

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Richland County Master In Equity
Joseph M. Strickland, Master in Equity

RECEIVED

MAR 19 2019

SC Court of Appeals

Civil Action No. 2018-001577

The Homestead Property Owners Association, Inc.....Respondents

v.

Wanda J. Miller and Orlando F. Miller.....Appellants

AMENDED RECORD ON APPEAL

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Inc.

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

THE HOMESTEAD PROPERTY
OWNERS ASSOCIATION, INC.,

Civil Action No. 2017-CP-40-06634

Plaintiff,

v.

WANDA J. MILLER & ORLANDO F.
MILLER,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AS TO DEFENDANTS'
COUNTERCLAIMS AND DENYING
PLAINTIFF'S CLAIM FOR
FORECLOSURE**

This matter was before the Court on July 30, 2018 for on Plaintiff Homestead Property Owners Association, Inc.'s ("Plaintiff") Motion for Summary Judgment to allow foreclosure and to dismiss the Millers' Counterclaims filed on July 20, 2018, and Wanda J. Miller and Orlando F. Miller's ("Millers") Rule 60(a) and Rule 60(b) Motion for Relief from Judgment filed on July 27, 2018.

At the hearing, Plaintiff was represented by Stephanie C. Trotter and George C. James, III, and the Millers were represented by Brian C. Gambrell.

After considering the arguments of counsel, review of the parties' written submissions, and examination of the governing law as applied to the facts of this case, the Court grants the Plaintiff's motion for summary judgment as to the Millers' counterclaims, and other than the vacation of this Court's June 4, 2018 Order Granting Judgment of Foreclosure and Sale, the Millers' Motion for Relief from Judgment is denied as moot.

FACTS/PROCEDURAL HISTORY

The factual recitations set forth herein are in the light most favorable to the Millers, the non-moving party. The Millers are the owners of the real property located at 261 Kenmore Park Drive ("Property") in The Homestead Subdivision in Richland County. Plaintiff is the homeowners' association for the subdivision.

On May 4, 2016, Plaintiff recorded a Notice of Lien against the Property for unpaid homeowners' association assessments. On October 30, 2017 Plaintiff filed this suit seeking foreclosure of its lien. The Millers were served on November 8, 2017. On January 23, 2018, Plaintiff filed an Affidavit of Default and the action was referred to the Master in Equity.

The initial foreclosure hearing was scheduled for May 14, 2018. At this hearing, the Millers appeared for the first time, with counsel, and the hearing was continued until July 30, 2018. At the May 14, 2018 hearing, the Court *sua sponte* stated the Millers, by and through their counsel, were free to file an answer; however, the entry of default was never set aside pursuant to Rule 55(c).¹

Thereafter, the Millers filed and served an answer and counterclaim alleging claims for abuse of process and breach of contract against Plaintiff. Specifically, the Millers allege Plaintiff filed the instant action for the ulterior purpose of collecting a non-existent debt and refused and returned the Millers' payments to illegally generate a lawsuit and attorney's fees.

Following the May 14, 2018 hearing, this Court signed an Order Granting Judgment of Foreclosure and Sale that was filed on June 4, 2018. This order was signed as a result of a clerical error. The parties consented to a vacation of this order at the July 30, 2018 hearing.

¹ While the Millers question whether or not the Court's *sua sponte* statement lifted the entry of default, the Court's holding to grant Plaintiff's Motion for Summary Judgment as to the Millers' counterclaims is based solely on the merits and its jurisdiction to hear matters of law under Rule 53(c) SCRCP; therefore, the Millers possibly being in default is irrelevant to the Court's findings in this Order.

STANDARD OF REVIEW

Summary judgment is proper when there is “no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. “In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in the light most favorable to the non-moving party.” *Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998) (citations omitted). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 240, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

LAW/ANALYSIS

I. The Millers’ Abuse of Process Counterclaim Fails as a Matter of Law.

“The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding.” *Hainer v. American Medical Intern., Inc.*, 328 S.C. 128, 137, 492 S.E.2d 103, 107 (1997). “There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” *Id.*

The Millers allege Plaintiff filed this suit for “the ulterior purpose of collecting a non-existent debt.” The Millers further allege that Plaintiff “returned Defendants’ assessment payments inside (sic) of accepting them for the purposes of generating this lawsuit.” However, given the Millers’ own deposition testimony, the Millers’ abuse of process claim fails as a matter of law.

The Millers’ deposition testimony established they have not submitted any payments to Plaintiff since 2014; therefore, Plaintiff, having received no payments, could not have possibly returned any payments.

During the Millers' depositions, the only evidence offered to support the allegation that Plaintiff refused their payments was in the context of Plaintiff's refusal to accept payment plans the Millers proposed. The Millers' deposition testimony directly contradicts the allegations in their abuse of process counterclaim and does not create any genuine issue of fact that Plaintiff has prosecuted this foreclosure action for any ulterior or improper purpose.

Taken in the light most favorable to the Millers, the evidence in the record establishes only that Plaintiff has refused to settle this case under the terms the Millers requested. Plaintiff's refusal to accept less than the balance due under the contract cannot form the basis for an abuse of process claim. Further, the contract specifically empowers Plaintiff to seek foreclosure of its lien for assessments not paid within thirty days. Plaintiff is entitled to judgment as a matter of law on this cause of action.

II. The Millers' Breach of Contract Counterclaim Fails as a Matter of Law.²

As they allege in their counterclaim for abuse of process, the Millers allege in their breach of contract counterclaim that Plaintiff has breached its contract with the Millers by failing to accept the Millers' payments and "filing a lien in order to justify higher fees, costs, and attorney's fees." However, as discussed above, both Mr. and Mrs. Miller testified they did not submit any payments to Plaintiff. Again, Plaintiff could not possibly refuse to accept payments the Millers admit that they did not make. Both Mr. and Mrs. Miller admit they owe Plaintiff for

² The Millers testified that Plaintiff was in breach of contract by failing to maintain the common areas within the neighborhood. However, the Millers did not make this allegation in their counterclaim. Even if they had, Plaintiff would still be entitled to summary judgment. The Association owns approximately sixteen acres of unimproved property at the rear of the subdivision. This area is shown as "Common Area" on the bonded plat of The Homestead Subdivision recorded in the Richland County Register of Deeds in Book 1163 at Page 2534. The Common Area is comprised of almost fifteen acres of wetlands. Therefore, Plaintiff is prevented from developing this area. Additionally, the Millers have presented no evidence or argument that Plaintiff is contractually required to develop this area.

assessments that are more than thirty days past due. The restrictive covenants specifically empower the Plaintiff to file a lien to secure charges more than thirty days past due.

Accordingly, Plaintiff is entitled to judgment as a matter of law on the Millers' counterclaim for breach of contract.

III. Plaintiff's Claim for Foreclosure is Denied at this time.

The Millers contest the exact amount of assessments and other charges they owe Plaintiff. Because there is a genuine issue of material fact regarding the total balance due, summary judgment on Plaintiff's claim for foreclosure is inappropriate at this stage.

CONCLUSION

After considering the arguments of counsel, review of the parties' written submissions, and examination of the governing law as applied to the facts of this case, the Court **GRANTS** the Plaintiff's motion for summary judgment as to the Millers' counterclaims. The Court **DENIES** Plaintiff's motion for summary judgment on its claim for foreclosure. Because the Court has dismissed Defendants' counterclaims, Defendants' Motion for Relief from Judgment/Order of Reference is moot; therefore, other than the vacation of the June 4, 2018 Order, the motion is **DENIED**. This Order does not end the case, it only dismisses the Millers' counterclaims asserted against Plaintiff with prejudice.

(Electronic Signature Page to Follow)



Richland Common Pleas

Case Caption: Homestead Property Owners Association Inc vs Wanda J Miller ,
defendant, et al
Case Number: 2017CP4006634
Type: Order/Summary Judgment

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2018-08-13 11:13:48 page 6 of 6

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Homestead Property Owners Association,
Inc.,

Plaintiff,

v.

Wanda J. Miller and Orlando F. Miller

Defendant(s).

IN THE COURT OF COMMON PLEAS

2017-CP-40-06634

**JUDGMENT OF FORECLOSURE AND SALE
(Deficiency Judgment Waived)**

20856.13

A hearing was held 05/14/2018. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Notice of Lien was filed on 05/04/2016 in Book 2109 at Page 2117.
2. The Lis Pendens was filed on 10/30/2017.
3. The Summons and Complaint were filed on 10/30/2017.
4. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
5. The Defendant(s) are in default.
6. The Defendant(s) are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
9. On 12/11/2007 the Defendant(s) took title to the subject property located at 261 Kenmore Park Drive. The Defendant(s), by taking title to the subject property agreed to the governing documents for Plaintiff, which are of record herein.
10. The titleholder(s) of record in and to the subject property as of the filing of the lis pendens in this action is/are Wanda J. Miller and Orlando F. Miller.
11. Payment of the assessment has not been made as provided for by the Declaration, and the Plaintiff has elected to require immediate payment of the entire amount due thereon.

Plaintiff has placed it in the hands of the attorney herein for collection by filing a Notice of Lien for unpaid assessments and initiating a foreclosure of that lien.

12. The sum of \$2,075.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Declaration.

13. Specifically, the Plaintiff's attorney is entitled to \$425.00 for services performed in filing a Notice of Lien for delinquent assessments. This service required the Plaintiff's attorney to research public real property records to identify the subject property, research court records to determine if there are any pending actions against the subject property, prepare and coordinate filing and service of the Notice of Lien, coordinate any payoff requests or payment plans with the Defendant, and eventually satisfy the Notice of Lien upon payment by the Defendant.

14. Plaintiff's attorney is further entitled to the additional sum of \$1,650.00 for prosecuting the foreclosure action. This service required the Plaintiff's attorney to obtain and review a title abstract for the subject property, prepare and file a lis pendens, summons and complaint for foreclosure, arrange for personal service of the initial pleadings, review the file to determine whether service was properly achieved and whether the Defendant is in default, and prepare and file an Affidavit of Default when the Defendant failed to respond. The Plaintiff's attorney also had to prepare and file a proposed order of reference for this case. Once the court set a final hearing date, Plaintiff's attorney had to send notice to the Defendant at least ten days prior to the final hearing. Prior to this hearing, Plaintiff's attorney was responsible for drafting a proposed transcript of testimony, an affidavit of costs, an affidavit of attorney's fees, a certification that this case is not subject to Administrative Order 2011-5-02-01, a proposed order, and a proposed notice of sale. Upon execution of this Judgment, Plaintiff's attorney will be responsible for ensuring the foreclosure sale is properly advertised, bidding on her client's behalf at any foreclosure sale, and preparing post-sale documents if her client should be the highest bidder at the sale. If her client takes title to the property at the foreclosure sale, Plaintiff's attorney will also be responsible for prosecuting any eviction proceedings necessary to clear the property for Plaintiff's possession.

15. The sum of \$2,075.00 is reasonable based on the time necessarily devoted to representation of the Plaintiff during the several-month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and her experience in handling assessment lien foreclosure matters. The fees awarded herein are also reasonable since they are less than the fees customarily awarded by this court for similar services in this county.

Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

16. After all payments received by the Plaintiff have been credited, the amount due and owing with interest at the rate provided in the Declaration, and other costs and expenses of the within action, including an attorney's fee, secured by the Declaration, is as follows:

(a)	Assessments	\$900.00
(b)	Interest from August 1, 2014 through May 9, 2018 at 10.00 % per annum	\$179.21
(c)	Costs of collection prior to hearing (service, filing, etc.)	\$534.00
(d)	Attorney's fee	\$2,075.00
(e)	Payments	(\$0.00)
+		
TOTAL debt secured by the Declaration, including interest to date shown		\$3,688.21

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 10.00 % per annum (pursuant to the terms of the Declaration) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Declaration through the date to which such interest is computed.

17. Plaintiff is seeking the usual foreclosure of the property and has expressly waived the right to a personal or deficiency judgment.

IT IS THEREFORE ORDERED THAT:

1. There is due the sum of \$3,688.21, as set out in the Findings of Fact *supra*, together with interest at the rate provided herein on the balance of principal from the date aforesaid to the date hereof.
2. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective Declaration rate per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.
3. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs

and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit.

4. The Defendant is liable for the aforesaid judgment debt including interest at the rate of 10.00 % per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. On default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Richland County Courthouse, in the City of Columbia, County and State aforesaid on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

a. For cash: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 10.00 %.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances. Specifically, this sale is subject to a senior mortgage held by Wells Fargo Bank, N.A. recorded in Book 1383 at Page 2581.

d. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

6. The bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

8. The Master in Equity will, by advertisement according to law, give notice of the

time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

9. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

10. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

11. The Defendant named herein, and all persons whosoever claiming under Defendant, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said premises so sold, or any part thereof.

12. In accordance with Rule 77(d), SCRPC, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

13. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

15. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as LOT SIXTY-TWO (62) on a plat of THE HOMESTEAD SUBDIVISION prepared for Brickyard 44, LLC by W. K. Dickson

& Associates, Inc. dated September 9, 2005, last revised November 8, 2005, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1163 at page 2534. Said lot is more specifically shown and delineated on a plat prepared for Wanda J. Miller and Orlando F. Miller by C. Thomas Hixson, Jr., RLS, dated November 13, 2007. The above plats are incorporated herein by reference and are made a part hereof for a more complete and accurate description. All measurements shown on said plats are a little more or less.

This being the same property conveyed to Wanda J. Miller and Orlando F. Miller by deed of Shumaker Homes, Inc., dated December 11, 2007 and recorded in the Register of Deeds for Richland County on December 12, 2007 in Book 1383 at Page 2579.

Property Address: 261 Kenmore Park Drive

TMS: R20103-05-28

Signature Page to Follow

**FORM 4
JUDGMENT IN A CIVIL CASE**

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
THE HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.,**

**IN THE COURT OF COMMON PLEAS
CASE NO. 2017-CP-40-06634**

WANDA J. MILLER AND ORLANDO F. MILLER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Stephanie C. Trotter (SC Bar 77680)
PO Box 212069
Columbia, SC 29221

**Attorney for : Plaintiff Defendant
or
Self-Represented Litigant**

DISPOSITION TYPE (CHECK ONE)

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow).

ORDER INFORMATION

This order ends the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Property Address: 261 Kenmore Park Drive Columbia, SC 29223
TMS: R20103-05-28

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

Master in Equity

Judge Code

Date



Richland Common Pleas

Case Caption: Homestead Property Owners Association Inc vs Wanda J Miller ,
defendant, et al

Case Number: 2017CP4006634

Type: Master/Order/Foreclosure & Sale and Form 4

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2018-06-01 16:05:59 page 8 of 8

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Homestead Property Owners Association, Inc.,

Plaintiff(s)

WANDA J. MILLER AND ORLANDO F. MILLER

Defendant(s)

IN THE COURT OF COMMON PLEAS

2017 CP400 6034

CIVIL ACTION COVERSHEET

Submitted By: Stephanie C. Trotter
Address: McCabe Trotter & Beverly, PC
140 Stoneridge Dr. Suite 650
Columbia SC 29210

SC Bar #: 77680
Telephone #: 803-724-5000
Fax #: 803-724-5001
Other:

E-mail: Stephanie.trotter@mccabetrotter.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☒ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature:

Date:

10-25-17

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
THE HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.,,

Plaintiff,

v.

WANDA J. MILLER AND ORLANDO F.
MILLER,

Defendant(s).

20856.13

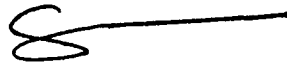
IN THE COURT OF COMMON PLEAS

**SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
NON-ELIGIBLE FOR HOME
MODIFICATION PROGRAM**

FILED
2017 OCT 30 PM 3:45
CLERK OF COURT
C.C.P. & G.S.

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 140 Stoneridge Drive Suite 650, Post Office Box 212069, Columbia, South Carolina 29221, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint. YOU WILL ALSO TAKE NOTICE that the Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master/special referee, pursuant to Rule 53, South Carolina Rules of Civil Procedure.



Stephanie C. Trotter
McCabe, Trotter & Beverly, P.C.
140 Stoneridge Drive Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210 803-724-5002
Email: Stephanie.Trotter@mccabetrotter.com
Attorneys for Plaintiff

Columbia, South Carolina
October 16, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
THE HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.,,

Plaintiff,

v.

WANDA J. MILLER AND ORLANDO F.
MILLER,

Defendant(s).

20856.13

IN THE COURT OF COMMON PLEAS

**COMPLAINT
(NON-JURY)
FORECLOSURE OF REAL ESTATE
NON-ELIGIBLE FOR HOME
MODIFICATION PROGRAM**

RICHLAND CO. CLERK OF COURT
FILED
JAN 30 PM 3:45
JANETTE M. HARRIS
C.P. & G.S.

The Plaintiff herein, complaining of the acts or omissions of the Defendant(s) would show unto this Honorable Court as follows:

1. Upon information and belief, the Defendant(s) is/are a resident of the County of Richland, State of South Carolina and the subject of this action is real property located in the County of Richland, South Carolina.

2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and has the right to bring this action.

3. Heretofore, on or about 12/11/2007 the Defendant(s) took possession of the property more fully described as:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as LOT SIXTY-TWO (62) on a plat of THE HOMESTEAD SUBDIVISION prepared for Brickyard 44, LLC by W. K. Dickson & Associates, Inc. dated September 9, 2005, last revised November 8, 2005, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1163 at page 2534. Said lot is more specifically shown and delineated on a plat prepared for Wanda J. Miller and Orlando F. Miller by C. Thomas Hixson, Jr., RLS, dated November 13, 2007. The above plats are incorporated herein by reference and are made a part hereof for a more complete and accurate description. All measurements shown on said plats are a little more or less.

This being the same property conveyed to Wanda J. Miller and Orlando F. Miller by deed of Shumaker Homes, Inc., dated December 11, 2007 and recorded in the Register of Deeds for Richland County on December 12, 2007 in Book 1383 at Page 2579.

4. The herein described property is subject to governing documents for The

Homestead Property Owners Association, Inc., attached hereto as Exhibit A and incorporated herein by reference.

5. By taking possession of the property, Defendant(s) agreed to pay assessments and other charges allowed by the governing documents.

6. Pursuant to the governing documents a lien arises in favor of Plaintiff to secure payment of the unpaid charges.

7. Plaintiff's duly elected corporate directors have properly levied assessments and other charges against Defendant's property pursuant to Exhibit A. Those charges are currently unpaid.

8. Heretofore, on or about 05/04/2016, Plaintiff filed a Notice of Lien in connection with unpaid assessments on the herein referenced property owned by the Defendant(s).

9. Pursuant to the governing documents Plaintiff is entitled to foreclose on the afore-mentioned lien.

10. The Defendant(s) has failed to make consistent payments of the assessments and interest, although demand for payment has been made, and the Plaintiff after giving all required notices, has and does hereby elect to declare the entire balance payable at once. There is now due, owing and unpaid the sum of \$827.04 in assessments, late fees, interest and other allowable charges. Plaintiff is further entitled to recover reasonable attorney's fees and the cost of litigating this proceeding.

11. If Plaintiff secures the premises being foreclosed herein, Plaintiff's cost of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges constituting a lien on said premises, Plaintiff's advances should be added to any judgment rendered on its behalf.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein:

1. Under the direction of this Court, ascertain and determine the amount due to Plaintiff as outlined by the governing documents, together with interest and reasonable attorney's fees and costs as outlined in the governing documents.

2. That said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the costs of this proceeding.

3. That the premises be sold under the direction of this Court, the equity of redemption be

barred, and that the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within proceeding and said sale;
 - b. Second, to the payment and discharge of the amount due under the governing documents, together with attorney's fees as aforesaid; and
 - c. Third, the surplus, if any, be distributed pursuant to Rule 71, of the South Carolina Rules of Civil Procedure.
4. For such other and further relief as may be just and proper.

MCCABE, TROTTER & BEVERLY, P.C.



Stephanie C. Trotter
140 Stoneridge Drive, Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210
Phone: 803-724-5000
Fax: 803-724-5001
Email: Stephanie.Trotter@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
October 16, 2017

STATE OF SOUTH CAROLINA) COVENANTS, CONDITIONS AND RESTRICTIONS-
COUNTY OF RICHLAND) THE HOMESTEAD

THIS DECLARATION made the date and year hereinafter set forth, subscribed by BRICKYARD 44, LLC, (hereinafter referred to as "Declarant")

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain property located in Richland County, South Carolina, more particularly described as :

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels A, containing 13.79 acres, Parcel B, containing 15.34 acres, and Parcel C, containing 14.79 acres, on a plat prepared for Mattie Lee Jones Estates by Inman Land Surveying Company, Inc., dated July 14, 2003, and recorded in the Office of the Register of Deeds for Richland County in Record Book 859 at Page 540. Reference to said plat being made for a more complete and accurate description.

WHEREAS, the Declarant is developing on the property hereinabove described a residential community known as THE HOMESTEAD, providing a residential community and desires to impose these Covenants, Conditions and Restrictions upon the said lots.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, affirmative obligations and conditions, all of which are for the purpose of protecting the value and desirability of the property described above, and which shall run with the real property and be binding on all persons having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

Section 1. "Association" shall mean and refer to THE HOMESTEAD PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Book 1169-3279

2006030810 04/09/2008 13:50:28:350

Declaration of Covenants

Fee: \$22.00 County Tax: \$0.00

State Tax: \$0.00



ARTICLE IV
Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (i) Annual assessments or charges, and
- (ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the maintenance of the Common Area, the payment of any taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the establishment of an adequate reserve for the maintenance, repair and replacement of the improvements in the Common Area, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Amount of Annual Assessments. The maximum annual assessment for each Lot in the Properties shall be payable annually, in advance, and the amount thereof shall be determined as follows:

(a) Up to and including December 31, 2006, the maximum annual assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot.

