

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

The Honorable Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A

Respondents

v.

Sand Dollar 31, LLC; Rhonda
Meisner, of whom Rhonda
Meisner is

Appellant.

FINAL BRIEF OF APPELLANT

Rhonda Meisner, Appellant
Post Office Box 689
Blythewood, South Carolina 29106
(803) 960-3696
pegasus@nuvox.net

Jason Wyman, Esquire
Rogers, Townsend and Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210
(803)771-7000
Attorney for Respondent

RECEIVED

OCT 23 2013

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	p.1
Statement of Issues on Appeal	p.4
Background	p.5
Statement of the Case /Facts	p.7
Argument	p.11
1)BECAUSE RESPONDENT FILED A PREMATURE AND INACCURATE FORM 4 JUDGMENT; RESPONDENT HAS CAUSED DUPLICATE JUDGMENTS TO BE FILED IN THE PUBLIC RECORDS IN VIOLATION OF THE SUPREME COURT RULES FOR ENTERING FORM 4 JUDGMENTS AND CONTRARY TO THE ORDER OF FORECLOSURE	p.11
2)BECAUSE RESPONDENTS FILED A MOTION TO VACATE THE JUDICIAL SALE; RESPONDENTS ARE JUDICIALLY ESTOPPED FROM VALUING THE PROPERTY LESS THAN THE VALUE CLAIMED IN THEIR MOTION TO VACATE THE SALE FOR A DEFICIENCY AGAINST APPELLANT.	p.14
A) Privity of Parties /Judicial Estoppel	p.15
3) BECAUSE RESPONDENTS NAMED APPELLANTS AS DEFENDANTS IN THE MOTION TO VACATE THE JUDICIAL SALE; RESPONDENTS CANNOT CHANGE THEIR POSITION ON THE VALUATION OF THE PROPERTY FOR THE DEFICIENCY ACTION.	p.17
B) Appraisal Statute	p.17
C) Guaranty Agreement	p.21
4) BECAUSE RESPONDENTS HAVE NOT FILED AN AFFIDAVIT OF ATTORNEY FEES OR ITEMIZED STATEMENT WITH THE COURT ATTORNEY FEES SHOULD BE DENIED OR ADJUSTED	p.28
Conclusion	p.30
Appellants Answer to Respondent Question #1	p.32

Appellants Answer to Respondent Question #2	p.34
Appellants Answer to Respondent Questions #3	p.37
Final Conclusion	p.38

**TABLE OF AUTHORITIES
CASES**

Appeal of Pasley, 230 S.C. 55, 94 S.E. 2d 57	p.275
Arrow Bonding Company v. Warren, Opinion #27166 S.C. Sup Ct. filed Aug 19,2012	p.262
Cothran v. Brown, 350 S.C. 566 S.E. 2d, 548 (S.C. App. 2002)	p.18,268
Duncan v. Little, 384 S.C. 420,682, S.E. 2d 788(2009)	p.244
Eastern Savings Bank, FSB v. Sanders, 373, S.C. 349,354, 644 S.E. 2d 802,805 (2007)	p.275,276
Farrow v. Farrow 88 S.C. 333,70 S.E. 2d 581	p.275
Gardner v. Nash v. Nash, 225 S.C. 303, 82 S.E. 2d 123 (1954)	p.277
Henry v. Blakely, 216 S.C.13,56 S.E. 2d 581	p.275
Howell v. Gibson, 208 S.C. 19,28-29, 37 S.E. 2d, 271, 275 (1946)	p.276
Interstate Building & Loan Ass'n v. Waters, 50 S.C. 459, 27 S.E. 948 (1897)	p.277
Jackson v. Speed, 326 S.C. 289, 486 S.E. 2d 750 (1997)	p.143,194
Myrtle Beach Lumber Company, Inc v. Willoughby, 276 S.C.3,274, S.E. 2d 423 (S.C. 1981)	p.145,196,233
PPG Industries, Inc v. Orangeburg Paint Center, Inc., 297, S.C. 176, 375 S.E. 2d 331 (Ct. App. 1988)	p.233
Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E. 2d7 (Ct. App 2009)	p.24,p.244
Poole v. Jefferson Standard Life Ins. Co. 174 S.C. 150, 157, 177 S.E. 24, 27 (1934).	P.274
Roberts V. Recovery Bureau Inc. 316 S.C. 492, 496, 450 S.E. 2d 616, 619 (Ct. App. 1994).	p.277
Singleton v. Mullis Lumber Co., 234 S.C. 330, 108, S.E. 2d 414 (1959).	p.276

Spillers v. Clay, 233 S.C. 99, 103 S.E. 2d 759 (1958)	p.274
Transouth Financial Corp. v. Cochran, 324 S.C. 290,478 S.E. 2d 63 (Ct. App. 1996)	p231,244
Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147, 150,667 S.E. 2d 414 425, (Ct. App. 2008).	P.274

STATUTES

S.C. Code Ann. §29-3-710 (1976)	p.182,183,184
S.C. Code Ann. § 29-3-650 (1976)	p.58,181,183
S.C. Code Ann. §29-3-660 (1976)	p.58,181,183
S.C. Code Ann. §29-3-680 (1962)	p.58,181,183,680
S.C. Code Ann §15-53-10 (1962)	p.53,181
S.C. Code Ann. §15-53-30 (1962)	p.53
S.C. Code Ann. §15-53-60 (1962)	p.53
S.C. Code Ann. §15-53-80 (1962)	p.53
S.C. Code Ann.§15-53-90 (1962)	p.53
S.C. Code Ann. §15-53-110 (1962)	p.53
S.C. Code Ann. §15-53-120(1962)	p.53
S.C. Code Ann. §15-53-130 (1962)	p.53
S.C. Code Ann. §15-39-700 (2005)	p.181-185
S.C. Code Ann. §15-39-710 (2005)	p.162
S.C. Code Ann. §15-39-720(2005)	p.260,276

OTHER AUTHORITIES

17A C.J.S. Contracts 324	p.231
27 S.C. Juris. Manner of Sale§ 128 (1976)	p.276
28 Am Jur 2d Estoppel & Waiver 374 (2000)	p268
S.C.R.C.P. 57	p58
S.C.R.C.P. 52, 59(e)(f), 60	p.126,197,270,
S.C.A.C.R. 203(b)(1)	P.270
FORM 4C INSTRUCTIONS	p.203

STATEMENT OF ISSUES ON APPEAL

- 1.) DID THE MASTER-IN-EQUITY ERR IN DENYING THE MOTION TO ALTER AND AMEND THE JUDGMENT?

- 2.) ARE RESPONDENTS JUDICIALLY ESTOPPED FROM VALUING THE PROPERTIES DIFFERENTLY THAN IN THE BANK'S MOTION TO VACATE THE JUDICIAL SALE?

- 3.) DID THE MASTER-IN-EQUITY ERR IN AWARDING ATTORNEY FEES WITHOUT A FILED AFFIDAVIT OR ITEMIZATION OF ATTORNEY'S FEES.

