidence do you have
25 that the sellers knew that that was false?

1 A. Well --

2 Q. Or a problem?

3 A. One of these documents, I don't remember
4 which one it was, you pointed it out already that it
5 stated there that -- you know, here they're saying
6 no, it's not in a flood plain and later they're
7 saying yes, it is in a flood plain.

8 Q. Okay. But they said yes before you
9 closed; right?

10 A. Yeah, it was in the document before.

11 Q. How has that caused you any damage if
12 you knew before the closing?

13 A. How has it caused me damage?

14 Q. Yes, ma'am.

15 A. If I knew -- could you rephrase that?

16 Q. Yeah. My question is, you have admitted
17 that you knew before the closing that some portion
18 of this property was in a flood zone; is that true?

19 A. Yes, sort of.

20 Q. And my question is to you how has -- if
21 you knew that before the closing how has that caused
22 you any damage in this case?

23 A. I had no idea what the flood plain --
24 what the ramifications of having property that's in
25 a flood plain would mean to me as a property owner

1 A. The windows were not replaced.

2 Q. Okay. So did you decide to go forward
3 with the closing without the replaced windows?

4 A. We -- we agreed that they would be done
5 beyond the closing.

6 Q. All right.

7 A. Past the point of closing.

8 Q. What false representations do you
9 contend are still part of this case?

10 A. Could you rephrase that, please?

11 Q. Sure. What do you think -- what are the
12 false representations that you're basing your
13 lawsuit upon right now?

14 MR. SYRETT: Objection. Calls for a
15 legal conclusion. You have our answer in the
16 counterclaim.

17 BY MR. HALL:

18 Q. The reason I ask the question is I want
19 to know what's still at issue in the case. Is the
20 plumbing a problem still?

21 A. The most important problem is the -- the
22 flood plain, the issues with the dam and the land.
23 I mean, I can -- I cannot proceed with my plans that
24 I had when I bought this property because of the
25 lack of information, the lack of disclosure to me.

1 wooded area.

2 Q. Okay. And you had a final walk through
3 on the property; is that right?

4 A. In the house.

5 Q. Yes. Did you?

6 A. Yes.

7 Q. Okay. And then you went in and you
8 closed the property; is that right?

9 A. With a document stating that there were
10 still things to be repaired even after we closed,
11 yes.

12 Q. Is that the list that you've given us?

13 A. No, sir.

14 Q. All right. Where is the list of things
15 that were supposed to be done after the closing?

16 A. There was a handwritten list by Rusty.

17 Q. I haven't seen that document.

18 MR. SYRETT: I believe there's an
19 addendum attached to the contract.

20 MR. PEACE: There is.

21 MR. HALL: I just want to make sure
22 we've identified it.

23 MR. SYRETT: One -- one of two addendums
24 to the contract.

25 MR. HALL: Make sure I understand that.

COPY

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2013 JAN 18

11:32
CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D. A. CAYRIGG
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

CERTIFICATE OF SERVICE

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

The undersigned paralegal to The Rick Hall Law Firm, LLC does hereby certify that she has on the 18th day of January, 2013, served a copy of Plaintiffs' Memorandum in Support of Motion for Summary Judgment and the Affidavit of Charles E. Strickland, III in Support of Plaintiffs' Motion for Summary Judgement by placing a copy in the U. S. Mail, postage prepaid, to the person(s) at the address(es) listed below:

S. Andrew Syrett, Esquire
PO Box 7403
Columbia, SC 29202

M. Alan Peace, Esquire
Tyler, Cassell, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
PO Box 11656
Columbia, S.C. 29211-1656

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201

Francis M. Mack, Esquire
Richardson Plowden
1900 Barnwell Street
Columbia, SC 29202

Kate A. Johnson
Kate A. Johnson
Paralegal to Frederick I. Hall, III

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
2014 APR 17)
P 3:28)
CIVIL ACTION NO.: 2011-CP-32-01781)

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,)
BETH A. CARRIGG)
CLERK OF COURT)
LEXINGTON SC)

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

MOTION FOR RULE 11
SANCTION AND
ATTORNEYS FEES

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,)
Gary A. Pickren, Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third-Party Defendants.

TO: RONALD GREENBURG AND ANDREW SYRETT, ATTORNEYS FOR THE DEFENDANT AND THE HONORABLE JAMES O. SPENCE, MASTER IN EQUITY FOR LEXINGTON COUNTY:

YOU WILL PLEASE TAKE NOTICE THAT ON THE TENTH DAY AFTER THE SERVICE THEREOF, or as soon as the matter can be held, the undersigned counsel for the plaintiff will move before the presiding Master in Equity for Lexington County for an Order granting Rule 11 sanctions by way of attorney's fees and costs against the attorneys for Marjorie E. Temple, Roland Greenburg and Andrew S. Syrett, on the grounds that the counterclaims and defenses raised in this case were not brought in good faith, and in fact, were entered for the purposes of delay, all of which will be shown at a hearing at such time that the Court may set.

This motion is further based upon the Order of the Circuit Court in this matter granting summary judgment against the defendant, Marjorie E. Temple, and all counterclaims and defenses raised in this action, which Order is attached as Exhibit A, and in which the Court held that there was no basis in fact or in law for the assertion of such defenses and counterclaims.

That the plaintiffs have incurred substantial attorney's fees and costs in defending the counterclaims brought by the defendant Marjorie E. Temple.

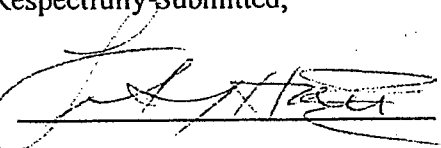
That counsel for the defendants was requested to withdraw the counterclaims early on in the proceedings and warned that a Rule 11 motion for attorney's fees would be brought if the claims were not withdrawn.

That ample opportunity was given to counsel for the defendant to withdraw the counterclaims that were brought even though there were no good grounds to bring such counterclaims. A copy of correspondence requesting that the claims be withdrawn are attached hereto as Exhibits B and C.

This motion will be further based upon the pleadings, discovery, depositions, and such further evidence as the Court is willing to receive and deems just and proper.

That the plaintiffs have expended attorneys fees and costs in defending this action and ask that the Court enter into an award to sanctions by way of attorneys fees against counsel for the defendant. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned hereby certifies that any consultation would serve no useful purpose or could not be timely held in light of the fact that counsel has previously requested that the claims and defenses be withdrawn, to no avail.

Respectfully Submitted,

By: 

Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Rd.

Lexington, SC 29072

Tel: (803) 957-5333

Fax: (803) 957-7717

rick@sctrilattorneys.com

*Attorney for the plaintiffs Charles E. Strickland,
Laticia D. Strickland, and Justin R. Dillon*

Lexington, South Carolina
April 17, 2014

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

FILED
IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2014 APR 17 12:32 PM
CIVIL ACTION NO.: 2011-CP-32-01781

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

CERTIFICATE OF SERVICE

The undersigned paralegal to The Rick Hall Law Firm, LLC does hereby certify that she has on the 17th day of April 2014, served a copy of plaintiff's Motion for Rule 11 Sanctions and Attorneys Fees by emailing and mailing a copy via U.S. mail, certified, return receipt requested, to the person(s) at the address(es) listed below:

S. Andrew Syrett, Esquire
PO Box 7403
Columbia, SC 29202

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201

Kate A. Johnson

Kate A. Johnson
Paralegal to Frederick I. Hall, III

Lexington, South Carolina

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2011-CP-32-01781

)
)
)

)
)
)

)
)
)
)

)
)
)

)
)
)

)
)
)

)
)
)
)

)

1

io

on
is

nte

Paragraph 15(b) of the agreement contained a provision disclosing that the property was located partly or entirely within designated "Special Flood Hazard Area."¹ The agreement also indicates that there was dam on the property. Defendant read and initialed the agreement.² Defendant did not speak with Plaintiffs before she signed the agreement. She could not remember any statements that were made about the condition of the property.³

Defendant went to the property with her real estate agent to view it and spent between an hour to an hour and a half on the first visit. She visited the property again before the closing. During one of these visits, she saw the dam and pond on the. She also received a plat prior to closing which disclosed the existence of the dam and pond on the property. The plat also noted that a portion of the property was located in the flood zone. The plat disclosed that there were approximately two and eight-tenths (2.8) acres of land classified as wetlands and that approximately an one and one half (1.5) acres is not wetlands. Similarly, Defendant did make an inspection and conduct a final walk through prior to closing.

Plaintiffs' complaint seeks foreclosure and sale of the property or, alternatively, the termination of the contract and Defendant's equitable interest in the property and an order of possession. Defendant answered and counterclaimed for Fraud, Rescission, Negligent Misrepresentation, Unconscionability, and violation of the Unfair Trade Practices Act (UTPA). Defendant alleges that Plaintiffs failed to disclose that: (a) the property has a dam on it; (b) a significant portion of the property is in a flood zone or is protected wetlands, and; (c) that Defendant advised all parties that she intended to build a residence

¹ Although the mobile home on the property is not in a flood zone, the portions of the property proximate to the dam and the pond are in the flood zone.

² Defendant has both an undergraduate liberal arts degree and a master's degree from the State University of New York. She has worked at the Veteran's Administration as a veteran's advocate and as a social worker. Defendant took the opportunity to read the documents pertaining to this transaction before she signed them, and the court presumes she read and understand them.

³ The Residential Property Condition Disclosure Statement indicates that the Plaintiffs did not have any knowledge of the property being located in a flood plain or any flood hazards, as they had not lived on the property.

on the property in place of the mobile home.⁴ However, her counterclaim does not allege any hidden or latent defects in the property which were undisclosed to her other than the dam, the pond, and the property's partial location in a flood zone.

STANDARD OF REVIEW

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. S.C. Dept. of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001). Once the moving party meets its initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Sirother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998); *Regions Bank v. Schmauch*, 354 S.C. 648, 659-60, 582 S.E.2d 432, 438 (Ct. App. 2003).

LAW/ANALYSIS

⁴ The court notes that this statement would be barred by the parole evidence rule as it is not contained in the agreement and is not set forth as something that was disclosed to her but rather something she intended to do, which is not a representation in itself. *See Iseman v. Hobbs*, 290 S.C. 482, 351 S.E.2d 351 (Ct. App. 1986) (holding that the parole evidence rule prohibits the introduction of extrinsic evidence of agreements or understandings contemporaneous with, or prior to, the execution of a written instrument when the extrinsic evidence is used to contradict, vary, or explain the written instrument).

A. Summary judgment is appropriate as to the fraud and misrepresentation claims

To survive a motion for summary judgment, Temple must offer some evidence that a genuine issue of material fact existed as to each element of fraud and negligent misrepresentation. *See Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct. App. 1992) (explaining the plaintiff has the burden to prove each element of the cause of action). Moreover, general allegations of fraud are insufficient and must be pled with particularity. Rule 9(b), SCRCP. To maintain a claim for fraud, Defendant must show:

(1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008). Although "the two causes of action differ, both fraud and negligent misrepresentation contain the necessary element that the hearer had the right to rely upon the misrepresentation or fraud." *Id.* at 457, 665 S.E.2d at 670 (internal quotes omitted).

In this case, the only allegations which the Defendant has set forth with any particularity at all are that the Plaintiffs failed to disclose that: (a) the property has a dam on it and (b) a significant portion of the property is a flood zone or is protected wetlands. The evidence all shows that this information was disclosed prior to the closing. Because Defendant knew the dam was present, saw it prior to closing, and received full disclosure in writing that a portion of the property contained wetlands, she is barred as a matter of law from a claim of fraud or a rescission of the contract on the basis of fraud. Our court of appeals has noted:

It is largely because the law of fraud requires [a claimant] to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must

read it and avail himself of every reasonable opportunity to understand its content and meaning.

PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 180, 375 S.E.2d 331, 333 (Ct. App. 1988) (citing *Parnell v. United Am. Ins. Co.*, 246 S.C. 26, 142 S.E.2d 204 (1965)). See also *Schmauch*, 354 S.C. at 673, 582 S.E.2d at 445. Because the only allegations of fraud pertain to problems with the property that were disclosed and clearly apparent upon the inspection, there is no evidence of fraud. While the Defendant may claim she relied on the disclosure statement, "there can be no reasonable reliance on a misstatement if the [the claimant] knows the truth of the matter." *Gruber v. Santee Frozen Food, Inc.*, 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct. App. 1992) "Thus, if the undisputed evidence clearly shows that the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact." *McLaughlin*, 379 S.C. at 458, 665 S.E.2d at 671. Therefore, Defendant is presumed to have had knowledge at the time of signing the agreements of the conditions of which she now complains.⁵

While "a buyer has the right in South Carolina to rely on a seller of a home to disclose latent defects or hidden conditions which are not discoverable on a reasonable examination of the property and of which the seller has knowledge," it is equally true that where the conditions are open and obvious, as they were here, there can be no right to rely. *May v. Hopkinson*, 289 S.C. 549, 557, 347 S.E.2d 508, 513 (Ct. App. 1986). The Defendant saw the dam and the pond, and she was given a plat prior to closing which revealed that a portion of the property was in a flood zone and contained wetlands. Therefore, Defendant's claim for Fraud and Negligent misrepresentation fail as a matter of law. Accord *McLaughlin*, 379 S.C. at 457, 665 S.E.2d at 67.

⁵ See also *PPG Indus.*, 297 S.C. at 180, 375 S.E.2d at 333 (holding that a party who "is a successful businessman," similar to defendant here, then she can "by no means can be excused from reading the contract which [she] signed."

B. Summary judgment is appropriate for Defendant's rescission claim

South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement. *See Scott v. Mid Carolina Homes, Inc.*, 293 S.C. 191, 359 S.E.2d 291 (Ct. App. 1987); *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). Rescission of a contract is therefore essentially allowed only when there is evidence of misrepresentation or concealment. *Jumper v. Queen Nab Lumber Co.*, 115 S.C. 452, 106 S.E. 473 (1921); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 101-02, 399 S.E.2d 22, 23 (Ct. App. 1990). In this case, Defendant essentially bases her entire claim to rescission of the contract solely upon the basis of fraud or non-disclosure of the existence of the dam and flood plain.

However, as stated above, Defendant's claims of fraud and non-disclosure cannot be supported because these matters, about which she complains, were in fact disclosed.⁶ She did not allege mistake as a grounds for rescission or breach of contract. Like fraud, claims of mistake must be pled with particularity, including the essential matters as to time and place of the mistake. *See* Rule 9(c), SCRC. Therefore, Defendant cannot rescind the contract.⁷

C. The terms of the agreement are not unconscionable

Defendant raises the equitable defense of unconscionability in her Answer and Counterclaim, and asserts that the agreement is unenforceable. The question of whether or not a contract by its terms is

⁶ Regardless of actual disclosure, Defendant is surely on inquiry notice regarding the condition of the property. *See O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 371 S.C. 340, 638 S.E.2d 96 (Ct. App. 2006); *Ten Woodruff Oaks, LLC v. Point Dev., LLC*, 385 S.C. 174, 683 S.E.2d 510 (Ct. App. 2009).

⁷ The court notes that Defendant's pleadings do not address the issue of her statement she wished to construct a new home on the property. To the extent she relies on those statements in arguing for rescission, the statements are barred by the parole evidence rule. *See* Footnote 4, *supra*.



unenforceable on the grounds of unconscionability is a matter for law for the court to determine. S.C. Code Ann. § 36-2-302; *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E. 2d 898 (1998). As such, the Court finds that this question, on these facts, is appropriate for determination on summary judgment.

Defendant does not specify the reasons she contends the contract is unenforceable, but does cite the case of *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E. 2d 361 (2002), which held that a provision in installment sale contract for real property was unenforceable on the grounds that it constituted a "forfeiture" and did not allow for an opportunity for the purchaser to redeem the property as a matter of equity. However, a forfeiture or liquidated damages clause in a contract is not *per se* unenforceable and is a fact specific determination for the Court. The South Carolina Supreme Court has held that:

[a] provision in an installment land contract declaring forfeiture in the event of purchaser default can, *in particular circumstances*, constitute a penalty. In those circumstances, as in other contractual instances where a stipulated sum amounts to a penalty, we conclude it would be inequitable to enforce the forfeiture provision without first allowing the purchaser an opportunity to redeem the installment contract by paying the entire purchase price.

