

January 28, 2013

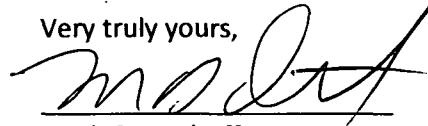
The Honorable Jenny Abbot Kitchens  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211  
1015 Sumter Street  
Columbia, SC 29201

Re: SunTrust v. Ostendorff, Mark  
Appellant Case No. 2010- 150386

Dear Jenny Abbott Kitchens:

Enclosed is Ostendorff's corrected Index for a Writ of Certiorari and unbound copies of Record on Appeal and Final Brief. I apologize for any problems.

Very truly yours,



Mark Ostendorff  
137 King Street  
Central, SC 29630  
(864) 640-3340  
Petitioner, Pro Se

cc: Brian Tatum

**RECEIVED**

JAN 29 2013

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

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Appellate Case No. 2010-150386

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SunTrust Mortgage.....Respondent,

v.

Mark Ostendorff.....Petitioner.

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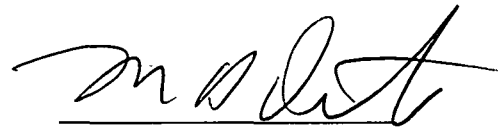
CERTIFICATE OF SERVICE

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I, Mark Ostendorff, certify that I placed in the United Postal Service with proper postage, a corrected copy of the INDEX of Petition for a Writ of Certiorari, addressed to the Respondent's attorney at :

Brian S. Tatum  
Tatum Law Firm  
POBox 11250  
Charlotte, NC 28220  
(704) 307-4350

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SunTrust Mortgage , Inc.,.....Respondent,  
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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

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Case No. 2007-CP-46-04305

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SunTrust Mortgage' Inc,.....Respondent,  
v.  
Mark Ostendorff,.....Appellant.

---

FINAL BRIEF OF APPELLANT

---

Mark Ostendorff  
PO Box 14846  
Greenville, SC 29610  
(864) 360-1834  
ProSe , Appellant

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JAN 29 2013

SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE TIMELINESS OF INTEREST PAYMENTS MADE BY APPELLANT ( DEFENDANT ) OSTENDORFF WAS AN ISSUE OF FACT , AND NOT LAW ?
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE COST TO COMPLETE THE HOUSE WAS AN ISSUE OF FACT , AND NOT LAW ?
3. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THERE WAS A GENUINE ISSUE OF MATERIAL FACT ?
4. DID THE TRIAL COURT ERR IN GRANTING A SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFF WHO HAD REFUSED TO PROVIDE DISCOVERY ?
5. DID THE TRIAL COURT ERR IN FINDING THE INDEBTEDNESS OF DEFENDANT OSTENDORFF TO PLAINTIFF SUNTRUST ?
6. DID THE TRIAL COURT ERR IN ORDERING PERMISSION FOR THE PLAINTIFF SUNTRUST TO PROCEED WITH FORECLOSURE ?

## STATEMENT OF CASE

On December 9, 2007 SunTrust Mortgage brought a foreclosure suit against Mark Ostendorff on a construction rehab loan. Ostendorff had been living in the house at the time the loan was originated and was making substantial improvements at the time when the foreclosure action started. Date of commencement of action was November 30, 2007.

Nature of action or matter: Foreclosure by SunTrust Mortgage ,Inc.

Nature of the defense : Defendant Ostendorff denied any indebtedness and filed a compulsory counterclaim.

Action of Court: Summary Judgment in favor of SunTrust to dismiss Ostendorff's counterclaim under reason of no genuine issue of material fact.

Date of trial: December 10, 2009

Mode of trial: Ostendorff's counterclaim was in Common Pleas with jury trial.

Summary Judgment on Ostendorff's was by Special Circuit Court judge (Master-In-Equity ).

The amount of appeal: Ostendorff's counterclaim was for \$1, 125,000.00

The date and nature of order or decision appealed from: December 18,2009.

Received written notice on January 15, 2010

Judgment appealed from: Special Circuit Court (Master-In-Equity) on order from motion for summary judgment.

Date of service of notice of appeal: January 18,2010.

## ARGUMENTS

1. BECAUSE APPELLANT (DEFENDANT ) OSTENDORFF DID MAKE INTEREST PAYMENTS WITHIN THE REQUIREMENTS OF THE MORTGAGE AND NOTE (CONSTRUCTION LOAN AGREEMENT ) , THIS ISSUE IS ONE OF FACT AND NOT LAW.