Background

This is an appeal of a personal judgment, the valuation of the properties subject to a mortgage foreclosure proceeding and the entry of the judgments into the public index in excess of the amount owed, including an appeal of the associated attorney's fees. The Defendant, Rhonda Meisner ("Meisner") was the guarantor of a mortgage loan that was initiated by Sand Dollar 31, LLC ("Sand Dollar") with SCBT, N.A. ("Bank"). Meisner is the single-member of the Sand Dollar Limited Liability Company. Sand Dollar subsequently defaulted on the loans and the Bank sought foreclosure of the properties securing the loans. The Bank filed a lis pendens on September 27, 2011 and subsequently filed a lawsuit seeking to foreclose on the properties. The Bank also named Meisner as a Defendant as she signed the Guaranty Agreement associated with the loans. Defendants Sand Dollar and Meisner answered the complaint by and through their attorney, Glenn Bowens. Meisner and Sand Dollar sought a declaratory judgment on whether both entities were entitled to appraisal rights pursuant to S.C. Code §29-3-680 and a declaratory judgment of the rights and liabilities of each of the parties under the note, mortgage and guaranty agreement and the amount of the deficiency judgment, if any. Defendants specifically preserved their rights to an appraisal and invoked the valuation protections of the Appraisal Statute in their Answer and Counterclaim. The Bank sought a deficiency against Sand Dollar and the enforcement of a guaranty agreement associated with the properties that were signed by Meisner. The foreclosure hearing was held April 25, 2012 and the Court ruled the evidence of the debt was sufficient and the foreclosure of the properties could proceed, but that both Sand Dollar and Meisner retained their appraisal rights according to the Appraisal Statute. The sale

was scheduled for June 4, 2012. Because the Bank had demanded a deficiency, the sales bidding process would remain open for 30 days and the deficiency sale was scheduled for July 5, 2012. Prior to sale of the properties and the completion of the appraisals, on May 16, 2012 the Bank entered judgment in the public roles for both Sand Dollar and Meisner indicating each entity was responsible for the entire amount the Bank demanded as payment for the sums owed. The properties were sold at the deficiency sale on July 5th, 2012 to South Carolina Operating Room Equipment, LLC (SCORE). After the sale of the properties, the Bank filed a motion to vacate the foreclosure sale, based on the fact that Meisner was the single member of SCORE, LLC and that Meisner in her individual capacity filed a certified petition as outlined in the Appraisal Statute for the valuation of the properties. The Bank named both Meisner and Sand Dollar as Defendants in the Motion to Vacate Judicial Sale, but did not name SCORE, LLC as a Defendant in the Motion to Vacate Judicial Sale. The Court scheduled a status conference for November 6, 2012 to hear the Motion to Vacate and to hear arguments on the memorandums regarding the Motion to Vacate which were previously submitted to the Court regarding the valuation of the properties. At the hearing, Judge Strickland apologized that due to the Presidential election there would not be a court reporter available to make a record. The parties agreed to proceed with the caveat that if necessary another hearing would be held to create a record. After an update on the submitted memorandums, the order to deny the Motion to Alter and Amend the Judgment was ruled on by the Court and recorded on November 6, 2012 effectively ruling on the outstanding issues of the Declaratory Judgment, the guaranty agreement, and the property valuation. A Notice of

Appeal was served on all parties and a copy provided to the Honorable Judge Joseph M. Strickland on December 6, 2012. This appeal follows.

STATEMENT OF THE CASE

South Carolina Bank and Trust, N.A. (Bank) by and through their attorney Teri Stomski, (Stomski) an attorney with the firm Rogers, Townsend and Thomas, PC initiated foreclosure proceedings against Sand Dollar 31, LLC (Sand Dollar) and sought to enforce a guaranty agreement signed by Rhonda Meisner (Meisner) by filing a lawsuit. The Bank filed the amended lis pendis against the properties on September 27, 2011. Glenn Bowens (Bowens) attorney for the Defendants' Sand Dollar and Meisner answered the lawsuit on January 19, 2012. In the Answer and Counterclaim, Defendants explicitly stated they would pursue appraisal rights under the Appraisal Statute, S.C. Code §29-3-760; requested the Court to reference the guaranty agreement attached to the lawsuit for the exact terms of the guaranty agreement and requested a Declaratory Judgment for the rights, responsibilities and obligations of each of the parties under the note, mortgage and guarantee agreement associated with the properties involved in the foreclosure. The foreclosure sale was held on April 25, 2012. Meisner testified that she brought one property current and submitted to the Court as evidence the payment receipt from the Bank in receipt of her payment. After hearing from both the Bank and Meisner, the Honorable Judge Joseph M. Strickland ruled the debt owed on both properties was confirmed and the properties could be sold at the foreclosure sale and instructed Stomski that the Bank should revise the prepared order to include a ruling that Sand Dollar and Meisner retained appraisal rights. On May 3, 2012 Kathy Clark, a paralegal with the Bank's attorneys' firm sent an email to Bowens and someone in the Master's office

identified as CorneliusS@rc.gov that included attachments which were the proposed orders and record of the hearings in both foreclosure cases. On May 17, 2012 the Bank sent an email to the attorney for the Defendants, Glenn Bowens, stating the hearing was held on April 25, 2012 and the scheduled foreclosure sale would proceed on June 4, 2012. On May 29, 2012 the Bank sent a letter directly to Sand Dollar and to Meisner indicating the hearing on April 25, 2012 occurred and a judgment was entered against Meisner and Sand Dollar on May 16, 2012. Meisner received the letter dated May 29, 2012 on June 6, 2012; however, attorney for Sand Dollar and Meisner, Glenn Bowens was not copied on the letter and did not receive a copy of the May 29, 2012 letter indicating the judgments had been filed in the public record. On June 7, 2012, Bowens filed a Motion to Alter and Amend the Order and Judgment filed by the Bank which included attorneys fees based on the letter and Form 4 judgments sent to Meisner. On July 4, 2012 Bowens sent a letter to the Court requesting to delay the deficiency sale for both properties scheduled for the next day, July 5, 2012, so that the Court could consider the Motion to Alter and Amend prior to conducting the sale. Stomski sent a letter to the Court via facsimile dated July 5, 2012 opposing the delay of the deficiency sale. The letter indicated her clients, the Bank, would be prejudiced by delaying the sale for any reason. The Court scheduled a conference call for the morning of July 5th between Stomski, Bowens and Judge Strickland to hear the respective arguments delaying the sale. The Court ruled the deficiency sale scheduled for later in the day on July 5, 2012 would proceed as scheduled. Kevin Knowell, (Knowell) an agent for South Carolina Operating Room Equipment, LLC (SCORE) was the successful bidder on behalf of SCORE, LLC on both properties. SCORE, LLC is a Limited Liability Company in good

standing with the Secretary of State's office and Rhonda Meisner (Meisner) is the single member of SCORE, LLC. Later in the day on July 5, 2012, but prior to the deadline in the Master of Equity's instruction on fulfilling the requirements of the sale, SCORE, LLC deposited the required 5% of the bid price in the second step of complying with the foreclosure sale as outlined in the Master's Order of Foreclosure and Sale; the first step being Knowell's bid on behalf of SCORE, LLC. On July 18, 2012, Bowens filed with the Court his memorandum in support of the Motion to Alter and Amend the judgment. The Court scheduled a hearing on July 18, 2012 to discuss the Motion to Alter and Amend filed by Bowens. Present at the hearing were Bowens, Stomski, Meisner, and Judge Strickland. During the hearing the Court asked the parties to brief their positions on the guaranty agreement and the application of the guaranty agreement to the deficiency amount. The Bank also requested the Court to consider a Motion to vacate the judicial sale and Stomski was directed to consult with her client and then file a formal motion if the Bank wanted to file a Motion to vacate the