(b) The maximum annual assessment for the calendar year beginning January 1, 2007, and for each calendar year thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed Ten Percent (10%) of the maximum annual assessment of the previous year.

(c) The maximum annual assessment may be increased without limit by the affirmative vote of two-thirds

shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment and give every owner subject thereto written notice of each assessment. Due dates shall be established by the Board of Directors. The Association, upon demand at any time and for a reasonable charge, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 7(b). Initial Start Up Fee: In addition to the annual assessments as set forth herein and in lieu of paying a prorata assessment for the year of conveyance of each lot, a one time start up fee in the amount of One Hundred Eighty and No/100 (\$180.00) Dollars will be payable by the initial Purchaser of each lot at the time of closing of the sale and purchase of each lot.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any annual assessment not paid within thirty (30) days after the due date shall bear interest from the due date at that rate which is equal to the rate of interest chargeable by law in the State of South Carolina on money judgements. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in like manner as a mortgage of real property, and, in either event, interest, costs and a reasonable attorneys fee shall be added to the amount of such assessment. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the annual assessment due and payable and collect the same through foreclosure. In the event of any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot after commencement of the foreclosure action; the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to (1) the lien of any first mortgage, and (2) the lien of any unpaid ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall be deemed to require any Mortgagee to be responsible for the collection of assessments.

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR RICHLAND COUNTY

The Homestead Property Owners Association, Inc.
Plaintiff/Petitioner
vs.
Wanda J. Miller; Orlando F. Miller
Defendant/Respondent

DOCKET NO: 2017CP4006634
FILING DATE: 10/30/2017

AFFIDAVIT OF SERVICE OF:
Civil Action Coversheet; Lis Pendens; Summons; Complaint;
Certification of Exemption from Administrative Order; Exhibits;
Letter to Defendant

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 8th day of November, 2017, at 1:41 PM, at the address of 261 Kenmore Park Drive, Columbia, Richland County, SC 29223; this affiant served the above described documents upon Wanda J. Miller by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with Wanda J. Miller, Who accepted service, with identity confirmed by subject reaching for docs when named, a brown-haired black female approx. 35-45 years of age, 5'4"-5'6" tall and weighing 160-180 lbs with glasses..

Is defendant active duty military? (X) NO () YES

Is the place of service the dwelling house or usual abode for the party being served? () NO (✓) YES

Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? () NO () YES

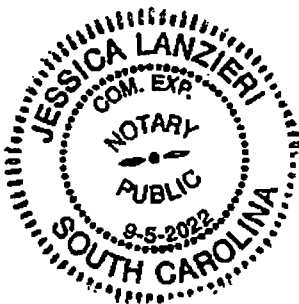
VIN #: _____
2017 NOV 13 PM 3:56
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

DATED this _____ day of NOV 13 2017, 20____.

Victor Aponte

SUBSCRIBED AND SWORN to before me this NOV 13 2017 day of _____, 20____.

NOTARY PUBLIC in and for the State of South Carolina
My commission expires _____



REF: 20856.13

FOR: McCabe, Trotter & Beverly, P.C.

PAGE 1 OF 1
ORIGINAL AFFIDAVIT OF
SERVICE



Tracking #: 0020048117 FIL



IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR RICHLAND COUNTY

The Homestead Property Owners Association, Inc.
Plaintiff/Petitioner
vs.
Wanda J. Miller; Orlando F. Miller
Defendant/Respondent

DOCKET NO: 2017CP4006634
FILING DATE: 10/30/2017

AFFIDAVIT OF SERVICE OF:

Civil Action Coversheet; Lis Pendens; Summons; Complaint;
Certification of Exemption from Administrative Order; Exhibits;
Letter to Defendant

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 8th day of November, 2017, at 1:41 PM, at the address of 261 Kenmore Park Drive, Columbia, Richland County, SC 29223; this affiant served the above described documents upon Orlando F. Miller by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with Wanda J. Miller, SPOUSE, who accepted service, with identity confirmed by subject reaching for docs when named, a brown-haired black female approx. 35-45 years of age, 5'4"-5'6" tall and weighing 160-180 lbs with glasses., a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above.

Is defendant active duty military? (X) NO () YES

Is the place of service the dwelling house or usual abode for the party being served? () NO (X) YES

Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? () NO () YES

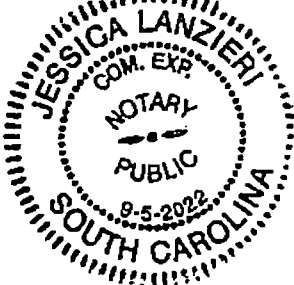
DATED this NOV 13 2017 day of 20.

Victor Aponte

NOV 13 2017

SUBSCRIBED AND SWORN to before me this day of 20.

NOTARY PUBLIC in and for the State of South Carolina
My commission expires



VIN #:
JEANETTE W. MCBRIDE
S.C.P. & G.S.
2017 NOV 13 PM 3:56
FILED

REF: 20856.13

FOR: McCabe, Trotter & Beverly, P.C.

PAGE 1 OF 1

ORIGINAL AFFIDAVIT OF
SERVICE



Tracking #: 0020048285 FIL



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

WANDA J. MILLER AND ORLANDO F. MILLER,

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2017-CP-40-06634

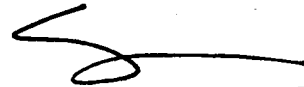
**AFFIDAVIT OF DEFAULT AND
NON-MILITARY SERVICE**

2018 JAN 23 PM 3:54
FILED
RICHLAND COUNTY
CLERK OF COURT
J. B. & G. S.

20856.13

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and says that she/he is one of the attorneys for Plaintiff in the above-entitled action and that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s) and that no Answer has been served on Plaintiff's attorney as required by the Summons by the Defendant(s) Wanda J. Miller and Orlando F. Miller. Therefore, the Defendant(s) Wanda J. Miller and Orlando F. Miller is/are in default.

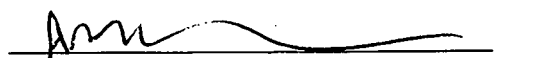
Further, that she/he has investigated the occupational status of Wanda J. Miller and Orlando F. Miller and they are not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.

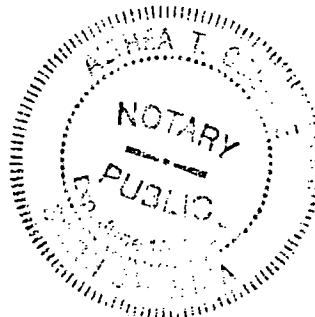


Stephanie C. Trotter
McCabe Trotter & Beverly, PC
P. O. Box 212069
Columbia, SC 29221
Telephone: 803-724-5002
Fax: 803-724-5001
Email: Stephanie.trotter@mccabetrotter.com
Attorneys for Plaintiff

January 2, 2018
Columbia, South Carolina

Sworn to before me this 15 day of
January, 2018.


Notary Public for South Carolina
My Commission Expires: 06/10/2021



IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR RICHLAND COUNTY

The Homestead Property Owners Association, Inc.
Plaintiff/Petitioner
vs.
Wanda J. Miller; Orlando F. Miller
Defendant/Respondent

DOCKET NO: 2017CP4006634

FILING DATE: 10/30/2017

COPY

AFFIDAVIT OF SERVICE OF:

Civil Action Coversheet; Lis Pendens; Summons; Complaint;
Certification of Exemption from Administrative Order; Exhibits;
Letter to Defendant

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 8th day of November, 2017, at 1:41 PM, at the address of 261 Kenmore Park Drive, Columbia, Richland County, SC 29223; this affiant served the above described documents upon Wanda J. Miller by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with Wanda J. Miller, Who accepted service, with identity confirmed by subject reaching for docs when named, a brown-haired black female approx. 35-45 years of age, 5'4"-5'6" tall and weighing 160-180 lbs with glasses..

Is defendant active duty military? (X) NO () YES

Is the place of service the dwelling house or usual abode for the party being served? () NO (✓) YES

Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? () NO () YES

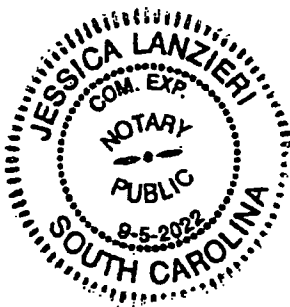
VIN #:

DATED this NOV 13 2017 day of NOV 13 2017, 20__.

Victor Aponte

SUBSCRIBED AND SWORN to before me this NOV 13 2017 day of NOV 13 2017, 20__.

NOTARY PUBLIC in and for the State of South Carolina
My commission expires



REF: 20856.13

FOR: McCabe, Trotter & Beverly, P.C.

PAGE 1 OF 1

ORIGINAL AFFIDAVIT OF SERVICE



Tracking #: 0020048117 FIL



IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR RICHLAND COUNTY

The Homestead Property Owners Association, Inc.
Plaintiff/Petitioner

DOCKET NO: 2017CP4006634

FILING DATE: 10/30/2017

COPY

vs.

Wanda J. Miller; Orlando F. Miller

Defendant/Respondent

AFFIDAVIT OF SERVICE OF:

Civil Action Coversheet; Lis Pendens; Summons; Complaint;
Certification of Exemption from Administrative Order; Exhibits;
Letter to Defendant

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Is defendant active duty military? (X) NO () YES

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Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? () NO () YES

VIN #:

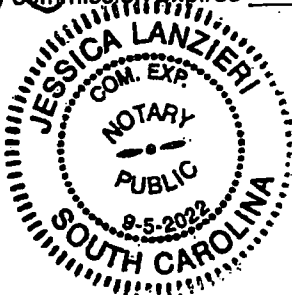
DATED this NOV 13 2017 day of NOV 13 2017, 2017.

Victor Aponte

NOV 13 2017

SUBSCRIBED AND SWORN to before me this NOV 13 2017 day of NOV 13 2017, 2017.

NOTARY PUBLIC in and for the State of South Carolina
My commission expires 9-5-2022



REF: 20856.13

FOR: McCabe, Trotter & Beverly, P.C.

PAGE 1 OF 1
ORIGINAL AFFIDAVIT OF
SERVICE



Tracking #: 0020048285 FIL





Status Report Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-5185
Birth Date:
Last Name: MILLER
First Name: ORLANDO
Middle Name:
Status As Of: Jan-02-2018
Certificate ID: NB213Q9GDHG0132

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Michael V. Sorrento, Director
Department of Defense - Manpower Data Center
400 Gigling Rd.
Seaside, CA 93955

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. ? 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q33) via this URL: <https://scra.dmdc.osd.mil/faq.xhtml#Q33>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. ? 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC ? 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC ? 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC ? 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.



Status Report Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-3762
Birth Date:
Last Name: MILLER
First Name: WANDA
Middle Name:
Status As Of: Jan-02-2018
Certificate ID: NCB5S1FQNLJSWXH

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Michael V. Sorrento

Michael V. Sorrento, Director
Department of Defense - Manpower Data Center
400 Gigling Rd.
Seaside, CA 93955

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. ? 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q33) via this URL: <https://scra.dmdc.osd.mil/faq.xhtml#Q33>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. ? 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC ? 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC ? 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC ? 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

WANDA J. MILLER AND ORLANDO F. MILLER,

Defendant(s).

20856.13

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2017-CP-40-06634

ORDER OF REFERENCE

2018 JAN 23 PM 3:54
FILED
CLERK OF COURT
RICHLAND COUNTY
J. M. STRICKLAND
C.C.P. & G.S.

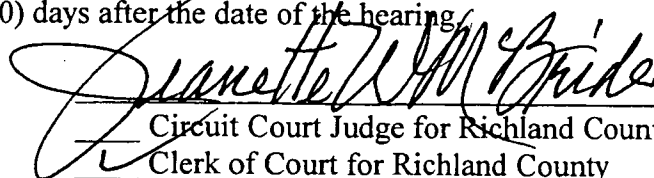
Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to The Honorable Joseph M. Strickland to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCF, and all matters arising from or reasonably related to such action. The Master in Equity/Special Referee shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity/Special Referee shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

The hearing shall be held in the Office of The Honorable Joseph M. Strickland for Richland County, located at:

1701 Main Street, Courtroom 2D
Columbia, SC, 29202-2766

and the final order by the Master in Equity or Special Referee shall be filed with the Clerk of Court for Richland County not later than sixty (60) days after the date of the hearing.


Circuit Court Judge for Richland County or
Clerk of Court for Richland County

_____, South Carolina
1-22, 2018.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

vs.

WANDA J. MILLER AND ORLANDO F.
MILLER

Defendant.

IN THE COURT OF COMMON PLEAS

2017-CP-40-06634

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED
JAN 23 PM 3:54
RICHLAND COUNTY
C.C.F. & G.S.

Plaintiff's Attorney:
Stephanie C. Trotter, Bar No. 77680
Address: 140 Stoneridge Drive, Suite 650
Columbia, SC 29210
Phone: 803-724-5000 Fax 803-724-5001
E-mail: Stephanie.trotter@mccabetrotter.com

Defendant's Attorney:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Order of Reference

Estimated Time Needed:

Court Reporter Needed: ☐ Yes/☒ No

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff

January 2, 2018

Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect

- ☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE

Date:

CLERK'S VERIFICATION

Collected by:  Date Filed: 1-16-18
☐ MOTION FEE COLLECTED: \$
☐ CONTESTED – AMOUNT DUE: \$

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.

2017-CP-46-3659

Plaintiff,

vs.

WANDA J. MILLER & ORLANDO
MILLER.

Defendant.

**DEFENDANTS MEMORANDUM IN
OPPOSITION TO FORECLOSURE
JUDGMENT & RELIEF FROM DEFAULT
JUDGMENT 60(b)**

Defendants Wanda J. Miller & Orland Miller ("Defendants") hereby submits this memorandum in support of their motion is opposition to an award of foreclosure pursuant to Rule 55(b) and 60(b) of the South Carolina Rules of Civil Procedure. HOA Homestead Property Owners Association, Inc. (hereinafter "HOA") has no right to foreclose a lien for unpaid association dues. For the reasons set forth herein, Plaintiff is not entitled to judgment on the issue of lien, foreclosure, and dissolution of the lis pendens filed by HOA in the instant action.

FACTUAL BACKGROUND

According to the allegations of the Complaint, HOA is a non-profit corporation created and empowered under a set of covenants and restrictions that are filed as a matter of record with the Richland County Register of Deeds. These covenants and restrictions purportedly impose upon Defendant the obligation of paying dues and assessments. HOA asserts that it has the right to impose a lien for unpaid assessments and foreclose the lien pursuant to the covenants. In addition or in the alternative, HOA pleads that it is entitled to an equitable lien. However, the complaint also pleads that Defendants owes a sum certain in unpaid dues.

LEGAL ARGUMENT

There is no factual scenario in which HOA would be entitled to receive the equitable remedy of foreclosure or assert an equitable lien. This action—although pled as one in equity—is really an action at law which prevents the application of an equitable remedy like foreclosure or an equitable lien. Thus, this Court should reconsider whether to allow the HOA to proceed in equity.

A. HOA has an adequate remedy at law.

It is beyond dispute that restrictive covenants are contractual in nature. Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). Restrictive covenants have been defined as “agreement[s] ... to do, or refrain from doing, certain things with respect to real property.” 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 1 (2005) Covenants “are contractual in nature and bind the parties thereto in the same manner as would any other contract.” Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). Covenants requiring the payment of maintenance assessments are contractual in nature. Seabrook Island Prop. Owners Assoc. v. Pelzer, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987). HOA also asserts it has suffered monetary damages. (Complaint ¶ 10)

The existence of a contract almost always provides as adequate remedy at law. Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011); Equitable relief is unnecessary when an adequate remedy for money damages is available at law. Monteith v. Harby, 190 S.C. 453, 3 S.E.2d 250, 251 (1939); Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007). A party that pleads money damages in the alternative to equitable relief has a duty to show why the money damages are inadequate.

Carolina Park Assocs., LLC v. Marino, 400 S.C. 1, 8, 732 S.E.2d 876, 879–80 (2012). HOA in the instant action does not plead equitable remedy in the alternative. It pleads it is contractually entitled to an equitable remedy. However, HOA asserts no authority for the proposition that it can contractually—and by contract alone—create the equitable remedy of foreclosure.

But, the foreclosure remedy sought by the HOA sounds in equity. E.g., Wilder Corp. v. Wilke, 324 S.C. 570, 479 S.E.2d 510 (Ct. App. 1996), *aff'd*, 330 S.C. 71, 497 S.E.2d 731 (1998). Where there is an adequate remedy at law, equitable relief is not generally available. Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co., 272 S.C. 127, 128-29, 249 S.E.2d 744, 745 (1978) Nutt, supra. Where a party “possesses an adequate remedy at law, equity will not intervene.” Van Robinson Ins., 272 S.C. at 128-29.

Our Supreme Court has said:

To entitle the HOA to the equitable interposition of the Court, he must show a proper case for the interference of a court of chancery, **and one in which he has no adequate and complete relief at law.** The very basis of the granting of equitable relief is the conclusion, in view of all the circumstances of the particular case, that full and adequate compensation **cannot be had at law.**

Monteith, 3 S.E.2d at 251 (emphasis added).

The Court of Appeals, citing Monteith, had this to say in a case in which it applied this principle to determine a HOA was not entitled to equitable relief, even though the statute of limitations on its at-law breach of contract claim had run:

“The function of equity is to supplement the law, not to displace it.” Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 117, 580 S.E.2d 100, 108 (2003) (internal quotations and citation omitted). The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law. Monteith v. Harby, 100 S.C. 453, 3 S.E.2d 250, 251 (1939). Accordingly, equity is generally only available when a party is without an

adequate remedy at law. EllisDon Constr., Inc. v. Clemson Univ., 391 S.C. 552, 555, 707 S.E.2d 399, 401 (2011). “[E]quity will not impose an equitable lien where there is an adequate remedy at law.” Carolina Attractions, Inc. v. Courtney, 287 S.C. 140, 146, 337 S.E.2d 244, 247 (Ct. App. 1985). “An ‘adequate’ remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” Milliken & Co. v. Morin, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009) (internal quotations omitted).

Nutt, 396 S.C. at 327-28.

The cases of Bartles v. Livingston, 282 S.C. 448, 455, 319 S.E.2d 707 (Ct. App. 1984), and Perpetual Bldg. & Loan Assn. of Anderson v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978), discuss the impact of the Act of 1791 (now embodied in Chapter 3 of Title 29 of the South Carolina Code) on mortgage foreclosure law in South Carolina. They reveal that the now-common procedure for the foreclosure of mortgages – in which a judgment for the debt and foreclosure by sale of the landowner’s equity of redemption are sought in the same suit – is purely a statutory creation, fashioned by the legislature. Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. “Prior to 1791, South Carolina adhered to the common law principle of mortgages whereby an action to foreclose a mortgage was regarded as strictly *in rem*.” Perpetual, 270 S.C. at 341.

At common law, an action for foreclosure sounds purely in equity and is an *in rem* proceeding only. Bartles, 282 S.C. at 455-56. It was “the Act of 1791 [that] integrated the action for foreclosure and the action for the deficiency after sale, abandoning the strict distinction between actions *in rem* and *in personam*.” Perpetual, 270 S.C. at 342. It is the Act of 1791, by creating a statutory hybrid creature that grafted an at-law claim on to an equitable one that allowed a mortgagee to seek a deficiency judgment in foreclosure without the

proceeding being one at law. See Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. It created a statutory scheme that supplanted the rule that equitable relief is not available where an adequate remedy at law exists. Id.

Importantly for the instant case, the Act of 1791 changed the process for the foreclosure of *mortgages*, not for liens imposed by restrictive covenant. Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. As now shown in S.C. Code Ann. § 29-3-660, the Act changed the law to provide:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises . . .

(Emphasis added.)

The rule that equitable relief is not available where a party possesses an adequate remedy at law has not been supplanted with regard to the foreclosure of other liens, except where provided by statute. It is not so provided by statute in the instant case.

As our Supreme Court has appeared to recognize, Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 87-88, 362 S.E.2d 874, 875 (1987), S.C. Code Ann. § 27-31-210(a), which applies only to restrictions and associations created under the Horizontal Property Regime Act, is the only law in this state that permits a lien for homeowners' associations to be foreclosed in the manner of a mortgage foreclosure. The Horizontal Property Regime Act does not apply in the instant action because HOA is not condominium.

Moreover, HOA has pled it is entitled to actual damages. (Complaint ¶ 10.) Actual damages is not an equitable remedy. Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 580, 527 S.E.2d 371, 375 (Ct. App. 2000), *aff'd as modified and remanded*, 343 S.C. 587, 541

S.E.2d 257 (2001). At common law, a proceeding in which a judgment for money is sought sounds in law. Cooper v. Poston, 326 S.C. 46, 48, 483 S.E.2d 750 (1997). HOA's pleading of actual damages demonstrates it is not entitled to equitable relief even assuming *arguendo* that HOA is entitled to a payment of unpaid assessments.

Also, the collectability of a judgment from an action at law does not impact its adequacy as a remedy and is an improper justification for reliance upon equity. Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 122, 603 S.E.2d 905, 908 (2004). Equity cannot be used to enforce a money judgment. Time Warner Cable v. Condo Servs., Inc., 381 S.C. 275, 284, 672 S.E.2d 816, 820 (Ct. App. 2009) Equity will also not enforce a penalty for breach of contract. Lewis v. Premium Inv. Corp., 351 S.C. 167, 568 S.E.2d 361 (2002).

The equitable remedies of specific performance and rescission are also reasons to reject HOA's argument. These equitable remedies relate to contracts all require the absence of an adequate remedy at law. Nutt, supra; Ingram v. Kasey's Assocs., 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000); Mortgage Elec. Sys., Inc. v. White, 384 S.C. 606, 615, 682 S.E.2d 498, 502 (Ct.App.2009); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616, 703 S.E.2d 221, 225 (2010). These remedies—like all equitable remedies—exist independent of any provision in a contract.