351 S.C. at 172, 568 S.E.2d at 364. The Court in *Lewis*, however, did not hold that forfeiture clauses or liquidated damages provisions are always unenforceable or unconscionable. The Court observed:

Parties to a contract may stipulate as to the amount of liquidated damages owed in the event of nonperformance. Where, however, the sum stipulated is plainly disproportionate to any probable damage resulting from breach of contract, the stipulation is an unenforceable penalty.

Id., 568 S.E.2d at 363.

Under the facts of this case, the stipulated liquidated damages provision should be enforced and the court finds it not to be unconscionable for two reasons. First, the Defendant has not made the final installment payment due under the contract in the approximate amount of \$72,000 dollars and has lived

essentially rent free for the past twenty-two (22) months when one considers the monthly payment she agreed to make in the amount of \$1000.00 dollars. As such the amount the Defendant would pay as liquidated damages is the amount of her down payment or roughly 16% of the purchase price. Secondly, if this was a mortgage foreclosure, a home owner would most certainly lose their down payment and be barred from the equity of redemption for failing to pay their mortgage payment for twenty-two (22) months.

The court here contrasts the facts of this case with facts in *Lewis*, as well as *Cody Disc., Inc. v. Merritt*, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006), where the purchasers had accumulated substantial equity and made payments over a great period of time. In *Cody Discount*, the purchaser had "almost paid the entire original balance on the contract." 368 S.C. at 574, 629 S.E.2d at 699. In *Lewis* the Court noted: "At the time of default (August 1988), Purchaser had made 141 of the approximately 182 monthly payments and owed \$2,440.14. The balance as of August 31, 1998, was \$7,726.33." 351 S.C. at 169, 568 S.E.2d at 362.

In *Cody Discount* the court indicates that a number of factors should be considered: "the amount of equity the purchaser has accumulated, the length and number of, the amount of the forfeiture, and the speed with which equity is sought." 368 S.C. at 575, 629 S.E.2d at 700. Moreover, the Plaintiffs do not seek here to deprive the Defendant of the equity of redemption, but to terminate it if she does not pay the balance of the purchase price, together with attorney fees and costs. When these factors are considered, enforcement of the liquidated damages clause on these facts is certainly not unconscionable.

The Supreme Court has defined unconscionability as follows:

Unconscionability is characterized by the "absence of meaningful choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them."

Lackey, 330 S.C. at 395, 498 S.E.2d at 902. In this case, Defendant did not qualify for a traditional mortgage and made a conscious choice to enter into an installment sale contract to purchase this property. She is an educated woman with a master's level and undergraduate degree. She received the agreement for review a full ten (10) days prior to closing. As the Court noted in *Lewis*:

Real property is often sold under contracts that provide for the payment of the purchase price in a series of installments. These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid ... Also typically, the purchaser is entitled to immediate possession ... Installment contracts almost always contain forfeiture clauses.

351 S.C. at 170-71, 568 S.E.2d at 363 (quoting 15 Richard R. Powell, Powell on Real Property § 84D.01 at 3 (2000)).

The agreement in this case, on these facts, is neither unfair, unenforceable, nor unconscionable. To hold otherwise would call into serious question when and under what circumstances a seller could enforce a bond for title agreement or installment sale contract.

D. Summary judgment is appropriate on the claim for violation of the UTPA

To be actionable under the UTPA, an allegedly "unfair or deceptive act or practice must have an impact upon the public interest." *Columbia E. Assocs. v. Bi-Lo, Inc.*, 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989). "The act is not available to redress a private wrong where the public interest is unaffected." *Id.* (citing *Noack Enters. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct.App.1986)). Furthermore, alleged deliberate or intentional breaches of a contract do not constitute a UTPA violation *Id.* (citing *Key Co., Inc. v. Fameco Distribs.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987)).

Defendant alleges that Plaintiffs are engaged in the business or trade of selling houses. However, Defendant has presented no evidence other than these bare allegations to support this claim. Therefore, Defendant has not proven that this transaction is anything more than a private act or that Plaintiffs are

ona

even subject to the UTPA. Even if she had, the only reasonable inference to be drawn from the evidence presented is that the Plaintiffs fully disclosed all material facts concerning the dam, the pond, and the existence of wetlands and the property's partial location in a flood zone. Therefore, there is no evidence of a deceptive act here.

To the extent the Defendant is referring to flipping property, illegal property flipping has been defined by the South Carolina Supreme Court as:

An illegal property flip generally requires the conspiracy of at least one of the buyers, an appraiser, and a mortgage broker or loan officer. It also requires the assistance of an attorney who is aware of the fraud, chooses to look the other way, or who fails to supervise non-lawyer assistants engaging in the unauthorized practice of law. In order for the flip to work, the same attorney has to close both transactions. If an attorney conducts a closing on property for a certain sales price and funds that closing with proceeds from the immediate resale of the same property for a significantly higher amount, the attorney has constructive notice that the second sale might be based on a fraudulently inflated appraisal of the property. This is particularly true when the buyer leaves the closing with both the property and with money from the loan.

In re Lattimore, 361 S.C. 126, 131-32, 604 S.E.2d 369, 372 (2004). Clearly, the act of "flipping" property requires a host of allegations against a fairly large group of individuals. Simply put, the Defendant's counterclaims are insufficient regarding any factual allegations which would constitute illegal property flipping.

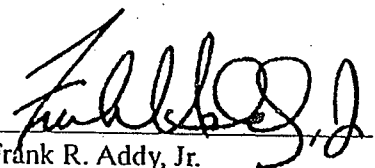
Finally, other than her allegations of failing to allegedly disclose the existence of the dam, wetlands, and flood zone, Defendant has set forth no other conduct which can be described as illegal, unethical, immoral or against public policy. See *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 396 S.E.2d 105 (Ct. App. 1989), *reversed on other grounds*, 309 S.C. 263, 422 S.E.2d 103 (1992). Therefore, Defendant's UTPA claim fails and Plaintiffs are entitled to summary judgment.

CONCLUSION

For the reasons set forth herein, and because the Defendant knew of the matters about which she complains pertaining to the property, the Defendant has no basis in law or in fact for any of the claims she has asserted.

Therefore, the Court GRANTS Plaintiff's motions for summary judgment on the Defendant's defenses and counterclaims. The Plaintiff's claim for breach of the agreement and to foreclose or terminate any equitable interest in the property is REFERRED to the Master In Equity for Lexington County for the purpose of determining whether or not the Defendant retains any equitable interest in the property. Plaintiff shall prepare an order of reference.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Judge, Eighth Judicial Circuit

May 14, 2013
Lexington, South Carolina



THE RICK HALL LAW FIRM, LLC

301 Gibson Road • P.O. Box 1898 • Lexington, South Carolina 29071

PHONE 803.957.5333 • FAX 803.957.7717

sctrilattorneys.com

FILE COPY

Rick Hall
Jennifer M. Cooper

August 9, 2012

S. Andrew Syrett, Esquire
712 Richland St., Ste. E
PO Box 7403
Columbia, SC 29202

Rolland E. Greenburg, III, Esquire,
712 Calhoun Street, Suite D
Columbia, S.C. 29201

RE: Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon, Plaintiffs, v.
Marjorie E. Temple, Defendant, et al
C/A: 2011-CP-32-01781

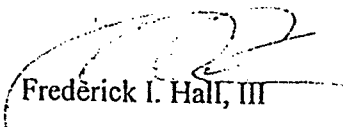
Dear Counsel:

This letter is a follow up on my letter dated January 26, 2012 concerning your client's allegations of fraud and unconscionability with respect to the bond for title and conditional sales contract by which your client purchased property from my clients. As you know, we have conducted discovery in this case, and the information we have been furnished indicates that there is no basis for your client's claims of fraud or unconscionability in this case. The action that we have brought acknowledges that existence of an equitable interest in the property and all of the written documents and testimonial evidence establish in this case that your client was fully aware that this property was partially located in a flood zone; that she purchased the property as is; and that she was fully aware that the property had a dam situated on it at the time she bought the property. It is, therefore, clear that there was no failure to disclose or misrepresentation on the part of my clients. Ms. Temple's allegations regarding repairs, amounts to nothing more than a potential breach of contract. As you know, a breach of contract claim cannot be the basis of an unfair trade practice claim, and to the extent your claims of unfair trade practice are based upon the failure to disclose, they are without merit.

I would urge you, therefore, to take my clients' deposition, or serve other appropriate discovery within the next thirty (30) days, if you intend to do so. The case has been pending for over a year, and you have had ample time to do discovery. Therefore, if I do not hear from you within the next thirty (30) days about a pending date for my clients' deposition within the next thirty (30) days, or if I do not receive any other appropriate discovery, I intend to move for summary judgment and to oppose any further delay in the hearing of that matter on the basis that discovery has not been completed.

Exhibit B

Very truly yours,



Frederick I. Hall, III

FIH,III/gmt

cc: Mr. Charles Strickland and Mrs. Latisha Strickland
Mr. Justin Dillon



THE RICK HALL LAW FIRM, LLC
301 Gibson Road • P.O. Box 1898 • Lexington, South Carolina 29071
PHONE 803.957.5333 • FAX 803.957.7717

sctrilattorneys.com

Frederick I. Hall III, PA
Darcy S. Templeton

FILE COPY

January 26, 2012

S. Andrew Syrett, Esquire
712 Richland St., Ste. E
PO Box 7403
Columbia, SC 29202

RE: Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,
Plaintiffs, v. Marjorie E. Temple, Defendant, et al
C/A: 2011-CP-32-01781

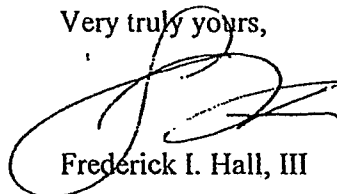
Dear Andy:

I received your letter of January 25, 2012 pertaining to the defense of "unclean hands." Please be advised that you need to file your Motion To Strike. I am not going to withdraw the defense. Secondly, I am enclosing a copy of a case that I had intended to send and simply had not had a chance to forward it to you at this point. Please find enclosed herewith the case of Coleman vs. Coleman, 208, S.C. 103 (1946).

In addition, this is to put you on notice that I believe that your client's claims in this matter are absolutely frivolous and without any support whatsoever concerning the documents that have been filed in this case. Every piece of written evidence indicates that your client was fully aware of the fact that she was buying property that had a dam situated on the pond; that she had record notice of the fact that this property was located in a flood plain; and, she purchased the property as is.

If you do not withdraw the allegations and the counterclaims that you have raised in this case, my client intends to file a Rule 11 motion, together with a Motion For Sanctions under the S. C. Frivolous Proceedings Act in the event that we are granted summary judgment in this case. I would urge you to consult with your client immediately about withdrawing her counterclaims in this case.

Very truly yours,



Frederick I. Hall, III

FIH,III/gmt

EXHIBIT C

278

Enclosure

cc: Rolland E. Greenburg, III, Esquire
Frances M. Mack, Esquire
M. Alan Peace, Esquire
Mr. Charles Strickland and Mrs. Latisha Strickland
Mr. Justin Dillon

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

FILED

IN THE COURT OF COMMON PLEAS FOR THE
 ELEVENTH JUDICIAL CIRCUIT

2014 JUL 29 A 8:16

Charles E. Strickland, III,
 Latisha Strickland, and
 Justin R. Dillon,

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

ORIGINAL

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant.

BRIEF IN OPPOSITION TO PLAINTIFF'S
 MOTION FOR ATTORNEY FEES
 2011-CP-32-1781

Marjorie E. Temple,

Third Party Plaintiff,

vs.

Russell Koivu,
 ERA Wilder Realty, Inc.,
 Gary A. Pickren,
 Rex Casterline, and
 Harvey Casterline & Vallini, LLP,

Third Party Defendants.

Plaintiffs seek an award of attorney fees pursuant to the Contract at issue and also an award of attorney fees pursuant to Rule 11. The Defendant opposes any award under any theory. The Plaintiffs bear the burden of presenting an adequate record to the Court to support the relief requested.

ATTORNEYS FEES PURSUANT TO CONTRACT

Attorney fees can be awarded pursuant to a statutory provision or if agreed to by contract. There is clearly no statutory provision governing this "Conditional Sales Agreement/Bond for Title." While the paragraph entitled "Failure to Perform (purchaser)" does contain a provision for attorney fees, the Defendant contends that attorney fees are

not separately awarded.

This agreement is what is commonly called an installment land contract. It has been referred to as the "poor man's mortgage." Upon default, the Seller cannot enforce a forfeiture but instead, a foreclosure must be brought and there must be a determination as to whether or not the Purchaser has any equity of redemption. *See Lewis v. Premium Investment Company, 351 S.C. 167, 568 S.E.2d 361 (2002).*

In a standard or strict foreclosure, the costs and fees are added to the amount of the debt for the purpose of determining the amount of the debt. Obviously in a mortgage foreclosure there must be a sale because the legal title is in the obligor. In an Installment Land Contract, title remains in the Seller so no sale is necessary unless there is equity. In the usual case of mortgage foreclosure, the property is sold to the Mortgagee, and the mortgagee receives only the property.

The mortgagee can obtain a money judgment only if the mortgagee seeks a deficiency judgment. A deficiency judgment occurs only because the amount owed under the Note exceeds the value of the property provided as security under the mortgage. The significant factor is that there are two different documents which are compared.

In the Installment Land Contract situation, there is no debt, only an amount remaining to be paid under the contract. There is no separate security instrument. There is also no right to a deficiency judgment.

The appropriate way to deal with attorney fees and costs is to add them to amount remaining to be paid under the contract. If the sum total exceeds the value of the property, then there is no equity of redemption and the contract is terminated. There is simply no right to a judgment for attorney fees in addition to the termination of the contract.

RULE 11 SANCTIONS

Plaintiffs' Motion for Sanctions is based solely on Plaintiffs' contention that the Defendant's Answer and Counterclaims were frivolous. The standard for determination of sanctions under Rule 11 is the same that under the South Carolina Frivolous Proceedings Sanctions Act §15-36-10.

The Act contains a provision that states that sanctions are available only if a reasonable attorney in the same circumstances would believe that under

the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification or reversal of existing law.

It is insufficient to prove that summary judgment was granted on the counterclaims.

The grant of summary judgment does not make the defense favorable.

Timeliness

The Motion for Summary Judgment was granted on May 14, 2013. Plaintiffs did not file their motion for sanctions until April 17, 2014. There is a ten day time period for filing post order Motions. Plaintiffs have missed this filing window and their motion must be denied.

Affidavit Submitted in Support of Motion

Assuming that the Court were to consider the affidavit, the submission by the Plaintiffs is deficient.

The standard for an award of attorney fees is set forth in Baron Data System, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

The factors are: 1) the nature, extent and difficulty of the legal services, 2) the time and labor necessarily devoted to the case, 3) the professional standing of counsel, 4) the contingency of compensation, 5) the fee customarily charged in the locality and 6) the beneficial results obtained. The Defendant concedes that the Court did rule in Plaintiffs' favor but that in and of itself is insufficient to support an award.

The affidavit submitted by the attorneys for the Plaintiffs does not meet the requirements of Baron Data:

1) the nature, extent and difficulty of the legal services

There is nothing in the affidavit that addresses this requirement.

2) the time and labor necessarily devoted to the case

Although there is an itemized statement attached to the Amended Affidavit, the Plaintiffs have made no effort to separately set forth the time and labor specifically devoted to the Motion for Summary Judgment. Moreover, since the Motion was granted on May 14, 2013, Plaintiffs cannot make a claim for any services rendered after that date. It is also unclear whether any significant portion of the pre-May 14, 2013, services were devoted to

the Motion. The Court would have significant trouble in making that determination.

In addition, the records have errors which make their accuracy questionable. On page 2 of the invoice dated June 21, there is a charge on January 25, 2012 which refers to Judge Strickland (the Richland County Master in Equity) and a review of the "Branham Electric deposition." Due to the fact that two of the Plaintiffs has the same last name of the Master, there may be other charges not so easily recognized. There are numerous charges for Westlaw research but nothing that indicates what was being research. There are numerous copy charges and for postage but nothing to indicate what was copied or mailed.

3) the professional standing of counsel

There is nothing in the affidavit that addresses this requirement.

4) the contingency of compensation

There is nothing in the affidavit that addresses this requirement. If there was a fee agreement, it was not submitted in support of the Motion. The absence of a fee agreement is fatal to the application for an award of fees. Williamson v. Middleton, 383 S.C., 490, 682 S.E.2d 867 (2009)

5) the fee customarily charged in the locality.