Judicial sale. The Bank via Stomski sent a letter to Bowens providing the Affidavit of Attorney's fees. The Bank filed their return to the Motion to Alter and Amend on July 27, 2012. On July 30, 2012 Stomski filed a Motion to Vacate the Judicial sale on behalf of the Bank naming Meisner and Sand Dollar as Defendants but not including SCORE, LLC as a Defendant. Only July 31, 2012 Meisner filed a certified petition for appraisal for both properties sold at the deficiency sale on July 5, 2012 which complied with the time constraints associated with the instructions of the Appraisal Statute. On August 8, 2012 the Master's office filed the Report on Sale and Disbursements and Order of Confirmation of Sale. On August 10, Bowens filed a memorandum on the guaranty

agreement on behalf of Sand Dollar and Meisner. Meisner also filed a memorandum with the Court on the guaranty agreement. On August 30, 2012 the Bank filed a Motion to Vacate the Judicial sale naming Sand Dollar and Meisner as Defendants. On September 27, 2012 Rick Gleissner, Attorney for SCORE, LLC made an appearance in the case by filing a Notice of Appearance and noticing Plaintiff Bank via Stomski and Defendants Sand Dollar and Meisner via Bowens. On November 2, 2012 Defendants, Sand Dollar and Meisner via their attorney Glenn Bowens filed a memorandum on Judicial Estoppel and the Appraisal Statutes. At the hearing on November 6, 2012 Judge Strickland signed the order denying Defendants Sand Dollar and Meisner's Motion to Alter and Amend the Judgment entered in the public record by the Bank. The Motion to alter and amend the judgment was filed by Bowens on the Defendants' behalf earlier in the year on June 7, 2012. On November 8, 2012 Bowens wrote a letter to Judge Strickland outlining the outstanding issues with regard to the foreclosure cases as Judge Strickland had requested at the status conference on November 6, 2012. On November 7, 2012 Stomski sent a letter to Bowens enclosing the filed stamped copy of the order denying the Motion to alter and amend which Bowens received on November 10, 2012. The Notice of Appeal was filed and served on all parties on December 6, 2012. A copy of the Notice of Appeal was also sent to the Honorable Judge Joseph M. Strickland on December 6, 2012.

ARGUMENT

1)BECAUSE RESPONDENT FILED A PREMATURE AND INACCURATE FORM 4 JUDGMENT; RESPONDENT HAS CAUSED DUPLICATE JUDGMENTS TO BE FILED IN THE PUBLIC RECORDS IN VIOLATION OF THE SUPREME COURT RULES FOR ENTERING FORM 4 JUDGMENTS AND CONTRARY TO THE ORDER OF FORECLOSURE

Prior to the foreclosure hearing on April 25, 2012, the Bank and Defendants Sand Dollar and Meisners' attorney had agreed that the hearing on April 25, 2012 was only to discuss whether or not the foreclosure could proceed and the debt Sand Dollar, the only Defendant subject to the foreclosure proceeding owed to the Bank. **(R.p.62 lines 6-14)** The application of the Appraisal Statutes and the application of the Guaranty Agreement to the deficiency, if any, would be evaluated after the sale of the properties. **(R. p 87 lines 16-25)** Wendy Wolfson, Vice President of SCBT (Bank) testified to the debt and to the fact the bank paid attorney's fees to Stomski which is necessary to validate the debt to the Bank prior to initiating the foreclosure proceedings against Sand Dollar. However, her testimony was not sufficient to show how Meisner, in her individual capacity owed the identical debts to the Bank. **(R. p68 lines10-21)** Wolfson's testimony did not identify that Meisner signed the Guaranty Agreement in her individual capacity and not as a member of Sand Dollar. **(R. p69 lines 1-13)** The Guaranty Agreement itself does not designate Meisner's legal status on the form. **(R p.249)** The Form 4 was filed **prior** to the foreclosure sale, **prior** to the application of the appraisals and or the valuation of the properties by the Bank, and **prior** to the application of the Guaranty Agreement to the debts owed by Sand Dollar. **(R pp. 12-13)** Each of these separate applications of funds or credits would reduce the amount of the judgment to both Sand Dollar and Meisner. The Bank erroneously filed judgments against Sand Dollar and **contemporaneously** filed the same erroneous amounts of judgments against Meisner. **(R pp. 12-13)** These amounts

were in excess of the amounts identified in the Guaranty Agreement and conveyed to third parties that both Sand Dollar and Meisner owed **the identical debt** to the Bank **essentially doubling** the judgment amounts owed in the eyes of third parties viewing the public judgment roles. The instructions for filing the Form 4 were not followed **(R.pp.203-204)** and the Form 4 that was sent to Defendant was not signed by the judge.**(R. pp.201-202)** The Form 4 Order indicates that Sand Dollar and Meisner each owe \$63,734.92 (Civil Action #11-CP-40-6317) (Appellate Case #213558) and \$43,220.45 (Civil Action #11-CP-40-6318) (Appellate Case #213559). The Form 4 Order, is used to index the parties' name and amount of the judgment in the public record. Based on the instructions for the use of a Form 4 Order, the Plaintiff should not have filed the Form 4 Order. **(R.p.203 #4)** Instruction #2 provides: "The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index." **(R.p. 203 #2)** The judge did not sign the Form 4 Order. **(R.p.202)** Instruction #10 provides:

When an Order of Foreclosure is filed, neither the parties nor the debt owed should be listed in the information for the Judgment Index Section, **unless the foreclosure order specifically requires** entry of the full judgment amount before the foreclosure sale, pursuant to Section §29-3-650 of the SC Code. **(R.pp. 14-20)** Instruction #12 provides: "...subsequent information, including deficiency judgments can be added after the case is over..."**(R p.204)**

The Foreclosure Order signed by the court did not specifically require entry of the full judgment amount before the foreclosure sale . The order stated in paragraph 33 that

the Order for Deficiency would be entered **after crediting** the proceeds of the sale, not the full judgment before the sale.(R.p.19 #33 line 6) The Bank ignored the order of the Court and entered the full judgment amounts against Sand Dollar and Meisner and entered identical amounts of debts owed to the Bank, thereby doubling the amounts owed. Moreover, counsel for the Bank knew when she filed the Form 4 Order that the sale and appraisal had not taken place and the amount recorded in the public record would be reduced. Making matters worse, counsel for the Plaintiff sent someone to the Foreclosure Sale to bid on the properties: \$25,000.00 on the Linden Street property and \$10,000.00 on the Winnsboro Road property, which meant she **absolutely knew** the amount recorded was **not the correct amount.** (R.p.260) The filing of the Form 4 Order gave the false impression that both Sand Dollar and Meisner owed \$63,734.92 and \$43,220.45 and became a lien **on all properties** owned by Sand Dollar and Meisner, **not just the ones subject** to the foreclosure actions. The Guaranty Agreement is a separate contract from the Mortgage Contract.(R.pp33-34)

The Form 4 should have never been filed as the application of the Appraisals and the guaranty agreements and the foreclosures themselves had not yet been completed. Additionally, by the time the Judge signed the order denying the Motion to Alter and Amend on November 6, 2012, the foreclosure sales **were complete** and the Bank was in possession of the funds received from the Court which were distributed from the sale of the properties which reduced the amounts of the debt at least by \$25,001 and \$10,501 respectively. Refusing to amend the amounts entered in the public roles via the Order of Judgment when this information was in front of the Court was clearly erroneous. Sand Dollar or Meisner **never** owed the amounts entered in judgment in the public index. This

is the very reason the Supreme Court issued the rules against entry of the order on Form 4, and why the Court should have required the Bank to remove erroneous entries based on the Order of Foreclosure and the Supreme Court rules. The judgments are not accurate and therefore they cannot be legal. Meisner is prejudiced by the entry of the judgments as the judgments affects title to other lands outside of the current action because it creates a lien on other properties owned by Meisner. This is the very reason the Supreme Court issued the rules for entering judgments in foreclosure cases. Meisner was not the Defendant to the foreclosure action, but a guarantor, until the amount determined to be owed by Meisner is decided, the erroneous amounts enrolled in the public roles should not be sanctioned by the Court.

2)BECAUSE RESPONDENTS FILED A MOTION TO VACATE THE JUDICIAL SALE; RESPONDENTS ARE JUDICIALLY ESTOPPED FROM VALUING THE PROPERTY LESS THAN THE VALUE CLAIMED IN THEIR MOTION TO VACATE THE SALE FOR A DEFICIENCY AGAINST APPELLANT.