### Mortgage

Paragraph 22 (in bold print) states : “ ... Lender shall give notice to Borrower (R. P. 141, LINES 2-5) prior to acceleration following Borrower’s breach of any covenant or agreement...The notice shall specify: (a) the default...”

Ostendorff never received any such notice that he was in was in breach for untimely payments. Ostendorff did not receive any verbal notice of breach. Ostendorff talked with Mike “ Mikey” Watts ( SunTrust loan originator) on a two to three week basis (Ostendorff’s 2nd affidavit, pg 2) and never was ever informed of any breach or (R. P. 114, LINES 11-15) problem. Ostendorff contacted Mike Watts ( Ostendorff’s 2<sup>nd</sup> affidavit, pg 2) around (R. P. 114, LINES 1-7) December 2006 for help in getting construction draws after being denied a draw by Steve Burmeister ( SunTrust construction administrator).Mike Watts did not inform Ostendorff of any breach. Steve Burmeister ( Ostendorff’s affidavit (first), pg 2) (R. P. 110, LINES 8+9) never gave a reason for discontinuing the draws nor any notice of breach.

### Construction Loan Agreement

Paragraph 16 states... “ The following acts by Borrower (R. P. 141, LINES 46, 47, 51-60) shall be events of default under the terms of this Agreement ...(g) failure to pay any

... interest payments, (h)...” . There is no reference requiring the interest payments be paid by a specific date of the month. Ostendorff had paid the monthly interest payments within each month when due (Susan Walker’s affidavit pg 4) prior to being cut off by SunTrust.  
(R. P. 57, lines 1-12)

No where in either the Mortgage or The Construction Loan Agreement that borrower is in breach by not making an interest payment by a certain day of the month.

### Ambiguity

The day that the interest payment must be paid in which not to be in breach is ambiguous. Only an unambiguous contract is one of law and thus decided by a lone judge. This contract is ambiguous and thus one of fact. It should be heard by the triers of fact, a jury.

West’s South Carolina Digest 2d , Contracts – 143(2). Existence of ambiguity.

D.S.C. 2002. Under South Carolina law, an “ambiguous contract” is one capable of being understood in more ways than one, or obscure in meaning through indefiniteness of expression.

Richland-Lexington Airport Dist.v. American Airlines, Inc.,

306 F.Supp.2d 548, affirmed 61 Fed.Appx. 67.

S. C. App. 2004. A contract is “ambiguous” when it is capable of more than one meaning or when its meaning is unclear.

Ellie, Inc. v. Miccichi, 94 S.E. 2d 485, 358 S.C. 78, rehearing denied.

S.C. App. 1997. Contract is “ambiguous” when terms on their face , or are

reasonably susceptible of more than one interpretation when viewed objectively by reasonably intelligent person who has examined context of entire integrated agreement and who is cognizant of customs , practices, usages , and terminology as generally understood in particular trade or business.

Hawkins v. Greenwood Development Corp., 493 S.E. 2d 875,  
328 S.C. 585 , rehearing denied , and certiorari denied.

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In re Georgetown Steel Co., LLC, 318 B.R. 313.

S.C. App.200 . A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.

Lacke v. Lacke., 608 S.E. 2d 147 , 362 S.C. 302, certiorari dismissed.

### Intent

If SunTrust intended to have the monthly interest payments by a certain day of the month, then SunTrust could have easily done so on the Mortgage and the Construction Loan Agreement ( i.e. “ if you do not make the monthly interest payment by day (x) of each month, you are in breach and will not receive anymore construction draws”).

Obviously , it was to the advantage of SunTrust for a construction loan to be completed. Thus, reasonable flexibility is understood for a cash flow that will support any construction project.

SunTrust made two months' interest payments for Ostendorff on 3/15/07 .

(Ostendorff's affidavit (1<sup>st</sup>) pg. 3 , item 10. and Susan Walker's affidavit (R. P. 111, LINES 3-7) pg. 4 , item 14 ). The two months' payments came out of the balance remaining (R. P. 57, LINES 13) out of the original loan amount. Had it been the intent of the Mortgage and Construction Loan Agreement for Ostendorff to be in breach by not paying interest payments by a specific day each month, then SunTrust would not have made the payments for Ostendorff. They were acting in their best interest to keep any chances of getting the house built without having to give Ostendorff anymore draws.