There is nothing in the affidavit that addresses this requirement.

CONCLUSION

Because the Plaintiffs failed to comply with the time requirements for filing the motion, the Court should not now consider the Motion.

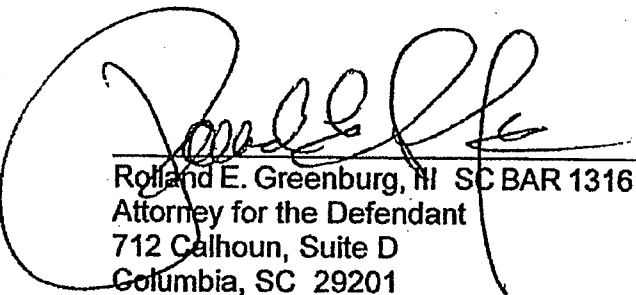
Assuming the Court will consider the Motion and the accompanying affidavit, the Plaintiffs have not provided adequate support for the request for attorney fees.

For the reasons stated herein, the Motion for Reconsideration should be denied.

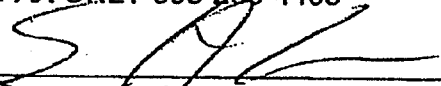
FILED

2014 JUL 29 A 0 16

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC



Roland E. Greenburg, III SC BAR 13161
Attorney for the Defendant
712 Calhoun, Suite D
Columbia, SC 29201
803-256-4408
FAX ONLY 803-256-4403



Spencer Andrew Syrett SC BAR 05459
Attorney for the Defendant
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950
syrettlaw@sc.rr.com

July 25, 2014

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2011-CP-32-01781

COPY

Plaintiff's Reply Memorandum In Support
of Motion For an Award of Attorney fees
and Sanctions

BETH A. CARRIG
CLERK OF COURT
LEXINGTON CO.

2014 OCT 13 P 12:51

FILED

The defendant and her counsel have filed a brief in opposition to plaintiff's motion for attorney fees and sanctions and memorandum in support of the same. For the reasons set forth herein, the arguments put forth by the defendant should be rejected with the exception of one error which plaintiff's counsel concedes. The basis of the defendant's opposition and that of her counsel is that: 1. an award of attorney's fees is not permissible on an installment contract where there is no deficiency judgment; 2. that Rule 11 sanctions cannot be awarded unless a reasonable attorney would believe that the claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for an extension or modification of or reversal of existing law; 3. Plaintiff's motion is not timely; 4. Plaintiff's affidavit is deficient.

CLY

JW

I. Argument

A. The Plaintiff is Entitled to An Award of Attorney Fees From the Defendant as a Matter of Contract.

The Conditional Sales Agreement and Bond for Title clearly state that the plaintiff is entitled to an award of attorney fees as a matter of the contract and there is no need to rehash this position here. The defendant and her counsel have cited no case which supports the notion that the plaintiff is not entitled to an award of attorney fees for the enforcement of this installment contract and to recover possession of their property. The contractual right to recover attorney fees is not related to a deficiency judgment and there is no case which prohibits an award under the circumstances of this case. Indeed, is it responsibility of the courts to enforce contracts reached between the parties, not to re-write them. *Low Country Open Land Trust v. Charleston Southern University*, 376 S.C. 399, 656 S.E. 2d 775 (Ct. App. 2008)

B. Rule 11 Sanctions are Recoverable When There is Not A Reasonable Belief That Good Grounds Exist to Support A Pleading, Claim, Motion or Defense.

While it has been held that a party or a party's attorney can be sanctioned for filing a "frivolous pleading" as noted in the case of *Ex Parte Gregory*, 378 S.C. 430 , 663 S.E.2d 46 (2008), Rule 11 is a separate basis for awarding attorney fees and sanctions and is governed by Rule 11 itself and not the South Carolina Frivolous Civil Proceedings Act (the Act). While there are similar elements of Rule 11 which are contained the Act, Rule 11 exist by itself as an independent means for the court to consider an award of sanctions and fees, as well as fine to the court. The key element under Rule 11 is whether or not there are good grounds to bring a claim or defense and reasonable basis to support it. In this case there were none. It is noteworthy that neither the defendant nor her counsel argue that there was good grounds to raise the claims that were asserted and continued to be asserted in the face of clear evidence to the contrary. And there is no evidence here that would allow a reasonable attorney to infer that there were good grounds to claim the non-

C. Y. JM

disclosure of the dam, pond and wetlands as a basis of fraud or unconscionability when this information was clearly disclosed in writing.

C. Plaintiff's Rule 11 Motion Is Timely.

There is no time limitation set forth in Rule 11 as to when a Motion can be brought and Rule 11 is not a post-trial motion for a new trial. Neither the defendant nor her counsel have cited to any case which indicates that a Rule 11 Motion must be brought within 10 days of the court granting summary judgment. It is true that a motion for new trial or a motion to alter or amend a judgment must be brought under Rule 59 within 10 days, but no time limit is defined under Rule 11. Certainly, the motion in this case was filed prior to this court's final order and is timely, as the Order Granting Summary Judgment was not appealed and the action is still pending since this Court held the issue of attorney fees and costs in abeyance. See Final Order at p. 5.

D. The Affidavit Is Sufficiently Detailed and Counsel's Professional Standing Before the Court Is Matter of Judicial Notice and Affidavit of Counsel.

The Court is able to ascertain the many of the factors required for an award of attorney fees by reviewing the file itself, including the nature, extent and difficulty of the case, as well as the time spent in obtaining a favorable result. While the underlying case was not particularly complicated in and of itself, it was rendered unnecessarily complicated and time consuming by the filing of unwarranted claims of fraud and unfair trade practices. This court is acquainted with counsel's professional standing and the affidavit of counsel and of John K. Koon, Esquire substantiate that counsel's professional standing are exemplary. The time and labor spent on this case is very detailed and though there is one error, which plaintiff's counsel concedes, the court can see for itself that this matter was protracted by frivolous counter claims and defenses, which had to be addressed and necessarily required substantial time.

COPY

JM

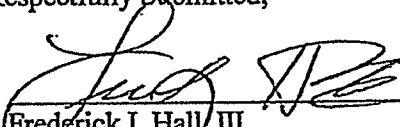
The cases cited by the defense do not support the contentions made in this case. First, there was an agreement that attorney fees would be paid and it is attached as exhibit A. It was not contingent but hourly. Additionally the *Williamson* case was based on the admission of counsel that no fees were incurred, which is not true here. See *Williamson v. Middleton*, 383 S.C. 490, 497, 681 S.E.2d 867 (2009). Secondly, in the *Baron Data Systems* case, the appellate court actually upheld a substantial award of attorney fees by the trial court for reasons similar as to why the court here should award fees, namely, turning a fairly straight forward action to recover real property into complex litigation requiring the defense of ungrounded fraud claims. *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989)

II. Conclusion

For the reasons set forth herein, as well as those set forth in the Plaintiff's Motion and Memorandum in Support of Request for Attorney Fees and Sanctions, the Plaintiffs respectfully submit that the Court should grant their Motion.

Respectfully Submitted,

By:


Frederick I. Hall, III

The Rick Hall Law Firm, LLC

301 Gibson Rd.

Lexington, SC 29072

Tel: (803) 957-5333

Fax: (803) 957-7717

rick@sctrilattorneys.com

Attorney for the plaintiffs Charles E. Strickland,
Laticia D. Strickland, and Justin R. Dillon

BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

2014 OCT 13 P 4:51

FILED

Lexington, South Carolina
October 13, 2014

COPY

JM

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2011-CP-32-01781

AFFIDAVIT JOHN K. KOON

COPY

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

2011 OCT 13 PM 4:51

FILED

PERSONALLY APPEARED BEFORE ME, John K. Koon, Esquire, who being duly sworn,
deposes and says:

1. I am an attorney with the law firm of Koon and Cook, PA. I am the senior partner and President of that firm.
2. That the firm has as its principal place of business at 2016 Gadsden Street in the City of Columbia, South Carolina.
3. I have practiced law for better than forty years.
4. That I am personally acquainted with and have known Frederick I. Hall, III in a professional capacity for approximately thirty years.

COPY

JM

5. That he is a well seasoned trial lawyer and is respected in the community for his abilities as a trial lawyer. He currently holds the highest Martindale rating of AV which measures his legal abilities and ethical standards.
6. That he is very thorough in researching a case as well as preparing a case for any matter that may come before a court.
7. That he has successfully prosecuted cases in federal, state, and the appellate courts of South Carolina.
8. I am also personally acquainted with the litigation subject matter of this case because I referred Mr. Strickland and the plaintiffs to him for legal representation because I personally do not deal with property matters.
9. That I am informed and believe that he obtained a successful result on behalf of his clients in this particular case and obtained an order granting summary judgment as to all claims and defenses of fraud, unfair trade practices, and the like.
10. That I am informed and believe that this affidavit will be submitted in support of a motion for attorney's fees and sanctions, and would respectfully submit based upon my personal knowledge of Mr. Hall that he would not have brought such a motion unless the same were grounded in fact and law.

FURTHER AFFIANT SAITH NOT.

SWORN TO before me this 13th day
of October, 2014.

Prather A. Bann
Notary Public for South Carolina
My Commission Expires: July 16th, 2020

John K. Koon
John K. Koon
S.C. Bar No. 3600

FILED
OCT 13 P 4:51
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO

COPY

JM

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2011-CP-32-01781

COPY

AFFIDAVIT OF
FREDERICK I. HALL, III

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2014 OCT 13 P 11:51

FILED

PERSONALLY APPEARED BEFORE ME, Frederick I. Hall, III, Esquire, who being duly sworn, deposes and says:

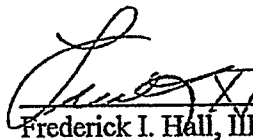
1. That the purpose of this affidavit is to supply the court with additional information concerning my professional qualifications and standing.
2. That while I believe the original affidavit filed with the court evidences that I have over thirty years of experience as a trial lawyer, this affidavit is to provide additional information to the court for my professional representation in this matter.
3. That I currently hold an AV rating with Martindale Hubbell, which is the highest possible rating provided for by this service in both ethical requirements and legal proficiency.

COPY

JL

4. Additionally, I was recently named among the top 100 trial lawyers in the state of South Carolina by both the American Society of Legal Advocates and the National Trial Lawyers Association. I have served on the fee dispute committee for the South Carolina Bar Association, and am a member of the South Carolina Bar, the Lexington County Bar Association, The South Carolina Association of Justice, and have been a member of the American Association for Justice and the American Trial Lawyers Association.
5. That I have practiced before all courts in this state, including appellate, state, and federal.
6. In addition to my qualifications, this affidavit serves to inform the court that I have had to spend additional time to respond to the arguments raised by defense counsel in their opposition brief to an award of attorney's fees and sanctions.
7. That I have spent approximately four hours on October 13, 2014 drafting additional affidavits, conducting additional research, and in drafting a reply memorandum to the arguments raised by the defense.
8. I believe that this additional time should be compensated for in the award of attorney's fees made by the court.
9. The research performed in this case on West Law pertained to the subject matter of Installment Land Contracts, fraud, unfair trade practices, unconscionability, and misrepresentation, pleading fraud and similar issues.

FURTHER AFFIANT SAITH NOT.


Frederick I. Hall, III

SWORN TO before me this 13 day
of October, 2014.

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON CO. SC

2014 OCT 13 P 1:51

FILED

Kathleen Bull
Notary Public for South Carolina
My Commission Expires: July 6, 2020

COPY

53

FILED

2014 OCT 13 PM 4:51

BETH A. CARRIG
CLERK OF COURT
LEXINGTON CO

STATE OF SOUTH CAROLINA)

FEE CONTRACT

COUNTY OF LEXINGTON)

I, Tina and Tim Dillon, the undersigned client, do hereby retain The Rick Hall, Law Firm, LLC, 301 Gibson Road, P. O. Box 1898, Lexington, South Carolina, as my attorneys to represent me in an action for Foreclosure of a Land Sale Contract (Mortgage) on behalf Latisha & Chad Strickland

In consideration of his services to me, I agree to pay a non-refundable retainer of \$ 2,500.00. I further agree to pay fees at the hourly rates specified below for in-office hours and the hourly rates specified below for out-of-office hours in addition to all costs.¹ I understand that any and all attorneys of the firm may, from time to time, collaborate, work on my file, and/or appear together or apart at required court appearances and agree to pay fees based upon the hourly rates as indicated below. I understand that paralegal time will be billed at the rate of \$85.00 per hour and that word processing, and clerical time will be billed at the rate of \$35.00 per hour. I further understand I will be sent interim bills of fees and costs upon the above basis and agree to pay the same. I understand that costs shall be due and payable as they accrue. Once the retainer is exhausted, I understand that I will be required to pay such additional sums into the firm's escrow account as may be required by attorneys. I further understand that failure provide said additional sums as required by the attorneys, or failure to pay interim bills or costs in a timely fashion may result in the firm's termination of its representation of me.

I will pay additionally and separately for any investigation which may be needed in my case.

As the retainer fee is non-refundable, I understand that should the action be dismissed before its conclusion, I may be billed for additional fees and costs for services rendered through that time.

The undersigned does hereby authorize The Rick Hall Law Firm, LLC by and through its attorneys to handle this matter in the manner in which they shall deem fit. I understand that, from time to time, the attorneys of the firm may communicate with parties associated with my case, including but not limited to opposing counsel, experts, adjusters, themselves and myself, via e-mail. I authorize the transmittal of documents and/or correspondence surrounding my case via e-mail. Further, I agree to release the attorneys and/or the firm from any and all liability resulting from any unintended results of dissemination of said information via the internet.

7th day of April, 2011.

Tina A. Dillon
CLIENT
[Signature]
Attorney

HOURLY RATES: 200 per hour

SENIOR PARTNERS: 200 per hour

ASSOCIATE ATTORNEYS: n/a

¹ Cost include, but are not limited to, long distance phone calls, fax services, publication costs, copies, postage, filing fees, service of process fees, deposition costs, etc.

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
10/13/2014	1786

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep
				Due Upon Receipt	FIH
Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	10/13/2014	Legal research, drafting of a Reply Memorandum, drafting additional Affidavits	4	200.00	800.00
Reimb Group	6/30/2014	Westlaw- Legal research; Strickland 11-19		44.31	44.31
	7/22/2014	Postage/Shipping		0.48	0.48
	8/13/2014	Copy charge (b/w=161)		16.10	16.10
		Total Reimbursable Expenses			60.89
			Total		
			\$860.89		
			Payments/Credits		
			\$0.00		
			Balance Due		
			\$860.89		

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2011-CP-32-01781

Plaintiffs,

VS.

Defendant

Third-Party Plaintiff,

VS.

Third-Party Defendants.

CERTIFICATE OF SERVICE

COPY

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, MA

2014 OCT 13 PM 4: 51

四

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201

Kate A. Johnson
Kate A. Johnson
Legal assistant to Frederick I. Hall, III

296

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,
Latisha Strickland, and
Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant.

REPLY
BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION FOR ATTORNEY FEES
2011-CP-32-1781

Marjorie E. Temple,

Third Party Plaintiff,

vs.

Russell Koivu,
ERA Wilder Realty, Inc.,
Gary A. Pickren,
Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third Party Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2014 DEC 10 A 8:27

FILED

Defendant Marjorie E. Temple responds as follows:

ATTORNEY FEES

Plaintiff restates her argument as stated in her brief in Opposition. What the Plaintiffs are seeking is essentially a deficiency judgment for the amount of their claimed attorney fees.

Although Rule 54(c) permits a Court to enter relief even if not sought in the pleadings, it should be noted that the Prayer of the Complaint does not ask for an award of attorney fees. It simply asks for the fees to be added to the amount owed under the Contract. Were the Court to award attorney fees as a separate judgment, it would in fact

result in the entry of deficiency judgment. This is at odd with Lewis and Cody Discount.

Moreover § 15-39-730 provides:

Upset bids in other judicial sales. In judicial sales other than foreclosures or in execution the bidding shall not remain open but shall be closed upon the date of sale unless there be objection at or prior to the hearing at which the decree is rendered to such closing by one or more parties to the suit, in which case the question shall be within the discretion of the court. In sales which involve both partition and foreclosure the bidding shall remain open as in foreclosure sales unless the right to a deficiency judgment is expressly waived.