Also by the time the Court signed the denial of the Motion to Alter and Amend on November 6, 2012, the Bank had admitted the value of the properties was the amount of their mortgage on each associated properties in their Motion to Vacate the Sale. **(R.P.262)** By naming Sand Dollar and Meisner in their Motion to Vacate the Sale, the Bank created a privities of parties or privities of interest in the valuation of the properties with SCORE, LLC which would not have existed had the Bank not named Sand Dollar and Meisner as Defendants in the Bank's Motion to Vacate the Judicial Sale. **(R.p.260)** By the time the Motion to Vacate the sale was filed by the Bank, the Judicial Sale was complete therefore extinguishing any legal or equitable rights that could be claimed by either Sand Dollar or Meisner. **(Rp.20 #36)** Naming both Meisner and Sand Dollar via

the Motion to Vacate the Sale created privities of interest between the three entities regarding the valuation opinion submitted by the Bank in the Motion to Vacate the Sale. The Bank's valuation of the properties, the limitations of the guaranty agreement, and the application of the funds received from the Judicial Sale effectively extinguished the liability of Meisner for any outstanding obligations of Sand Dollar regarding the foreclosure of the two properties involved.

Privities of Parties/Judicial Estoppel

Privities of Parties deals with the relationship of the parties to the subject matter and not to the relationship between the parties. **(R.p.277 footnote #1)** While the Motion to Vacate the Judicial Sale involves three separate and distinct legal entities; Sand Dollar, Meisner and SCORE, by naming Sand Dollar and Meisner as Defendants in the Motion to Vacate the Sale in the confines of the foreclosure proceedings the Bank created a privities of parties with regard to the subject of the valuation of the property. Roberts v. Recovery Bureau Inc. 316 S.C. 492,496,450 S.E 2d 616,619 (Ct App 1994). In this case, Sand Dollar and Meisner lost all equitable and legal interest in the properties subject to the Bank's foreclosure proceedings on June 4, 2012 **(R. p.20¶36)** However, Meisner and Sanddollar at the time of the Bank's Motion to Vacate Judicial Sale on September 6, 2012, retained an interest in the valuation of the properties under the Appraisal Statues based on the deficiency demanded by the Bank **(R.p.25)**. The Bank, instead of naming the legal owner of the properties, SCORE, in a separate and distinct lawsuit, named both Meisner and Sanddollar as Defendants in their Motion to Vacate the Judicial Sale and tied the Motion to the original foreclosure proceeding. **(R. p260)**. South Carolina

recognizes only two reasons to set aside a Judicial Sale. Specifically, South Carolina will set aside the Judicial Sale when, (1) “The sales price is ‘so gross as to shock conscience; or (2) the sale is accompanied by other circumstances warranting interference from the Court”. Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147,150,667 S.E. 2d 424,425 (Ct. App. 2008) (citing Poole v. Jefferson Standard Life Ins. Co. 174 S.C. 150,157,177 S.E. 24,27 (1934). In this case, (1) the Court made no error in the sale (2) the price paid was more than the Bank was willing to pay, therefore it shouldn’t shock the conscience of the Bank (3) there is no “scheme” unless the Bank is suggesting the South Carolina legislature has participated and “authorized” a “scheme” as the purchase by SCORE, LLC conformed to the Order of Sale by the Masters order and as in compliance with the laws regarding foreclosure sales. The laws of South Carolina do not prevent the Mortgagee from purchasing the properties; therefore to suggest the law prevents SCORE, LLC from purchasing a property in a foreclosure is not consistent with the statutory construct in South Carolina for mortgage foreclosure sales. **(R p19 ¶32¶34)**

Additionally, it is important to note, the Bank does not make any accusations about irregularities in the bidding process or the Judicial Sale itself, only about the purchaser. Had the property been purchased by the Bank itself, or any other citizen or company, Meisner and Sanddollar would retain their appraisal rights. If it is legal for the Bank to purchase without penalty, the same would be true for any other company or individual. **(R.p.19¶32)**

In their Motion to Vacate the Judicial Sale of the properties, in foreclosure actions 11-CP-40-6317 and 11-CP-40-6318 the Bank has claimed that the value of the properties

should be set at the mortgage amount for the properties. (R.p.262¶4 lines 3-7_) Defendants “Sanddollar” and “Meisner” previously petitioned the court for their Statutory Appraisal Rights and the Bank has conceded both entities maintain their statutory rights to an appraisal. (R p.83 lines1-3;15-17)South Carolina Operating Room Equipment, LLC (SCORE) outbid the Bank at the deficiency sale and became the legal and equitable owner of both properties upon receipt of the deed from the Richland County Master in Equity (R p274). The Bank, by naming Sanddollar and Meisner as Defendants in the Motion to Vacate the Judicial Sale, has created a “privities of parties” with regard to Bank’s valuation of the properties based on the Appraisal Statutes and Common Law Doctrine of Equity.

3) BECAUSE RESPONDENTS NAMED APPELLANTS AS DEFENDANTS IN THE MOTION TO VACATE THE JUDICIAL SALE; RESPONDENTS CANNOT CHANGE THEIR POSITION ON THE VALUATION OF THE PROPERTY FOR THE DEFICIENCY ACTION.

Appraisal Statute

The Appraisal Statute was specifically instituted to protect Mortgagors from Mortgagees foreclosing on properties; then under-bidding at the Judicial Sale only to later sell the property for a profit and subsequently demand a large deficiency from the Mortgagors and or Guarantors. (R.p.262-3) Here, the Bank’s “scheme” to bid low at the Judicial Sale as contemplated by the Legislature in enacting the Appraisal Statute is admitted by the Bank in both the bidding process and the valuation of properties via the Motion to Vacate the Judicial Sale . The Bank knew the properties were worth more than the amount they bid at the Judicial Sale, but still bid a minimum amount (Rp.262). The Bank was not prejudiced by SCORE, LLC’s purchase of the property in excess of the

Bank's bid, and to the contrary, the Bank should have bid an adequate amount initially. South Carolina is one of the few states that does not hold the purchase price against the purchaser even when the purchaser is the Mortgagee. The Bank then argued in the Motion to Vacate the Judicial Sale that "...the mortgage value is a fair gauge of the property's value in the hands of the buyer" of the properties is the amount of the mortgage owed on the properties. **(R p.262)** The Bank further argues the Court could set aside a sale when "...the discrepancy between the winning bid and the fair market value"... The Bank seems to forget that the **Bank's bid is the bid that was upset**. The **Bank should have bid** the "fair market value". **(R p.263)** Meisner and Sanddollar accepted the Bank's "mortgage amount" valuation of the properties under the Appraisal Statute **(R.p.267)**. The Appraisal Statute gives a specific process for valuing the properties where a deficiency is demanded to protect the Mortgagors and or Guarantors in the valuation of properties. As such, the Statute on Deficiency sales states the Mortgagee must put their highest and best bid at the time of the Judicial Sale. **R. p267 lines 9-16)** The Appraisal Statute also gives guidance to who would qualify as an appraiser for the purpose of setting the value of the property. The Court gave direction to both parties to get the properties appraised and submit the value to the Court if both appraisers agreed. **(R. p. 114 line 24-25)** If the appraisers did not agree, the Court would appoint a third appraiser and come up with the value if necessary. **(R. p114 line 25 p. 115 lines 1-2)** In this case, prior to the return of the appraisers, the Bank itself, via the Motion to Vacate the Judicial Sale, valued the properties at the amount of the mortgage which was accepted by Sanddollar and Meisner. **(R.p. 267 lines 1-5)** In order to increase the amount of the deficiency judgment against Sand Dollar and Meisner, the

Bank intends to suggest a lower value for the properties under the Appraisal Statute. The Bank is asking the Court to determine the amount owed in the deficiency judgment based on these lower property values when it previously asked the Court to set aside the foreclosure sale by valuing the properties at the market values represented by their respective mortgages (i.e. \$62,280.00 for #6317 and \$36,000.00 for #6318).