Had SunTrust considered Ostendorff in breach for late interest payments, they would not have waited one and a half years to bring forth the foreclosure suit. This is illustrated by SunTrust sending Ostendorff an "Acceleration Letter" on approximately October 8 , 2007, shortly after the 90 day period when Ostendorff stopped making monthly interest payments. ( Brian Tatum's affidavit pg 2, item4 ). (R. P. 52, LINES 10-14)

The two best individuals who understood the intent of the agreement are:

SunTrust – Mike "Mikey" Watts

Mark Ostendorff , Defendant and Appellant

because these are the two main individuals who negotiated and carried out the origination of this contract.

SunTrust's attorney has refused to provide an address or telephone number for Mike Watts even though requested through discovery.

No affidavit has been provided by Mike Watts.

The Trial Court never asked any questions from Ostendorff or of SunTrust of the intent of the Mortgage , Construction Loan Agreement, or any ancillary agreements. This Trial Court is not a place of opportunity to explain one's position or facts unless specifically asked. Numerous facts regarding the intention of this loan still have not been heard. Ostendorff's affidavits do not include the interest payment date issue, as it had never been raised before until the motion hearing.

West's South Carolina Digest 2d, Contracts -147 (1)

S.C. App. 1995 . Cardinal rule of contracts interpretation is to ascertain and give effect to intention of parties.

Friarsgate, Inc. v. First Federal Sav. And Loan Ass'n of South Carolina, 454 S.E. 2d 901 , 317 S.C. 452 , rehearing denied and certiorari denied.

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S.C. App. 1989. Once contract is before court for interpretation, main concern is to give effect to intention of parties by determining situation of parties, as well as their purposes, at time contract was entered.

Columbia East Associates v. Bi-Lo, Inc.,  
386 S.E. 2d 259, 299 S.C. 515.

#### Surprise Issue

SunTrust has never brought up the issue of Ostendorff making untimely interest payments. This issue is a surprise issue. It is not in Suntrust's pleadings, nor is it in Susan Walker's affidavit. The first time it was ever brought up was at the hearing (Transcript pg 6, lines 21-25, lines 1-8).  
(R.p. 22, lines 21-25; P. 23, lines 1-8)

The issue all along in SunTrust's pleadings and Susan Walker's affidavit was that Ostendorff quit paying interest payments in July 2007, not late in paying interest payments May 2006 through 2006 (Transcript pg 9, lines 6-12). (R.p. 25, lines 6-12)

In Susan Walker's affidavit, pg 5, item 17, states "That on August 21, 2007, SunTrust advised the Defendant that the final construction draw could not be  
(R.p. 38, lines 1-3)

disbursed and the construction loan made permanent until Defendant's payments were current."

Ostendorff's payments had been current for 7 months since the last draw.

Ostendorff had explained to each of SunTrust's three subsequent attorneys that SunTrust had breached by stopping construction draws. Each attorney insisted the reason for stopping construction draws was because Ostendorff stopped making interest payments altogether. SunTrust's attorney Brian Tatum's Brief In Support Of Plaintiff's Motion For Summary Judgment, pg 2, top (R.P. 47, lines 1-4) paragraph states "...the Defendant has failed to provide proof that the loan was current when SunTrust stopped disbursements of the construction draws..."

A change in the story occurred only after SunTrust's attorney realized, after reviewing Susan Walker's affidavit, that SunTrust had stopped the construction draws approximately 7 months before Ostendorff stopped making any more interest payments.

Ostendorff was current for 7 months after the construction draws stopped.

That change in the story was never uttered or written until during the motion hearing.

Rule 8 (a) SCRPC. This Rule requires the litigant to plead the ultimate facts that will be proved at trial. "Ultimate facts" have been defined as "such facts as form the basis for the legal conclusions necessary for the pleader to prevail." (H. Lightsey, Jr. & J. Flanagan, South Carolina Civil Procedure 106 (2<sup>nd</sup> ed. 1985).

Had Ostendorff had the opportunity to be prepared for this position by SunTrust of untimely payments, then Ostendorff could have time to recollect the discussions with Mike Watts just days after the loan origination ( closing ). Those discussions included required payment dates and Credit Bureau reporting . Those discussions were quickly discussed 3 ½ years ago before the hearing.