In the instant action, HOA has plead it is entitled to the equitable remedy of foreclosure because Defendants failed to pay their dues. HOA is attempting to use the equitable power of this court to collect damages for a simple breach of contract. HOA cannot have it both ways. HOA has an action for law, but their prayer for relief is purely equitable. Therefore, the HOA's judgment for foreclosure should be denied.

B. There is no statutory or common law basis for the assertion of a pre-suit lien and foreclosure.

HOA may attempt to analogous to other circumstances where a party to a contract may assert the equitable remedy of foreclosure. All of the circumstances the HOA may mention have been specifically created and/or authorized by statute. There is no statutory or common law basis for the assertion of a pre-suit lien and foreclosure by a non-condominium homeowners association.

Almost all liens in South Carolina are created by statute , and all pre-suit liens which allow for repossession/dispossession are purely statutory. The issuance and foreclosure of tax liens are governed strictly by statute, S.C. Code Ann. §§ 12-49-10 et seq. *F.C. Enterprises, Inc. v. Dibble*, 335 S.C. 260, 263–64, 516 S.E.2d 459, 461 (Ct. App. 1999); *Von Elbrecht v. Jacobs*, 286 S.C. 240, 243, 332 S.E.2d 568, 569 (Ct. App. 1985). There is a “charging lien” for the foreclosure of an interest in a limited liability company § 33–44–504(b). Judgment liens are a matter of statute. S.C. Code § 15-35-810. A workers compensation insurance carrier has a lien for funds paid by a third party tortfeasor. S.C. Code Ann. § 42–1–560(b).

A secured creditor has the right to file a lien and resort to the remedies of repossession in the event of a default under the Uniform Commercial Code, S.C. Code Ann. § 36-9-601 et seq. A health insurance company has the statutory right to assert a subrogation lien for payments made by a party at fault for causing injuries to its insured. S.C Code Ann. § 38-71-190. South Carolina also allows for reverse mortgages pursuant to S.C. Code Ann. § 29-4-10, et seq. A lender has a lien on a motor vehicle as part its security interest which can be repossessed for nonpayment. § 56-19-390 et seq.

There are mechanics' liens for unpaid improvements to real property with a right of foreclosure, and there is a first lien on funds to protect subcontractors. S.C. Code Ann. § 29-5-10, et seq. S.C. Code Ann. § 29-6-10, et seq., 29-6-210, et seq. There are liens for work performed on ships and vessels. S.C. Code Ann. § 29-9-10, et seq. Every employee of factories, mines, mills, and distilleries have a lien for unpaid wages on the goods they produce. S.C. Code Ann. § 29-11-10, et seq. There is a "sharecropper's lien" for landlords on unpaid rent for agricultural goods produced on rented land. S.C. Code Ann. § 29-13-10, et seq. There is even an "artisan's lien" or "repairmen lien" which allows for a repairman to recover funds by selling abandoned or unpaid for goods in his or her possession. S.C. Code Ann. § 29-15-10, et seq.

The State has a "general lien" on the real and personal property of any person who is or has received care by the South Carolina Department of Mental Health. S.C. Code Ann. § 44-23-1140. The Department of Mental Health's lien is limited to the property and estate of the patient, and there is no common law right to assert a lien against the husband of a patient. S.C. Dep't of Mental Health v. Turbeville, 273 S.C. 311, 315, 257 S.E.2d 493, 494 (1979). Any incorporated city or town has the right to issue a lien and foreclose that lien to pay for the improvement of its streets and sidewalks. S.C. Code Ann. § 5-27-310 et seq. The state has also created a lien on the retirement funds of any public officer, official, etc. convicted of embezzlement or misappropriation of public funds. S.C. Code Ann. § 8-1-115.

A landlord has the statutory right to assert a lien for unpaid rent and hold personal property in distraint. S.C. Code Ann. § 27-39-210. A landlord has a right to distraint a tenant's property which arises automatically when the lease commences, but an actual lien does not

attach until the tenant defaults and the landlord levies for distress. In re J.M. Smith Corp., 341 S.C. 442, 535 S.E.2d 131 (2000); Burnett v. Boukedes, 240 S.C. 144, 125 S.E.2d 10 (1962).

There are three more three statutory liens which are particularly relevant to the instant action. There is a lien and right to foreclose an interest in a timeshare under the South Carolina Timeshare Lien Foreclosure Act (SCTLFA.) S.C. Code Ann. § 27-32-300, et seq. A timeshare is defined as an interest in real property used for vacations instead of as a homestead. S.C. Code Ann. § 27-32-305(1). The SCTLFA sets out the requirement to file a lien and then foreclose the lien only as to the portion of the timeshare estate belonging to a single debtor. S.C. Code Ann. § 27-32-320. The SCTLFA also requires the appointment of a trustee to oversee the process and protect the interests of the other fractional owners. S.C. Code Ann. § 27-32-315. By its plain terms, the SCTLFA is limited to timeshare estates and does not apply to non-timeshare homeowners associations like HOA in this case.

The General Assembly also created a right to a lien for unpaid condominium assessments and the foreclosure of the same in the South Carolina Horizontal Property Regime Act., S.C. Code Ann. § 27-31-210. This statutory provision allows for the lien to be foreclosed “in like manner as a mortgage of real property.” S.C. Code Ann. § 27-31-210(a). The Horizontal Property Regime Act is limited to properties purchased and owned as a condominium or “slice of air.” S.C. Code Ann. § 27-31-20. There are specific requirements for the preparation of the declaration, deeds, etc. to create a horizontal property regime. S.C. Code Ann. § 27-31-30. An action to foreclose a lien under this action is one in equity as is one to foreclose a real estate mortgage. Dockside Ass'n. Inc. v. Detyens, 294 S.C. 86, 88, 362 S.E.2d 874, 875 (1987) There is

no such analogous statutory provision which authorizes a non-condominium homeowners association to create and foreclose a lien.

Finally, there is the mortgage lien. The mortgagor of land is the owner in fee and has title to the land so mortgaged, but the mortgagee has a lien upon the land to secure his debt. *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 282, 711 S.E.2d 912, 915 (2011); *Simms v. Kearsse*, 42 S.C. 43, 20 S.E. 19 (1894); S.C. Code Ann. § 29-3-10 “A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action.” *U.S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct.App.2009). A mortgage lien for property was once a feature of common law. But the mortgage lien was codified by the General Assembly in 1791 and is now found in S.C. Code Ann. § 29-3-10, *et. seq.* *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 293-94, 778 S.E.2d 106, 108 (2015); *Berry v. Caldwell*, 121 S.C. 418, 114 S.E. 405 (1922); *Union Nat. Bank of Columbia v. Cook*, 110 S.C. 99, 96 S.E. 484, 488 (1918). The common law right of mortgage foreclosure has never existed in South Carolina. *Bartles v. Livingston*, 282 S.C. 448, 459, 319 S.E.2d 707, 714 (Ct. App. 1984)

As the Supreme Court recognized in *Carolina First*, the foreclosure of a mortgage sounds in equity because the Act of 1791 vested the courts of equity with exclusive jurisdiction for foreclosure prior to the adoption of the 1868 Constitution. *Williams v. Beard*, 1 S.C. 309, 324 (1870). This Court has also stated the Act of 1791 changed the nature of a mortgage from that of a conveyance on condition to a mere lien. *Perpetual Bldg. & Loan Ass’n of Anderson v. Braun*, 270 S.C. 338, 341-42, 242 S.E.2d 407, 409 (1978). Mortgage foreclosure proceedings are regulated by statutes, and those statutes should be substantially followed. 27 S.C. Jur. Mortgages

§ 103; Carolina First, *supra*. The rights of lenders and debtors are also further elaborated under the Negotiable Instruments provision of the South Carolina Uniform Commercial Code, S.C. Code Ann. § 36-6-101, et seq.

HOA does not meet any of these statutory tests or definitions. HOA specifically disclaims it is a mortgage. HOA is neither a horizontal property regime nor a time share. Therefore, this Court should deny foreclosure.

C. HOA cannot receive an equitable lien.

For equitable lien there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt.” Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct.App.2011); Nutt, supra. An equitable lien or charge is **neither an estate or property in the thing itself, nor a right to recover the thing**, but is simply a right of a special nature over the thing, which constitutes a charge upon the thing so that the very thing itself may be proceeded against in equity for payment of a claim. Carolina Attractions, Inc. v. Courtney, 287 S.C. 140, 145, 337 S.E.2d 244, 247 (Ct. App. 1985)(Emphasis added.)

This equitable interest arises from the payment of the money and does not depend upon the purchaser's taking possession of the real estate. S.C. Fed. Sav. Bank v. San-A-Bel Corp., 307 S.C. 76, 79, 413 S.E.2d 852, 854 (Ct. App. 1992). It generally relates to the lien a purchaser under an executory contract for the purchase and sale of real property. Id. An equitable lien is a “mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered.” Horry Cnty. v. Ray, 382 S.C. 76, 83–84, 674 S.E.2d 519, 524 (Ct.App.2009) Even though an equitable lien is not judicially recognized until a judgment is

entered declaring its existence, the lien relates back to the time it was created by the conduct of the parties. Id. at 84, 674 S.E.2d at 524. Moreover, a mere breach of contract does not give rise to an equitable lien. Regions, supra. A court cannot impose an equitable lien where there is an adequate remedy at law.” Nutt, supra.

As with foreclosure, HOA’s assertion of contractual damages is fatal to its claim for an equitable lien.

D. Language that provides for foreclosure within the covenant is invalid.

HOA may argue that the appeal within the covenants to the “manner” of a mortgage creates right to a lien and foreclosure. These provisions within the covenants merely appeal to a method and do not create a substantive right under an inapplicable statute. It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. Smith v. Tiffany, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017). To do otherwise elevates form over substance. Chapman v. S.C. Dep’t of Soc. Servs., 420 S.C. 184, 189, 801 S.E.2d 401, 404 (Ct. App. 2017); Gordon v. Busbee, 367 S.C. 116, 120-21, 623 S.E.2d 857, 859-60 (Ct. App. 2005).

Artful drafting and/or pleading do not transform the plain words in a statute. Blue Cross Blue Shield of Massachusetts, Inc. v. BCS Ins. Co., 671 F.3d 635, 637–38 (7th Cir. 2011). Abraham Lincoln’s saying that “calling a tail a leg doesn’t make it a leg” is particularly apt in this circumstance. “[T]he logic of words should yield to the logic of realities.” Di Santo v. Pennsylvania, 273 U.S. 34, 43, 47 S.Ct. 267, 71 L.Ed. 524 (1927). The words and labels in a contract do not override statutory or common law. Righthaven LLC v. Hoehn, 716 F.3d 1166, 1168 (9th Cir. 2013). The language in restrictive covenants cannot create rights for the parties born out of inapplicable statutes no matter how clearly the covenants call tails legs.

CONCLUSION

For the reasons set forth herein, taking the facts in the light most favorable to the Defendant, there is no genuine issue of material fact as to the existence of an adequate remedy at law. Accordingly, this Court should GRANT Defendant's Motion to Reconsider and Dismiss Plaintiff's claims for foreclosure on the property.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

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*Attorney for Defendant Wanda J. Miller
& Orlando Miller*

May 14, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

The Homestead Property Owners
Association, Inc.

2017-CP-40-6634

Plaintiff,

**ANSWER & COUNTERCLAIM
JURY TRIAL DEMANDED**

vs.

Wanda J. Miller & Orlando F. Miller,

Defendants.

COMES NOW DEFENDANTS Wanda J. Miller & Orlando F. Miller ("Defendants") answering the Complaint of The Homestead Property Owners Association, Inc. ("HOA") and asserting Counterclaims against the same as follows:

1. In answering paragraph 1 of the HOA's complaint Defendants admits that they are residents and owners of real property in Richland County, South Carolina. Defendants also admits the subject of this action is real property which is in Richland County.
2. Defendants admits paragraphs 2 and 3 of HOA's complaint.
3. In answering paragraph 4 of HOA's complaint, Defendants admits only there is a document which purports to be the governing documents of The Homestead Property Owners Association recorded in the Register of Deeds Office for Richland County. The remaining allegations of paragraph 4 are hereby denied.
4. In answering paragraph 5 of HOA's complaint, Defendants admit only that they agree to pay such assessments as authorized by the governing documents that have been properly assessed by the HOA's Board of Directors.
5. Paragraphs 6-7 are hereby denied.

6. In answering paragraph 8, Defendants admits upon information and belief only that HOA filed an unlawful Notice of Lien. The remaining allegations of paragraph 8 are hereby denied.

7. Paragraphs 9-11 are hereby denied.

8. Defendants alleges that HOA failed to maintain the common elements and areas during 2013-2016.

9. HOA is attempting to collect dues and fees despite not providing services commensurate with those fees.

FOR A FIRST DEFENSE
Failure to State a Claim

10. Defendants incorporate the previous paragraphs as if repeated herein verbatim.

11. HOA has failed to state a claim pursuant to Rule 12(b)(6) for foreclosure.

12. In particular, HOA has no right despite the purported language of any covenant or contract to assert a pre-suit lien or a right to the statutory remedy of foreclosure.

13. HOA also has asserted the existence of a contract which precludes the existence of any equitable remedy.

FOR A SECOND DEFENSE
Unclean Hands

14. Defendants incorporates the previous paragraphs as if repeated herein verbatim.

15. Defendants pleads the equitable doctrine on unclean hands as an affirmative defense.

FOR A THIRD DEFENSE
Prior Breach

16. Defendants incorporates the previous paragraphs as if repeated herein verbatim.

17. Defendants pleads the defense of prior breach.
18. Defendants and HOA has a contractual relationship by virtue of the alleged covenants and restrictions.
19. The assertion of false, misleading, and fraudulent charges by HOA is a breach of contract.

FOR A FOURTH DEFENSE

Election of Remedies

20. Defendants incorporates the previous paragraphs as if repeated herein verbatim.
21. Defendants pleads the doctrine of election of remedies.
22. HOA has asserted an action at law in conjunction with an equitable remedy.
23. HOA should be required at trial to elect which remedy it is seeking.

FOR A FIFTH DEFENSE

In Pari Delicto

24. Defendants incorporates the previous paragraphs as if repeated herein verbatim.
25. Defendants pleas the doctrine of *in pari delicto* to bar HOA's complaint.
26. HOA's attempts to use a pre-suit lien and the remedy of foreclosure are illegal.
27. HOA's attempt to collect a debt that not is not properly owed is illegal.

FOR A SIXTH DEFENSE

Statute of Limitations

28. Defendants incorporates the previous paragraphs as if repeated herein verbatim.
29. Defendants pleas the statute of limitations as bar to recover a portion of the fees sought by HOA.

FOR A SEVENTH DEFENSE
Reservation of Additional Defenses

30. Defendants reserves the right to add additional defenses in a manner that is consistent with the South Carolina Rules of Civil Procedure.

FOR A FIRST COUNTERCLAIM
Abuse of Process

31. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

32. The HOA's filing of the instant action was done for the ulterior purpose of collecting a non-existent debt.

33. The HOA knew or should have known Defendants had paid or had attempted to pay.

34. The HOA, by and through its agents, returned Defendants' assessment payments inside of accepting them for purposes of generating this lawsuit.

35. The filing of the instant action was not proper in the regular conduct of the proceeding.

36. As a result of aforesaid, Defendants has suffered damages as will be proved at trial.

FOR A SECOND COUNTERCLAIM
Breach of Contract

37. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

38. Under South Carolina law, the relationship between HOA and Defendants is based in contract.

39. Defendants has paid the assessments and/or attempted to pay his annual assessments.

40. HOA has unlawfully refused to accept those payments.

41. HOA has filed a lien in order to justify higher fees, costs and attorneys' fees.

42. As a result, HOA has breached its contract with Defendants

43. Defendants has suffered damages in an amount to be determined at trial.

WHEREFORE, having fully set forth his answer to HOA's Complaint, Defendants Dana Rumer prays:

A. That the HOA's Complaint be dismissed and that Defendants be awarded costs against the HOA;

B. A judgment be entered on Defendants' Counterclaims on all actual and consequential damages, fees, and costs;

C. For a trial by jury of all issues joined herein so triable; and

D. For such other and further relief as this Honorable Court deems just and equitable.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

/s Brian C. Gambrell

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Attorney for Defendants

Columbia, South Carolina
June 1, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Homestead Property Owners Association, Inc.,,

Plaintiff,

v.

Wanda J. Miller and Orlando F. Miller

Defendant(s)

IN THE COURT OF COMMON PLEAS

C/A No.: 2017-CP-40-06634

**PLAINTIFF'S REPLY TO DEFENDANT(S)
COUNTERCLAIMS**

20856.13

TO: BRIAN C. GAMBRELL, ESQ., THE ATTORNEY FOR DEFENDANT WANDA J.
MILLER AND ORLANDO F. MILLER

Comes Now, Plaintiff, by and through its undersigned counsel and responds to Defendants'
Answer and Counterclaims as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation not specifically admitted herein is denied. To the extent any allegation or part thereof is not expressly referred to and specifically answered it is hereby denied and legal proof thereof is demanded.

FOR A SECOND DEFENSE
(Specific Denial)

2. Paragraphs 1 through 7 are in response to Plaintiff's Complaint and do not require a response. To the extent a response is required, Plaintiff denies the same.

3. Paragraphs 8 and 9 are denied.

**This communication is for the purpose of collecting a debt and any information obtained
will be used for that purpose.**

4. Paragraph 10 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

5. Paragraphs 11-13 are denied.

6. Paragraph 14 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

7. Paragraph 15 is denied.

8. Paragraph 16 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

9. Paragraphs 17-19 are denied.

10. Paragraph 20 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

11. Paragraphs 21-23 are denied as stated. Plaintiff has elected foreclosure as its remedy.

12. Paragraph 24 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

13. Paragraphs 25-27 are denied.

14. Paragraph 28 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

15. Paragraph 29 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

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16. Paragraph 31 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

17. Paragraphs 32-36 are denied.

18. Paragraph 37 does not require a response. To the extent such paragraph could be construed to require a responsive pleading, then such paragraph is denied.

19. Paragraph 38 is denied as stated. Plaintiff states that a contractual relationship arises between Plaintiff and Defendant by virtue of restrictive covenants that run with Defendants' real property.

20. Paragraphs 39-43 are denied.

21. Plaintiff specifically denies the relief sought by Dana Rumer or any other party in the Prayer for Relief.

22. All other allegations in Defendants' Answer and Counterclaims that are not specifically addressed herein are hereby denied.

FOR A THIRD DEFENSE
(Dismissal Pursuant to SCRCP 12(b)(6))

23. The Defendants' Counterclaims fail to state a claim against Plaintiff for which relief can be granted.

FOR A FOURTH DEFENSE
(Unclean Hands)

24. Some or all of the Defendants' Counterclaims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE
(Prior Breach)

This communication is for the purpose of collecting a debt and any information obtained will be used for that purpose.

25. Defendants are barred from any recovery due to their prior breach of the restrictive covenants by failing to make timely payments of assessments as alleged in the Complaint.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

26. Defendants have failed to mitigate its damages as required by law.

FOR AN SEVENTH DEFENSE
(Statutes of Limitations and Repose/Laches)

27. Some or all of the Defendants' counterclaims are barred by the applicable Statutes of Limitations and Repose and/or the equitable doctrine of laches.

FOR AN EIGHTH DEFENSE
(Waiver)

28. Some or all of the Defendants' Counterclaims are barred by the doctrine of waiver.

FOR A NINTH DEFENSE
(Estoppel)

29. Some or all of the Defendants' Counterclaims are barred by the doctrine of estoppel.

FOR A TENTH DEFENSE
(Reservation and Non-Waiver)

30. Plaintiff reserves and does not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, Plaintiff, having fully responded to Defendants' Answer and Counterclaims, prays this Honorable Court as follows:

- a) For an Order dismissing Defendants' Counterclaims;
- b) For an Order denying the relief requested in Defendants' Counterclaims;

This communication is for the purpose of collecting a debt and any information obtained will be used for that purpose.

- c) Judgment in favor of Plaintiff;
- d) An award of costs and attorneys' fees; and
- e) For such other and further relief as may be deemed just and proper.

July 20, 2018

/s Stephanie c. Trotter

Stephanie Trotter (SC Bar #77680)

McCabe, Trotter & Beverly, P.C.

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Attorneys for Plaintiff/Counterclaim Defendant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The Homestead Property Owners Association, Inc.,,

Plaintiff,

v.

Wanda J. Miller and Orlando F. Miller

Defendant(s)

IN THE COURT OF COMMON PLEAS

C/A No.: 2017-CP-40-06634

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

20856.13

TO: BRIAN C. GAMBRELL, ESQ., THE ATTORNEY FOR DEFENDANT WANDA J.
MILLER AND ORLANDO F. MILLER

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the Plaintiff will move before this Honorable Court for an Order granting summary judgment in favor of Plaintiff's claim for foreclosure and dismissing Defendants' counterclaims. Plaintiff moves for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues as to any material fact and that Plaintiff is entitled to summary judgment as a matter of law.

This Motion will be based upon the pleadings, any supporting memoranda or affidavits that may be submitted by Plaintiff, any discovery material or deposition testimony, and the applicable common and statutory law.

July 20, 2018

/s/ Stephanie C. Trotter
Stephanie Trotter (SC Bar #77680)
McCabe, Trotter & Beverly, P.C.

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

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Attorneys for Plaintiff/Counterclaim Defendant

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.