The Plaintiffs have not complied with this statute.

The Plaintiffs' supplemental submissions in support of the fees are woefully deficient. Mr. Koon's affidavit certainly lauds Mr. Hall's character but it does not address the issues in the case nor the value of Mr. Hall's services. Mr. Koon is well known as a personal injury lawyer but his experience in real estate matters is virtually non-existent. Mr. Koon admits that he has no expertise in property matters. He does not indicate that he reviewed either the case record or Mr. Hall's billing records. The supporting affidavit must opine as to the reasonableness of the fees charged in light of the services performed and the result. His affidavit is insufficient to support Plaintiff's application for attorney fees.

Mr. Hall's affidavit does not sufficiently address the requirements of Loter v. Baron Data Systems.

RULE 11

Plaintiff restates her argument as stated in her brief in Opposition.

TIMELINESS

The Court Rules require post-judgment motions to be filed within ten days of the Order of Judgment. If the Defendant would have wished to challenge the Order by way of a Motion under Rule 59, she would have had ten days in which to do so. There are a number of cases that apply the ten day rule to Motions pursuant to Rule 11 as well as motions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, §15-36-10, et seq.

A motion for sanctions must be filed within ten days of the notice of entry of judgment. Pitman v. Republic Leasing Co., Inc., 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002). Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006)

Plaintiff's motion for sanctions was untimely.

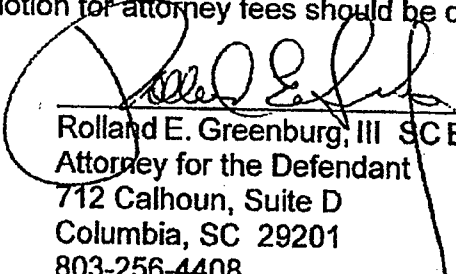
CONCLUSION

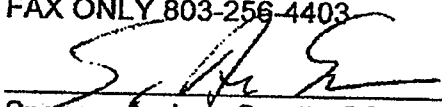
The Plaintiffs have not established that they are entitled to a separate award of attorney fees. Such an award would be in effect the grant of a deficiency judgment which the Courts have not sanctions in Installment land Contract foreclosures. In any event, the Plaintiffs did not comply with the requirements of §15-39-730.

Assuming that their application should be considered, the Plaintiffs still have not provided adequate support for their petition for attorney fees.

Because the Plaintiffs failed to comply with the time requirements for filing the motion for sanctions under Rule 11, the Court should not now consider the Motion.

For the reasons stated herein, the Motion for attorney fees should be denied.


Rolland E. Greenburg, III SC BAR 13161
Attorney for the Defendant
712 Calhoun, Suite D
Columbia, SC 29201
803-256-4408
FAX ONLY 803-256-4403


Spencer Andrew Syrett SC BAR 05459
Attorney for the Defendant
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950
syrettlaw@sc.rr.com

December 9, 2014

BETH A. GARRISS
CLERK OF COURT
LEXINGTON SC

2014 DEC 10 A 8:27

FILED

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2011-CP-32-01781

Plaintiff's Reply to the
Defendant's Memorandum in
Opposition to Plaintiff's Pending
Motion for Attorney Fees and
Rule 11 Sanctions

2015 MAR 13 A 11:11
CLERK OF COURT
LEXINGTON, SC

Plaintiff replies to the Defendant's Memorandum in Opposition to Plaintiff's Pending Motion for Attorney Fees and Rule 11 Sanctions as follows:

I. Attorney Fees Are Recoverable Pursuant to the Contract and Rule 11.

In this action, the Plaintiff seeks to recover attorney fees as part of the contract, which provides for the costs of recovery in the event an action is brought to enforce the provisions of the Agreement, including attorney fees. There is no dispute that a request for attorney fees was pled, contrary to what the Defendant argued initially. Now the Defendant argues that because this action is tantamount to a foreclosure and the attorney fees would normally be added to the debt, they cannot be recovered where the contract is merely terminated. The cases cited for this proposition are *Lewis v. Premium Investment Corp.* 351 S.C. 167, 568 S.E.2d 361 (2002) and *Cody Discount, Inc. v. Merritt*, 368 S.C. 570, 629 S.E.2d 697 (Ct. App. 2006). Neither of these cases address the issue of attorney fees and whether or not they are properly awarded, but rather addressed the issue of whether or not an equitable interest of redemption would be recognized in the face of an alleged or perceived forfeiture or penalty. *Lewis* affirms the principle that, "it is not the function of the

courts to rewrite contracts for parties,” citing *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983). The contract here provides for the recovery of attorney fees and costs.

Moreover, the Plaintiff seeks Rule 11 Sanctions and attorney fees pursuant to the contract, as previously briefed and each of the remedies are available to the plaintiff. It is only a double recovery that is barred. The plaintiff would reiterate her previous arguments to the court on all of the issues that are pending and respectfully submits that this matter should be brought to a conclusion, as it has been protracted by the defendant and her counsel.

II. Timeliness of Plaintiff's Motion

The Defense continues to assert the position that Plaintiff's Motion For Rule 11 Sanctions is not timely, despite the fact that it was filed prior to final judgment, and while the Court had jurisdiction to enter final judgment with any appeal to be filed directly with the South Carolina Court of Appeals. See Order of Reference dated May 14, 2013. The Defendant cites to the case of *In Re Beard*, 359, S.C. 1, 597 S.E.2d 835 (2004) in support of her position that the motion is time barred, but in fact, this case actually supports the premise asserted by the Plaintiff that her motion was timely as it was filed *before final judgment. (emphasis added)*

In *Beard*, the court did analogize a Rule 11 motion to a motion filed under the Frivolous Civil Proceedings Sanctions Act (FCPSA), which the court noted must be filed “*at the conclusion of a trial.*” In this case, Plaintiff's Rule 11 Motion was filed prior to final judgment, and was pending for the court's consideration and while the court retained jurisdiction over the issue of attorney fees. Indeed in *Beard*, the trial court did entertain the Rule 11 Motion post- judgment even though it denied the Motion under the FCPSA as time barred and outside of the ten day post-trial Motions time period. It therefore implicitly recognized what is in fact true, which is that Rule

11 does not contain a time period, as the Defendant and her counsel admit. Rather, the Court in *Beard* addressed the Rule 11 motion on its merits and found there was no bad faith, even though it was filed more than ten days beyond the judgment.

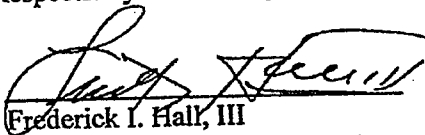
The Court here has jurisdiction because final judgment on the issue of attorney fees has not been entered. Plaintiff's Rule 11 motion has not been ruled upon, and the issue of attorney fees was held in abeyance in the order terminating the installment land sales contract. In contrast, the motion in *Beard* under the FCPSA was *filed more than ten days after the judgment*. Moreover, the Master in Equity has the same power as does the Circuit Court, SCRCP, 53: "Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter." Because final judgment with respect to the issue of attorney fees has not been entered, plaintiff's Rule 11 Motion was pending prior to the Court's Order Terminating Defendant's Equitable Interest and the Court has not ruled on this motion, the plaintiff's motion is timely.

III. Conclusion

For the reasons set forth herein, as well as those set forth in the Plaintiff's Motion and Memorandum in Support of Request for Attorney Fees and Sanctions, the Plaintiffs respectfully submit that the Court should grant their Motion.

Respectfully Submitted,

By:



Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Rd.
Lexington, SC 29072
Tel: (803) 957-5333
Fax: (803) 957-7717

rick@sctrialattorneys.com

*Attorney for the plaintiffs Charles E. Strickland,
Laticia D. Strickland, and Justin R. Dillon*

Lexington, South Carolina
March 10th, 2015

FILED
2015 MAR 13 A 11:18
BETTY A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

)
) CIVIL ACTION NO.: 2011-CP-32-01781

CERTIFICATE OF SERVICE

The undersigned legal assistant to The Rick Hall Law Firm, LLC does hereby certify that she has on March 10th, 2015, served a copy of the Plaintiff's Reply to the Defendant's Memorandum in Opposition to Plaintiff's Pending Motion for Attorney Fees and Rule 11 Sanctions by placing a copy via electronic mail and via U. S. Mail, postage prepaid, to the person(s) at the address(es) listed below:

The Honorable James O. Spence
Lexington County Judicial Center
205 E. Main Street
Ste 204
Lexington, SC 29072

S. Andrew Syrett, Esquire
712 Richland Street, Suite E
PO Box 7403
Columbia, SC 29202

Rolland E. Greenburg, III, Esquire
712 Calhoun Street, Suite D
Columbia, S.C. 29201

Kate A. Johnson
Kate A. Johnson
Legal assistant to Frederick I. Hall, III

Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2011-CP-32-01781
)

Charles E. Strickland, III, Latisha D.
Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

NOTICE OF MOTION AND
MOTION TO ALTER
JUDGEMENT OF THE
COURT'S DENYING OF
ATTORNEY'S FEES AND
RULE 11 SANCTIONS

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2015 JUN 26 PM 4:08

FILED

TO: RONALD GREENBURG AND SPENCER ANDREW SYRETT, ATTORNEYS FOR THE
DEFENDANT AND THE HONORABLE JAMES O. SPENCE, MASTER IN EQUITY FOR
LEXINGTON COUNTY:

YOU WILL PLEASE TAKE NOTICE THAT ON THE TENTH DAY AFTER THE
SERVICE THEREOF, or as soon as the matter can be held, the undersigned counsel for the
plaintiffs will move before the Honorable James O. Spence, Master in Equity for Lexington
County, for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure
altering and amending the judgement of the Court, which was entered on June 15th, 2015, and
written notice thereof received on June 16th, 2015, in the following particulars:

That the order denying attorney's fees and Rule 11 sanction fails to make specific
findings of fact and conclusions of law as to what the good grounds were for the defendant and

her counsel to bring counterclaims for fraud, breach of contract accompanied by fraud, negligent misrepresentation, and unfair trade practices in the first place and to continue to prosecute the same after being requested to withdraw them.

In addition, the Court's Order denying attorney's fees violates both the South Carolina Constitution and the United States Federal Constitution, which prohibits the impairment of a valid legal contract. Although the Court indicates that the plaintiffs are entitled to attorney's fees under the contract, it fails to award them, citing no other authority than what "other masters in equity have done" and includes no written citation to an order of any court, or any published decision of the State of South Carolina. For these reasons, the plaintiffs, by and through their undersigned counsel, request that the Court amend its judgement by awarding attorney's fees in the amount prayed for and by making specific findings of fact and conclusions of law as to what the good grounds were for bringing the counterclaims alleged by the defendants.

This motion will be based upon the South Carolina Rules of Civil Procedure and any memorandum(s) handed up at the time of the hearing and such other and further matters that may be properly considered by the Court.

Respectfully Submitted,

By:



Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Rd.
Lexington, SC 29072
Tel: (803) 957-5333
Fax: (803) 957-7717
rick@sctrilattorneys.com

*Attorney for the plaintiffs Charles E. Strickland,
Laticia D. Strickland, and Justin R. Dillon*

Lexington, South Carolina
June 26, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS FOR THE
ELEVENTH JUDICIAL CIRCUIT

Charles E. Strickland, III,)
Latisha Strickland, and)
Justin R. Dillon,)

Plaintiffs,)

vs.)

Marjorie E. Temple,)

Defendant.)

DEFENDANT'S
MEMORANDUM IN RESPONSE TO
PLAINTIFFS' 59(e) MOTION

2011-CP-32-1781

Marjorie E. Temple,)

Third Party Plaintiff,)

vs.)

Russell Koivu,)
ERA Wilder Realty, Inc.,)
Gary A. Pickren,)
Rex Casterline, and)
Harvey Casterline & Vallini, LLP,)

Third Party Defendants.)

The Defendant responds as follows:

TIMELINESS

Rule 59(e) states as follows:

A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

The Master in Equity signed the Order on June 4, 2015. The Clerk of Court clocked the order on June 4, 2015. On June 4, 2015, Ms. Leslie Shealy, Court Assistant to the Master, e-mailed a copy of the clocked copy of the order to each of the attorneys. She sent Mr. Hall his copy at the following email address: rick@sctrilattorneys.com

On June 16, 2015, Ms. Mona Huggins, clerk in the Clerk's office e-mailed a clocked copy of the order to the attorneys. She sent Mr. Hall his copy at the same address.

For purposes of Rule 59(e), The Clerk entered the Order on June 4 and the time for a Motion on Rule 59(e) started running. That time expired on June 15, 2015.

The Plaintiff filed his motion on June 26, 2015.

The Plaintiffs' motion should be dismissed as not being timely filed.

GOOD GROUNDS

The Plaintiffs seek to have the Court define the "good grounds" for the Defendant to assert counterclaims in her answer. The Court's Order adequately addresses this issue.

The Plaintiffs repeatedly state that the Court denied them an award of attorney fees. This is incorrect. The Court awarded all of the fees sought by the Plaintiffs but added those fees to the amount due under the contract. The Court had already determined that there was no equity in the property. The result is an award with no avenue available to the Plaintiffs to collect the fees. Because the Plaintiffs are not entitled to a deficiency judgment, the Court's procedure is entirely appropriate.

IMPAIRING OF THE OBLIGATIONS OF CONTRACT

The Plaintiffs claim that the Court's failure to award attorneys fees separately from the Order terminating the Contract is the "impairment of a valid legal contract."

The Plaintiffs have not previously made an argument on this ground. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995),

A party cannot use a Rule 59(e) motion to present an issue to the court that could have been raised prior to judgment but was not so raised. Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005) (citing generally C.A.H., 315 S.C. at 392, 434 S.E.2d at 270); Patterson, 318 S.C. at 185, 456 S.E.2d at 437; Hickman, 301 S.C. at 456, 392 S.E.2d at 482); see also McMillan v. S.C. Dep't of Agric., 364 S.C. 60, 67, 611 S.E.2d 323, 327 (Ct.App. 2005) (issue not preserved "because it cannot be raised for the first time in a motion to alter or amend."), cert. granted (Feb. 14, 2007). "[A] party cannot use a motion to reconsider, alter or amend a

judgment to present an issue that could have been raised prior to the judgment but was not." RRR, Inc. v. Toggas, 378 S.C. 174, 185, 662 S.E.2d 438, 443 (Ct.App. 2008) (citing Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005)). Coastal Conservation v. Dept. Of Health, 380 S.C. 349, 669 S.E.2d 899 (Ct.App. 2008)

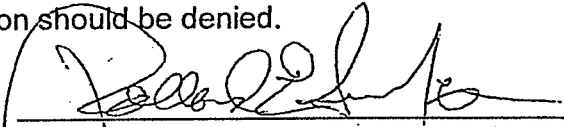
CONCLUSION

The Motion filed by the Plaintiffs was not timely filed.

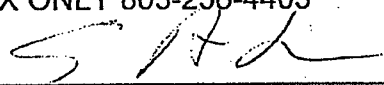
The first part of the motion has been adequately addressed in the Order.

The second part of the motion raises an issue that could and should have been raised prior to the Order. It was not and is therefore not appropriate for a motion under Rule 59(e).

For the reasons stated herein, the Motion should be denied.



Rolland E. Greenburg, III SC BAR 13161
Attorney for the Defendant
712 Calhoun, Suite D
Columbia, SC 29201
803-256-4408
FAX ONLY 803-256-4403



Spencer Andrew Syrett SC BAR 05459
Attorney for the Defendant
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950
syrettlaw@sc.rr.com

July 27, 2015

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,

Plaintiffs,

VS.

Marjorie E. Temple,

Defendant

AMENDED AFFIDAVIT OF ATTORNEY'S FEES

Marjorie E. Temple,

Third-Party Plaintiff,

VS.

Russell Koivu, ERA Wilder Realty, Inc.,
Gary A. Pickren, Rex Casterline, and
Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

PERSONALLY APPEARED BEFORE ME, Frederick I. Hall, III, who being duly sworn, deposed and says:

1. That he is the attorney for Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon, Plaintiffs herein.

2. That he has practiced since 1982, and his practice is varied, but a reasonable amount of time is spent in the area of civil law. His customary hourly rate for civil matters is \$200.00 per hour.

3. That his associate, Jennifer M. Cooper has practiced since 2000 and her practice is varied, but a reasonable amount of time is spent in the area of civil law. Her customary hourly rate for civil matters is \$200.00 per hour.