As it stands, since Ostendorff did not bring up these issues in the hearing, Ostendorff is barred from bringing up these discussions for argument in this appeal.

#### Acquiescence

SunTrust accepted interest payments at different days during each month (Susan Walker's affidavit pg 4, item 14 ) and continued to make draws with no objections (R.P. 57, lines 1-10)  
To anything on Ostendorff's performance in carrying out his contract obligations ( transcript pg 19, entire page and pg 20, lines 1-14 ).  
(R. p. 35, lines 1-25 ; p. 36, lines 1-14)

2. BECAUSE THERE WAS ENOUGH MONEY REMAINING IN THE LOAN BALANCE TO COMPLETE THE HOUSE , THIS ISSUE IS ONE OF FACT AND NOT LAW.

Construction Loan Agreement

Paragraph 4 –“ Lender may request a breakdown of the construction costs at anytime (R.P. 146, lines 30-34) prior to or during the construction period. If it appears that the construction costs will exceed the net amount available under the Note, Lender may require the Borrower to deposit with Bank sufficient to cover the deficiency. In the event Lender expends any funds in excess of the funds held and / or the net loan proceeds , they shall be considered as futures advances and shall be secured by the lien of the Security Instrument.”

No where else in the Construction Loan Agreement or Mortgage is the issue of not enough money in the loan balance to complete construction.

SunTrust never questioned Ostendorff on remaining costs to complete the construction. ( Transcript pg 23 , lines 8-9 ) (R.P. 39, lines 8-9)

Mortgage

Paragraph 22 (in bold print ) states “ Lender shall give notice to Borrower prior to (R.P. 141, lines 2-5) acceleration following Borrower’s breach of any covenant or agreement ... The notice shall specify: (a) the default...”

Ostendorff never received any such notice that he was in breach for not enough money remaining to complete the house. Ostendorff did not receive verbal notice of breach . Ostendorff talked with Mike Watts on a two to three week basis (Ostendorff's 2<sup>nd</sup> affidavit, pg 2 ) and never was informed of any breach or (R. p. 114, lines 11-15) problem. Ostendorff contacted Mike Watts (Ostendorff's 2<sup>nd</sup> affidavit, pg 2) (R. p 114, lines 1-7) around December 2006 for help in getting construction draws after being denied a draw by Steve Burmeister . Mike Watts never informed Ostendorff of any breach. Steve Burmeister (Ostendorff's affidavit (first) , pg 2 ) never gave a reason for (R. p. 110, lines 8+9) discontinuing the draws nor any notice of breach.

### Ambiguity

The amount of money remaining in the loan balance to complete the construction in which not to be in breach is ambiguous. Only an unambiguous contract is one of law and thus decided by a lone judge. This contract is ambiguous and thus one of fact. It should be heard by the triers of fact, a jury.

West's South Carolina digest 2<sup>nd</sup>, Contracts- 143(2). Existence of ambiguity.

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S.C. App. 200 . A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.

Lacke v. Lacke

608 S. E. 2d 147 , 362 S.C. S.C. 302

#### Intent

SunTrust could have easily put in the Construction Loan Agreement “if Borrower cannot complete the construction within the remaining loan balance then you are in breach and will not receive any more construction draws”. It did not do so and did not consider Ostendorff in breach.

Obviously, it was to SunTrust’s advantage for a construction project to be completed

Cost overruns are common in the construction industry and no one has control of commodity prices over a year's length.

Had SunTrust considered Ostendorff in breach of not enough money in the loan balance, they would not have waited one and a half years to bring forth the foreclosure suit. This is illustrated by SunTrust sending Ostendorff an "Acceleration Letter" on approximately October 8, 2007, shortly after the 90 day period when Ostendorff stopped making monthly interest payments. ( Brian Tatum's affidavit pg 2, item 4).  
(R. p. 52, lines 10-14)

The two best individuals who understood the intent of the agreement are:

Suntrust- Mike Watts

Mark Ostendorff- Appellant and Defendant

because these are the two main individuals who negotiated and carried out the origination of this contract.

SunTrust's attorney has refused to provide an address or telephone number for Mike Watts even though requested through discovery.

No affidavit has been provided by Mike Watts.