2017-CP-40-06634

Plaintiff,

**DEFENDANTS' MOTION FOR RELIEF
FROM JUDGMENT**

vs.

WANDA J. MILLER & ORLANDO
MILLER.

Defendant.

Defendants Wanda J. Miller & Orland Miller ("Defendants") hereby move for relief from judgment pursuant to Rule 60(a) and Rule 60(b), SCRCP for the reasons set forth below.

1. This Court held a hearing in the above-captioned action on May 14, 2018. At that hearing, this Court *sua sponte* relieved Defendants of Default Judgment pursuant to Rule 60(b).
2. The Court directed Defendants to file responsive pleadings on or by June 1, 2018.
3. Defendants filed an Answer & Counterclaim on June 1, 2018. Defendants' counterclaims include actions at law and demanded a jury trial.
4. This Court inadvertently signed a previously submitted default judgment package. Upon information and belief, the Court acknowledged to Plaintiff's counsel that the judgment in the instant action was signed in error.
5. Plaintiff filed their reply to the Counterclaims on July 20, 2018.

LAW

Rule 60(b)(1) applies to any final judgment. Goodson v. Am. Bankers Ins. Co. of Fla., 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988). The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the court.

Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606–07, 681 S.E.2d 885, 888 (2009).

As this Court acknowledged to Plaintiff's counsel, this Court's entry of judgment in the above-captioned case was done in error. Moreover, this Court's entry of judgment was void under Rule 60(b)(4) pursuant to S.C. Community Bank v. Salon Proz, LLC, 420 S.C. 89, 97, 800 S.E.2d 488, 492 (Ct. App. 2017). As will be discussed in a separate motion, the filing of a jury demand with legal counterclaims divested this Court of jurisdiction.

CONCLUSION

For the reasons set forth herein, taking the facts in the light most favorable to the Defendant, there is no genuine issue of material fact as to the existence of an adequate remedy at law. Accordingly, this Court should GRANT Defendant's Motion for Relief of Judgment.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

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*Attorney for Defendant Wanda J. Miller
 & Orlando Miller*

July 27, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.

2017-CP-40-06634

Plaintiff,

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MILLER.

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1. The instant action was submitted to this Court by way of an order of reference signed by the Richland County Clerk of Court on January 22, 2018.
2. Defendants were in default at the time the Order of Reference was made.
3. This Court held a hearing in the above-captioned action on May 14, 2018. At that hearing, this Court *sua sponte* relieved Defendants of Default Judgment pursuant to Rule 60(b).
4. The Court directed Defendants to file responsive pleadings on or by June 1, 2018.
5. Defendants filed an Answer & Counterclaim on June 1, 2018. Defendants' counterclaims include actions at law and demanded a jury trial.
6. Plaintiff filed their reply to the Counterclaims on July 20, 2018.

LAW

Pursuant to Rule 53(b), SCRPC, this Court "shall" return the matter to Circuit Court "upon the filing of a jury demand." Defendant have made a valid demand for a jury trial. Defendants have asserted two counterclaims for Abuse of Process and Breach of Contract. Both

of these causes of action are actions at law. Pope v. Gordon, 369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006); Electro-lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). The demand of jury trial was timely filed. See Rule 38(b), SCRCF (stating a party may serve a jury demand “not later than 10 days after the service of the last pleading” or the demand “may be endorsed upon a pleading of [a] party”). Defendants are entitled to a jury trial in this equitable action “only if the counterclaims are legal and compulsory.” Carolina First Bank v. BADD, L.L.C., 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). “A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party’s claim.” Id. (citing Rule 13(a), SCRCF). No waiver exists when there are legal and compulsory counterclaims. Wachovia Bank, Nat. Ass’n v. Blackburn, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014); Johnson v. S.C. Nat’l Bank (Johnson II), 292 S.C. 51, 55–56, 354 S.E.2d 895, 897 (1987). The master shall not dispose of the foreclosure action until all legal issues raised compulsory counterclaims until those claims have been disposed of by jury trial. Gardner v. Travis, 316 S.C. 315, 318–19, 450 S.E.2d 54, 56–57 (Ct. App. 1994)

This Court was confronted with a nearly identical situation in S.C. Community Bank v. Salon Proz, LLC, 420 S.C. 89, 97, 800 S.E.2d 488, 492 (Ct. App. 2017). The Court of Appeals reversed this Court and determined that the matter should have been returned to the Circuit Court.

CONCLUSION

For the reasons set forth herein, taking the facts in the light most favorable to the Defendant, there is no genuine issue of material fact as to the existence of an adequate remedy at law. Accordingly, this Court should GRANT Defendant’s Motion to return the matter to the

Circuit Court.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

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July 27, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

HOMESTEAD PROPERTY OWNERS
ASSOCIATION, INC.

2017-CP-40-06634

Plaintiff,

**DEFENDANTS' MOTION FOR RELIEF
FROM JUDGMENT**

vs.

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MILLER.

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1. The instant action was submitted to this Court by way of an order of reference signed by the Richland County Clerk of Court on January 22, 2018.
2. Defendants were in default at the time the Order of Reference was made.
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4. The Court directed Defendants to file responsive pleadings on or by June 1, 2018.
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Pursuant to Rule 53(b), SCRPC, this Court "shall" return the matter to Circuit Court "upon the filing of a jury demand." Defendant have made a valid demand for a jury trial. Defendants have asserted two counterclaims for Abuse of Process and Breach of Contract. Both

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CONCLUSION

For the reasons set forth herein, taking the facts in the light most favorable to the Defendant, there is no genuine issue of material fact as to the existence of an adequate remedy at law. Accordingly, this Court should GRANT Defendant's Motion to return the matter to the

Circuit Court.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

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*Attorney for Defendant Wanda J. Miller
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July 27, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2017-CP-40-6634

The Homestead Property Owners Association,
Inc.

Plaintiff,

v.

Wanda . Miller and Orlando F. Miller

Defendants.

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT**

This matter comes before the Court on Plaintiff's Motion for Summary Judgment. For the reasons stated more fully herein, the Court should grant Plaintiff's Motion for Summary Judgment in favor of foreclosure and dismiss Defendants' counterclaims.

FACTUAL BACKGROUND

Defendants are the owners of the real property located at 261 Kenmore Park Drive ("Property") in Richland County. (Ex. 2, W. Miller Dep.). Plaintiff is the homeowners' association for the subdivision called The Homestead.

On May 4, 2016 Plaintiff recorded a Notice of Lien against the Property for unpaid homeowners' association assessments. (Compl. ¶ 8). On October 30, 2017 Plaintiff initiated this suit seeking foreclosure of its lien. Defendants were served on November 8, 2017. (Aff. of Svc.; W. Miller Dep. 69:13-25). On January 23, 2018 Plaintiff filed an Affidavit of Default and this matter was referred to the Master in Equity for foreclosure proceedings. The initial foreclosure hearing in this matter was scheduled for May 14, 2018. (Not. of Hr'g.). That hearing was continued to allow Defendants to file an Answer. Thereafter Defendants filed an Answer and Counterclaim alleging claims of Abuse of Process and Breach of Contract against Plaintiff. Defendants' Counterclaims allege Plaintiff refused and returned Defendants' payments in order to illegally generate a lawsuit and attorney's fees. (Answer ¶¶ 32-36, 39-41). However, in their depositions the Defendants admitted that they are members of the Association, admitted that they owe at least four years of assessments to the Plaintiff, admitted that they never sent payments to Plaintiff, and admitted the Plaintiff never returned any payments to them. Instead, Defendants

testified that Plaintiff refused to accept their offer to settle the case under terms acceptable to the Defendants. Because there is no genuine issue of material fact as to any of the claims, Plaintiff is entitled to judgment as a matter of law. This court should grant Plaintiff's request for foreclosure and dismiss Defendants' counterclaims for Abuse of Process and Breach of Contract.

STANDARD OF REVIEW

Summary judgment is proper when there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. "In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in the light most favorable to the non-moving party." Wade v. Berkeley County, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998) (citations omitted). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 240, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

ARGUMENT

I. Plaintiff is entitled to foreclose its lien because Defendants admit that they have not paid Plaintiff's assessments and other charges authorized by the restrictive covenants.

A. The restrictive covenants for The Homestead encumber the Defendants' lot.

The Covenants, Conditions and Restrictions for Homestead ("Declaration") were recorded April 5, 2006 in the Register of Deeds for Richland County in Book 1169 at Page 3279. (Exhibit A). The Declaration explicitly encumbers the real property designated as Tracts A, B, and C on a plat recorded at the Richland County Register of Deeds in Book 859 at Page 540. (Exhibit B). In 2007 Brickyard 44, LLC conveyed two parcels from the real property depicted on Exhibit B to Shumaker Homes, Inc. by deed recorded in the Richland County Register of Deeds in Book 1292 at Page 3389. (Exhibit C). The Shumaker Deed states that these parcels are a portion of the same land already encumbered by the Declaration.¹ Shumaker Homes, Inc. subsequently conveyed one of these parcels, denoted as Lot 62, to the Defendants by deed

¹ The Shumaker Deed's derivation cites three deeds recorded in October 2003 in Book 864 at Pages 653-662. These deeds describe the real property in question by reference to the plan recorded at Book 859 at Page 540. This is the same plat used to describe the property encumbered by the Declaration.

recorded December 12, 2007 in the Register of Deeds for Richland County in Book 1383 at Page 2579. (Exhibit D). The plats and deeds attached hereto as Exhibits B-D show that Defendants' Property is a portion of the real property initially encumbered by the Declaration when it was filed April 5, 2006. Accordingly, this Court should hold that the Declaration is the binding contract between Plaintiff and the Defendants.

B. The Declaration entitles Plaintiff to collect assessments, interest, attorney's fees, and costs from Defendants.

The Declaration provides:

"Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges; and (ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made."

Article VI, § 1.

The due date for each assessment is established by the Board of Directors. (Declaration, Art. VI, § 7(a)).

"Any annual assessment not paid within thirty (30) days after the due date shall bear interest from the due date at that rate which is equal to the rate of interest chargeable by law in the State of South Carolina on money judgments. The Association may . . . foreclose the lien against the property in like manner as a mortgage of real property, and . . . interest, costs and a reasonable attorneys fee shall be added to the amount of such assessment."

Article VI, § 8.

The contract between the parties provides that the Association is entitled to foreclose its lien in the same manner as a mortgage if the Defendants fail to pay any annual assessment within thirty days. Defendants admit that they owe Plaintiff \$180.00 per year for each year they have not paid. (W. Miller Dep. 73:11-12). Defendants admit that they did not pay any assessments in 2014, 2015, 2016, 2017 or 2018. (W. Miller Dep. 51:3-11; 75:7-9; O. Miller Dep. 27:16-21; 30:16-22). Plaintiff has presented evidence that the annual assessment for 2014-2018 were due

on January 1st of each year. (Aff. of Dugas ¶__). Defendant has not presented any evidence to contest Plaintiff's claim for assessments in the amount of \$900.00.

Plaintiff is further entitled to claim interest at 8.75% per annum. (Declaration Art. VI, § 8). Plaintiff's affidavit states that Plaintiff has charged Defendants a total of \$191.45 in interest charges. (Aff. of Dugas, ¶__). A quick calculation shows this is actually less than the Association is entitled to charge. The interest for each assessment can be calculated as follows:²

$$180 * \left(\frac{x}{365} \right) * .0875$$

Assessment Year	Days Delinquent	Interest Charge
2014	1,657	\$71.50
2015	1292	\$55.75
2016	927	\$40.44
2017	561	\$24.20
2018	196	\$8.46
	TOTAL	\$200.35

Defendants presented no evidence that interest charged by the Plaintiff is calculated in excess of the amount allowed by the Declaration. Accordingly, Plaintiff is entitled to an award of interest as charged on the account ledger.

Finally, Defendants are responsible for Plaintiff's costs and reasonable attorney's fees pursuant to Article VI, § 8. Plaintiff's counsel has submitted an affidavit of attorney's fees and costs in the amount of \$_____.

Defendants admit that they have not paid any money to Plaintiff or its agents since 2013. (O. Miller Dep. 27:16-21; W. Miller Dep. 51:3-10). Defendants have not submitted any evidence contesting Plaintiff's interest calculation or its request for fees and costs. Accordingly, Plaintiff is entitled to a Judgment of Foreclosure in the following amount:

Assessments	\$900.00
Interest.....	\$191.45

² x= days delinquent as of 7/16/18

Costs (as of 7/25/18)	\$1653.60
Attorney's Fees (as of 7/25/18)	\$8707.50
Payments	(\$0.00)
TOTAL BALANCE DUE	\$11,452.55

II. Defendants' Abuse of Process Counterclaim should be dismissed because the Defendants admit they owe the assessments Plaintiff is attempting to collect.

"The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." Hainer v. American Medical Intern., Inc., 328 S.C. 128, 137, 492 S.E.2d 103, 107 (1997). "There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." Id.

Defendants' Counterclaim alleges Plaintiff filled this suit for "the ulterior purpose of collecting a non-existent debt." (Answer ¶ 32). Defendants further allege that Plaintiff "returned Defendants' assessment payments inside (sic) of accepting them for the purposes of generating this lawsuit." (Answer ¶ 34). However, both Defendants testified that they had not submitted any payments to Plaintiff and Plaintiff had never returned any of those payments. (W. Miller Dep. 52:12-25; 54:16-23; O. Miller Dep. 29:10-15). Orlando Miller even testified that he was not familiar with the allegations contained in paragraph 34 of his Answer and Counterclaim. (O. Miller Dep. 41:18-23). Orlando Miller further testified that as of November 2017, when Plaintiff filed this suit, the Defendants owed Plaintiff at least three years of assessments to Plaintiff. (O. Miller Dep. 30:16-25; 62:10-13).

The Defendants' only allegation that Plaintiff refused their payments was in the context of declined payment plan offers. Specifically, the Defendants testified that they tried to negotiate a deal with Plaintiff but the Plaintiff would not accept their offers. (W. Miller Dep. 51:10-25; 52:2-6; O. Miller Dep. 43:7-14). Orlando Miller admitted that the Defendants never attempted to pay the full balance demanded by Plaintiff. (O. Miller Dep. 43:15-17). Mr. Miller specifically claimed that Plaintiff "continuously declined anything that [Defendants] offer[ed] to pay." (O. Miller Dep. 47:4-7).

The contract between the parties specifically empowers the Association to seek foreclosure of its lien for assessments not paid within thirty days. Defendants admit that they did not pay the assessments for several years. Defendants admit that they owed assessments to Plaintiff at the time Plaintiff filed suit. Defendants' deposition testimony inconceivably contradicts the allegations of their counterclaims and does not contain any other allegations that Plaintiff has used this foreclosure action for any ulterior or improper purpose. Taken in the light most favorable to the Defendants, their allegations merely amount to a claim that the Plaintiff has refused to settle this case under the terms requested by the Defendants. A party's refusal to accept less than the balance due under a contract cannot form the basis for an abuse of process claim. Accordingly, Plaintiff is entitled to summary judgment dismissing Defendants' Abuse of Process Counterclaim.

III. Defendants' Breach of Contract Counterclaim should be dismissed because Plaintiffs never returned or refused to accept payments and because Plaintiff has no obligation to build on the common areas.

A. Defendants have failed to provide any evidence that Plaintiff prevented Defendants from paying the balance owed.

Defendants' Counterclaim also alleges that Plaintiff has breached its contract with Defendant by failing to accept Defendants' payments and "filing a lien in order to justify higher fees, costs, and attorney's fees." (Answer ¶ 40-42). However, as discussed above, both Defendants testified that they did not submit any payments to Plaintiff. Plaintiff could not possibly refuse to accept payments that Defendants admit that they did not pay to Plaintiff. Both Defendants admit that they owe Plaintiff for assessments that are more than thirty days past due. The restrictive covenants specifically empower the Plaintiff to file a lien to secure charges more than thirty days past due. Accordingly, the Plaintiff's lien filing cannot form the basis for Defendants' breach of contract claim.

B. The Declaration does not require the Association to provide common areas that Defendants consider to be enjoyable.

While not pled in their Breach of Contract claim, Defendants also allege that Plaintiff failed to maintain the common areas within the neighborhood. The Association owns

approximately sixteen acres of unimproved property at the rear of the subdivision. This area is shown as “Common Area” on the Bonded Plat of The Homestead Subdivision recorded in the Richland County Register of Deeds in Book 1163 at Page 2534. (Exhibit E). The Common Area is comprised of almost fifteen acres of wetlands.

Both Defendants testified that the Plaintiff failed to maintain the Common Area because Plaintiff has not developed this area into something the property owners can “use and enjoy.” (W. Miller Dep. 94:16-18; 99:9-11; O. Miller Dep. 14:22). In support of this argument Defendants point to Article I, Section 4 of the CCR: “Common Area” shall mean and refer to all property (including the improvements thereon) owned by the Association for the common and exclusive use and enjoyment of the owners and others, entitled to the use thereof.”

However, Article II, § 1 further provides that

“[e]very Owner shall have the right and easement of enjoyment in and to the Common Area . . . subject to . . . [t]he right of the Association to formulate, publish and enforce rules and regulations regarding the use of the Common Area.”

Finally, the CCR provides that “[p]lants and trees now or hereafter located on the Common Area shall be maintained by the Association and may not be removed except by permission of the Board of Directors.” Art. VI, §2(q).

“Enjoyment” is defined as the “possession and use, esp. of rights or property.” ENJOYMENT, Black’s Law Dictionary (10th ed. 2014). The “use and enjoyment” granted to Defendants by the CCR is the legal right to access the Common Area in the manner deemed appropriate by the Plaintiff. The Defendants admit that the Plaintiff has not taken any steps to prevent them from accessing the Common Area, only that they do not wish to access it in its current state. (W. Miller Dep. 98:13-21; O. Miller Dep. 37:1-5). However, the Defendants also admitted that the Common Area remains substantially the same as it was when the Defendants purchased their property in 2007. (W. Miller Dep. 100:16-17; O. Miller Dep. 37:15-18). The CCR does not contain any promise, guarantee, or mention of any obligation or plan to improve the Common Area. Accordingly, the Defendants’ counterclaim for Breach of Contract should be dismissed.

CONCLUSION

For the reasons stated herein the Plaintiff respectfully requests this court grant Plaintiff summary judgment granting foreclosure of its lien and dismissing Defendants' counterclaims for abuse of process and breach of contract.

Respectfully Submitted,

/s Stephanie C. Trotter

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Attorneys for Plaintiff/Counterclaim Defendant

Exhibit A

STATE OF SOUTH CAROLINA) COVENANTS, CONDITIONS AND RESTRICTIONS-
COUNTY OF RICHLAND) THE HOMESTEAD

THIS DECLARATION made the date and year hereinafter set forth, subscribed by BRICKYARD 44, LLC, (hereinafter referred to as "Declarant")

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain property located in Richland County, South Carolina, more particularly described as :

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels A, containing 13.79 acres, Parcel B, containing 15.34 acres, and Parcel C, containing 14.79 acres, on a plat prepared for Mattie Lee Jones Estates by Inman Land Surveying Company, Inc., dated July 14, 2003, and recorded in the Office of the Register of Deeds for Richland County in Record Book 859 at Page 540. Reference to said plat being made for a more complete and accurate description.

WHEREAS, the Declarant is developing on the property hereinabove described a residential community known as THE HOMESTEAD, providing a residential community and desires to impose these Covenants, Conditions and Restrictions upon the said lots.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, affirmative obligations and conditions, all of which are for the purpose of protecting the value and desirability of the property described above, and which shall run with the real property and be binding on all persons having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

Section 1. "Association" shall mean and refer to THE HOMESTEAD PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Book 1169-3279

2006030810 04/05/2006 13:50:28:350

Declaration of Covenants

Fee:\$22.00 County Tax:\$0.00

State Tax:\$0.00



2006030810 John G. Morris

Richland County RRR

Section 3. "Properties" shall mean and refer to that real property hereinabove described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean and refer to all real property (including the improvements thereon) owned by the Association for the common and exclusive use and enjoyment of the owners and others, entitled to the use thereof.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties, together with the improvements thereon, with the exception of the roads and common area.

Section 6. "Member" shall mean and refer to every person who is a member of the Association.

Section 7. "Declarant" shall mean and refer to BRICKYARD 44, LLC, or any person or entity who succeeds to the title of Declarant to any portion of the Properties by sale or assignment of all of the interests of the Declarant in the Properties, if the instrument of sale or assignment expressly so provides, or by exercise of a right of foreclosure of a mortgage given by the Declarant or a deed in lieu thereof. Any such person or entity shall be entitled to exercise all rights and powers conferred upon Declarant by this Declaration, the Articles of Incorporation or Bylaws of the Association.

ARTICLE II Property Rights

Section 1. Owners Easements of Enjoyment. Every Owner shall have the right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to formulate, publish and enforce rules and regulations regarding the use of the Common Area; and

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by at least two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his rights of enjoyment of the Common Area to members of his family, his tenants, or contract purchasers, provided, however, that each such delegee shall reside upon a Lot of such Owner.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area described herein to the Association free and clear of all liens and encumbrances, subject only to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and utility and drainage easements specifically reserved or indicated on any recorded plat.

Section 4. Transfer or Mortgage of the Common Area. Unless the Association shall receive the prior written approval of at least two-thirds (2/3) of the lot owners (exclusive of the Declarant), the Association shall not be entitled to, by act or omission, abandon, partition, subdivide, sell, mortgage or transfer all or any portion of the Common Area, except that wetlands, detention ponds and drainage ways may be transferred to appropriate governmental entities.

No portion of the common area may be sold or transferred to any other party for any other use than is set forth in this document and no subdivision of the common area may occur unless such property is brought into compliance with the then existing subdivision regulations of the County of Richland, South Carolina, regarding lots for other than support facilities.