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2014 JUL 15 @ 4:05

11-11-11

4. That he incorporates herein Rule 407, 1, 5 Rules of Professional Conduct, which contains the Canons of Professional Ethics and further calls the attention of the Court to the holdings in Nienow v. Nienow, 268 S.C. 161, 232 S.E.2d 504 (1977) and Atkinson v. Atkinson, 279 S.C. 454, 309 S.E.2d 14 (S.C.App., 1983), and Glasscock v. Glasscock, 403 S.E.2d 313 (S.C. 1991) concerning the factors and criteria which should be considered in the setting of attorney's fees. He relies upon the discretion of this Court in the determination of the amount of fees, based, among other things, upon the Court's file, the Court's knowledge of the litigation between the parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of compensation in a domestic relations case, the professional standing of counsel, the fees customarily charged in this area for similar legal services, and the attached time records.

5. That figure set forth hereinbelow is in accordance with the time and expense records which are maintained on a daily basis.

6. That, to date, he and Ms. Cooper have expended a total of 72.25 hours in preparing this matter.

7. That, to date, my firm has expended total paralegal time of 11.7 hours at a rate of \$85.00 per hour for a total of \$994.50.

8. That, to date, my firm has expended total clerical time of 4.9 hours at a rate of \$35.00 per hour for a total of 171.50.

9. That, to date, my firm has costs totaling \$3,485.82.

10. That my client's fees for the time spent for the initiation and prosecution of this action to date total \$ 15751.00.

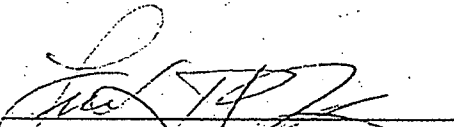
11. That, to date, my firm has expended a total of \$19,236.82 for attorney's fees, paralegal time,

clerical time and costs, an itemization of which is attached hereto as **Exhibit A**.

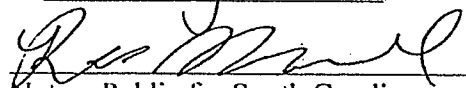
12. That my client's fees for the time spent for the defense of this action to date are set forth on the invoice attached hereto.

13. Based on the time necessarily devoted to this case; the other criteria which have been held to be relevant in the setting of attorney's fees; the undersigned, on behalf of his client, requests that this Court review the file herein, together with this Affidavit, and adjudge the same as fair and reasonable the attorney's fees of the undersigned for services rendered on behalf of Charles Strickland, Latisha Strickland and Justin Dillon.

FURTHER AFFIANT SAITH NOT.


Frederick I. Hall, III

SWORN TO before me this 15th day
of July, 2014.


Notary Public for South Carolina
My Commission Expires: July 6, 2020

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

				Amount Due	Amount Enc.	
				\$1,773.63		
Date	Transaction			Amount	Balance	
12/31/2010	Balance forward				0.00	
04/07/2011	PMT Dillon, Jimmy 11-19			-2,500.00	-2,500.00	
06/21/2012	INV #1284, Due 06/21/2012:			3,160.00	660.00	
	--- FII Time, 1 @ \$200.00 = 200.00					
	--- FII Time, 1.2 @ \$200.00 = 240.00					
	--- FII Time, 2 @ \$200.00 = 400.00					
	--- FII Time, 0.3 @ \$200.00 = 60.00					
	--- FII Time, 0.5 @ \$200.00 = 100.00					
	--- FII Time, 0.3 @ \$200.00 = 60.00					
	--- FII Time, 0.2 @ \$200.00 = 40.00					
	--- FII Time, 0.2 @ \$200.00 = 40.00					
	--- FII Time, 0.2 @ \$200.00 = 40.00					
	--- FII Time, 0.4 @ \$200.00 = 80.00					
	--- FII Time, 0.2 @ \$200.00 = 40.00					
	--- FII Time, 1 @ \$200.00 = 200.00					
	--- FII Time, 0.4 @ \$200.00 = 80.00					
	--- FII Time, 0.3 @ \$200.00 = 60.00					
	--- FII Time, 1 @ \$200.00 = 200.00					
	--- FII Time, 0.4 @ \$200.00 = 80.00					
	--- FII Time, 0.4 @ \$200.00 = 80.00					
	--- FII Time, 0.3 @ \$200.00 = 60.00					
	--- FII Time, 0.3 @ \$200.00 = 60.00					
	--- FII Time, 0.6 @ \$200.00 = 120.00					
	--- FII Time, 2 @ \$200.00 = 400.00					
	--- FII Time, 1.5 @ \$200.00 = 300.00					
	--- FII Time, 0.4 @ \$200.00 = 80.00					
	--- FII Time, 0.2 @ \$200.00 = 40.00					
	--- FII Time, 0.3 @ \$200.00 = 60.00					
	--- FII Time, 0.2 @ \$200.00 = 40.00					
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00		572.89	0.00	300.74	0.00	\$1,773.63

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

					Amount Due	Amount Enc.
					\$1,773.63	
Date	Transaction				Amount	Balance
06/21/2012	INV #1285. Due 06/21/2012. === Reimb Group --- Postage/Shipping \$1.88 --- Postage/Shipping \$3.36 --- Postage/Shipping \$0.88 --- Postage/Shipping \$2.52 --- Postage/Shipping \$0.64 --- Postage/Shipping \$1.32 --- \$3.84 --- Postage/Shipping \$0.88 --- Postage/Shipping \$3.48 --- Postage/Shipping \$3.04 --- Postage/Shipping \$2.70 --- Postage/Shipping \$0.45 --- Postage/Shipping \$1.30 === Total Reimbursable Expenses \$26.29 === Reimb Group --- Legal research - Strickland, C 11-19 \$125.40 --- Legal research - Westlaw: Strickland 11-19 \$77.12 === Total Reimbursable Expenses \$202.52 --- Title search - Strickland 11-19 \$218.50 --- Filing fee - Strickland 11-19 \$25.00 === Reimb Group --- Copy charge - (B/W: 253 @ .20) \$50.60 --- Copy charge (B/W=158) \$31.60 --- Copy charge - (b/w= 40) \$4.00 === Total Reimbursable Expenses \$86.20				558.51	1,218.51
07/09/2012	INV #1291. Due 07/09/2012. --- FHI Time, 4.5 @ \$200.00 = 900.00 --- FHI Time, 3 @ \$200.00 = 600.00				1,500.00	2,718.51
07/25/2012	PMT #6941. Strickland, Charles & Latisha 11-19				-1,218.51	1,500.00
09/10/2012	PMT #6979. Strickland, Charles & Latisha 11-19				-1,500.00	0.00
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00		572.89	0.00	300.74	0.00	\$1,773.63

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

				Amount Due	Amount Enc:
				\$1,773.63	
Date	Transaction			Amount	Balance
10/02/2012	INV #1365. Due 10/02/2012. === Reimb Group --- Westlaw - legal research - Strickland, C & L 11-19 \$294.34 --- Transcript - M. Temple Gentry: Strickland 11-19 \$416.75 === Total Reimbursable Expenses \$711.09			711.09	711.09
11/01/2012	PMT #7013, Strickland, Charles & Latisha 11-19			-711.09	0.00
01/17/2013	INV #1445. Due 01/17/2013. --- FIH Time, 0.2 @ \$200.00 = 40.00 --- FIH Time, 0.2 @ \$200.00 = 40.00 --- FIH Time, 0.2 @ \$200.00 = 40.00 --- FIH Time, 5 @ \$200.00 = 1,000.00 --- FIH Time, 3 @ \$200.00 = 600.00 --- FIH Time, 9 @ \$200.00 = 1,800.00 --- FIH Time, 7 @ \$200.00 = 1,400.00 --- FIH Time, 1 @ \$200.00 = 200.00 --- FIH Time, 0.5 @ \$200.00 = 100.00 --- Paralegal, 4 @ \$85.00 = 340.00 --- Paralegal, 0.2 @ \$85.00 = 17.00 --- Paralegal, 0.5 @ \$85.00 = 42.50 --- Paralegal, 0.2 @ \$85.00 = 17.00 --- Paralegal, 1 @ \$85.00 = 85.00 --- Paralegal, 0.5 @ \$85.00 = 42.50 --- Paralegal, 5 @ \$85.00 = 425.00 --- Paralegal, 0.3 @ \$85.00 = 25.50 === Reimb Group --- Postage/Shipping \$0.65 --- Postage/Shipping \$0.45 --- Postage/Shipping \$1.80 --- Postage/Shipping \$0.45 --- Postage/Shipping \$0.45 --- Postage/Shipping \$2.80 --- Postage/Shipping \$1.30 --- Postage/Shipping \$1.80 === Total Reimbursable Expenses \$9.70			6,316.30	6,316.30
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00	572.89	0.00	300.74	0.00	\$1,773.63

301 Gibson Road
Lexington, SC 29072

Date

7/15/2014

To:

Charles & Latisha Strickland 11-19

					Amount Due	Amount Enc.
					\$1,773.63	
Date	Transaction				Amount	Balance
02/05/2013	--- Filing fee - Strickland, Charles & Latisha 11-19 \$25.00					
03/28/2013	=== Reimb Group					
	--- Copy charge - b/w- 13: c- 5 \$3.30					
	--- Copy charge - b/w- 45: c- 1 \$4.90					
	=== Total Reimbursable Expenses \$8.20					
	--- Copy charge - b/w- 145: c- 111 \$58.90					
	PMT #7076, Strickland, Charles & Latisha 11-19					
	INV #1470, Due 03/28/2013.				-6,316.30	0.00
	--- FIH Time, 1 @ \$200.00 = 200.00				1,863.87	1,863.87
	--- FIH Time, 0.5 @ \$200.00 = 100.00					
	--- FIH Time, 2 @ \$200.00 = 400.00					
	--- FIH Time, 2.5 @ \$200.00 = 500.00					
	=== Reimb Group					
	--- Postage/Shipping \$0.45					
	--- Postage/Shipping \$0.45					
	--- Postage/Shipping \$12.50					
	--- Postage/Shipping \$5.04					
	--- Postage/Shipping \$2.44					
	--- Postage/Shipping \$0.92					
	=== Total Reimbursable Expenses \$21.80					
	=== Reimb Group					
	--- Westlaw - Legal research - Strickland, C & L, 11-19 \$307.62					
	--- Westlaw - Legal research - Strickland, C 11-19 \$334.45					
	=== Total Reimbursable Expenses \$642.07					
05/02/2013	PMT Strickland, Charles & Latisha 11-19				-1,900.00	-36.13
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00		572.89	0.00	300.74	0.00	\$1,773.63

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

					Amount Due	Amount Enc.
					\$1,773.63	
Date	Transaction				Amount	Balance
08/26/2013	INV #1547. Due 08/26/2013. --- FII Time. 2 @ \$200.00 = 400.00 --- FII Time. 0.5 @ \$200.00 = 100.00 --- Clerical. 0.2 @ \$35.00 = 7.00 --- Clerical. 0.2 @ \$35.00 = 7.00 --- Clerical. 0.3 @ \$35.00 = 10.50 --- Clerical. 0.5 @ \$35.00 = 17.50 === Reimb Group --- Postage/Shipping \$0.46 --- Postage/ Shipping \$0.92 --- Postage/Shipping \$1.32 --- Postage/Shipping \$1.32 --- Postage/Shipping \$0.46 --- Postage/Shipping \$1.12 --- Postage/Shipping \$0.92 --- Postage/Shipping \$2.76 === Total Reimbursable Expenses \$9.28 === Reimb Group --- Copy charge - b/w=117: c=172 \$80.50 --- Copy charge (b/w=44) \$4.40 === Total Reimbursable Expenses \$84.90 === Reimb Group --- Westlaw - Legal research - Strickland 11-19 \$307.62 --- Westlaw - Legal research - Strickland 11-19 \$334.45 --- AE - Westlaw - Legal research - Strickland 11-19 \$17.58 === Total Reimbursable Expenses \$659.65 --- Filing fee - Strickland. Charles & Latisha 11-19 \$125.00				1,420.83	1,384.70
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due	
900.00	572.89	0.00	300.74	0.00	\$1,773.63	

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

		Amount Due	Amount Enc.		
		\$1,773.63			
Date	Transaction	Amount	Balance		
10/01/2013	INV #1567. Due 10/01/2013. --- JMC Time, 0.5 @ \$200.00 = 100.00 --- JMC Time, 0.5 @ \$200.00 = 100.00 --- JMC Time, 0.2 @ \$200.00 = 40.00 --- JMC Time, 0.15 @ \$200.00 = 30.00 --- JMC Time, 0.5 @ \$200.00 = 100.00 --- JMC Time, 0.2 @ \$200.00 = 40.00 --- JMC Time, 0.2 @ \$200.00 = 40.00 --- JMC Time, 0.2 @ \$200.00 = 40.00 --- Copy charge - b/w=2 \$0.20	490.20	1,874.90		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00	572.89	0.00	300.74	0.00	\$1,773.63

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

				Amount Due	Amount Enc.
				\$1,773.63	
Date	Transaction			Amount	Balance
03/17/2014	INV #1695. Due 03/17/2014. --- JMC Time, 0.1 @ \$200.00 = 20.00 --- JMC Time, 0.1 @ \$200.00 = 20.00 --- JMC Time, 0.5 @ \$200.00 = 100.00 --- JMC Time, 0.2 @ \$200.00 = 40.00 --- FHI Time, 0.3 @ \$200.00 = 60.00 --- Clerical, 0.3 @ \$35.00 = 10.50 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.3 @ \$35.00 = 10.50 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.3 @ \$35.00 = 10.50 --- Clerical, 0.3 @ \$35.00 = 10.50 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Clerical, 0.2 @ \$35.00 = 7.00 --- Filing fee - Strickland, Charles & Latisha 11-19 \$25.00 === Reimb Group --- Copy charge - b/w=220; c=0 \$22.00 --- Postage/Shipping \$19.53 --- Postage/Shipping \$4.16 --- Postage/Shipping \$2.12 --- Postage/Shipping \$0.46 === Total Reimbursable Expenses \$48.27			425.27	2,300.17
03/24/2014	INV #1699. Due 03/24/2014. --- FHI Time, 0.3 @ \$200.00 = 60.00 --- JMC Time, 3 @ \$200.00 = 600.00 --- Mileage - JC: Strickland 11-19 \$3.92 --- Copy charges- b/w=8. c=6 \$3.20			667.12	2,967.29
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00	572.89	0.00	300.74	0.00	\$1,773.63

The Rick Hall Law Firm, L.L.C.