The Trial Court never asked any from Ostendorff or of Suntrust of the intent of the Mortgage, Construction Loan Agreement, or any ancillary agreements. This Trial Court is not a place of opportunity to explain one's position or facts unless specifically asked. Numerous facts regarding the intention of this loan still have not been heard. Ostendorff's affidavits , nor Susan Walker's affidavit, or any of Suntrust's attorney mention anything about the total cost of construction within the loan balance.

Only did the Trial Court bring up the issue.

West's South Carolina Digest 2d , Contracts -147 (1)

S.C. App. 1995. Cardinal rule of contracts interpretation is to ascertain and give effect to intention of parties.

Friarsgate , Inc. v. First Federal Sav. And Loan Ass'n of South Carolina

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Columbia East Associates v. Bi-Lo , Inc.,

386 S.E. 259 , 299 S.C. 515.

Surprise Issue

The Trial Court is the one who brought up this issue.

SunTrust never brought it up in the hearing or even commented on it.

Ostendorff had mentioned in his affidavit (1<sup>st</sup>) on item 13 that SunTrust

(R.p. 112, 1m3 1+2)

16

5

could easily make \$200,000.00 if they foreclosed and finished the construction themselves and sold it. This was just an illustration for item 4 pg five in Ostendorff's Opposition to Plaintiff's Motion for Summary Judgment. (R.P. 108, lines 6+7)

The issue all along in SunTrust's pleadings and Susan Walker's affidavit (R.P. 54-59) was that Ostendorff quit making interest payments in July 2007, not that there was not enough money in the loan balance to complete construction.

Ostendorff had explained to each of SunTrust's three subsequent attorneys that SunTrust had breached by stopping construction draws. Each attorney insisted the reason for stopping construction draws was because Ostendorff stopped making interest payments altogether. SunTrust's attorney Brian Tatum's Brief In Support Of plaintiff's Motion For Summary Judgment pg 2 (R.P. 47, lines 1-4) states "... the Defendant has failed to provide proof that the loan was current when SunTrust stopped disbursements of the construction draws ...".

No where was any issue of not enough money in the loan balance to complete the construction.

Rule 8 (a) SCRPC. This Rule requires the litigant to plead the ultimate facts that will be proved at trial. "Ultimate facts" have been defined as "such facts as form the basis for the legal conclusions necessary for the pleader to prevail." (H.Lightsy, Jr. & J. Flanagan, South Carolina Civil Procedure 106 (2<sup>nd</sup> ed. 1985).

Had Ostendorff had the opportunity to be prepared for this position by

The Court (and not SunTrust), then Ostendorff could have time to recollect more from the frequent discussions with Mike Watts that occurred before the loan origination and lasted 6 months into the loan. Those discussions were 3 to 3 ½ years ago before the hearing.

As it stands now, since Ostendorff did not bring up these discussions with Mike Watts in the hearing, Ostendorff is barred from bringing up these discussions for argument in this appeal.

Trial Court's misunderstanding of facts at Motion Hearing

Costs to complete- The Court in its findings of fact stated on about written line 20 (R.P. 5, lines 20+21) that "Defendant admitted at the hearing that he owed suppliers and subcontractors for work performed on the house, and estimated that it would \$50,000 to complete the house."

This was the amount Ostendorff thought SunTrust could finish the house and sell it, not the amount Ostendorff would need to complete it (Transcript pg 20, lines 21-24). (R. p. 36, lines 21-24)

Ostendorff thought he needed \$4, 000 cash (a construction draw) to complete (Transcript Pg 17, lines 24- 25, pg 18, lines 1-4). (R. p. 33, lines 24-25; p. 34, lines 1-4)

Subcontractors- In the Courts above statement- Ostendorff did not owe any subcontractors as Ostendorff did not use any subcontractors. Nor is the word "subcontractor" in any of Ostendorff's written papers. Nor is the word "subcontractor" ever mentioned in the hearing.

Ostendorff's need to sell the house- Ostendorff did plan on selling the house at a later date in order to build his next house. Ostendorff did not need to sell the house to pay creditors , credit cards, suppliers (if any still owed).(Transcript pg 21 , lines 24 and 25, pg 22 lines 1-2). (R. p. 37, lines 24+25; p.38, lines 1-2)

Cash out refinance- Ostendorff and Mike Watts intended all along for Ostendorff to do a cash out refinance loan with Suntrust once the house was completed. This was intended to to pay my short term creditors ( all were known by Suntrust and attached to the loan application) and any suppliers( if still owed). (Transcript pg 21 , lines 10- 23). (R. p. 152 - 155) (R. p. 37, lines 10-23)

Thus Ostendorff did not need to sell the house.