ARTICLE III Membership and Voting Rights

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant, and each shall be entitled to one (1) vote for each Lot owned. If more than one person owns an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they may determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership upon the happening of the earlier of the following:

(i) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(ii) On December 31, 2016.

ARTICLE IV
Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (i) Annual assessments or charges, and
- (ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the maintenance of the Common Area, the payment of any taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the establishment of an adequate reserve for the maintenance, repair and replacement of the improvements in the Common Area, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Amount of Annual Assessments. The maximum annual assessment for each Lot in the Properties shall be payable annually, in advance, and the amount thereof shall be determined as follows:

(a) Up to and including December 31, 2006, the maximum annual assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot.

(b) The maximum annual assessment for the calendar year beginning January 1, 2007, and for each calendar year thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed Ten Percent (10%) of the maximum annual assessment of the previous year.

(c) The maximum annual assessment may be increased without limit by the affirmative vote of two-thirds

(2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum. When the Board of Directors fixes the annual assessments for each calendar year, the Board shall, at the same time and in connection therewith prepare, or cause to be prepared, an annual budget showing the services furnished by the Association and the cost thereof per lot.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related hereto, Provided that any such assessment shall have the assent of Two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on an annual basis, or on such other basis as may be approved by the Board of Directors.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast Sixty Percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be One-Half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date set for the preceding meeting.

Section 6. Uniform Rate of Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots and shall be collected annually in advance, or on any other basis approved by the Board of Directors.

Section 7(a). Date of Commencement of Annual Assessments:

The annual assessments provided for herein shall commence as to each lot on the first day of the first month following the construction of a residence on the lot and the issuance of a certificate of occupancy. The first annual assessment

shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment and give every owner subject thereto written notice of each assessment. Due dates shall be established by the Board of Directors. The Association, upon demand at any time and for a reasonable charge, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 7(b). Initial Start Up Fee: In addition to the annual assessments as set forth herein and in lieu of paying a prorata assessment for the year of conveyance of each lot, a one time start up fee in the amount of One Hundred Eighty and No/100 (\$180.00) Dollars will be payable by the initial Purchaser of each lot at the time of closing of the sale and purchase of each lot.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any annual assessment not paid within thirty (30) days after the due date shall bear interest from the due date at that rate which is equal to the rate of interest chargeable by law in the State of South Carolina on money judgements. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in like manner as a mortgage of real property, and, in either event, interest, costs and a reasonable attorneys fee shall be added to the amount of such assessment. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the annual assessment due and payable and collect the same through foreclosure. In the event of any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot after commencement of the foreclosure action; the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to (1) the lien of any first mortgage, and (2) the lien of any unpaid ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall be deemed to require any Mortgagee to be responsible for the collection of assessments.

ARTICLE V ARCHITECTURAL CONTROL

No building, fence, wall, mailbox or other structure, and no change in topography, landscaping, grading, filling or any other item, shall be commenced, erected or maintained upon any portion of the Property or any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, so long as Declarant owns any lot in the Subdivision or until such time as Declarant relinquishes such rights in writing, and thereafter, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event approval or disapproval is not given within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been completed.

ARTICLE VI Use Restrictions

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors shall be recorded in a book of resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. The Properties shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws and other applicable restrictions of record:

a. No structure shall be erected on any Lot in the subdivision other than one permanent single-family dwelling and detached or attached garage of similar design, and no use shall be made of the Property or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family; Provided, however, the Declarant reserves to itself, as well as the right to assign to builders during construction, the right to use one or more such dwellings as a temporary office, model home, information center and real estate sales office, provided further that no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities and drainage facilities within the areas provided hereinafter. Any temporary construction used as administrative, information or

real estate sales office shall be promptly removed when it shall come to be used for such purposes. No other temporary structure or apartment shall be erected upon any Lot.

b. No Lot in the subdivision shall be subdivided or reduced in size without the written consent of the Declarant, provided, however, that no Lot in the subdivision shall be subdivided or reduced in size so as to have a total area less than the smallest Lot shown on the above referenced plat, nor shall any Lot so subdivided leave a residual lot with a total area less than the smallest Lot shown on said plat.

c. Any consequence of alteration to the natural grade of any Lot shall be the responsibility of the Purchaser of said Lot. Said Purchaser shall also be responsible for the channeling of any surface water in accordance with the approved grading Plan of the subdivision.

d. No residence containing less than Nine Hundred (900) square feet of heated space shall be erected on any lot.

e. All sewage disposal shall be by central sewer service approved by appropriate governmental utility authorities, or by public utility at such rates as shall be established by governmental authority or approved by the South Carolina Public Service Commission.

f. The placement, design, type and color of any mailbox and its support must be approved by the Declarant or the Architectural Committee appointed by it in accordance with Article V above.

g. The placement, design, type, material and color of any fencing shall be first approved by the Declarant or the Architectural Committee appointed by it in accordance with Article V above.

h. No building shall be closer than twenty five (25) feet to the street or road right of way upon which it faces, no building shall be closer to the interior side lot boundary line than a minimum of five (5) feet, nor closer than twenty (20') feet to the rear lot line, nor closer to any side street line than a minimum of ten (10.0) feet; further provided, however, that no side, rear or front setback distance shall be less than the side or front setback lines as shown on the above referenced plat.

i. No noxious or offensive activity or other thing shall be had or done upon any Lot in the subdivision, and nothing shall be had or done thereon which constitutes or becomes an annoyance or nuisance to the neighborhood, or constitutes an unsanitary condition. No livestock or other such animals shall be allowed or kept on any lot in the subdivision. Nothing shall be done or allowed, and no conditions or situation shall be permitted on any such Lot which shall constitute, cause or

become a nuisance or otherwise detract from the desirability of the neighborhood as a residential section.

j. No radio or television transmission or reception towers, antennas, or satellite dishes shall be erected on a Lot other than customary satellite dishes which do not exceed sixteen (16") inches in width, provided that such satellite dishes shall not be visible from the street on which the house faces. In no event shall freestanding transmission or receiving towers or discs or dishes be permitted which are greater than sixteen inches in diameter.

k. No tent, shack, trailer, bus, camper or motor home or temporary structure of any kind shall be erected, kept, had or allowed at any time on any Lot or parked on the street or road adjacent thereto; provided, however, that a camper or motor home may be parked in an enclosed garage where such recreational vehicle is not visible from the street, or adjoining homes, and also provided such garage meets all requirements for buildings and improvements contained elsewhere in these restrictions. No automobiles, trucks or other motor vehicles shall be parked within the right of way of any public street for a period of longer than twenty four hours, nor shall any such vehicle be parked on any portion of a lot other than in an approved garage or on an approved concrete driveway for a period of longer than twenty four (24) hours. All garage doors shall remain closed except for ingress and egress. No clothesline may be erected or maintained on any Lot. All rubbish, garbage and trash shall be kept in closed cans, or other suitable containers, which shall be placed and kept in such manner as to be out of sight from the street. The Lot, property and premises shall be kept clean at all times.

l. Water, sanitary sewer, drainage and public utility easements are reserved over each Lot in the subdivision along the side five (5) feet and front and rear ten (10) feet and such others as are shown on the recorded plat referred to in these restrictions. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels. The Declarant hereby reserves the right to create and impose additional easements or rights-of-way over unsold Lots or for street, drainage and utility installation purposes by the recording of appropriate instruments, and such shall not be construed to invalidate any of these covenants. Declarant may grant written easements to specific utility providers within the easement areas described herein as reserved for utilities, and such easements shall be effective whether recorded before or after the sale of a lot affected thereby.

m. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than five (5)

square feet advertising the property for sale or rent, or signs approved by Declarant and used by a builder to advertise the property during construction and sales period. During the initial period of construction on the vacant Lots, no sign shall be placed on any Lot unless the style and design thereof shall have been approved in writing by the Declarant, its successors or assigns. Provided, however that nothing contained in this paragraph shall prohibit Declarant from approving a sign or signs larger than provided in this paragraph for use at model home sites or at the entrance to the development.

n. These restrictions shall run with the land and be binding upon all parties, persons, firms or corporations claiming under them until January 1, 2037. Thereafter said restrictions shall automatically be extended for successive periods of ten (10) years unless changed in part or in whole by written instrument signed by a majority of then record owners of the Lots.

o. If any person shall violate, or attempt to violate, any of these restrictions, any person who shall own real property in the subdivision may enforce these restrictions by proceedings at law or in equity, to either recover damages or restrain such violation. All costs and expenses incurred in the successful enforcement of any restriction, including a reasonable attorney's fee, shall thereupon become due and payable by the losing party.

p. In the event of the unintentional violation of any of the building line restrictions or minimum Lot residence square foot requirements as set forth herein, Declarant reserves the right, by and with the mutual written consent of the owner or owners for the time being of such Lot, to change the building line restriction set forth in this instrument; provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Richland, State of South Carolina.

q. Use of Common Area. No person shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area or facilities except under the direction of and with the express consent of the Association. The Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the residences, subject to any rules and regulations that may be adopted by the Association pursuant to its Bylaws. Plants and trees now or hereafter located on the Common Area shall be maintained by the Association and may not be removed except by permission of the Board of Directors. No additional plants, trees or shrubs may be planted upon the Common Area without the written approval of the Board of Directors.

r. Subdivision streetlighting . In the event subdivision streetlighting is provided by South Carolina Electric and Gas Company (SCE&G), then such street lighting will be provided under the terms approved by the South Carolina Public Service Commission. Each homeowner will have a prorata share of streetlighting costs included in their monthly electric bills from SCE&G. The amount of this monthly charge is determined by SCE&G, is on file with the South Carolina Public Service Commission and is subject to change as approved by the South Carolina Public Service Commission.

ARTICLE VII Easements

Section 1. Reservation. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats for use by Declarant, utility companies and public agencies in connection with this development. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which obstruct or retard the flow of water through drainage channels and the easements. The use of such easement areas by the Association for access, ingress and egress to and from common areas and the public streets is hereby specifically granted.

Section 2. Common Areas. Declarant hereby reserves unto itself, its successors and assigns, easements to cross the Common Area with pipes, utilities, power lines, gas lines, drainage and other usual and customary subdivision service facilities. The Association shall have the power and authority to grant and establish in, over, upon and across any Common Area conveyed to it such further easements as may be requisite for the convenient use and enjoyment of the property.

ARTICLE VIII Rights of First Mortgagees

The following provisions, in addition to the provisions set forth elsewhere in this Declaration, shall be applicable to the holders, guarantors or insurers of first mortgages upon Lots subject to this Declaration and any Amendments hereto:

Section 1. Planned Unit Development. This Declaration and other constituent documents create a planned unit development hereinafter referred to as a "PUD."

Section 2. Assessment. Any first mortgagee who obtains title to a Lot pursuant to the remedies provided in its mortgage shall not be liable for unpaid assessments which accrued prior to the acquisition of title to such Lot by the mortgagee.

Section 3. Material Changes. Unless the Association shall

receive the prior written approval of at least two-thirds (2/3) of the first mortgagees (who have informed the Association of their addresses in writing and requested to participate in such decisions), the Association shall not be entitled to do any of the following:

(a) By act or omission, seek to abandon, partition or subdivide, sell or transfer the Common Area owned, directly or indirectly, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area, shall not be deemed a transfer within the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other changes which may be levied against any Lot or the Owner thereof;

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance residential dwellings, the maintenance of party walls or common fences and driveways, or the upkeep of lawns, plantings and improvements located in or on the Common Area;

(d) Use hazard insurance proceeds for loss to any Common Area improvements for other than the repair, replacement or reconstruction of such improvements.

Section 4. Taxes and Other Charges. First mortgagees of Lots subject hereto may, jointly and severally, pay taxes or other charges which are in default and which may, or have become, a charge against any of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of such policies for such Common Area, and first mortgagees making such payments shall be immediately reimbursed therefor by the Association.

Section 5. Rights in Insurance Proceeds and Condemnation Award. No provision of the PUD constituent documents gives an Owner or any other party priority over any of the rights of any first Mortgagee contained in its mortgage, in or to a distribution to such owner of insurance proceeds or condemnation award or losses to or a taking of the Common Area or any part thereof.

Section 6. Notice to Mortgagee. A first mortgagee, upon request, is entitled to written notification from the association of the following: (a) any default in the performance by its borrower of any obligations under the PUD constituent documents which is not cured within sixty (60) days; (b) any condemnation loss or any casualty loss which affects a material portion of the Properties or any of such mortgagee's security; (c) any lapse, cancellation or material modification of any insurance policy or

fidelity bond maintained by the Association, and (d) any proposed action which would require the consent of a specified percentage of the mortgage holders.

Section 7. Further Rights of Mortgagees. The Association shall make this Declaration, any bylaws or other rules pertaining to the Properties, as well as all books, records and financial statements, available for inspection by any mortgagee during normal business hours or under other reasonable circumstances. Any mortgagees, upon its request, shall be entitled to a financial statement for the immediately preceding fiscal year.

Section 8. Contract Services. No agreement or lease, entered into on behalf of the Association prior to the termination of Class B membership, as provided in Section 2(b) Article III, shall be binding on the Association, unless the agreement or lease shall permit termination by either party without cause and without payment of a termination fee upon written notice of ninety (90) days or less.

ARTICLE IX Annexation and Further Development

Section 1. Other Residential Property. Additional residential property and common area may be annexed to the Properties at any time, with the consent of the Owners of two-thirds (2/3) of the lots. Any land owned by Declarant and adjacent to the property which is subject to this Declaration may be annexed without the consent of members.

Section 2. Common Areas. Title to any common areas located within such portions of land annexed by the Declarant as provided in Section 1 may be conveyed to the Association without its consent, or the consent of the Owners, and shall be held, improved and administered in the same manner and for the same purposes, as the land described in Article I, Section 4, hereof.

Section 3. Effect of Annexation. Additional properties and improvements, including common area, so annexed shall be merged with the Properties described herein and with any previously annexed property, and shall be subject to the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association. Annexation as provided in this Article may increase or decrease the benefits which each Owner expects to derive from the Common Area, and may increase or decrease the cost of maintenance and operation thereof; any increase or decrease in such costs may require the Association to change the annual assessments levied in accordance with this Declaration.

ARTICLE X General Provisions

Section 1. Application. All Owners, employees of Owner and tenants or any other persons who may, in any manner, use the

Properties or any portion thereof shall be subject to the provisions hereof and to the provisions of the Articles of Incorporation and the Bylaws of the Association.

Section 2. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so.

Section 3. Severability. Invalidity of any one of these covenants or restrictions, by judgment or court order, shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with the land and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3rds) of the lots; provided, however, that the Board of Directors may amend this Declaration without the consent of Owners to correct any obvious errors or inconsistencies in drafting, typing or reproduction or to make any changes required for FHA, VA or Conventional loan approval. All Amendments shall forthwith be recorded in any public office where this Declaration may be recorded and shall be effective upon such recordation.

Section 5. Lease of Residence. No residence shall be leased for transient or hotel purposes, nor may any Owner lease less than his entire residence. Any lease must be in writing and provide that the terms of the lease and occupancy of the dwelling shall be subject in all respects to the provisions of this Declaration and of the Bylaws and Articles of Incorporation, and that any failure by any lessee to comply with the terms of such documents shall be in default of such lease.

Section 6. Liability Insurance. The Association shall obtain and maintain a broad form public liability insurance policy covering all of the Common Area and all damage or injury caused by the negligence of the Association or any of its agents, officers or employees in an amount of not less than One Million and No/100 (\$1,000,000.00) Dollars for each occurrence, and such policies shall contain a waiver of the right of subrogation against the Association, its members, officers, agents or employees.

Section 7. Fidelity Bonds. The Association may maintain, as a common expense of the Association, blanket fidelity bond coverage against dishonest acts by officers directors, agents and employees and all other persons handling or responsible for funds of or administered by the Association. Such fidelity bonds

shall:

- (a) Name the Association as an obligee;
- (b) Be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual budget of the Association, including reserves;
- (c) Contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expressions; and
- (d) Provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days, prior written notice to the Association.

Similar bonds may be required covering any management agent employed by the association for such agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

Section 8. Waiver. No provision hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may occur.

Section 9. Conflicts. In the event of irreconcilable conflicts between this Declaration and the Bylaws or Articles of Incorporation, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between the Articles of Incorporation of the Association and the Bylaws of the Association, the provisions of the Articles of Incorporation shall control.

Section 10. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and nonpersonal entities, as well as the singular and plural wherever the context provides or permits.

Section 11. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

IN WITNESS WHEREOF, BRICKYARD 44, LLC has caused this Declaration to be executed on this the 27th day of March, 20056.

WITNESSES:

BRICKYARD 44, LLC (SEAL)

[Signature]
[Signature]

By: *Doris O. Kinard*
Its: member

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness who, on oath, says that (s)he saw the within-named BRICKYARD 44, LLC, by its duly authorized Member, sign the within Declaration of Covenants, Conditions and Restrictions, and, as its act and deed, deliver the same, and that (s)he with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 27th day of March, 2006.

[Signature]

[Signature]
Notary Public for South Carolina
My Commission Expires: 8/25/15

15.34 ACRES

14.79 ACRES

NOW
ALM

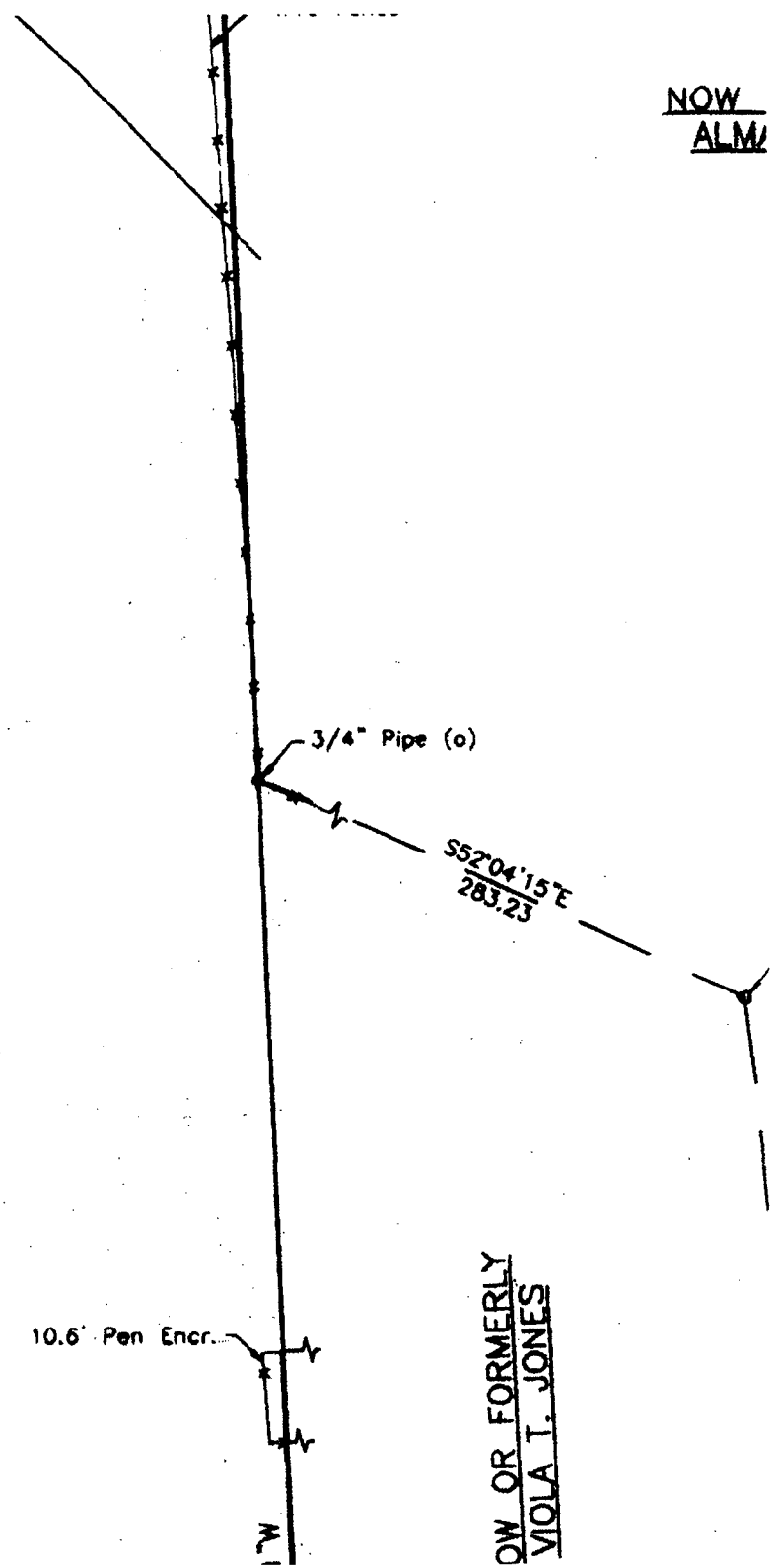
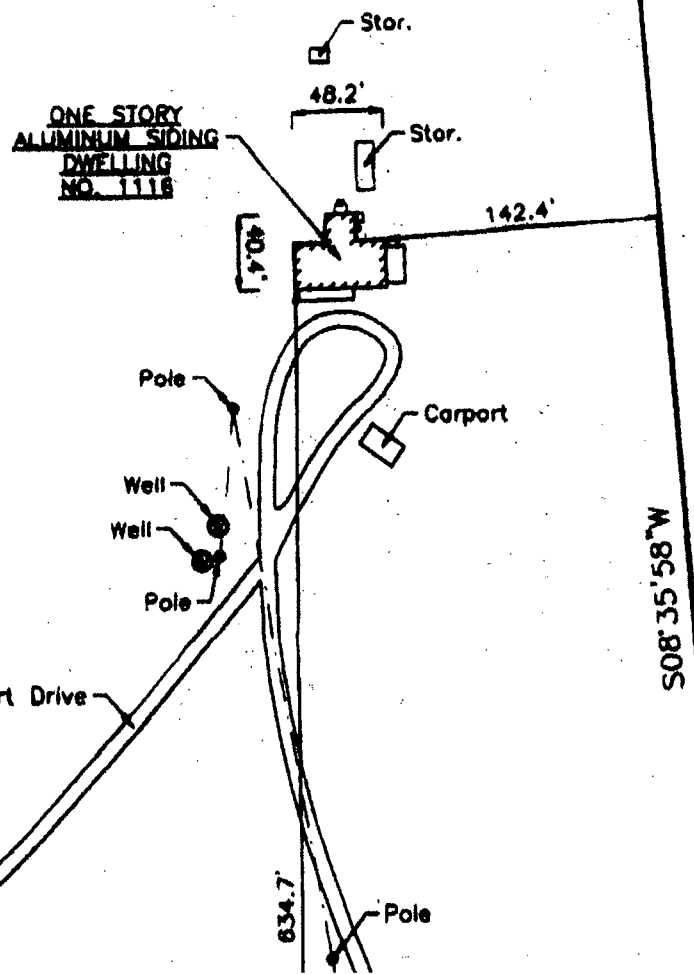


Exhibit C

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

THE HOMESTEAD SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS That

BRICKYARD 44, LLC

(hereinafter called "GRANTOR"), in the State aforesaid, for and in consideration of the sum of Fifty-Five Thousand and No/100 (\$55,000.00) Dollars to GRANTOR in hand paid at and before the sealing of these presents by SHUMAKER HOMES, INC. (hereafter called "GRANTEE"), in the State aforesaid (the receipt of which is hereby acknowledged), has granted, bargained, sold and released unto SHUMAKER HOMES, INC.:

All those certain pieces, parcels or lots of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as **LOT SIXTY-TWO (62) AND SIXTY-SEVEN (67)** on a plat of **THE HOMESTEAD SUBDIVISION** prepared for Brickyard 44, LLC by W. K. Dickson & Associates, Inc. dated September 9, 1005, last revised November 8, 2005, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1163 at page 2534.