301 Gibson Road
Lexington, SC 29072

Statement

Date
7/15/2014

To:
Charles & Latisha Strickland 11-19

		Amount Due	Amount Enc.		
		\$1,773.63			
Date	Transaction	Amount	Balance		
04/17/2014	INV #1711. Due 04/17/2014. --- Clerical, 0.5 @ \$35.00 = 17.50 --- FII Time, 0.2 @ \$200.00 = 40.00 === Reimb Group --- Mediation fee - Strickland, Charles & Latisha 11-19 \$266.67 --- Postage/Shipping \$0.69 --- Postage/Shipping \$0.48 --- Copy charge \$0.40 === Total Reimbursable Expenses \$268.24	325.74	3,293.03		
04/21/2014	PMT #1031.	-2,967.29	325.74		
04/21/2014	INV #1712. Due 04/21/2014. --- JMC Time, 1.5 @ \$200.00 = 300.00 --- Filing fee - Strickland, C & L 11-19 \$25.00	325.00	650.74		
05/15/2014	PMT #7278.	-350.00	300.74		
07/10/2014	INV #1749. Due 07/10/2014. --- FII Time, 0.5 @ \$250.00 = 125.00 --- FII Time, 1 @ \$250 = 250.00 === Reimb Group --- Postage/Shipping \$1.44 --- Postage/Shipping \$1.44 --- Postage/Shipping \$2.40 === Total Reimbursable Expenses \$5.28 === Reimb Group --- Copy charge - b/w=70, c=7 \$9.80 --- Westlaw - Legal research - Strickland, C & L 11-19 \$50.38 --- Witness fee - MT Gentry: Strickland 11-19 \$32.43 === Total Reimbursable Expenses \$92.61	472.89	773.63		
07/10/2014	INV #1750. Due 07/10/2014. --- Transcript - Hearing 7/3/14: Strickland 11-19 \$100.00	100.00	873.63		
07/15/2014	INV #1753. Due 07/15/2014. --- FII Time, 3.5 @ \$200.00 = 700.00 --- FII Time, 1 @ \$200.00 = 200.00	900.00	1,773.63		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
900.00	572.89	0.00	300.74	0.00	\$1,773.63

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
6/21/2012	1284

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIII

Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	4/6/2011	Meet with clients re: foreclosure of Installment Contract	1	200.00	200.00
FIH Time	4/11/2011	Study contract & call for amount owed: receive & review e-mail from Chad Strickland	1.2	200.00	240.00
FIH Time	4/12/2011	Draft Foreclosure Complaint. Read & study contract in connection with preparing draft Complaint	2	200.00	400.00
FIH Time	4/13/2011	Corrections to draft Complaint	0.3	200.00	60.00
FIII Time	4/13/2011	Legal research re: Notice of Right to Cure with regard to installment land sale contract	0.5	200.00	100.00
FIH Time	5/10/2011	Review of Complaint & Lis Pendens, signing of paperwork	0.3	200.00	60.00
FIH Time	5/11/2011	Receipt & review of e-mail re: acceptance of service; respond to same	0.2	200.00	40.00
FIH Time	5/16/2011	e-mail Chad Strickland re: acceptance of service	0.2	200.00	40.00
FIII Time	5/16/2011	Telephone conference with client re: advantage of personal service	0.2	200.00	40.00
FIII Time	7/27/2011	Receipt & review of Answer & Counterclaim	0.4	200.00	80.00
FIII Time	8/3/2011	Receipt & review of e-mail from client: return call to client re: getting case resolved as quickly as possible	0.2	200.00	40.00
FIII Time	8/10/2011	Meeting with Chad Strickland & Mr. Dillon	1	200.00	200.00
FIII Time	8/23/2011	Telephone conference with attorney Rex Casterline re: our defense position	0.4	200.00	80.00
FIII Time	8/23/2011	e-mail to client re: status	0.3	200.00	60.00
FIH Time	9/10/2011	Draft Reply to Counterclaims & initial discovery - Interrogatories & Request for Production	1	200.00	200.00
FIH Time	9/12/2011	Revisions to Reply & discovery requests	0.4	200.00	80.00

Thank you for allowing us to serve you! We appreciate your prompt payment.

Total

Payments/Credits

Balance Due

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
6/21/2012	1284

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIH

Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	10/10/2011	Telephone conference with client re: loan status; letter to opposing counsel & to client re: mortgage payoff & loan status	0.4	200.00	80.00
FIH Time	11/22/2011	Receipt & review of e-mail re: case status & hearing: respond to same	0.3	200.00	60.00
FIH Time	12/29/2011	Review of Motion roster & Motion from defense counsel	0.3	200.00	60.00
FIH Time	1/9/2012	Meeting with client to explain upcoming Motion to Strike & Make More Certain; Motion to Compel; telephone conference with atty Frank Mack who represents Casterline	0.6	200.00	120.00
FIH Time	1/19/2012	Preparation for Motion hearing (Motion to Make More Certain). including legal research, attendance at the hearing & amending the Reply re: equitable defenses	2	200.00	400.00
FIH Time	1/25/2012	Revision to Proposed Order: letter to Judge Strickland re: the Parol Evidence Rule & oral modification to contract: review of Branham Electric deposition	1.5	200.00	300.00
FIH Time	5/7/2012	Two telephone conferences with client re: Motion to Compel	0.4	200.00	80.00
FIH Time	5/7/2012	Review of the file: telephone conference with the Court re: setting of the Motion to Compel hearing	0.2	200.00	40.00
FIH Time	5/24/2012	Telephone conference with Roland Greenburg re: discovery is being hand delivered: follow-up telephone with Andy Syrett to acknowledge receipt of discovery	0.3	200.00	60.00

Thank you for allowing us to serve you! We appreciate your prompt payment.

Total

Payments/Credits

Balance Due

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
6/21/2012	1284

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIH

Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	5/30/2012	Telephone conference with Chad Strickland re: the discovery results of the Motion to Compel discovery & that case is now in position to depose the Defendant	0.2	200.00	40.00

Thank you for allowing us to serve you! We appreciate your prompt payment.

Total	\$3,160.00
Payments/Credits	-\$3,160.00
Balance Due	\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
6/21/2012	1285

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep
				Due Upon Receipt	FIRM
Item	Serviced	Description	Hours/Qty	Rate	Amount
Reimb Group	5/3/2011	Postage/Shipping		1.88	1.88
	5/25/2011	Postage/Shipping		3.36	3.36
	8/4/2011	Postage/Shipping		0.88	0.88
	9/7/2011	Postage/Shipping		2.52	2.52
	9/7/2011	Postage/Shipping		0.64	0.64
	10/5/2011	Postage/Shipping		1.32	1.32
	12/8/2011			3.84	3.84
	1/3/2012	Postage/Shipping		0.88	0.88
	1/17/2012	Postage/Shipping		3.48	3.48
	1/17/2012	Postage/Shipping		3.04	3.04
	5/8/2012	Postage/Shipping		2.70	2.70
	5/23/2012	Postage/Shipping		0.45	0.45
	6/21/2012	Postage/Shipping		1.30	1.30
		Total Reimbursable Expenses			26.29
Reimb Group	7/19/2011	Legal research - Strickland, C 11-19		125.40	125.40
	6/20/2012	Legal research - Westlaw; Strickland 11-19		77.12	77.12
		Total Reimbursable Expenses			202.52
	7/12/2011	Title search - Strickland 11-19		218.50	218.50
	12/30/2011	Filing fee - Strickland 11-19		25.00	25.00
Reimb Group	12/19/2011	Copy charge - (B/W: 253 @ .20)		50.60	50.60
	3/12/2012	Copy charge (B/W=158)		31.60	31.60
	6/21/2012	Copy charge - (b/w= 40)		4.00	4.00
		Total Reimbursable Expenses			86.20
			Total		\$558.51
			Payments/Credits		-\$558.51
			Balance Due		\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
7/9/2012	1291

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep.
Due Upon Receipt	FII

Item	Serviced	Description	Hours/Qty	Rate	Amount
FII Time	6/21/2012	Review of all discovery documents & preparation for the deposition of Marjorie Temples	4.5	200.00	900.00
FII Time	6/22/2012	Travel time & attendance at Marjorie Temples' deposition	3	200.00	600.00
			Total		\$1,500.00
			Payments/Credits		-\$1,500.00
			Balance Due		\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
10/2/2012	1365

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIII

Item	Serviced	Description	Hours/Qty	Rate	Amount
Reimb Group	9/4/2012	Westlaw - legal research - Strickland, C & L 11-19		294.34	294.34
	9/27/2012	Transcript - M. Temple Gentry: Strickland 11-19		416.75	416.75
		Total Reimbursable Expenses			711.09
			Total		\$711.09
			Payments/Credits		-\$711.09
			Balance Due		\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
1/17/2013	1445

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep
				Due Upon Receipt	FIH
Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	1/9/2013	E-mail to client re: status & Motion	0.2	200.00	40.00
FIH Time	1/11/2013	E-mail to client to advise Motion scheduled	0.2	200.00	40.00
FIH Time	1/11/2013	Receipt & review of e-mail re: Scheduling of Motion for Summary Judgment	0.2	200.00	40.00
FIH Time	1/12/2013	Review of file materials, read Defendant's deposition & legal research for Summary Judgment memo; began drafting memo	5	200.00	1,000.00
FIH Time	1/14/2013	Continue drafting of Summary Judgment Memo	3	200.00	600.00
FIH Time	1/15/2013	Continue research & drafting of memo	9	200.00	1,800.00
FIH Time	1/16/2013	Drafting of memorandum in support of Motion for Summary Judgment	7	200.00	1,400.00
FIH Time	1/17/2013	Changes to Memo	1	200.00	200.00
FIH Time	1/17/2013	Frederick I. Hall	0.5	200.00	100.00
Paralegal	5/10/2011	Worked on Complaint & edits: prepared Summons, Civil Action coversheet, Certificate of Service: prepared for filing	4	85.00	340.00
Paralegal	4/25/2012	Spoke to client briefly & relayed information to Mr. Hall in connection with status of case	0.2	85.00	17.00
Paralegal	5/23/2012	Drafted letter to counsel for Defendant Andrew Syrett enclosing the Complaint & prepared an Acceptance of Service	0.5	85.00	42.50
Paralegal	6/23/2012	E-mailed client re: need for documents (insurance documents relating to the property)	0.2	85.00	17.00
Paralegal	11/19/2012	Filed a Notice of Motion & Motion for Summary Judgment: edited draft, prepared a Certificate of Service, drafted letter to clerk, & mailed courtesy copies to counsel & client	1	85.00	85.00
Paralegal	1/16/2013	Worked on formatting/editing of Memo draft: Corrections made	0.5	85.00	42.50
Thank you for allowing us to serve you! We appreciate your prompt payment.			Total		
			Payments/Credits		
			Balance Due		

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
1/17/2013	1445

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep.
				Due Upon Receipt	FIRM
Item	Serviced	Description	Hours/Qty	Rate	Amount
Paralegal	1/17/2013	Completely finalized draft of Memo; prepared exhibits; went over drafts, incorporated changes/amendments, exhibits added. & prepared for filing	5	85.00	425.00
Paralegal Reimb Group	1/17/2013	Paralegal services	0.3	85.00	25.50
	7/2/2012	Postage/Shipping		0.65	0.65
	7/11/2012	Postage/Shipping		0.45	0.45
	8/13/2012	Postage/Shipping		1.80	1.80
	10/2/2012	Postage/Shipping		0.45	0.45
	10/2/2012	Postage/Shipping		0.45	0.45
	11/20/2012	Postage/Shipping		2.80	2.80
	12/10/2012	Postage/Shipping		1.30	1.30
	12/10/2012	Postage/Shipping		1.80	1.80
		Total Reimbursable Expenses			9.70
Reimb Group	11/19/2012	Filing fee - Strickland, Charles & Latisha 11-19		25.00	25.00
	8/6/2012	Copy charge - b/w- 13; c-5		3.30	3.30
	12/18/2012	Copy charge - b/w- 45; c-1		4.90	4.90
		Total Reimbursable Expenses			8.20
	1/17/2013	Copy charge - b/w- 145; c- 111		58.90	58.90
Thank you for allowing us to serve you! We appreciate your prompt payment.			Total		
					\$6,316.30
			Payments/Credits		
					-\$6,316.30
			Balance Due		
					\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
3/28/2013	1470

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep.
Due Upon Receipt	FIH

Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	1/17/2013	Changes to Memo	1	200.00	200.00
FIH Time	1/17/2013	Dictating Affidavit in Support of Motion for Summary Judgment	0.5	200.00	100.00
FIH Time	2/6/2013	Prepare argument for Summary Judgment hearing & draft & submit supplemental affidavit	2	200.00	400.00
FIH Time	2/7/2013	Attend Summary Judgment hearing; return & conduct brief research on inquiry notice	2.5	200.00	500.00
Reimb Group	1/18/2013	Postage/Shipping		0.45	0.45
	1/18/2013	Postage/Shipping		0.45	0.45
	1/18/2013	Postage/Shipping		12.50	12.50
	2/1/2013	Postage/Shipping		5.04	5.04
	2/21/2013	Postage/Shipping		2.44	2.44
	2/21/2013	Postage/Shipping		0.92	0.92
		Total Reimbursable Expenses			21.80
Reimb Group	3/7/2013	Westlaw - Legal research - Strickland, C & L 11-19		307.62	307.62
	3/28/2013	Westlaw - Legal research - Strickland, C 11-19		334.45	334.45
		Total Reimbursable Expenses			642.07

We appreciate your prompt payment.

Total	\$1,863.87
Payments/Credits	-\$1,863.87
Balance Due	\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
8/26/2013	1547

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIH

Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	4/5/2013	Preparation of draft Order for Summary Judgment	2	200.00	400.00
FIH Time	5/22/2013	Drafting of Order of Reference	0.5	200.00	100.00
Clerical	8/12/2013	Drafting of Notice of Appearance	0.2	35.00	7.00
Clerical	8/13/2013	Correspondence to all counsel re: Notice of Status Conference	0.2	35.00	7.00
Clerical	8/13/2013	Drafting of Notice of Status Conference	0.3	35.00	10.50
Clerical	8/26/2013	Emails to & from Leslie Shealy RE: scheduling Status Conference	0.5	35.00	17.50
Reimb Group	4/9/2013	Postage/Shipping		0.46	0.46
	4/26/2013	Postage/ Shipping		0.92	0.92
	5/24/2013	Postage/Shipping		1.32	1.32
	5/24/2013	Postage/Shipping		1.32	1.32
	5/24/2013	Postage/Shipping		0.46	0.46
	6/25/2013	Postage/Shipping		1.12	1.12
	6/25/2013	Postage/Shipping		0.92	0.92
	8/22/2013	Postage/Shipping		2.76	2.76
		Total Reimbursable Expenses			9.28
Reimb Group	5/9/2013	Copy charge - b/w=117; c=172		80.50	80.50
	8/22/2013	Copy charge (b/w=44)		4.40	4.40
		Total Reimbursable Expenses			84.90
Reimb Group	5/29/2013	Westlaw - Legal research - Strickland 11-19		307.62	307.62
	5/29/2013	Westlaw - Legal research - Strickland 11-19		334.45	334.45
	7/31/2013	AE - Westlaw - Legal research - Strickland 11-19		17.58	17.58
		Total Reimbursable Expenses			659.65
	6/20/2013	Filing fee - Strickland, Charles & Latisha 11-19		125.00	125.00
Total					\$1,420.83
Payments/Credits					-\$1,420.83
Balance Due					\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
10/1/2013	1567

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIII

Item	Serviced	Description	Hours/Qty	Rate	Amount
JMC Time	8/28/2013	Status conference preparation	0.5	200.00	100.00
JMC Time	8/28/2013	Status conference attendance	0.5	200.00	100.00
JMC Time	8/28/2013	Telephone conference with Taylor Peace (attorney for Defendant)	0.2	200.00	40.00
JMC Time	9/10/2013	Telephone conference with client re: mediation	0.15	200.00	30.00
JMC Time	9/24/2013	Receive, review, & respond to e-mail from Taylor Peace re: mediation scheduling	0.5	200.00	100.00
JMC Time	9/24/2013	Called & scheduled Mediation with Nicole in Randy Davis' office for 10/8/13 @10 AM	0.2	200.00	40.00
JMC Time	9/24/2013	Received telephone call from Taylor Peace re: mediation & scheduling order for Judge Spence	0.2	200.00	40.00
JMC Time	9/24/2013	Received & reviewed e-mail from Taylor Peace & Judge Spence re: scheduling of mediation	0.2	200.00	40.00
	9/23/2013	Copy charge - b/w=2		0.20	0.20
			Total		\$490.20
			Payments/Credits		-\$490.20
			Balance Due		\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
3/17/2014	1695

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep
				Due Upon Receipt	FIII
Item	Serviced	Description	Hours/Qty	Rate	Amount
JMC Time	8/26/2013	Returned telephone call to Taylor Peace re: hearing status	0.1	200.00	20.00
JMC Time	10/8/2013	Telephone conference with Chris @ Taylor Peace's office re: rescheduling of mediation	0.1	200.00	20.00
JMC Time	10/23/2013	Telephone conference with Ms. Strickland	0.5	200.00	100.00
JMC Time	11/18/2013	Receive; review, & respond to scheduling of mediation	0.2	200.00	40.00
FIH Time	2/4/2014	Telephone conference with Mrs. Strickland re: mediation	0.3	200.00	60.00
Clerical	10/14/2013	Email to Nicole Price & other attorneys re: rescheduling mediation	0.3	35.00	10.50
Clerical	10/14/2013	Telephone conference with clients re: mediation dates	0.2	35.00	7.00
Clerical	10/16/2013	Follow up e-mail to all attorneys re: rescheduled mediation dates	0.2	35.00	7.00
Clerical	10/23/2013	Emails to J. Cooper re: our clients & mediation	0.2	35.00	7.00
Clerical	10/28/2013	Emails to Nicole Price & other attorneys re: rescheduling mediation	0.3	35.00	10.50
Clerical	10/28/2013	Telephone conference with clients re: mediation dates	0.2	35.00	7.00
Clerical	11/4/2013	Telephone conference with Nicole Price re: mediation	0.2	35.00	7.00
Clerical	1/17/2014	Email to Leslie Shealy at Judge Spence's office re: our Motion to Compel Mediation	0.2	35.00	7.00
Clerical	1/24/2014	Emails to Leslie Shealy re: scheduling a telephone status conference	0.3	35.00	10.50
Clerical	1/24/2014	Emails to other attorneys re: scheduling a telephone status conference with Judge Spence	0.3	35.00	10.50
Clerical	2/4/2014	Emails to Nicole Price re: mediation dates	0.2	35.00	7.00
			Total		
			Payments/Credits		
			Balance Due		