All houses are eventually sold due to death, moving, etc.

Indebtedness of Ostendorff to SunTrust- Ostendorff did not fail to refute the amount owed to SunTrust because The Court did not ask anything regarding the amount owed. The question by The Court was regarding the interest payments and dates that Ostendorff made to SunTrust. This was in regards to Susan Walker's affidavit , paragraph 14. (R. p. 57, lines 1-20) (Transcript pg 16 , lines 19 - 25). One cannot refute what one is not asked. (R. p. 32, lines 19-25)

Remaining loan balance- The Court stated there was less than \$7, 000 loan balance however, in Susan Walker's affidavit, the available money at last draw was \$ 11,200. (balance statement dated 12-15-2006).

The above misunderstandings show that the motion hearing did not flush out facts that can give a basis to any conclusion that there was an absence of material fact.

3. BECAUSE SUNTRUST DID NOT SHOW THE ABSENCE OF A GENUINE ISSUE OF MATERIAL FACT , SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED.

The U. S. Supreme Court has stated a dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”

Anderson v. Liberty Lobby, Inc.

477 U.S. 242 , 251, 106 S.Ct. 2505, 2511, 91 L. Ed. 2d . 202 (1986).

Arguments 1 and 2 showed that the issue is genuine .

The U. S. Supreme Court cautioned that summary judgment not become a trial by affidavit and that “[c] redibility determinations, the weighing of evidence , and the drawing of legitimate inferences from the facts are jury functions , not those of a judge...The evidence of the non-movant is to be believed , and all justifiable inferences are to be drawn in his favor.”

Anderson v. Liberty Lobby , Inc.

477 U.S. 242, 255 , 106 S.Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986).

SunTrust’s affidavits did not even support their claim. Ostendorff provided evidence that should be heard by a jury.

Rule 6(c) .... “ that there is no genuine issue as to any material fact the moving party is entitled to a judgment as a matter of law.”

SunTrust did not show an absence or material fact and thus summary judgment should not have been granted.

In general, if pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented.

Baird v. Charleston County

333 S.C.519 , 511, S. E. 2d 69 (1999)

4. BECAUSE THE PLAINTIFF REFUSED TO PROVIDE DISCOVERY,  
SUMMARY JUDGMENT SHOULD NOT BEEN GRANTED

Ostendorff informed The Court that SunTrust had been refused discovery  
(Transcript pg 24, lines 10- 13). (R, p. 40, lines 10-13)

There was a pending motion to compel filed by Ostendorff on December 9, 2009,  
for discovery requests from 4/ 15/09. (R, p. 156 + 157)

Only admissions were received and an interrogatory was answered by the  
attorney , and not the Plaintiff. The Plaintiff stonewalled by claiming trade  
secrets and attorney-client privledges.

5. BECAUSE THE CASE WAS IN COMMON PLEAS , MASTER-IN-EQUITY  
DID NOT HAVE JURISDICTION TO DETERMINE INDEBTEDNESS.

The Master –In – Equity hears motions on jury trials. The Common Pleas had not  
sent an Order of Reference to Master-In – Equity.

The motion for summary was granted by the Master-In- Equity.

6. BECAUSE THE CASE WAS IN COMMON PLEAS , MASTER-IN-EQUITY  
DID NOT HAVE JURISDICTION FOR CASE TO PROCEED INTO  
FORECLOSURE.

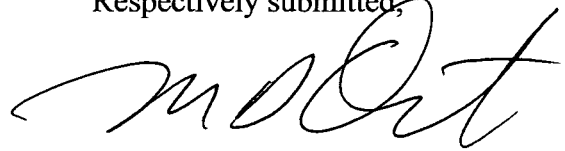
The Master-In- Equity hears motions on jury trials. Common Pleas had not  
sent an Order of Reference.

The motion for summary judgment was granted by the Master-In-Equity.

CONCLUSION

For the reasons stated , this Court should reverse the judgment of the Circuit Court.

Respectively submitted,

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written in a cursive style.

June 26, 2010

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