The above plat is incorporated herein by reference and is made a part hereof for a more complete and accurate description. All measurements shown on said plat are a little more or less.

This is a portion of the property conveyed to Brickyard 44, LLC by the following deeds:

- a. Deed of W. Edward Jones, Thomas M. Jones, Vernon O'Neal Jones and Barbara J. Barfield dated October 13, 2003; recorded October 15, 2003, in Book 864 at Page 653.
- b. Deed of Alice Brasington Jones dated October 13, 2003, recorded October 15, 2003, in Record Book 894 at Page 658.
- c. Deed of Mary C. Jones, Wesley Douglas Jones and Kimberly D. Jones dated October 13, 2003, recorded October 15, 2003, in Record 864 at Page 662.

Grantee's Mailing Address: 5847 Shakespeare Road
Columbia, SC 29223

TMS No. 20100-02-29 (portion of)

This conveyance is made subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to, any shown on recorded plats.

Book 1292-3389

2007022487 03/15/2007 16:42:01:443

Fee: \$10.00 County Tax: \$60.50

Deed

State Tax: \$143.00



2007022487 Richard W. Rodden

Richland County ROD

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the GRANTEE and GRANTEE'S Successors and Assigns forever.

AND THE GRANTOR hereby binds GRANTOR and GRANTOR'S Successors and Assigns to warrant and forever defend all and singular the premises unto the GRANTEE and GRANTEE'S Successors and Assigns against GRANTOR and GRANTOR'S Successors, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, the within Deed has been executed this 13th day of March, 2007.

Signed, Sealed and Delivered
In The Presence of:

BRICKYARD 44, LLC

Tate Jedd
J. M.

By:

Porter O. Kinard
Its: authorized member

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named BRICKYARD 44, LLC by its duly authorized Member, sign, seal and, as its act and deed, deliver the within deed and that (s)he with the other witness subscribed above, witnessed the execution thereof.

Tate Jedd

Sworn To Before Me This 13th
day of March, 2007.

J. M.
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/25/15

(L.S.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) DEED

KNOW ALL MEN BY THESE PRESENTS, That

SHUMAKER HOMES, INC.

in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty-Four Thousand Two Hundred Thirty-Seven and 50/100 (\$234,237.50) Dollars, to it paid by WANDA J. MILLER AND ORLANDO F. MILLER {hereinafter GRANTEE(s)} in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, by these presents does grant, bargain, sell and release unto the said

WANDA J. MILLER AND ORLANDO F. MILLER

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as LOT SIXTY-TWO (62) on a plat of THE HOMESTEAD SUBDIVISION prepared for Brickyard 44, LLC by W. K. Dickson & Associates, Inc. dated September 9, 1005, last revised November 8, 2005, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1163 at page 2534. Said lot is more specifically shown and delineated on a plat prepared for Wanda J. Miller and Orlando F. Miller by C. Thomas Hixson, Jr., RLS, dated November 13, 2007.

The above plats are incorporated herein by reference and are made a part hereof for a more complete and accurate description. All measurements shown on said plats are a little more or less.

This is a portion of the property conveyed to Shumaker Homes, Inc. by deed of Brickyard 44, LLC dated March 13, 2007, recorded March 15, 2007, in Record Book 1292 at Page 3389.

THE LIMITED WARRANTY ISSUED TO YOU IN CONNECTION WITH THIS TRANSACTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY WARRANTY OF HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY EXCLUDED AND DISCLAIMED. WARRANTOR IN NO EVENT SHALL BE HELD LIABLE FOR CONSEQUENTIAL DAMAGES.

Wanda J. Miller
 WANDA J. MILLER

Orlando F. Miller
 ORLANDO F. MILLER

Grantee's Mailing Address:

261 Kenmore Park Drive
 Columbia, SC 29223

TMS No.: 20103-05-28

Book 1383-2579

2007109678 12/12/2007 15:39:09:587

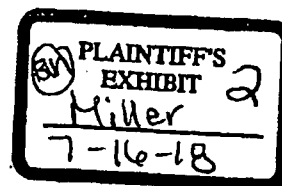
Deed

Fee:\$10.00 County Tax:\$257.85 State Tax:\$809.70



2007109678 Richard W. Rodden

Richland County ROD



This conveyance is made subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to, any shown on recorded plats.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said GRANTEE(S) and GRANTEE(S)' Heirs and Assigns forever.

And it does hereby bind itself and its successors, to warrant and defend all and singular the said premises unto the said GRANTEE(S)' Heirs and Assigns, against it and its successors and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF the within Deed has been executed this 11th day of December, 2007.

Signed, Sealed and Delivered
In The Presence of:

SHUMAKER HOMES, INC.

Mary Beth Demaris

By:

Its:

[Signature]
for SHH

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named SHUMAKER HOMES, INC. by its duly authorized officer sign, seal and, as its act and deed, deliver the within deed and that (s)he with the other witness subscribed above, witnessed the execution thereof.

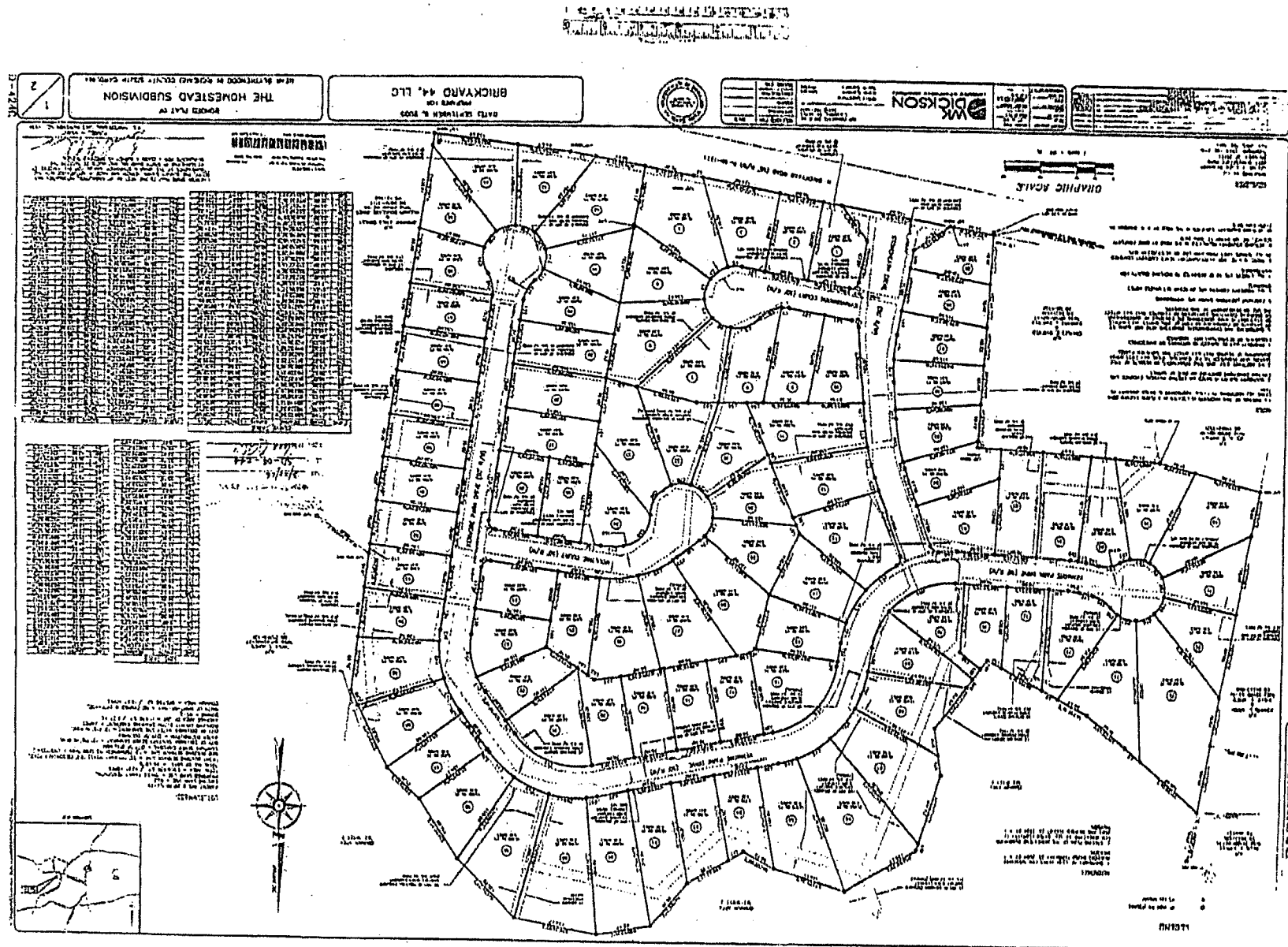
Sworn To Before Me This 11th
day of December, 2007.

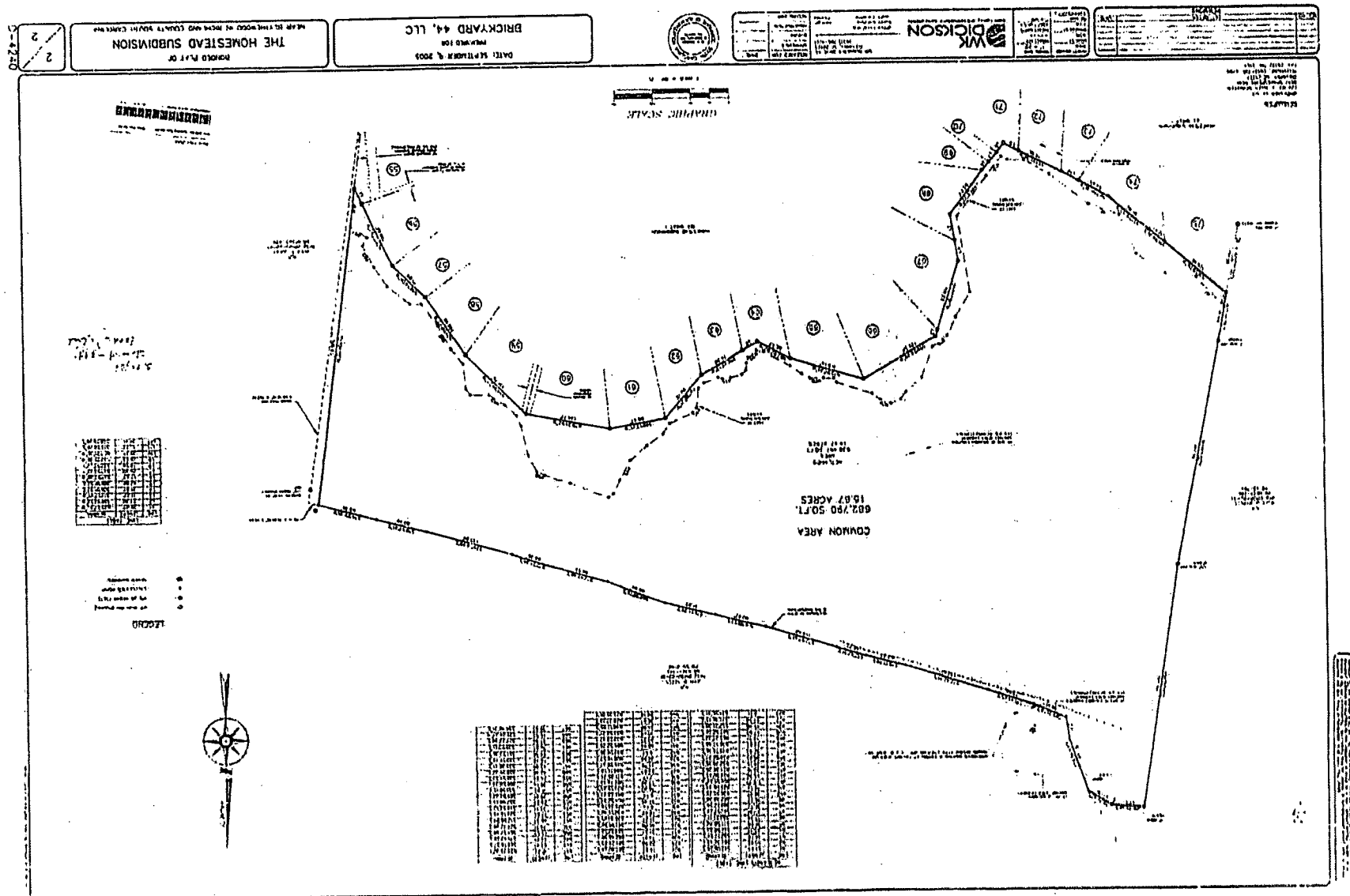
Mary Beth Demaris

[Signature] (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3/29/09

Exhibit E

163-2534





THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Richland County Master In Equity
Joseph M. Strickland, Master in Equity

Civil Action No. 2017-CP-40-06634

RECEIVED
AUG 28 2018
SC Court of Appeals

The Homestead Property Owners Association, Inc.....Respondents

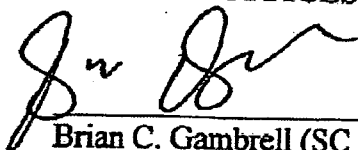
v.

Wanda J. Miller and Orlando F. Miller.....Appellants

NOTICE OF APPEAL

Appellants Wanda J. Miller and Orlando F. Miller pursuant to South Carolina Appellate Court Rule 203 hereby files their Notice of Appeal of the order of the Honorable Joseph M. Strickland entered on August 13, 2018 granting summary judgment to Respondents and denying Appellants' motions to transfer and relief from judgment.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.



Brian C. Gambrell (SC Bar # 68253):

810 Dutch Square Blvd, Suite 112

Columbia, SC 29210

Telephone: (800) 351-3008

Facsimile: (803) 610-1931

bgambrell@jasonetaylor.com

Attorney for Wanda J. Miller and Orlando F. Miller

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

THE HOMESTEAD PROPERTY
OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

WANDA J. MILLER & ORLANDO F.
MILLER,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-40-06634

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AS TO DEFENDANTS'
COUNTERCLAIMS AND DENYING
PLAINTIFF'S CLAIM FOR
FORECLOSURE

This matter was before the Court on July 30, 2018 for on Plaintiff Homestead Property Owners Association, Inc.'s ("Plaintiff") Motion for Summary Judgment to allow foreclosure and to dismiss the Millers' Counterclaims filed on July 20, 2018, and Wanda J. Miller and Orlando F. Miller's ("Millers") Rule 60(a) and Rule 60(b) Motion for Relief from Judgment filed on July 27, 2018.

At the hearing, Plaintiff was represented by Stephanie C. Trotter and George C. James, III, and the Millers were represented by Brian C. Gambrell.

After considering the arguments of counsel, review of the parties' written submissions, and examination of the governing law as applied to the facts of this case, the Court grants the Plaintiff's motion for summary judgment as to the Millers' counterclaims, and other than the vacation of this Court's June 4, 2018 Order Granting Judgment of Foreclosure and Sale, the Millers' Motion for Relief from Judgment is denied as moot.

RECEIVED

AUG 28 2018

SC Court of Appeals

ELECTRONICALLY FILED 12/01/18 AUG 31 2018 IN RICHLAND COUNTY COMMON PLEAS CASE#2017CP4006634

FACTS/PROCEDURAL HISTORY

The factual recitations set forth herein are in the light most favorable to the Millers, the non-moving party. The Millers are the owners of the real property located at 261 Kenmore Park Drive ("Property") in The Homestead Subdivision in Richland County. Plaintiff is the homeowners' association for the subdivision.

On May 4, 2016, Plaintiff recorded a Notice of Lien against the Property for unpaid homeowners' association assessments. On October 30, 2017 Plaintiff filed this suit seeking foreclosure of its lien. The Millers were served on November 8, 2017. On January 23, 2018, Plaintiff filed an Affidavit of Default and the action was referred to the Master in Equity.

The initial foreclosure hearing was scheduled for May 14, 2018. At this hearing, the Millers appeared for the first time, with counsel, and the hearing was continued until July 30, 2018. At the May 14, 2018 hearing, the Court *sua sponte* stated the Millers, by and through their counsel, were free to file an answer; however, the entry of default was never set aside pursuant to Rule 55(c).¹

Thereafter, the Millers filed and served an answer and counterclaim alleging claims for abuse of process and breach of contract against Plaintiff. Specifically, the Millers allege Plaintiff filed the instant action for the ulterior purpose of collecting a non-existent debt and refused and returned the Millers' payments to illegally generate a lawsuit and attorney's fees.

Following the May 14, 2018 hearing, this Court signed an Order Granting Judgment of Foreclosure and Sale that was filed on June 4, 2018. This order was signed as a result of a clerical error. The parties consented to a vacation of this order at the July 30, 2018 hearing.

¹ While the Millers question whether or not the Court's *sua sponte* statement lifted the entry of default, the Court's holding to grant Plaintiff's Motion for Summary Judgment as to the Millers' counterclaims is based solely on the merits and its jurisdiction to hear matters of law under Rule 53(c) SCRCP; therefore, the Millers possibly being in default is irrelevant to the Court's findings in this Order.

STANDARD OF REVIEW

Summary judgment is proper when there is “no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. “In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in the light most favorable to the non-moving party.” *Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998) (citations omitted). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 240, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

LAW/ANALYSIS

I. The Millers’ Abuse of Process Counterclaim Fails as a Matter of Law.

“The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding.” *Hainer v. American Medical Intern., Inc.*, 328 S.C. 128, 137, 492 S.E.2d 103, 107 (1997). “There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” *Id.*

The Millers allege Plaintiff filed this suit for “the ulterior purpose of collecting a non-existent debt.” The Millers further allege that Plaintiff “returned Defendants’ assessment payments inside (sic) of accepting them for the purposes of generating this lawsuit.” However, given the Millers’ own deposition testimony, the Millers’ abuse of process claim fails as a matter of law.

The Millers’ deposition testimony established they have not submitted any payments to Plaintiff since 2014; therefore, Plaintiff, having received no payments, could not have possibly returned any payments.

During the Millers' depositions, the only evidence offered to support the allegation that Plaintiff refused their payments was in the context of Plaintiff's refusal to accept payment plans the Millers proposed. The Millers' deposition testimony directly contradicts the allegations in their abuse of process counterclaim and does not create any genuine issue of fact that Plaintiff has prosecuted this foreclosure action for any ulterior or improper purpose.

Taken in the light most favorable to the Millers, the evidence in the record establishes only that Plaintiff has refused to settle this case under the terms the Millers requested. Plaintiff's refusal to accept less than the balance due under the contract cannot form the basis for an abuse of process claim. Further, the contract specifically empowers Plaintiff to seek foreclosure of its lien for assessments not paid within thirty days. Plaintiff is entitled to judgment as a matter of law on this cause of action.

II. The Millers' Breach of Contract Counterclaim Fails as a Matter of Law.²

As they allege in their counterclaim for abuse of process, the Millers allege in their breach of contract counterclaim that Plaintiff has breached its contract with the Millers by failing to accept the Millers' payments and "filing a lien in order to justify higher fees, costs, and attorney's fees." However, as discussed above, both Mr. and Mrs. Miller testified they did not submit any payments to Plaintiff. Again, Plaintiff could not possibly refuse to accept payments the Millers admit that they did not make. Both Mr. and Mrs. Miller admit they owe Plaintiff for

² The Millers testified that Plaintiff was in breach of contract by failing to maintain the common areas within the neighborhood. However, the Millers did not make this allegation in their counterclaim. Even if they had, Plaintiff would still be entitled to summary judgment. The Association owns approximately sixteen acres of unimproved property at the rear of the subdivision. This area is shown as "Common Area" on the bonded plat of The Homestead Subdivision recorded in the Richland County Register of Deeds in Book 1163 at Page 2534. The Common Area is comprised of almost fifteen acres of wetlands. Therefore, Plaintiff is prevented from developing this area. Additionally, the Millers have presented no evidence or argument that Plaintiff is contractually required to develop this area.

assessments that are more than thirty days past due. The restrictive covenants specifically empower the Plaintiff to file a lien to secure charges more than thirty days past due.