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
3/17/2014	1695

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FII

Item	Serviced	Description	Hours/Qty	Rate	Amount
Clerical	2/6/2014	Email to Leslie Shealy re: agreed on mediation date	0.2	35.00	7.00
Clerical	3/13/2014	Telephone conference with clients re: subpoenas for mediation	0.2	35.00	7.00
Clerical	3/13/2014	Drafting of subpoenas for mediation	0.2	35.00	7.00
Reimb Group	1/13/2014	Filing fee - Strickland, Charles & Latisha 11-19		25.00	25.00
	1/2/2014	Copy charge - b/w=220; c=0		22.00	22.00
	1/23/2014	Postage/Shipping		19.53	19.53
	1/23/2014	Postage/Shipping		4.16	4.16
	1/23/2014	Postage/Shipping		2.12	2.12
	1/23/2014	Postage/Shipping		0.46	0.46
		Total Reimbursable Expenses			48.27
			Total		\$425.27
			Payments/Credits		-\$425.27
			Balance Due		\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
3/24/2014	1699

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep
				Due Upon Receipt	FIH
Item	Serviced	Description	Hours/Qty	Rate	Amount
FIH Time	2/4/2014	Telephone conference with Mrs. Strickland re: mediation	0.3	200.00	60.00
JMC Time	3/19/2014	Attendance at mediation	3	200.00	600.00
	3/20/2014	Mileage - JC; Strickland 11-19		3.92	3.92
	1/13/2014	Copy charges- b/w=8. c=6		3.20	3.20
			Total		\$667.12
			Payments/Credits		-\$667.12
			Balance Due		\$0.00

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
4/17/2014	1711

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FIH

Item	Serviced	Description	Hours/Qty	Rate	Amount
Clerical	3/24/2014	Emails with Master in Equity's office & other attorneys re: setting final hearing	0.5	35.00	17.50
FIH Time	4/15/2014	Telephone conference with Justin Dillon about hearing date & need to prepare testimony	0.2	200.00	40.00
Reimb Group	4/1/2014	Mediation fee - Strickland, Charles & Latisha 11-19		266.67	266.67
	4/1/2014	Postage/Shipping		0.69	0.69
	4/1/2014	Postage/Shipping		0.48	0.48
	4/8/2014	Copy charge		0.40	0.40
		Total Reimbursable Expenses			268.24
			Total		
			\$325.74		
			Payments/Credits		
			-\$325.74		
			Balance Due		
			\$0.00		

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
4/21/2014	1712

Bill To:
Charles & Latisha Strickland 11-19

[illegible]

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
7/10/2014	1749

Bill To:
Charles & Latisha Strickland 11-19

				Terms	Rep
				Due Upon Receipt	FIRM
Item	Serviced	Description	Hours/Qty	Rate	Amount
FIRM Time	7/3/2014	Meet with clients	0.5	250.00	125.00
FIRM Time	7/3/2014	Status conference, pre-trial, putting settlement on record	1	250.00	250.00
Reimb Group	4/28/2014	Postage/Shipping		1.44	1.44
	4/28/2014	Postage/Shipping		1.44	1.44
	6/30/2014	Postage/Shipping		2.40	2.40
		Total Reimbursable Expenses			5.28
Reimb Group	5/8/2014	Copy charge - b/w=70, c=7		9.80	9.80
	6/5/2014	Westlaw - Legal research - Strickland, C & L 11-19		50.38	50.38
	6/26/2014	Witness fee - MT Gentry: Strickland 11-19		32.43	32.43
		Total Reimbursable Expenses			92.61
			Total		\$472.89
			Payments/Credits		\$0.00
			Balance Due		\$472.89

The Rick Hall Law Firm, LLC

301 Gibson Road Lexington, SC 29072

Invoice Date:	Invoice #:
7/10/2014	1750

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep
Due Upon Receipt	FII

Item	Serviced	Description	Hours/Qty	Rate	Amount
	7/10/2014	Transcript - Hearing 7/3/14; Strickland 11-19		100.00	100.00
				Total	\$100.00
				Payments/Credits	\$0.00
				Balance Due	\$100.00

The Rick Hall Law Firm, LLC

301 Gibson Road · Lexington, SC 29072

Invoice Date:	Invoice #:
7/15/2014	1753

Bill To:
Charles & Latisha Strickland 11-19

Terms	Rep.
Due Upon Receipt	FIH

[illegible]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2011-CP-32-01781

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,

Plaintiffs,

vs.

Marjorie E. Temple,

Defendant

CERTIFICATE OF SERVICE

Marjorie E. Temple,

Third-Party Plaintiff,

vs.

Russell Koivu, ERA Wilder Realty, Inc.,
 Gary A. Pickren, Rex Casterline, and
 Harvey Casterline & Vallini, LLP,

Third-Party Defendants.

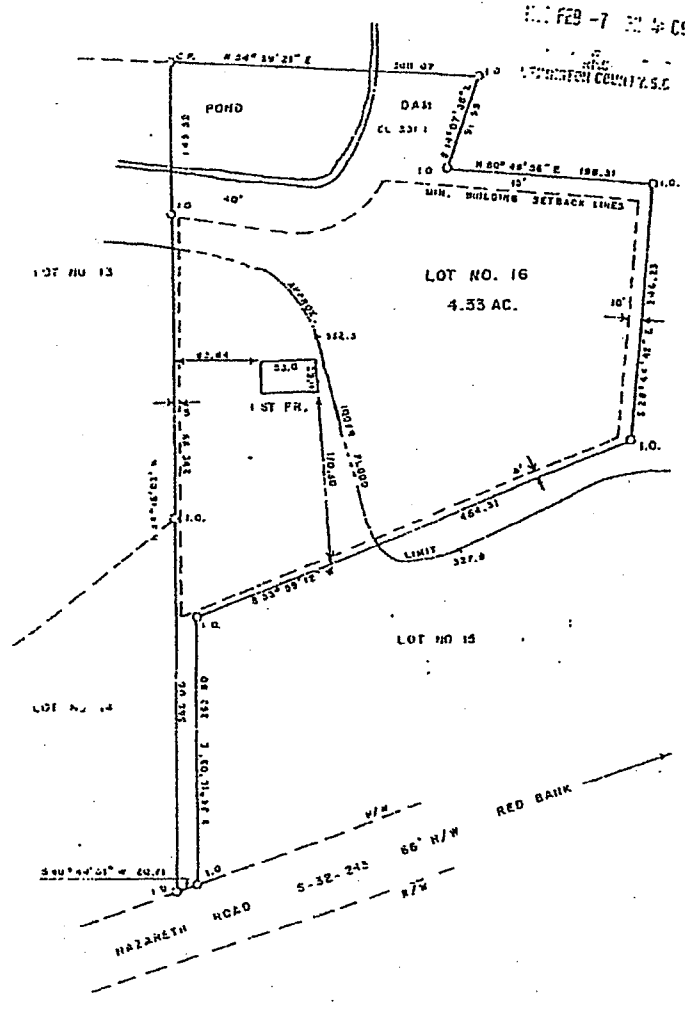
The undersigned legal assistant to The Rick Hall Law Firm, LLC does hereby certify that she has on July 15, 2014, served a copy of the Amended Affidavit of Attorney's Fees and Costs and Plaintiff's Memorandum of Law in Support of Request for Attorney's Fees and Costs Pursuant to the Bond for Title and Purchase Agreement and Rule 11 Sanctions by placing a copy via electronic mail and via U. S. Mail, postage prepaid, to the person(s) at the address(es) listed below as evidenced by the attached letter and emails:

S. Andrew Syrett, Esquire
 712 Richland Street, Suite E
 PO Box 7403
 Columbia, SC 29202

Rolland E. Greenburg, III, Esquire
 712 Calhoun Street, Suite D
 Columbia, S.C. 29201

Kate A. Johnson
 Kate A. Johnson
 Legal assistant to Frederick I. Hall, III

Lexington, South Carolina



PLAT OF

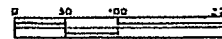
LOT NO. 16 OF THE PARTRIDGE HILL SUBDIVISION PHASE I LOCATED 2.8 MILES WEST OF RED BANK, AS SHOWN ON THE SUBDIVISION PLAT THAT IS RECORDED IN THE LEXINGTON COUNTY, SOUTH CAROLINA, OFFICE OF MESNE CONVEYANCES IN PLAT BOOK 233 PAGE 7.

PLAT PREPARED FOR

LAWRENCE D. & SHARON B. WRIGHT

SCALE: 1" = 100'

JANUARY 30, 1990



I HEREBY CERTIFY THAT THE MEASUREMENTS AS SHOWN ON THE ABOVE PLAT ARE CORRECT AND THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THE AREA WAS COMPUTED BY THE COORDINATE METHOD AND THE RATIO OF PRECISION IS 1" /

I HEREBY CERTIFY THAT I HAVE CONSULTED THE FEDERAL FLOOD HAZARD MAPS AND FIND THE SUBJECT PROPERTY TO BE IN ZONE "C" PANEL NO. (100 YR. FLOOD LIMIT AS SHOWN DATED: ON SUBDIVISION MAP)

Donald B. Sprules
DONALD B. SPROLES, RES. NO 11320

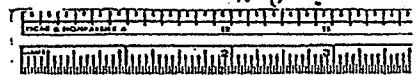
D.B. SPROLES & ASSOCIATES, INC.
618 SHADOW BROOK DR.
COLUMBIA, SC. 29210
TELE: 803-798-2032

Page 152-A

7523-01-016

03947
Plat Bk 235

Page 152-A





11-17
THE RICK HALL LAW FIRM, LLC
301 Gibson Road • P.O. Box 1898 • Lexington, South Carolina 29071
PHONE 803.957.5333 • FAX 803.957.7717

sctrialattorneys.com

FILE COPY

Frederick I. Hall III, PA
Darcy S. Templeton

January 26, 2012

S. Andrew Syrett, Esquire
712 Richland St., Ste. E
PO Box 7403
Columbia, SC 29202

RE: Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,
Plaintiffs, v. Marjorie E. Temple, Defendant, et al
C/A: 2011-CP-32-01781

Dear Andy:

I received your letter of January 25, 2012 pertaining to the defense of "unclean hands." Please be advised that you need to file your Motion To Strike. I am not going to withdraw the defense. Secondly, I am enclosing a copy of a case that I had intended to send and simply had not had a chance to forward it to you at this point. Please find enclosed herewith the case of Coleman vs. Coleman, 208, S.C. 103 (1946).

In addition, this is to put you on notice that I believe that your client's claims in this matter are absolutely frivolous and without any support whatsoever concerning the documents that have been filed in this case. Every piece of written evidence indicates that your client was fully aware of the fact that she was buying property that had a dam situated on the pond; that she had record notice of the fact that this property was located in a flood plain; and, she purchased the property as is.

If you do not withdraw the allegations and the counterclaims that you have raised in this case, my client intends to file a Rule 11 motion, together with a Motion For Sanctions under the S. C. Frivolous Proceedings Act in the event that we are granted summary judgment in this case. I would urge you to consult with your client immediately about withdrawing her counterclaims in this case.

Very truly yours,

Frederick I. Hall, III

FIH,III/gmt

Enclosure

cc: Rolland E. Greenburg, III, Esquire
Frances M. Mack, Esquire
M. Alan Peace, Esquire
Mr. Charles Strickland and Mrs. Latisha Strickland
Mr. Justin Dillon



THE RICK HALL LAW FIRM, LLC

301 Gibson Road • P.O. Box 1898 • Lexington, South Carolina 29071
PHONE 803.957.5333 • FAX 803.957.7717

sctrilattorneys.com

FILE COPY

Rick Hall
Jennifer M. Cooper

August 9, 2012

S. Andrew Syrett, Esquire Rolland E. Greenburg, III, Esquire,
712 Richland St., Ste. E 712 Calhoun Street, Suite D
PO Box 7403 Columbia, S.C. 29201
Columbia, SC 29202

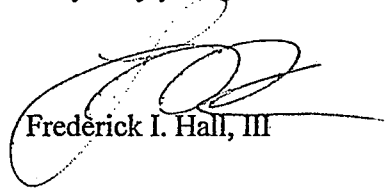
RE: Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon, Plaintiffs, v.
Marjorie E. Temple, Defendant, et al
C/A: 2011-CP-32-01781

Dear Counsel:

This letter is a follow up on my letter dated January 26, 2012 concerning your client's allegations of fraud and unconscionability with respect to the bond for title and conditional sales contract by which your client purchased property from my clients. As you know, we have conducted discovery in this case, and the information we have been furnished indicates that there is no basis for your client's claims of fraud or unconscionability in this case. The action that we have brought acknowledges that existence of an equitable interest in the property and all of the written documents and testimonial evidence establish in this case that your client was fully aware that this property was partially located in a flood zone; that she purchased the property as is; and that she was fully aware that the property had a dam situated on it at the time she bought the property. It is, therefore, clear that there was no failure to disclose or misrepresentation on the part of my clients. Ms. Temples' allegations regarding repairs, amounts to nothing more than a potential breach of contract. As you know, a breach of contract claim cannot be the basis of an unfair trade practice claim, and to the extent your claims of unfair trade practice are based upon the failure to disclose, they are without merit.

I would urge you, therefore, to take my clients' deposition, or serve other appropriate discovery within the next thirty (30) days, if you intend to do so. The case has been pending for over a year, and you have had ample time to do discovery. Therefore, if I do not hear from you within the next thirty (30) days about a pending date for my clients' deposition within the next thirty (30) days, or if I do not receive any other appropriate discovery, I intend to move for summary judgment and to oppose any further delay in the hearing of that matter on the basis that discovery has not been completed.

Very truly yours,



Frederick I. Hall, III

FIH,III/gmt

cc: Mr. Charles Strickland and Mrs. Latisha Strickland
Mr. Justin Dillon



James O. Spence
Master-in-Equity

ORIGINAL
FILED

2015 MAR 26 A 11:27

BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

MASTER-IN-EQUITY COURT
COUNTY OF LEXINGTON
Lexington County Judicial Center
205 East Main Street, Suite 204
Lexington, SC 29072

Fax (803) 785-0609
Email: jspence@lex-co.com

March 26, 2015

Re: Strickland v Temple v Koivu et al/ 2011-CP-32-01781

Dear Mr. Hall, Mr. Syrett, and Mr. Greenburg:

I hope all is well with everyone at home and work.

The purpose of this letter is to advise you of the decision reached in the above referenced action to foreclose and equitable interest in real estate with related attorney fee claims case and to ask for assistance in the preparation of the order. I appreciate your effort/research and spirited representation of your clients and well-thought memos regarding this very interesting issue.

My analysis of the case is limited to the trial testimony, reasonable inferences, and stipulated evidence. I will not cite all case law etc to all points discussed below since most arguments are addressed in your respective briefs/memos. { *I further note that I have yet to determine how property to format and space WORD, so I apologize in advance for the below format.* }

The basic facts are as follows:

1. May 10, 2011 Plaintiff files an Action to Foreclose on Equitable interest in real property and or terminate a conditional sales agreement and bond for title. Attached to the complaint was a recorded 14 page Conditional Sales Agreement/Bond for Title containing language that Attorney represented the Seller, and that Purchase could obtain attorney, independent title search etc.
2. Defendant responded with 11 count Answer, Counterclaim and Third Party Complaint against Real Estate Agents and Law Firm involved in closing.

3. Hearing testimony and a review of case history reveals that extensive discovery, discovery motions, dispositive motions, mediation etc occurred.
4. Plaintiff claims that since SJM granted and that discovery indicated Defendant had no valid defense etc, that Defendant's failure to withdraw claims timely pursuant to Plaintiff's demands warrant sanctions.
5. Defendant thereafter argues that he had duty to represent client, fully investigate, conduct discovery etc and that all delays in case were not directly caused by Defendant.
6. Defendant also claims that Plaintiff has failed to prove case law 6 factors entitling them to award of attorney fees.