The Bank is judicially estopped from changing its position on the facts regarding the value of the property between the Motion to Vacate the Foreclosure Sale and the Motion for a Deficiency Judgment. The Bank asserted the value of the properties was the value of the mortgage in order to attempt to set aside the foreclosure sale; it cannot now claim a different property value for the same properties in order to increase the amount of the deficiency judgment. The South Carolina Court of Appeals has held:

“Judicial estoppel preclude a party from adopting a position in conflict with one earlier taken in the same or related litigation.”

When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.

Cothran v. Brown, 350 S.C. 352, 566 S.E. 2d 548 (S.C. App 2002).

The Bank bid low at the Judicial Sale in order to get the properties so that it could turn around and sell them at a higher price and make a profit while at the same time pursuing a Deficiency Judgment against Sand Dollar and Meisner. The Bank is seeking to increase the amount of the Deficiency Judgment by changing its position on the value of the property and is asking the Court to aid it in its “scheme” to both make a profit on the property and increase the amount of the deficiency judgment; the Bank’s “scheme” is not equitable.

Ironically, it was the Bank's premature and inaccurate indexing of judgments against Sand Dollar and Meisner that prevented either entity from being able to secure financing in order to repurchase the properties and subsequently resulting in the Bank's "confession" of the true value of the properties. **(R.p.260)** The motive for the Bank's action is simple and has three separate and distinct parts. First, the Bank filed the Motion to Vacate the Sale against Sand Dollar and Meisner to have a second chance to get ownership of the properties and the equity(**R.p.117 lines 14-19**) e.g.: the chance to re-bid; the South Carolina Deficiency Sale Statute specifically requires the Mortgagee to enter their highest and best bid at the foreclosure sale. Second, they filed the Motion to Vacate the Judicial Sale in connection with the foreclosure proceeding in an attempt to continue to have the attorney's fees paid by the Defendants which was not contemplated in the original mortgage agreement. Third, if Sand Dollar or Meisner would have been the successful bidder, the Bank would not have tried to vacate the sale and in their argument for the "Motion" mistakenly admit the Bank's true opinion of the value of the properties to the Court. **(R.p.262)** Had Sand Dollar or Meisner re-gained ownership of the properties, the previously filed erroneous Form 4 judgments would immediately attach to the properties and the Bank would still have received the equity. Had the Bank purchased the property, they could have sold the properties for a profit and still claimed the erroneous judgments filed against both Meisner and Sand Dollar. The only problem with the Bank's "Motion to Vacate the Sale" as it played out in front of the Court was the fact that inadvertently, the Bank admitted the value of the properties should be set at the amount of the mortgage associated with the properties.

Meisner testified that she had lost her job and the tenants at both properties were unable to pay their rent as the reason for non-payment of the mortgages **(R p79 lines 16-25)**. She further testified that she had previously brought one property current and was attempting to catch up the payments on the other property from her recent job loss when the Bank refused to accept payments on either property and initiated the foreclosure actions. **(R p 71 lines 21-15)** In 2010 the Supreme Court announced stricter scrutiny of foreclosures and a process to evaluate the actions of Banks when a mortgagor's primary home was involved. **(R p. lines 1-9)** These properties did not qualify for the protective order of the Supreme Court as they were rental properties. However, the Supreme Court did make reference to the fact that foreclosure should be the last resort, not the first tool to be taken out of the tool box.

Guaranty Agreement

During a hearing held on July 18, 2012, the Court requested the parties brief the issue of the application of the Guaranty Agreements with regard to the liability of Meisner on any deficiency judgment as Defendants had previously filed a Motion for Declaratory Judgment in their Answer and Counterclaim to the original foreclosure proceeding. **(R. p.107 lines 22-25)**

The Defendants' Answer and Counterclaim previously had asked for a Declaratory Judgment to determine the parties' rights and liabilities under the Note, Mortgage and Guaranty Agreement, and to determine the rights and obligations of the parties with respect to the amount of the Deficiency Judgment requested by the Plaintiff. **(R. p53 ¶18)** The Guaranty Agreements placed monetary limitations on Meisner's

personal liability. Meisner sought this Declaratory Judgment because she wanted to make certain that, should there be a Deficiency Judgment, her liability did not exceed those limitations.

During the trial of Civil Action 11-CP-40-6317 (Appellate case #213558) and 11-CP-40-6318 (Appellate case #213559), held on April 25, 2012, the Plaintiff presented two Guaranty Agreements executed by Meisner guaranteeing payment of the two promissory notes between the Plaintiff and Sand Dollar. **(R. p.31 ; p48-49)** Meisner claims her maximum liability for a Deficiency Judgment based on these Guaranty Agreements is \$31,140.00 for the loan in 11-CP-40-6317 (Appellate case #213558) and \$36,000.00 for the loan in 11-CP-40-6318 (Appellate case #213359) as provided in the two respective Guaranty Agreements the Bank sued for in the foreclosure proceedings; Meisner requested the Court issue a Declaratory Judgment to that effect. A review of Guaranty Agreements in question offers no evidence of whether Meisner was acting in her personal capacity or as a member of Sand Dollar. **(R. p. 48-49)** There are no words such as “personal guaranty” or “jointly and severally” or “individually” and “corporately” or “acting as a member on behalf of Sand Dollar”. In fact, without acknowledgement from Meisner, a reader of the guaranty would not be able to determine Meisner’s legal capacity regarding the agreement. There are no “articles of instruction” for members or “articles of organization” required as part of the loan for Sand Dollar indicating Meisner had been given authority to act as a member of Sand Dollar. Since none of the LLC documents are attached to the loan, it is not unreasonable to presume that the Guaranty Agreement could serve the function of providing a “right to act” agreement on the behalf of the LLC by Meisner as a part of the loan processing. As

such, an independent reviewer would not recognize without additional information whether the guarantees were executed in Meisner's personal capacity or in the capacity of "member" Sand Dollar 31, LLC. While Meisner acknowledges the guaranty was presented to her as a personal guaranty for a business loan; an outside reader of the documents might not be able to discern the relationship of Meisner to Sand Dollar and the intent of the parties, further giving credence to the fact the guaranty is ambiguous and therefore requires extrinsic evidence to interpret the intent of the parties. (R p.48-49)

Meisner claims that the purpose of the Guaranty Agreements and the intent of the parties were to guarantee the Plaintiff received \$31,140.00 for the loan in 11-CP-40-6317 and 36,000.00 for the loan in 11-CP-40-6318 should Sand Dollar default. These amounts represented the money actually loaned by the Plaintiff to Sand Dollar. Meisner also claims that if the high bid at the foreclosure sale **or the appraised value was equal to or exceeded** those amounts, then her liability under the Guaranty Agreements will be satisfied as the Plaintiff will have received the guaranteed amounts provided in those agreements.

Meisner bases her claim that the Guaranty Agreements limit her liability to \$36,000.00 and \$31,140.00 on three basic grounds. First, the Guaranty Agreements specifically state the maximum dollar amount in paragraph A. Second, paragraph 4 provides that the guarantor is liable for "all indebtedness, without limitation as to amount" if "no amount is stated". However, since an amount is stated, i.e. \$31,140.00 and \$36,000.00, then the guaranty is limited to those amounts. Third, this was the

understanding of the parties at the time the Guaranty Agreements were made, based on representations made by the Bank to the effect that the amount guaranteed was the dollar amount stated in the agreement.