Accordingly, Plaintiff is entitled to judgment as a matter of law on the Millers' counterclaim for breach of contract.

III. Plaintiff's Claim for Foreclosure is Denied at this time.

The Millers contest the exact amount of assessments and other charges they owe Plaintiff. Because there is a genuine issue of material fact regarding the total balance due, summary judgment on Plaintiff's claim for foreclosure is inappropriate at this stage.

CONCLUSION

After considering the arguments of counsel, review of the parties' written submissions, and examination of the governing law as applied to the facts of this case, the Court **GRANTS** the Plaintiff's motion for summary judgment as to the Millers' counterclaims. The Court **DENIES** Plaintiff's motion for summary judgment on its claim for foreclosure. Because the Court has dismissed Defendants' counterclaims, Defendants' Motion for Relief from Judgment/Order of Reference is moot; therefore, other than the vacation of the June 4, 2018 Order, the motion is **DENIED**. This Order does not end the case, it only dismisses the Millers' counterclaims asserted against Plaintiff with prejudice.

(Electronic Signature Page to Follow)



Richland Common Pleas

Case Caption: Homestead Property Owners Association Inc vs Wanda J Miller ,
defendant, et al
Case Number: 2017CP4006634
Type: Order/Summary Judgment

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2018-08-13 11:13:48 page 6 of 6

ELECTRONICALLY FILED 2018 AUG 13 11:13 AM RICHLAND COMMON PLEAS CASE#2017CP4006634

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Richland County Master In Equity
Joseph M. Strickland, Master in Equity

Civil Action No. 2017-CP-40-06634

The Homestead Property Owners Association, Inc.....Respondents

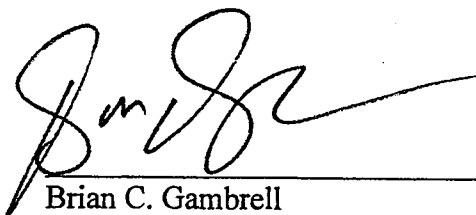
v.

Wanda J. Miller and Orlando F. Miller.....Appellants

PROOF OF SERVICE

I, Brian C. Gambrell, the attorney for Appellant, do hereby certify that I served Appellant's Notice of Appeal on Respondents' counsel via U.S. Mail on August 28, 2018.

Stephanie C. Trotter
PO Box 212069
Columbia, SC 29221



Brian C. Gambrell

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

THE HOMESTEAD PROPERTY OWNERS ASSOCIATION, INC.,)

Civil Action No. 2017-CP-40-06634

Plaintiff/Counterclaim Defendant,)

vs.)

NOTICE OF APPEARANCE

WANDA J. MILLER & ORLANDO F. MILLER,)

Defendants/Counterclaim Plaintiffs.)

TO: ALL COUNSEL OF RECORD AND THE CLERK OF COURT FOR RICHLAND COUNTY:

The undersigned, as attorneys for the Counterclaim Defendant The Homestead Property Owners Association, Inc., hereby notifies and advises the Court, the Defendants Wanda J. Miller and Orlando F. Miller, and all attorneys of record, that the undersigned have been retained to defend Counterclaim Defendant against the counterclaims made by the Counterclaim Plaintiffs in this matter.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/George C. James, III

Heath M. Stewart, III

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George C. James, III

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ATTORNEYS FOR

PLAINTIFF/COUNTERCLAIM DEFENDANT

THE HOMESTEAD PROPERTY OWNERS

ASSOCIATION, INC

July 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF COMMON PLEAS
)
) C/A No. 2017-CP-40-06634

The Homestead Property
Owners Association, Inc.,

Plaintiff,

v.

Wanda J. Miller and
Orlando F. Miller,

Defendants.

HEARING

COPY

Monday, July 30, 2018
9:59 a.m. - 10:53 a.m.

The hearing before the Honorable Joseph M. Strickland, Master-In-Equity for Richland County, was taken at 1701 Main Street, Courtroom 2D, South Carolina on the 30th day of July, 2018 before Sarah Costilow, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
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(803) 252-3445 / (800) 822-0896

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 Attorney for the Defendants

Also Present:

Rayleen Dugas
 Brian Gavigan

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1 CALL TO ORDER:

2 THE COURT: This is Civil Action Number 2017-CP-40-
3 06634. Homestead Property Owners Association,
4 Incorporated against Wanda Miller and others.
5 Are we all on the same page?

6 MS. TROTTER: Yes, Your Honor.

7 THE COURT: All right. Now there's a motion pending
8 for summary judgment, there's also a hearing
9 scheduled for a contested foreclosure, if we
10 need that. And Mr. Gambrell indicates that
11 there's another Motion that's been filed by the
12 defendant?

13 MR. GAMBRELL: Yes, Your Honor.

14 THE COURT: Okay.

15 MOTION BY MR. GAMBRELL:

16 MR. GAMBRELL: Under -- because of the procedural
17 hiccup with the filing of the incorrect Order,
18 my -- what was overlooked was the fact when I
19 filed my ans- -- filed the Answer on behalf of
20 the Millers, contained therein was a Demand for
21 Jury Trial ---

22 THE COURT: Uh-huh.

23 MR. GAMBRELL: --- on the legal counterclaims that
24 were asserted ---

25 THE COURT: Uh-huh.



1 MR. GAMBRELL: --- under Rule 53(b), which I have a
2 copy of for the Court.

3 THE COURT: Yes, sir.

4 MR. GAMBRELL: It particularly means that once the -
5 - once a matter has (a) under 53(b), it says,
6 any party may request a jury, pursuant to Rule
7 38 on any or all issues triable by a right --
8 of a right by a jury, and upon filing of a jury
9 demand, the matter shall be returned to the
10 Circuit Court. And so, what -- obviously what
11 that means to me, Your Honor, is that while the
12 reference -- an Order of Reference is
13 discretionary ---

14 THE COURT: Uh-huh.

15 MR. GAMBRELL: --- once a jury trial demand has been
16 made, the return to the Circuit Court of the
17 matter, and the way I read the matter is the
18 entire case is then mandatory. You know, that
19 there's no -- there is no holding on to the
20 knot, to the equitable jurisdiction of the
21 Court, once a jury trial has been made. In
22 fact, Your Honor is probably aware of the case
23 in South Carolina Community Bank versus Salon
24 Proz. The Court of Appeals has had opportunity
25 to -- and I've highlighted the relevant



1 portion.

2 THE COURT: Uh-huh.

3 MR. GAMBRELL: The Court of Appeals has had an
4 opportunity to review that mandatory language -
5 --

6 THE COURT: Uh-huh.

7 MR. GAMBRELL: --- and has ruled that once a jury
8 trial has been made, this Court surrenders the
9 matter back to the Circuit Court; and that's
10 exactly what has happened in this particular
11 case.

12 THE COURT: That's interes- -- well, in some cases,
13 don't they allow that the case be bifurcated;
14 that you try the equitable issues, and y'all --
15 then you try the legal issues before a jury
16 later on, or first, but however you want to
17 proceed?

18 MR. GAMBRELL: It -- Your Honor, according to
19 Gardner versus Travis ---

20 THE COURT: Uh-huh.

21 MR. GAMBRELL: --- which I'm gonna hand up, the
22 Court of Appeals has determined that while
23 bifurcation might be appropriate ---

24 THE COURT: Uh-huh.

25 MR. GAMBRELL: --- the legal issue shall be decided



1 first.

2 THE COURT: Okay.

3 MR. GAMBRELL: So in other words, Your Honor, that
4 what the Court should do today, under Rule
5 53(b), is send the matter back to the Circuit
6 Court, let the Circuit Court hear Ms. Trotter's
7 Motion for Summary Judgment, let us go do what
8 we want to go do in Circuit Court as far as the
9 legal causes of action ---

10 THE COURT: Uh-huh.

11 MR. GAMBRELL: --- and at that trial, it might be
12 bifurcated, it might be -- you know what I
13 mean, it's up to the Circuit Court then to
14 decide what to do. But it is not for this
15 Court today to do anything, other than to now
16 -- to say that the Order of Reference has been
17 superseded by a Demand for Jury Trial, and send
18 it back to the Circuit Court under Rule 53(b).

19 THE COURT: All right. What are your counterclaims?

20 MR. GAMBRELL: Our counterclaims, Your Honor, are
21 for abuse of process and for breach of
22 contract, both of which are legal causes of
23 action, which included a right by a jury. They
24 arise out of the same transaction, so they are
25 therefore compulsory.



1 THE COURT: And you want a jury trial on those, too?

2 MR. GAMBRELL: That's correct, Your Honor.

3 THE COURT: No other counterclaim. Okay, Ms.
4 Trotter, and your response?

5 RESPONSE BY MS. TROTTER:

6 MS. TROTTER: Your Honor, my notes indicate that
7 there was not a lifting of default, just that
8 the defendants would be allowed to file an
9 answer in this matter.

10 THE COURT: Uh-huh.

11 MS. TROTTER: In fact, my notes indicate that Mr.
12 Gambrell, on their behalf, admitted that they
13 were served with the Summons and Complaint in
14 this matter. Ms. Miller admitted that as well
15 in her deposition.

16 THE COURT: Uh-huh.

17 MS. TROTTER: So I'm unaware of any lifting of the
18 default that would require vacating the Order
19 of Reference. I think the Salon Proz case is
20 easily distinguishable.

21 THE COURT: Uh-huh.

22 MS. TROTTER: In that case, the party filed a timely
23 Jury Trial Demand ---

24 THE COURT: Uh-huh.

25 MS. TROTTER: --- and the Clerk of Court.



1 unilaterally referred the case in violation of
2 the Rule. The Rule said the Clerk shouldn't do
3 that when there's an Answer and a Jury Trial
4 Demand on the record.

5 **THE COURT:** Uh-huh.

6 **MS. TROTTER:** Additionally, Your Honor, I don't know
7 of any reason that you wouldn't be capable of
8 hearing the Motion for Summary Judgment.
9 Motion for summary judgment is an issue of law,
10 I mean, it's not a fact, finder issue that a --

11 -

12 **THE COURT:** Uh-huh.

13 **MS. TROTTER:** --- Circuit Court judge would be any
14 more capable of hearing than Your Honor.

15 **THE COURT:** Uh-huh. Hold on just a second. Mr.
16 Gambrell, I thought you conceded that I can
17 hear most of your Summary Judgement, is that
18 correct?

19 **MR. GAMBRELL:** I did not.

20 **THE COURT:** No?

21 **MR. GAMBRELL:** I don't recall conceding that you
22 could hear a Motion for Summary Judgment when
23 ---

24 **THE COURT:** All right, all right.

25 **MR. GAMBRELL:** And in fact, Your Honor, I would



1 argue that you told me to file an answer. You
2 don't file answers in default; there is no such
3 thing under the Rule as an answer in default.

4 THE COURT: Uh-huh.

5 MR. GAMBRELL: You have a right as a defaulted
6 defendant to contest damages. But Your Honor
7 instructed me to file an answer.

8 THE COURT: Uh-huh.

9 MR. GAMBRELL: And an answer, I think, strongly
10 implies you released them from default.

11 THE COURT: Implies that I released them from
12 default?

13 MR. GAMBRELL: Other than -- I think you did. I
14 mean, I think that's the purpose.

15 MR. GAMBRELL: Again, my practice is the lawyers
16 that appear before me a lot, I like to resolve
17 things on the merits. And -- but now you're
18 asking for a jury trial to delay it. Now, is
19 your position that the jury trial was not
20 timely made, or?

21 MS. TROTTER: Yes, Your Honor. The Jury Trial
22 Demand hasn't been timely made. And I would
23 also point out that this Motion for Your Honor
24 not to hear the Motion for Summary Judgment and
25 for this to be transferred back was filed on



1 Friday.

2 THE COURT: Uh-huh.

3 MS. TROTTER: I don't know what the -- what the
4 Foreclosure Order has anything to do with it.
5 Your Honor, you signed that Order on June the
6 5th. That same day, my office notified Mr.
7 Gambrell that we had received that. I presume
8 he had received it as well ---

9 THE COURT: Uh-huh.

10 MS. TROTTER: --- because I think by that point, he
11 had made an appearance on the E-filing system,
12 didn't get any sort of response; no action was
13 taken to have it vacated. I reminded Mr.
14 Gambrell mid-June, hey, is this something your
15 client's gonna undo, didn't get a response
16 until Friday that Motion was filed. This
17 Motion for Summary Judgment has been filed for
18 some time now, over ten days. We haven't had
19 any response that the Millers were going to
20 contest the trial today; that they were going
21 to contest the Motion for Summary Judgment. We
22 had depositions in this matter two weeks ago,
23 I believe; no mention. I was with the parties
24 all day, no mention that they weren't going to
25 go forward with the trial. Your office noticed



1 this trial on May the 25th, so it's been
2 pending for over two months now with no mention
3 from the defendants that they had -- they
4 intended to demand a jury and have it remanded
5 back.

6 THE COURT: All right. What's the amount of the
7 debt in this case?

8 MS. TROTTER: The amount of debt in -- on May the 24
9 -- May the 14th, when we came to this
10 foreclosure hearing, was around \$4,000, Your
11 Honor.

12 THE COURT: Uh-huh.

13 MS. TROTTER: Today, it is up to \$11,000 in light of
14 the attorney's fees that we have spent
15 defending the Counterclaims that were filed.
16 At the hearing, I wasn't here; Dean Hayes was
17 here. I have the notes he completed that day,
18 and they say that the homeowners, for the most
19 part, agree with the debt amount but may have
20 an issue with a few items. Mr. Gambrell agreed
21 to provide us with the specific items with
22 which the defendants had an issue within 20
23 days. I've asked for that, I haven't gotten
24 it.

25 THE COURT: Okay.



1 MS. TROTTER: I've sent discovery, it was due on
2 Friday and I haven't gotten it. We conducted
3 depositions two weeks ago to determine -- we
4 had a trial scheduled; we had to know what they
5 were gonna say that our clients did.

6 THE COURT: Uh-huh.

7 MS. TROTTER: And at that trial we learned that the
8 factual allegations in the Counterclaims, the
9 Millers had no idea about them.

10 THE COURT: Okay.

11 MS. TROTTER: Looked at me like I was crazy when I
12 asked them about them. So, I know of no reason
13 that Your Honor can't hear a Motion for Summary
14 Judgment, it's purely a decision of law. The
15 Circuit Court judges sitting on the jury trial
16 this term are not any more capable of hearing
17 that than Your Honor.

18 THE COURT: Yeah. Now, the Counterclaims, though,
19 now, we've -- I've seen it before. One lawyer
20 in town, who's name you recognized, tried a
21 foreclosure here and then, in Courtroom 2C next
22 door, had a jury trial on the Counterclaims and
23 actually won on the jury trial with
24 Counterclaims; that was the good news. The bad
25 news was that they didn't get any money out of



1 it. They won, but the jury decided that they,
2 you know, weren't entitled to any compensation.
3 I think they gave him \$1 or something like
4 that.

5 But in this case, I'm going to ask you, Mr.
6 Gambrell, if you go and try the Counterclaims
7 with the jury and you win, what do you win?

8 REPLY BY MR. GAMBRELL:

9 MR. GAMBRELL: Well, Your Honor, I think we would
10 win damages as we may prove. I mean that, it's
11 up to a jury. I mean, I have no idea. I mean,
12 that's what -- certainly what we're seeking to
13 provide, is to find out what they knew, when
14 they knew it, you know, what the true debt is.
15 There's some issues with the debt, Your Honor.

16 THE COURT: Uh-huh.

17 MR. GAMBRELL: And I -- I mean, Mr. Hayes' notes are
18 certainly not dispositive of the issue of what
19 I agreed to; I agreed to provide it.

20 THE COURT: Well if y'all disagree on what the date
21 is, that's something that could be negotiated
22 and settled, couldn't it, I mean?

23 MR. GAMBRELL: I mean, it could, but somehow, Your
24 Honor, between two months, they've billed
25 \$7,000 in attorney's fees which, I mean, I



1 don't know how you do that. But, Your Honor,
2 I mean, I think at this point, what's before
3 the Court is whether this Court can go forward
4 today or not.

5 THE COURT: Uh-huh.

6 MR. GAMBRELL: And as far as the timely filing of my
7 Counterclaims, they were timely filed and then
8 because the error of this Court in signing the
9 Order ---

10 THE COURT: Uh-huh.

11 MR. GAMBRELL: --- it didn't move. In other words,
12 the Court process, it kind of -- if you want to
13 think about it like the gears of a clock, if a
14 clock got stuck ---

15 THE COURT: Uh-huh.

16 MR. GAMBRELL: --- and moving the -- in the gears --
17 of moving it back to the jury roster and
18 starting that process.

19 THE COURT: Uh-huh.

20 MR. GAMBRELL: So from my point of view, you
21 directed me to file an answer.

22 THE COURT: Uh-huh.

23 MR. GAMBRELL: And I filed the Answer and asserted
24 the Counterclaims demanding a jury trial,
25 exactly as I was instructed to do on the day I



1 was instructed to do it. Somehow, it becomes
2 my client's fault, and thus responsibility,
3 that the default package submitted by the
4 plaintiff was signed. Again, I don't know --
5 I mean, Ms. Trotter's certainly invented that
6 and tried to make it sound like there was
7 something my side was required to do. They
8 certainly knew of the error. They certainly
9 could have filed a motion as well. In other
10 words, Your Honor, I didn't see it as a problem
11 I created, so why am I having to undo it? I
12 didn't submit the proposed Order. So to the
13 extent that ---

14 THE COURT: Wait, you're talking now about the
15 administrative issue we talked -- that looked
16 at the outset?

17 MR. GAMBRELL: See, that's what stopped this Court
18 from moving it back, because there was nothing
19 to move. Because the Order had been signed,
20 and so it takes it out of that normal process.
21 But since Your Honor's agreed to undo that
22 Order ---

23 THE COURT: Right.

24 MR. GAMBRELL: --- and right now is when the
25 appropriate time for this Court to decide under



1 Rule 53(b), that a Demand for Jury Trial has
2 been made, to un-refer it, send it back to the
3 Circuit Court.

4 THE COURT: The whole case, not just your
5 Counterclaims?

6 MR. GAMBRELL: The whole case. And that's what
7 53(b) says. It doesn't say the non- -- the
8 jury trial matters, it says the matter.

9 THE COURT: Okay.

10 MR. GAMBRELL: And so ---

11 THE COURT: So you want ---

12 MR. GAMBRELL: --- it is then back to the Circuit
13 Court to figure out how it's structured, what
14 trial in the future, but I think 53(b)
15 constrains this Court into doing exactly what
16 I have asked for; which is I've demanded a jury
17 trial. You've indicated that you're going to
18 undo the Order, so that means this case is now
19 alive again. So now my Jury Trial Demand has
20 been active. They filed a Reply to the jury
21 trial and they filed ---

22 THE COURT: Uh-huh.

23 MR. GAMBRELL: --- a Reply to my Counterclaims.

24 THE COURT: But ---

25 MR. GAMBRELL: And so, now we're active.



1 THE COURT: Okay. But now your position is -- I
2 want to make it clear, I want to understand how
3 your position is. Your position is I can't
4 hear a Motion for Summary Judgment today?

5 MR. GAMBRELL: That's correct, Your Honor, because
6 as soon as the demand for the jury trial has
7 been made, it -- the language in the Rule is
8 non-discretionary. It says the Master shall
9 return the matter.

10 THE COURT: So I can't hear a Motion for Summary
11 Judgment?

12 MR. GAMBRELL: That's correct, Your Honor. Because
13 you -- because as soon as I made that Jury
14 Trial Demand back on June 1st ---

15 THE COURT: Uh-huh.

16 MR. GAMBRELL: --- this Court was required to un-
17 refer it.

18 THE COURT: So you're saying I lost jurisdiction,
19 right?

20 MR. GAMBRELL: That's correct, under the Rule;
21 that's what the Rule says. I'm not ...

22 THE COURT: No, no, go ahead. I'm ---

23 MR. GAMBRELL: I mean, and I think that's what these
24 two cases -- and I think particularly that's
25 what Salon Proz says. Certainly, the first



1 part that -- what I'm referring to in that case
2 is the highlighted part in the back, which
3 interprets Rule 53.

4 THE COURT: Uh-huh.

5 MR. GAMBRELL: And 53(b) is absolutely clear that
6 once a jury trial demand has been made,
7 whenever it is made, so long as it's timely ---

8 THE COURT: Uh-huh.

9 MR. GAMBRELL: --- you've allowed us to file a
10 response to the pleading and you said file an
11 answer. That provoked the Miller's right to
12 not only file an answer, but also their
13 counterclaims. They filed the Counterclaims as
14 soon as they were -- they did and they assert
15 a Demand for Jury Trial. It's right there on
16 the face of the pleading. This Court was
17 required under 53(b) to send it back.

18 THE COURT: Okay.

19 MR. GAMBRELL: So -- and that was done well before
20 they filed their Motion for Summary Judgment.

21 THE COURT: Now when was their Motion for Summary
22 Judgment filed?

23 MR. GAMBRELL: Like 12 days ago.

24 THE COURT: 12 days ago?

25 MR. GAMBRELL: Right. I mean, it's ---



1 THE COURT: Did you -- did you file an affidavit in
2 response to it?

3 MR. GAMBRELL: Your Honor, it was scheduled within
4 the time of filing an affidavit, but we were
5 going to rely on 53(b) to send it back.