There are basically three disputed issues:

- (1) ISSUE ONE:** Is Plaintiff entitled to attorney fees pursuant to six factor case law? **Yes. (Following law from Judge Anderson's MIE Attorney Fees-- How to Get Them and Keep Them on Appeal (2010 MIE Bench Bar SCCLE 10-41 October 8, 2010)**

"When determining what constitutes a "reasonable" attorney's fee, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Dickert v. Dickert, __ S.E.2d __, 2010 WL 98698 (2010); Michael Scott B. v. Melissa M., 378 S.C. 452, 663 S.E.2d 58 (2008); Marquez v. Caudill, 376 S.C. 229, 656 S.E.2d 737 (2008); Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005); Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005); Rowell v. Whisnant, 360 S.C. 181, 600 S.E.2d 96 (Ct. App. 2004); Gordon v. Drews, 358 S.C. 598, 595 S.E.2d 864 (Ct. App. 2004); Burton v. York County Sheriff's Dep't, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004); Vick v. South Carolina Dep't of Transp., 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001); Global Protection Corp. v. Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998); Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997); Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990); Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

B. No One Factor is Controlling

Consideration should be given by the trial court to all six factors; none of the factors is controlling. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).

**C. Explanation of Factors/
Examples of Application of Facts
to Six Factors**

- **Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 384-85, 377 S.E.2d 296, 297-98 (1989):**

In awarding reasonable attorney's fees, there are six factors to be considered. See, e.g., Wood v. Wood, 269 S.C. 600, 239 S.E.2d 315 (1977); Bentrim v. Bentrim, 282 S.C. 333, 318 S.E.2d 131 (Ct. App. 1984). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling. Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974).

In making its determination, the trial court articulated each of the six factors.

(1) The Nature, Extent and Difficulty of the Legal Services Rendered.

Upon its evaluation of the nature, extent and difficulty of the legal services, the trial court determined that Baron had to expend considerably more time and effort on the case because the defendants had transformed a simple collection action into complex litigation.

(2) The Time and Labor Necessarily Devoted to the Case.

The trial court concluded that "a review of the statements and affidavits of Baron's trial attorney indicate clearly that the time and labor spent were reasonable and not duplicative." The respondents did not dispute this conclusion.

(3) The Professional Standing of Counsel.

The circuit court's determination that Baron's trial attorney is an experienced, skilled attorney, of high professional standing in the

community was based upon a careful review of the affidavits of Baron's expert and its trial attorney, which included the attorney's resume. Respondents did not contest the trial court's determination.

(4) The Contingency of Compensation.

Not applicable since this was not a contingency case.

(5) The Fee Customarily Charged in the Locality for Similar Legal Services.

Based upon a review of the attorney's resume, affidavits and its familiarity with attorney fees customarily charged in this legal community, the trial court found that the rate of \$100 per hour was appropriate.

(6) The Beneficial Results Obtained.

The trial court decided that the total benefits obtained by Baron include a sizeable judgment (\$16,151) and the avoidance of nearly half a million dollars in liability on the counterclaims. The Court of Appeals concluded that Baron sought over \$70,000 and recovered only \$16,151, thus the beneficial result was not significant.

....

We conclude that the trial court properly applied the relevant factors and that its order is supported by the record.

- Glasscock v. Glasscock, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991):

[W]e clarify the six factors cited by this Court in determining a reasonable attorney's fee:

- (1) the nature, extent, and difficulty of the case;
- (2) the time necessarily devoted to the case;
- (3) professional standing of counsel;
- (4) contingency of compensation;
- (5) beneficial results obtained;
- (6) customary legal fees for similar services.

Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989). While “contingency of compensation” is an appropriate factor considered in awarding attorney’s fees, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney’s fee if an award is not made. Further, the factor “beneficial results obtained” merely aids in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result. Neither of these factors endorses use of a percentage fee. . . .

Further, we hold that a fee award must be based upon a reasonable hourly fee. Applying the above six factors to determine an appropriate fee award, the reasonableness of the hourly rate shall be determined according to: (1) the professional standing of counsel; and (2) the customary legal fees for similar services. The reasonableness of the number of hours billed shall be determined according to: (1) the nature, extent, and difficulty of the case; and (2) the time necessarily devoted to the case.[FN1]

[FN1] As discussed above, the remaining factors, “contingency of compensation” and “beneficial results obtained” are to be considered in determining whether an award should be made. In making this determination, the abilities of the parties to pay, their respective financial conditions, and the effect of the attorney’s fees on each party’s standard of living are also to be considered. Mitchell v. Mitchell, 283 S.C. 87, 320 S.E.2d 706 (1984).

Applying these factors here, we find the total hourly fee of \$51,998.75 reasonable and affirm the award of attorney’s fees in this amount.

- Taylor v. Medenica, 331 S.C. 575, 580-81, 503 S.E.2d 458, 461-62 (1998):

The trial court considered each of the above factors in setting the attorney’s fee award. The trial judge based his award on the affidavits submitted by Mrs. Taylor’s three attorneys and the affidavit of an attorney who did not participate in this matter but attested the hourly rates and hours submitted were appropriate. The trial judge

noted he had presided over a number of the discovery motions in this case, all of the pretrial motions, and the two and one-half week trial. The court determined the amount of time estimated by Mrs. Taylor's attorneys, approximately 1500 hours, was appropriate, if not conservative. The court recognized all of Mrs. Taylor's attorneys were experienced and capable trial attorneys and agreed the hourly rates for each were appropriate. The court noted the attorneys had accepted this case on a contingency fee basis and opined it thought UTPA actions were one of the most difficult types of cases to try. The trial court recognized the beneficial results obtained by the attorneys, both in terms of the \$108,726 recovered under the UTPA by Mrs. Taylor from CIBL and in terms of the public benefit in deterring CIBL from similar conduct.

In addition, the trial court took judicial notice that CIBL vigorously contested Mrs. Taylor's claims it had violated the UTPA, thereby requiring Mrs. Taylor to present witnesses in response. Mrs. Taylor's experts testified CIBL's laboratory tests were excessive, "absolutely bizarre," and the results were questionable. One expert testified he believed the tests were conducted for the purpose of generating income. One witness testified there was no medical reason for any of the tests. Another witness testified the tests were painful to Mrs. Taylor yet medically worthless.

We have reviewed the affidavits submitted by counsel and agree they are somewhat deficient. One affidavit includes approximately 78 hours of time for work performed prior to the filing of Mrs. Taylor's second amended complaint. Moreover, the affidavits do not specifically state the time spent on the UTPA claim against CIBL.

In spite of these deficiencies, we conclude there is evidence which supports the approximately 1500 hours of time spent by Mrs. Taylor's attorneys on this matter. The affidavits note the time spent by other attorneys and some legal professionals was not submitted for reimbursement. The judge who presided over the majority of this matter stated the submitted time was, in his view, conservative. Furthermore, time spent is but one factor to consider in setting a reasonable attorney's fee. Baron Data Systems, Inc. v. Loter, supra.

With regard to the issue of estimates, two of the three affidavits state the attorneys did not keep records of the time spent on this case. Nonetheless, the accompanying time sheets do list specific services rendered and the time spent performing each service. We conclude the affidavits and accompanying time sheets fairly reflect the time spent by the attorneys on this matter.

Finally, there is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. This Court has approved an award of attorney's fees where the fee substantially exceeded the actual recovery. Baron Data Systems, Inc. v. Loter.

We conclude the trial judge properly considered all six factors in determining the appropriate attorney's fee and find his decision awarding \$500,000 in attorney's fees and \$24,068 in costs is supported by the record. Jackson v. Speed, *supra*. (Footnotes omitted).

IV. COURT IS REQUIRED TO MAKE FINDINGS OF FACT FOR EACH OF THE SIX FACTORS

"When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in Collins [v. Collins], 239 S.C. 170, 122 S.E.2d 1 (1961)]." Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993).

"On appeal, absent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court to make specific findings of fact." *Id.* This proposition has been interpreted by our courts to mean that an award for attorney's fees will not be reversed due to a lack of findings in the order when the record supports the judge's determination. See Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) ("[A]n award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor."); McMaster v. Strickland, 322 S.C. 451, 455, 472 S.E.2d 623, 626 (1996) (affirming special referee's award of attorney's fees notwithstanding his failure to make specific findings about each of the six Blumberg factors because the record contained ample support for each of the six factors).

Under Rule 52(a), SCRCP, “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon.” Our appellate courts have determined this requirement to be directory and that noncompliance would not form the basis for invalidating a judgment. Rather, where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court’s judgment for lack of an explicit or specific factual finding. Noisette v. Ismail, 304 S.C. 56, 403 S.E.2d 122 (1991).”

In this case, Plaintiff has submitted three (3) attorney fees affidavits and an affidavit by Attorney John Koon. A review of the case file, the affidavits, the court’s knowledge of these actions and fees charges, and the trial testimony dictates that attorney fees be awarded because (a) Defendant did not contest nor choose to cross examine Plaintiff counsel about the hours worked or claimed to have been worked, and (b) Plaintiff submitted affidavits satisfying the six factor attorney reasonableness test.

- (i) Nature /difficulty of case As noted above the pleadings, CMS status report, and counsels hearing arguments indicate that this was a well-contested case about the sale of property that contained a pond. There were counterclaims, defenses, third party claims etc, extensive discovery, mediations, motions filed and argued before various trial courts.
- (ii) Time Spent: Plaintiff documented time. Defendant did not cross Plaintiff about time allocations contained on affidavit nor argue that he believed Plaintiff had not worked the time he claimed on affidavit.
- (iii) Professional Standing: Plaintiff counsel’s affidavits & John Koon Affidavit noted his work experience, his length of practice, various trial and appellate work, legal associations and his Martindale-Hubbard AV attorney rating
- (iv) Contingency of Compensation: Not applicable since hourly rate contract.
- (v) Benefit/Result: Plaintiff won. He successful prosecuted his action; defended against defenses and counterclaims through discovery, and filed and argued motions.

- (vi) Fee Customarily Charged: The various affidavits contained the fee contract and hourly rates of \$200.00 etc. The court has reviewed nine years of attorney fee hourly rates from attorneys in this geographical area for not only foreclosures, but actions to foreclose on bonds for title, equitable mortgages, contracts for deeds, installment sales contracts etc. There is no question in this judge's mind that the court's knowledge plus matters contained in affidavits confirm that the fees based on a \$200 hourly rate satisfies this criteria for such a case and an experienced attorney.

2 If so entitled, are Plaintiff's attorney fees a separate damage award or an element of damages?

The attorney fee award is an element of damages. This matter is, by caption, form and substance, an action to foreclose or terminate an equitable interest in property. It is not a lease/contract dispute case which could result in an award of monetary damages. When foreclosing an equitable interest, the total amount of damages must be calculated pursuant to SCRPC 71 and by case law since the damage amount is necessary to determine what, if any, equity the defendant might have in the property. Our state cases, various legal journals etc, basically state that if (a) not equity- proper remedy is to terminate equitable interest. (b) if some equity, then a 30 day (or some time period) is granted to defendant to redeem or tender a full pay -off. (c) if a lot of equity, then a court could order a public sale as in the case of a legal foreclosure. Thus, the attorney fees earned in this case are added as a part of the damage calculation, not as a separate award. (See Attorney Andrew S. Radeker's "Pleading Special Property Matters: A New Look at Old Stuff" 2008 MIE Bench Bar Seminar October 10, 2008 SC BAR CLE 08-41 for summary of this type lien.)

I would further note that this argument, granting a separate award of attorney fees, or an assignment of the attorney fees award from client to law firm has been made and universally rejected to my knowledge, in various MIE courts over the last nine years. The one way for a creditor to obtain a monetary award after terminating a legal or equitable interest is to request a deficiency judgment, which then would provide the debtor with certain statutory protections.

3. Is Plaintiff entitled to Rule 11 or other punitive award of attorney fees against Defendant? No. Plaintiff's argument that attorney fees as sanctions should be imposed against defendant because the counsel raised or continued to prosecute improper defenses, failed to dismiss them after demand, and ultimately had sjm granted against them, is not persuasive. While Plaintiff's case law does allow for sanctions in certain cases, I do not believe the facts and actions in this matter warrant sanctions any Plaintiff theory.

Trial delays generally can result from things such as (1) 7 month discovery time allowance (2) Court Admin. target deadlines of trial being heard 1 year after assigned to trial roster (which suppose to happen 1 year from filing) or I guess by analogy 1 year from Order of Reference. (3) scheduling Order putting case out (4) delays in court time scheduling, hearing and ruling on discovery motions (5) delay in court time scheduling, hearing and ruling on SJM (6) mediations (7) attorney generated request for continuances (8) Court conflict rules-which trial does first if conflict between courts etc.

The crux of Plaintiff's complaint here seems to be that fraud was alleged and SJM was granted. A granting of SJM after discussion with client, paper discovery, depositions etc, does not necessarily dictate sanctions. Further, one lawyer does not have a duty to dismiss a claim or action or quit based upon a request or demand by the other attorney. Trials exist so that parties must prove their case before a judge pursuant to rules of evidence and procedure.

I further note that Rule 407 states that a lawyer has responsibilities to (a) his client (b) to the legal system and to (3) the lawyer & firm's interest. These rules are designed to provide guideposts advising such things as:

Attorney must have basis in law and fact.

Attorney has duty to use the legal procedure for the fullest benefit of the clients cause but also a duty not to abuse the legal system.

Comment 2-action not frivolous even if lawyer doesn't believe his client will ultimately win so long as layer can in good faith believes law can by changed or modified.

Attorney can't do things just for delay.

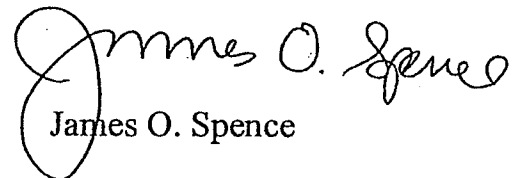
Comments to Rule 3.3 Expediting litigation does not seem to indicate that defense attorney has duty to push case forward, but rather that attorney cannot do overt/improper acts to delay.

This letter is not a final order. The court asks Mr. Syrett to submit a *judiciously objective proposed order citing transcript and the above.* (Please summarize Plaintiff's argument in each sub section), in the following format, addressing (Please review MIE Web site on Lexington County Website for Honorable Justice Kittredge 2007 MIE Bench Bar Seminar Notes and S.C. Court of Appeals Judge Bruce Williams Order Writing Tips) citing:

1. Include chronology of relevant dates and court actions.
2. Final Foreclosure of Lien Order citing relevant case law from above.
3. Prepare Notice of sale-leave sale date blank. Court will fill in date after final order review and execution.
4. RULE 52 applications of specific facts supporting cause(s) of action/defenses.
5. Any critical evidentiary matter.
6. Please prepare Order and cite authority according to Rules 85(a) and 239 SCACR.

None of this letter need be inserted verbatim in the proposed order. Please send me (within thirty days) the proposed Order by a WORD e-mail attachment and provide a copy of the order to all parties as required by rule.

Very Truly Yours,


James O. Spence

FILED
2015 MAR 26 A 11:27
BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON COUNTY

Rick Hall

From: Huggins, Mona Denise <MHuggins@lex-co.com>
Sent: Tuesday, June 16, 2015 8:31 AM
To: 'Rick Hall'
Cc: Rolland E Greenburg, III; Andrew Syrett; Taylor Peace; M Alan Peace
Subject: 2011CP3201781 Strickland vs Temple
Attachments: SKMBT_36315061208213.pdf

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable James O. Spence
Master-In-Equity

Case No. 2011-CP-32-1781

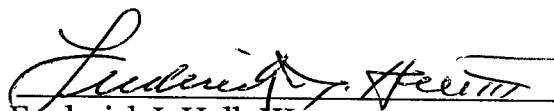
Appellate Case No. 2015-002048

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellants,
v.
Marjorie E. Temple.....Respondent.

CERTIFICATE OF COUNSEL

In accordance with Rule 210 (g) S.C.A.C.R., the undersigned counsel for the Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 18, 2018



Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Road
Lexington, SC 2972
Rick@sctrtrialattorneys.com
(803) 957-5333
(803) 957-7717 facsimile
S.C. Bar. No. 2591
Attorney for Appellant

RECEIVED

JUN 25 2018

SC Court of Appeals