The Bank disagrees with Meisner's interpretation of the Guaranty Agreements; and claims she owes \$63,734.92 in 11-CP-40-6317 (Appellate case #213558) and \$43,220.45 in 11-CP-40-6318 (Appellate case #213559); these amounts represent the money actually loaned to Sand Dollar **plus** other debts allegedly incurred by Sand Dollar in the form of attorneys fees, interest, corporate charges, late charges, taxes, escrow, advances, costs of litigation and other charges. The Bank bases these claims on its interpretation of paragraph 4 of the guaranty; however, paragraph 4 is in conflict with paragraph A. The Bank's interpretation of paragraph 4 reveals an inherent ambiguity between paragraph 4 and paragraph A.

Guaranty Agreements are contracts and their interpretation is governed by the same contract law principles as any other contract. The South Carolina Court of Appeals has held:

A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation.

The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.

Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E. 2d 799 (Ct.App. 2009) (internal citations omitted)

When a contract is susceptible of more than one interpretation, the non-drafting party is given the benefit of the ambiguity. The South Carolina Supreme Court has held:

“(A)mbiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage. ”

It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters. We quote, with approval, the following from 17A C.J.S. Contracts 324:

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings.”

Myrtle Beach Lumber Company, Inc. v. Willoughby, 276 S.C. 3, 274 S.E. 2d 423 (S.C. 1981).

There is no dispute that the Guaranty Agreements at issue were drafted and prepared by the Bank. Based on the Supreme Court’s holding, the ambiguity must be resolved in favor of Meisner. The parties’ conflicting interpretations requires the Court to interpret the agreement and issue a Declaratory Judgment. When a written contract is

ambiguous extrinsic evidence may be admitted to determine the parties' intent. Duncan v. Little, 384 S.C. 420,682, S.E. 2d 788 (2009).

The Guaranty Agreements in the two cases are preprinted forms and are identical with the exception of the dates and dollar amounts. Both Guaranty Agreements contain two options, paragraph A and B, with a box beside each paragraph, one of which is to be marked with an "X". Paragraph A was marked in both 11-CP-40-6317 and 11-CP-40-6318. Importantly, paragraph A limited the amount guaranteed to \$31,140.00 (11-CP-40-6317) and \$36,000.00 (11-CP-40-6318) respectively. On the other hand, paragraph B, which was **not checked**, required payment by the guarantor of:

...each and every debt, liability and obligation of **every type and description** which Borrower may now or at any time hereafter owe to lender (**whether such debt, liability or obligation now exists or is hereafter created or incurred**, and whether it is or may be direct or indirect, due or become due, **absolute or contingent**, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "indebtedness"). (emphasis added)

The Bank claims that Meisner is liable for payment of Sand Dollar's debts beyond the \$31,140.00 and \$36,000.00 stated in the guaranty are exactly the type of debts contemplated by paragraph B; at the time the Guaranty Agreement was executed these other debts:

- (1) did not exist;(2) they were neither created nor incurred;
- (3) were indirect and secondary to the amount borrowed;
- (4) were contingent and had not yet become due.

The Bank wants to focus just on paragraph 4 which itself is ambiguous; however, when interpreting a contract the contract must be read as a whole, without focusing on any single provision to determine the contract's meaning. Pee Dee Stores, at 242. Paragraph 4 must be interpreted in light of paragraphs A and B. The Bank's argument that paragraph 4 makes Meisner liable for these additional debts would make more sense if paragraph B had been checked; however, the parties did not check paragraph B. Even under the Bank's interpretation that the specific dollar amount stated in the Guaranty Agreement referred to the amount of "principal" guaranteed, the Plaintiff still claims \$48,698.20 is due in principle in 11-CP-40-6317 (Appellate case #213558), when the Guaranty Agreement only provided for \$31,140.00, which is over \$17,000.00 more in principle than the Bank is allowed under its own interpretation of the agreement.

The question before the Court is whether the Guaranty Agreements place a monetary limitation on Meisner's personal liability (as claimed by Meisner) or whether Meisner's liability is unlimited (as claimed by the Bank). The South Carolina Court of Appeals has held:

Although not yet decided in South Carolina, in the absence of an express limitation of an amount of a guaranty as a general rule the amount of the liability, or, in other words, the measure of damages, on a default by the principle obligor is that amount of loss which the guarantee has sustained by reason of such default....PPG Industries, Inc. v Orangeburg Paint Center, Inc. 297 S.C. 176,375 S.E. 2d 331 (Ct. App.1988)

The Guaranty Agreements in these cases do place "an express limitation of an amount" i.e. \$36,000.00 and \$31,140.00. If the parties intended for her liability to extend beyond stated dollar amounts then paragraph B would have been marked. Based on the

holding in PPG Industries, and Myrtle Beach Lumber Company, the ambiguity created by paragraph 4 and paragraph A must be resolved in Meisner's favor. Furthermore, the Bank has valued the property at the mortgage amount of the property which effectively satisfies the Guaranty Agreement.

4) BECAUSE RESPONDENTS HAVE NOT FILED AN AFFIDAVIT OF ATTORNEY FEES OR ITEMIZED STATEMENT WITH THE COURT ATTORNEY FEES SHOULD BE DENIED OR ADJUSTED

As of July 31, 2012 the Bank's attorney had still not filed with the Clerk of Court's office the Affidavit of Attorney's Fees to provide proof of the reasonableness of the fees under the Jackson v Speed criteria. The Bank claims attorney fees in the following amounts: (1) \$3,321.00; (2) \$2,679.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances". The Bank claims over \$6,000.00 in attorney fees related to the Linden Street property. This same property was previously foreclosed upon and the court awarded \$2,900.00 in attorney fees, less than one half the amounts being claimed in the present case. (**Rp.208**) The Court should deny this request for attorney fees without documentation supporting a claim for fees that are double the amount of the previous foreclosure on the same property.

Second, in Civil Action 11-CP-40-6318 (Appellate case #213559) the Bank claims attorney fees in the following amounts: (1) \$4,924.00; (2) \$3,760.00; and (3) an undisclosed amount for attorney fees under the category of "Allowable Advances". The Bank lists as "Allowable Advances": "escrow advances," "corporate charges," "expenses from the foreclosure action" and an ambiguous charge for "other charges." The Bank did not separately identify the amounts allocated from the \$6,263.60 for each of these

charges. Without an affidavit and itemized statement of attorney fees and costs it is impossible for the Court to evaluate the propriety and reasonableness of these claimed charges or for the Defendants to decide if these charges are objectionable.

The Court must evaluate the reasonableness of the claimed attorney fees based on the six factors outlined by the Supreme Court in Jackson v. Speed, 326 S.C. 289, 486 S.E. 2d 750 (1997). The Supreme Court held that the trial judge should consider the following six factors when determining the reasonableness of a claim for attorney fees: (1) the nature, extent, and difficulty of the case; (2) the time necessary 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. Id. The Supreme Court also held that “on appeal, an award for attorney’s fees will be affirmed so long as sufficient evidence in the record supports each factor” Id. The Court cannot accomplish this task without an itemized statement of attorney fees and costs. The Court should also consider that the Defendants offered to settle the case without the necessity of going to court and made a payment to bring the loan current when deciding the issue of attorney’s fees. The Bank has engaged in conduct that Meisner considers to be improper, fraudulent, libelous, and abusive and in violation of rules governing the filing of

Form 4 Orders: (1) filing an order with a judgment amount the Bank knew was not correct and/or final, especially when the Bank knew it was going to be bidding on the properties at the foreclosure sale and thereby reduce the amount of the judgment by the amount of the bid; (2) filing an order without obtaining the trial court’s signature on the order; (3) filing an order in violation of the instructions; (4) failing to notify Meisner’s counsel that the proposed order had been transmitted to the court; (5) failing to notify

Meisner's counsel that the order had been signed and filed; and (6) send a letter, in an attempt to collect a debt that was in litigation, directly to Meisner when the Bank knew Meisner was represented by counsel.

The Appellant requests the Court consider the Plaintiff's conduct, which Meisner contends constitutes unclean hands, when deciding the Bank's request for attorney fees. As a result of the Bank's conduct, Meisner has been required to incur additional attorney fees and costs unnecessarily. By the Bank's actions the Bank has tried or will try to collect attorney's fees not contemplated in the original mortgage contract e.g.: the Motion to Vacate the Sale. The Appellant requests the Court to award Appellants' attorney fees and costs and/or make an appropriate adjustment to the attorney fees and costs that may be awarded to the Bank to offset the fees and costs incurred by the Defendants with respect to this motion.

Additionally the Attorney's for the Bank has increased the costs associated with this litigation by filing the Form 4 prematurely and inaccurately and therefore causing a required defense response. Many of the actions and hearings associated with this case are the result of the Bank's attorneys trying to garner rights for the Bank not available legally; such as trying to limit the appraisal rights of Meisner, naming Meisner as a Defendant in an action that does not legally include them e.g.: Motion to Vacate the Judicial Sale and by threatening to sue Meisner for comments made in open Court which counsel for the Bank knows these comments have an absolute privilege.

Conclusion

The entry of the judgment amounts on the Form 4 against Meisner in the public record is clearly erroneous. The Form 4 did not have the Judge's signature prior to

entering the full judgment of Sand Dollar's debts against Meisner. Additionally, the Order of Foreclosure did not dictate the full judgment amount should be entered for Sand Dollar much less Meisner, the Guarantor, prior to the foreclosure sale. The enforcement of the Guaranty Agreement necessarily assumes there is something to enforce. On November 6, 2012 when the written order was signed, the Court had considered the Guaranty Agreement, Appraisal Statute arguments, the Privities of Parties, and the Judicial Estoppel arguments regarding the valuations of the property's value and still sanctioned the entry of judgment in the public roles by denying the Motion to Alter and Amend the judgment. The order ruled against the Defendant with regard to the Guaranty Agreement, otherwise the order would have been vacated and replaced. The order did not set the valuation of the property suggested by the Bank and accepted by the Defendants via the Appraisal Statute by allowing a judgment stand for the full amount against Meisner. Furthermore, the Bank has admitted the "bad deeds" of bidding a minimal amount and then confessing the true value of the property in front of the Court. This information is usually hidden behind the walls of the institution, but here in front of the Court of Equity such inequitable behavior should not be tolerated. The only value for the properties in front of the Court is the suggested "mortgage value" put forth by the Bank in their Motion to Vacate the Sale and this "mortgage value" was accepted by the Defendants.

For the reasons noted above, the Court should not sanction a retroactive approval of inappropriate judgments being enrolled in the public indexes. As officers of the Court, attorneys not following the Supreme Court rules for the entry of judgments should have some economic repercussions considering the economic hardship this causes Defendants.

Furthermore, this retroactive approval of inappropriate actions further emboldens the Bank's attorneys to "take action" then beg for forgiveness later. In the instant case, the judgments filed against Meisner have never existed in the amounts enrolled in the public roles.

APELLANT'S ANSWER TO RESPONDENTS QUESTION #1

1. WHETHER MEISNER MAY ARGUE THE EFFECT OF THE MOTION TO VACATE THE JUDICIAL SALE WHEN THE MASTER IN EQUITY HAS NOT HEARD OR RULED ON THE MOTION TO VACATE THE JUDICIAL SALE?

The Bank's argument that Meisner is premature in appealing "the effects" of the Motion to Vacate the Judicial Sale and that the appeal of the Motion to Vacate the Sale is interlocutory is misplaced. It is important to note that Meisner does **not** have standing to appeal the Motion to Vacate the Judicial Sale itself as she has no equitable or legal interest in the property and as a matter of law cannot appeal the Motion to Vacate the Sale. Additionally, while a record was not created on November 6, 2013 all parties briefed the Court on the issue of the Bank's Motion to Vacate the Judicial Sale at which time, the Court instructed Teri Stomski, attorney for the Bank to deposit the checks sent to her firm from the Masters office as proceeds from the sale of the foreclosed properties.

The Bank has erroneously named both Meisner and Sand Dollar 31, LLC (hereinafter "sanddollar") as Defendants in a case where neither entity has a legal or equitable interest. Meisner does however have a "privity of parties" with South Carolina Operating Room Equipment, LLC (hereinafter SCORE, LLC) via an interest in the valuation of the properties asserted by the Bank in the Motion to Vacate the Judicial Sale. Meisner has never filed "an appeal" of the Motion to Vacate the Sale. Meisner's

reference to the Bank's motion is not only timely; but necessary , given the Court's final ruling which was a denial of a Motion to Alter and Amend the judgment amounts entered into the public roles via submission of the Form 4 by the Bank. Therefore, effectively ruling on the Guaranty agreement and the Declaratory Judgment as pled in the Plaintiff's Answer and Counterclaim and requested relief via Rule 59-e S.C.R.C.P. motion.

It would be naive for the Appellant to assume the Court would independently "correct" the figures submitted into the public roles by the Bank at some future date, since the Court had already declined to do so via the denial of the Motion to Alter and Amend the judgment. Prior to refusing to Alter and Amend the Judgment entered by the Bank, the Court had all of the necessary information regarding the full judgment amounts entered and still denied the Motion to Alter and Amend the judgment. To wit, on November 6, 2012 when the Court signed the denial of the Motion to Alter and Amend the judgment, the sale of the properties had already occurred and the Bank had already submitted their valuation opinions of the properties to the Court via the Motion to Vacate the Sale; thereby, making it a final judgment and not interlocutory.. Had Meisner not appealed , she would lose the right to challenge the personal judgments and the property valuations in the Appellate Courts.

Quite obviously, if the Court ruled to set aside the Sale of the properties as the Bank was requesting in their Motion to Vacate the sale, then that would be an issue for the purchaser of the properties SCORE, LLC; not for Meisner and not for the arguments regarding the Bank's valuation of the properties in this appeal. The salient point regarding the Motion to Vacate the Sale in this appeal is the Bank's valuation of the

properties in their Motion. The entire argument that the Bank has inadvertently created a "privity of parties" between Sand Dollar 31 LLC, (hereinafter " Sanddollar") Meisner and the purchaser of the properties SCORE, LLC with regard to accepting the Banks valuation opinion of the properties rests on the notion that "[i]f" the Bank had filed a "[s]eparate and distinct lawsuit" not involving Meisner or Sand Dollar, 31, LLC, Meisner would have no legal reason to reference the Bank's valuation opinions. This opinion would be submitted outside the Court's eyes and unavailable as proof of the "[c]orrect" value of the properties with regard to the deficiency. The Bank should have bid the amount they subsequently valued the properties at in the Motion to Vacate the Sale instead of the low amounts the Banks submitted as bids at the foreclosure sale.

APPELLANT'S ANSWER TO RESPONDENTS QUESTION #2

2.) WHETHER THE MASTER-IN-EQUITY PROPERLY DENIED THE MOTION TO ALTER AND AMEND THE JUDGMENT?

The Order of Foreclosure **did not state** the amount of judgment should be entered **prior** to the Sale of the properties, therefore it was clearly erroneous for the Court to sanction the erroneous amounts entered in judgment against Meisner in contradiction of the Order of Foreclosure. Additionally the form 4 judgment instructions were not followed and the Court should have made the Bank correct the "figures" or remove the judgement amounts for Meisner from the public roles as the entering of the judgments effected the legal status of other properties not involved in this foreclosure proceeding.

Here, the Bank, via the Bank's motion to vacate the Sale, issues an opinion that the properties should be valued at the amount of the mortgage; therefore due to the doctrine of collateral estoppel the Bank should be prevented from changing their

valuation opinions in the same cause of action when a "different" valuation of the properties is more beneficial to them later on e.g.: the enforcement of a personal guaranty agreement.

Meisner refers to the Bank's valuation opinion in the Bank's Motion to Vacate the Sale for the following reasons: 1) To support the value claims of both properties via the appraisal statute, 2) to agree with the Banks reported value in the Motion to Vacate the sale, 3) to suggest to the Court the Bank has cancelled its own claims as to deficiency by valuing the property at the amount of the Mortgage owed. The appeal of inaccurate judgment amounts entered into the public roles is appropriate and timely. It is well understood that any judgment entered in the public roles in excess of the amounts owed is prejudicial and ; therefore, immediately appealable. Once entered into the public roles the Plaintiff is already harmed as other properties and assets in her name are immediately "attached" to the judgment. It is important to note that the amounts entered against Meisner have never been owed. The amounts entered did not take into account the sale amount and at the time the Court signed the denial of the Motion to Alter and Amend the Bank had already said " a fair value for the properties were reflected in the Mortgage amount" as such, the Court should have at a minimum required the Bank to give the credit for the sale of the properties.

Additionally, the Bank did not allocate the funds owed between the Mortgagor Sanddollar and the Guarantor, Meisner which resulted in duplicate amounts being entered in the public roles. The Bank admits in its Initial brief that Sanddollar and Meisner first brought up the issue of the Guaranty agreement in the Answer and Counterclaim in the form of a Declaratory Judgment request. After admitting the Declaratory judgment

request, the Bank then suggests the issue of the Guaranty agreement was first brought up in a Rule 59-e SCRCF motion to alter and amend. It was the Bank who narrowed the issues to be discussed at the April foreclosure hearing. (**R.p62 lines 6-14**) Even if the Bank was accurate that the guaranty issue was first presented in the Rule 59-e SCRCF, in a judge alone trial, the judge can re-open the case and find additional findings of fact and conclusions of law. (**Rp.30**) At the July Motion hearing, the judge directed the parties to brief the guaranty agreement . Thereby effectively re-opening the issue of the guaranty agreement via his request for briefing or conversely acknowledging Plaintiff's motion as correcting the error of not ruling on the declaratory judgment action in the initial hearing. The Bank also admits, in an action in equity the Appellate Court has broad discretion to find facts in accordance with the Court's own view. Here, the Bank has refused to follow the Supreme Court Rules for entering judgments in the public roles, admits the values of properties are in excess of the guaranty amounts and then ask the Court to deflect their eyes from the valuation made by Bank under the guise that the Trial Court has not ruled on the Motion to Vacate the Sale yet. It is important to note the Motion to Vacate the Sale does not affect Sanddollar 31, LLC or Meisner as neither have an equitable interest any longer. Because the Bank has named the wrong Defendants in its Motion to Vacate the Sale does not make it necessary to have a ruling on their Motion for the argument regarding valuation to be appropriate for Appellate review as the Banks arguments have already been presented to the Court and the Court has ruled via the denial of the Motion to Alter and Amend the judgment because the judgments have already been entered.

The Courts having not ruled on the Motion to Vacate the Sale does not defeat the collateral estoppel or privity of parties arguments. The Bank actually makes the case for

collateral estoppel in its Motion to Vacate the Sale argument . The equitable principle the Bank is attempting to undermine is changing the valuation opinions in the same or related litigation. The Bank erroneously entered identical amounts into the public judgment roles for both Sanddollar, 31, LLC (hereinafter " Sand Dollar") and Meisner thereby doubly the amount owed in the eyes of third parties. As an example, if someone looked at Judgments owed by Meisner and Sand Dollar independantly, they would assume each entity owes the same money thereby doubling the amounts. However, as a guarantor, Meisner only owes the amount of a deficiency, if any. Also during the hearing, Wendy Wolfson, the Banks representative did not testify as to whether Meisner signed the guaranty in her personal capacity or as a member of Sand Dollar 31, LLC. This is the very reason the Supreme Court of South Carolina has created rules for entering judgments and specifically instructs judgments in real estate foreclosures to be entered **after** the sale of the property, so as not to prejudice the parties. At the time the Court signed the denial of the Motion to Alter and Amend judgement on November 6, 2012, the amounts entered in the judgement had been reduced by the sale and income from the sale of the properties but the amounts entered did not reflect the reductions. Also, the Bank had suggested values for the properties in the motion to vacate the sale which eliminated all deficiencies because the Bank argued the appropriate value for the properties was the amount of the mortgage owed. Since the loans were several years old, each loan had reduced the amount owed from the initial mortgage amount. in addition the Bank only loans 70 % of loan to value on investment property; so in effect the values in the Motion to Vacate the Judicial Sale reflect the true value the Bank has assigned to each property.

APPELLANTS ANSWER TO RESPONDENTS QUESTION # 3

**3.) WHETHER THE MASTER IN EQUITY PROPERLY AWARDED
ATTORNEYS FEES?**

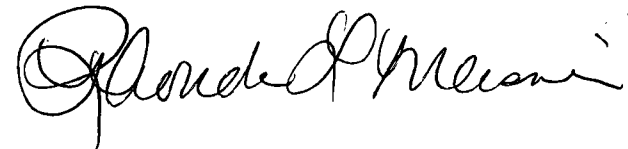
While respondents suggest the award of attorney's fees is appropriate, the affidavit of fees was not filed with the Court as of July 31, 2013 and as such there is no evidence from which the Master can properly award the fees other than the fees Ms. Wolfson testified were already paid by the Bank. Ms. Wolfson, the Bank's representative testified the Bank paid the fees to attorney Teri Stomski and therefore validated the debt owed the Bank. However, the affidavit of attorney's fees was never filed with the Court as of July 31, 2013 and should therefore be denied. Additionally, the Respondents named Sanddollar and Meisner as Defendants inappropriately and therefore caused Meisner to incur additional attorneys fees outside of the original contract that was contemplated by the parties. It is also important to note that Meisner testified and presented evidence that one of the properties was brought current and the Bank still continued with the foreclosure. **(R. 278)** The Bank should not be rewarded for their heavy handed actions. As for the argument the foreclosure was "highly contested" that is accurate but not for the reasons the Respondents suggest. The Respondents contested Meisner's right to invoke the appraisal rights statute with regard to valuation. Meisner testified she tried to comply and cure the deficiencies which were submitted into evidence at the foreclosure hearing.

FINAL CONCLUSION

For the above reasons, Appellant Rhonda Meisner respectfully requests the Court to REVERSE the decision of the Master-in-Equity and accept the valuation opinion submitted by the Bank in their Motion to Vacate the Judicial Sale as the appropriate valuation of the properties and REMAND the entry of Judgement to reflect the

appropriate valuation amounts and DENYING the inclusion of Attorney's fees for guarantor Meisner.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rhonda Meisner". The signature is written in a cursive style with a large initial "R" and "M".

Rhonda Meisner, Appellant
post office Box 689
Blythewood, SC 29016
pegasus@nuvox.net
(803)960-3696

This 16th Day of October 2013 A.D.

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A.

Respondents,

v.

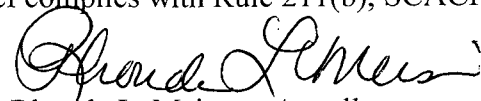
SandDollar 31, LLC: Rhonda
Meisner, of whom Rhonda
Meisner is Appellant

Appellant.

CERTIFICATE OF APPELLANT

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

October 16, 2013


Rhonda L. Meisner, Appellant

Post Office Box 689

Blythewood, South Carolina 29016

~~(864) 000-0000~~ 803-960-3696

Attorney for Appellant

pegasus@huvox.net