6 THE COURT: Does he have an affidavit today in
7 response to ---

8 MR. GAMBRELL: No, Your Honor.

9 THE COURT: --- to the Motion for Summary Judgment?

10 MR. GAMBRELL: No, Your Honor.

11 THE COURT: Okay. All right, yes, sir?

12 RESPONSE BY MR. JAMES:

13 MR. JAMES: Your Honor, just briefly. George James,
14 and I was hired to represent the HOA in
15 response to the Counterclaims filed by the
16 defendants.

17 THE COURT: Uh-huh.

18 MR. JAMES: And I would submit that we would agree
19 that the Order was mistakenly filed by you, but
20 that does not do anything to set aside the
21 Default that was previously entered. And I,
22 unfortunately, was involved in the case the day
23 these depositions were taken, but Default has
24 been entered because of their failure to move
25 to set aside and their failure to reply. You



1 granting them the opportunity to file an answer
2 doesn't do anything to -- absent a formal order
3 that ---

4 THE COURT: Uh-huh.

5 MR. JAMES: --- specifically lays out the
6 satisfactory explanation and compliance with
7 the Wham factors. Typically in Circuit Court,
8 answers are filed along with the motion to set
9 aside default, that typically when you get to
10 the end, it's saying we filed an answer, we're
11 ready to go, there's no prejudice. But in this
12 case, there has been no formal order that has
13 stated that they have satisfied the
14 satisfactory of explanation in the Wham factors
15 to have the default set aside. So in our
16 opinion, they're still in default, absent an
17 order from Your Honor that says they are no
18 longer in default.

19 THE COURT: Okay.

20 CONTINUED RESPONSE BY MS. TROTTER:

21 MS. TROTTER: Additionally, Your Honor, again, I'm
22 not aware of anything that says that Your Honor
23 could not hear a Motion for Summary Judgment.
24 To answer the question that you posed to the
25 defendants, whether they wanted a jury trial,



1 the testimony in the depositions was they want
2 compensated for their time appearing at the
3 deposition. They couldn't give me any other
4 damages.

5 THE COURT: Okay.

6 MS. TROTTER: We're ready to proceed based solely on
7 the deposition testimony of the defendants ---

8 THE COURT: So ---

9 MS. TROTTER: --- as well as an Affidavit of
10 Attorney's Fees.

11 THE COURT: When were the depositions taken?

12 MS. TROTTER: Two weeks ago.

13 THE COURT: And you filed a Motion for Summary
14 Judgment after the depositions?

15 MS. TROTTER: Yes, Your Honor.

16 THE COURT: Okay. Now, you have no reason -- this
17 is a counterclaim for who -- I've never -- I
18 don't think I've ever heard the argument that
19 I didn't have jurisdiction over a motion for
20 summary judgment once the case has been
21 referred.

22 CONTINUED REPLY BY MR. GAMBRELL:

23 MR. GAMBRELL: Right.

24 THE COURT: You're saying the case should never have
25 been referred because you demanded a jury trial



1 in your Counterclaim?

2 MR. GAMBRELL: That's correct, Your Honor.

3 THE COURT: The case -- the whole case should not
4 have been referred.

5 MR. GAMBRELL: The whole case should not be here.

6 THE COURT: But ---

7 MR. GAMBRELL: It should be gone, it should be back
8 to the Circuit Court.

9 THE COURT: So you don't want a bifurcation here?

10 MR. GAMBRELL: I want a bifurcation in the Circuit
11 Court, not here.

12 THE COURT: And I don't -- and you're saying I don't
13 have the authority to do it?

14 MR. GAMBRELL: No, Your Honor.

15 THE COURT: I don't ---

16 MR. GAMBRELL: Not now; the Circuit Court could say,
17 we want Judge Strickland to have the non-jury
18 foreclosure ---

19 THE COURT: Uh-huh.

20 MR. GAMBRELL: --- portion, but that's not a
21 decision the Clerk gets to make, that's a
22 decision the Circuit Court has to make. This
23 Order of Reference was signed by the Clerk of
24 Court, which as Salon Proz notes, once jury
25 trial has been demanded, the Circuit -- the



1 Clerk of Court doesn't have the power to do
2 that. All the Court can do under 53(b) is send
3 it back.

4 THE COURT: And you're saying that this action was
5 reffered by the Clerk?

6 MR. GAMBRELL: It was, Your Honor.

7 THE COURT: Because it was reffered by the Clerk
8 because the defendants were in default?

9 MR. GAMBRELL: At the time.

10 THE COURT: Okay.

11 MR. GAMBRELL: But we had filed an answer, which
12 Your Honor directed me to do, which is exactly
13 what I did.

14 THE COURT: Okay. And I directed you to do that sua
15 sponte or on your request?

16 MR. GAMBRELL: It was sua sponte.

17 THE COURT: I see. Okay, so -- my critics say I'm
18 just too nice. You've mentioned Rule 53(b),
19 have you read Rule 53(c)?

20 MR. GAMBRELL: Yes, Your Honor.

21 THE COURT: Okay. Now you're saying that it should
22 never have been referred, but Rule 53(b)
23 outlines the powers that I have once it is
24 referred.

25 MR. GAMBRELL: Right.



1 THE COURT: And you want to publish that or do you
2 want me to publish it?

3 MR. GAMBRELL: You can publish it, Your Honor.

4 THE COURT: Okay. Thank you. "Once referred, the
5 Master or Special Referee shall exercise all
6 power and authority which a circuit judge
7 sitting without a jury would have in a similar
8 matter." Okay. Which I think kind of trumps
9 your theory that I don't have the power to hear
10 a motion for summary judgment.

11 MR. GAMBRELL: Well -- but -- and I think, Your
12 Honor, you need to go back to 53(b).

13 THE COURT: Okay.

14 MR. GAMBRELL: See, here's the -- it is once
15 referred, is the critical part of (c).

16 THE COURT: Okay.

17 MR. GAMBRELL: The way 53(b) reads is, "In an action
18 where the parties consent," ---

19 THE COURT: All right.

20 MR. GAMBRELL: --- which we didn't, in default,
21 which we no longer -- which we're no longer in
22 default 'cause we have an answer, in a fore- --
23 action for foreclosure, which this is ---

24 THE COURT: Uh-huh.

25 MR. GAMBRELL: --- if it's legal to do a



1 foreclosure, "referred to a Master or Special
2 Referee by order of a Circuit Court" "or the
3 Clerk of Court. In all other actions, the
4 Circuit Court may, upon application of any
5 party or upon its own motion, direct a
6 reference of some or all of the" case --
7 "causes of action in a case. Any party may
8 request a jury" tri- -- "a jury pursuant to
9 Rule 38" or "on any or all issues triable of
10 right by jury and, upon the filing of a jury
11 demand, the matter shall be returned to the
12 Circuit Court."

13 THE COURT: Uh-huh.

14 MR. GAMBRELL: "A case shall not be referred to a
15 Master or Special Referee for the purpose of
16 making a report to the Circuit Court. The
17 Clerk shall promptly provide the Master or
18 Special Referee with a copy of the Order of
19 Reference."

20 THE COURT: Uh-huh.

21 MR. GAMBRELL: So in other words, Your Honor, you
22 don't get to get to see to get the power to
23 hear my motion, because the moment on June 1st
24 when I filed my Jury Trial Demand, this Court
25 was required to kick it back. In other words,



1 it is, for purposes of today, under Rule (b),
2 it is no longer referred. What 53(b) requires
3 is simply an administrative action by you ---

4 **THE COURT:** Uh-huh.

5 **MR. GAMBRELL:** --- to send it back to the Clerk of
6 Court for the Circuit Court to now deal with
7 it. You no longer have a reference under (c).
8 In other words, the only way you get to (c), is
9 if it's proper for you to have it today, and
10 it's no longer proper for you to have it.

11 **THE COURT:** All right. Let me hold your Motion in
12 abeyance and I'm going to go ahead and hear
13 argument on the Motion for Summary Judgment at
14 this time. Let me hold your Motion in
15 abeyance.

16 **MR. GAMBRELL:** Your Honor, I'll have to -- my
17 problem with that is that because it affects
18 mode of right to trial, I have a right to
19 instant appeal. And if I allow -- and if I
20 participate -- if we go forward with a Motion
21 for Summary Judgment, that could be construed
22 as a waiver of my right to jury trial.

23 **THE COURT:** Be construed by whom?

24 **MR. GAMBRELL:** By the Circuit Court -- I mean, by
25 the Court of Appeals with the Supreme Court as



1 a waiver. And I -- so, therefore, you're
2 putting me in a procedural bias that I can't
3 get out of.

4 THE COURT: Well, no, no. I mean, it's -- you've
5 made it very clear you're not waiving your
6 right to a jury trial at this point. You've
7 demanded it, and your position is that I don't
8 have a right to hear a Motion for Summary
9 Judgment on the case as a whole because it
10 should have been sent back pursuant -- and you
11 want it sent back. You filed an answer.

12 MR. GAMBRELL: That's correct.

13 THE COURT: All right. Right. So, okay, I
14 understand your position and -- but some of
15 your motions, I'm gonna -- we're going to go
16 forward with the Motion for Summary Judgment.
17 I'm curious of what was said in the deposition,
18 basically.

19 MR. GAMBRELL: Well, Your Honor, here's the other
20 problem.

21 THE COURT: Okay.

22 MR. GAMBRELL: The depositions were not given to us
23 until Thursday of last week for my clients.
24 They have agreed to read and sign.

25 THE COURT: Okay.



1 MR. GAMBRELL: I ---

2 THE COURT: Well -- they -- I don't think your
3 client's are gonna change anything that was
4 said, are they?

5 MR. GAMBRELL: No, Your Honor.

6 THE COURT: When you read and sign it, you just
7 simply correct -- make sure your name is
8 spelled right. Making sure, you know, things
9 like that are, you know, typographical errors
10 are corrected ---

11 MR. GAMBRELL: That's correct, Your Honor, but we
12 don't have a finalized deposition transcript so
13 -- but, I mean, it says it's been sworn to by
14 her. She can't -- the Clerk -- I mean, a court
15 reporter can't do it until she certifies it's
16 done.

17 THE COURT: Who was the court reporter?

18 MS. TROTTER: Brittany Van Nort with Garber was the
19 court reporter.

20 THE COURT: Uh-huh.

21 MS. TROTTER: She has included a certification that
22 the deposition was taken and recorded, the
23 right to sign was not waived. The transcript
24 was delivered on July the 25th, and as of the
25 date -- as of July 26th, the read and sign



1 documents had not been received by this office,
2 but other than that, she affirms that this was
3 a testimony taken under oath and a transcript
4 of it.

5 THE COURT: All right, I understand. Let me ask you
6 -- I'm sorry Mr. James. Mr. Gambrell, have you
7 had a chance to read the deposition?

8 MR. GAMBRELL: I have not, Your Honor.

9 THE COURT: Were you present ---

10 MR. GAMBRELL: It was delivered on Thursday.

11 THE COURT: Were you present at the deposition?

12 MR. GAMBRELL: I was.

13 THE COURT: Okay.

14 MR. JAMES: And, Your Honor, I just wanted to put on
15 the record I was not present at the deposition,
16 however, I was provided the transcripts and I
17 have had the opportunity to review them and I
18 am ready to proceed today.

19 RULING OF THE COURT:

20 THE COURT: Okay. All right. Your objection's duly
21 noted, Mr. Gambrell, and we will proceed with
22 the arguments on the Motion for Summary
23 Judgment.

24 MS. TROTTER: May I approach, Your Honor?

25 THE COURT: Yes, ma'am.



1 MS. TROTTER: This is a copy of the memorandum and
2 exhibits as well as an Affidavit ---

3 THE COURT: Okay.

4 MS. TROTTER: --- of Rayleen Dugas, it was e-filed
5 this morning, Your Honor.

6 THE COURT: Okay.

7 MOTION FOR SUMMARY JUDGEMENT BY MS. TROTTER:

8 MS. TROTTER: Your Honor, the plaintiff's
9 counterclaims allege that the Association
10 refused their payment or returned their
11 payments instead of accepting them for the
12 purpose of generating this lawsuit and dragging
13 out attorney's fees.

14 THE COURT: Uh-huh.

15 MS. TROTTER: In the deposition, Ms. Miller
16 testified that she owes \$180 for every year
17 that she didn't pay. She testified that she
18 had not paid for 2014, 2015, 2016, and 2017.
19 She admitted she had not made a payment since
20 2014, but would not admit that she owed the
21 2018 assessment. Rayleen Dugas' affidavit
22 establishes that that assessment was due
23 January the 1st, and therefore, that 2018
24 assessment is due. Ms. Miller did not contest
25 that she had not paid that.



1 Mr. Miller's testimony was similar. \$180
2 for four years, that's '14, '15, '16, and '17.
3 Mr. Miller testified he believed the 2018
4 assessment was not due until December 31st,
5 2018. He had no evidence for that; I'm unaware
6 of any evidence in the record. As I mentioned,
7 I haven't gotten my discovery responses yet
8 that were due on Friday, but I'm unaware of any
9 evidence that the defendants could submit that
10 would say that that 2018 assessment is
11 currently -- is not currently due.

12 The other charges the Association are
13 seeking is interest. The interest is in the
14 amount of \$191.45. When asked in their
15 deposition, the defendants testified that they
16 didn't know if the interest was correct because
17 they didn't know if it was calculated
18 correctly. And just because it says it's on
19 paper doesn't make it so. So just because the
20 restrictive covenants say the interest is due
21 doesn't make it so.

22 The other charges the Association are
23 seeking are attorney's fees and costs. When
24 asked about those in the deposition, the
25 defendants testified that they didn't hire that



1 law firm and so they should not be responsible
2 for my attorney's fees; and that they didn't
3 believe \$400 was reasonable for sending a
4 letter.

5 I have an Affidavit of Attorney's Fees if
6 the -- if Your Honor is so inclined to grant
7 summary judgment on the liability issue. It
8 has detailed time entries supporting our
9 request in this matter.

10 **THE COURT:** Uh-huh.

11 **MS. TROTTER:** Same thing with the costs. We have a
12 certification of costs for Your Honor's
13 consideration.

14 The assessments that my client is seeking,
15 that the defendants in large part do not
16 contest, are \$900. The interest is \$191.45.
17 The costs have been \$1,653.60. The large
18 majority of that was for deposition
19 transcripts. And the attorney's fees are
20 \$8,707.50, for a total debt of \$11,452.55.
21 Defendants admit they haven't made any
22 payments.

23 When we started to go over the counterclaims
24 issue, I asked the defendants if they had ever
25 mailed any payments in to my client, and they



1 stated no. I asked them if they had -- if the
2 defendant -- if the plaintiff had returned
3 those payments, and I believe Ms. Miller said
4 I just told you I didn't send any, so, of
5 course, they didn't mail them back to me. So
6 I read to her paragraph 34 of the Counterclaim
7 that says, the HOA, by and through its agents,
8 return defendants' assessment payments, inside
9 of accepting them for the purposes of
10 generating this lawsuit. I asked Ms. Miller
11 and Mr. Miller if they had any information
12 about that allegation in their counterclaims,
13 and they both stated, no, they had no
14 information about that. They both stated they
15 didn't even read the Counterclaim before it was
16 filed.

17 The breach of contract claim is the same;
18 the HOA unlawfully refused to accept those
19 payments. The HOA filed a lien in order to
20 justify higher fees, costs, and attorney's
21 fees. Again, the defendants admitted they
22 never paid anything. At most, the defendants
23 said, I called you, I tried to work something
24 out with you and every time we were ready to
25 pay, we owed more. Mr. Miller talked at length



1 about negotiations that he had with my office
2 on payment plans. And at most, what he has
3 alleged is that he made an offer that my client
4 didn't accept. He admitted he never offered to
5 pay the full balance. He admitted he never
6 even offered to pay \$720 which was the
7 undisputed amount of assessments according to
8 Mr. Miller.

9 Refusing to settle for terms favorable or
10 acceptable to the defendants cannot be the
11 basis for an abuse of process or a breach of
12 contract claim. I also asked the defendants
13 what their damages had been. The testimony was
14 their time here tod- -- time at the deposition.
15 They testified that they had -- had to hire Mr.
16 Gambrell; they could not provide me any
17 contract or any statute that would entitle them
18 to reimbursement for Mr. Gambrell's fees. They
19 couldn't tell me what their fee agreement was.
20 They stated they had not paid anything and had
21 not been billed anything, and basically
22 couldn't give me any amount of damages that
23 they would be entitled to as a result of that.

24 Your Honor, in an abundance of caution, I
25 have addressed in my memo this idea that the



1 plaintiff -- that the defendants have not been
2 allowed -- or have not been able to use and
3 enjoy the Association's common areas. So
4 there's an allegation in their Counterclaim
5 that says that the HOA has failed to maintain
6 the common areas from 2013 to 2016; that's
7 paragraph 8. Paragraph 9 says the HOA is
8 attempting to collect dues and fees despite not
9 providing services commiserate with those fees.
10 Those allegations are not pled in the original
11 contract section, but in their deposition, Ms.
12 Miller and Mr. Miller testified that the area
13 behind their house is common areas. And they
14 believe that the Association has a right to
15 make that area something they can use and
16 enjoy, because pursuant to the restrictive
17 covenants, the owners have an easement for use
18 and enjoyment of that common area. And it's
19 current condition is not something they use and
20 enjoy. They admitted the Association has done
21 nothing to block them from that area. They
22 admitted that the common area has been
23 substantially that condition since before they
24 bought their property. I've attached for Your
25 Honor a copy of the subdivision plat for the



1 homestead. And that subdivision plat shows
2 that the area in question is actually wetlands.
3 So the Association is restrained in what it
4 could even build on that area.
5 Additionally, the restrictive covenants don't
6 have any obligation for the Association to
7 improve that area. They're very clear that
8 that common area shall be used in the manner
9 the Board deems appropriate, the rules and
10 regulations.
11 Your Honor, the only thing the Millers did
12 not admit in their deposition was that the
13 restrictive covenants that I handed them was
14 the governing restrictive covenants for the
15 Homestead Subdivision. Ms. Miller testified
16 she remembered initialing that document at
17 closing, and the document I handed her did not
18 have her initials. She also admitted that the
19 document I handed her was dated prior to her
20 purchasing the property. Attached to my memo
21 and outlined in my memo, it is the chain of
22 title for this property. The restrictive
23 covenants are found in Book 1169 at Page 3279,
24 and they reference parcels A, B, and C as shown
25 on plat 859 at page 540. I've attached that



1 plat for Your Honor's reference. I've also
2 attached for Your Honor the chain of title to
3 the Miller's property. It starts with
4 BRICKYARD 44, LLC. They are the declarant
5 under the restrictive covenants. They deeded
6 lots 62 and 67 to Schumacher Homes. Lot 62 is
7 the Millers' lot. So Exhibit C to my memo is
8 a deed to Schumacher Homes and it references
9 three deeds. The three deeds by which
10 BRICKYARD 44 got that property. And it also
11 references a plat, plat 1163 at page 2534.
12 That same plat is referenced in the Millers'
13 deed from Schumacher. And that plat is
14 attached as Exhibit E, and it states it's a
15 bonded plat of The Homestead Subdivision. This
16 is the same property that is described in the
17 legal description on Exhibit A, which is the
18 restrictive covenants.

19 I'm unaware of any evidence that the
20 defendants are in possession of, much less have
21 been presented in the record, that would state
22 that the restrictive covenants in Book 1169 at
23 Page 3279 are not the restrictive covenants for
24 The Homestead Subdivision. To do so would be
25 a little bit difficult for the defendants as



1 they admitted freely that they are members of
 2 the Association. They admit there is a
 3 contract between the Association and the
 4 Millers. They admit that that contract is a
 5 covenant. Throughout the deposition, when I
 6 asked them which contract my client allegedly
 7 breached or promise they allegedly broke, they
 8 would point to Exhibit 3, which was the
 9 restrictive covenants. And when I would say I
 10 thought that wasn't the restrictive covenants,
 11 when we talked about a promise the Association
 12 broke, it was always in Exhibit 3. When we
 13 talked about something the Millers were
 14 required to do, they said, well I don't know if
 15 this is the right document. I'm unaware of any
 16 other restrictive covenants for The Homestead
 17 Subdivision. The chain of title is clear
 18 throughout the various deeds that these are
 19 restrictive covenants that encumber the
 20 defendants' property.

21 I haven't received any discovery responses
 22 or affidavit in opposition to this Motion.
 23 Trial has been scheduled in this matter since
 24 May the 25th, so I think it would be -- I
 25 assumed that this Motion would be heard before



1 trial, which was always scheduled for July the
2 30th, and have not received any affidavits in
3 opposition. I think Mr. James might have
4 something to say about the abusive process and
5 breach of contract.

6 THE COURT: All right. Let's take a brief recess.

7 MS. TROTTER: Uh-huh.

8 THE COURT: Three minutes.

9 MS. TROTTER: Okay.

10 THE COURT: All right. I'll be right back.

11 MS. TROTTER: Okay. Thank you.

12 (Off the record from 10:35 a.m. until 10:38 a.m.)

13 THE COURT: Go ahead, Mr. James.

14 RESPONSE BY MR. JAMES:

15 MR. JAMES: Yes, Your Honor, just very briefly. The
16 plaintiffs in the Counterclaim -- defendants
17 would rely on the memo. And I would reiterate
18 the majority, if not all of what Ms. Trotter
19 said. But I just wanted to briefly go over the
20 counterclaims that have been alleged against
21 the HOA.

22 THE COURT: Sure.

23 MR. JAMES: It appears that the crux of the abuse of
24 process and breach of contract claims center
25 around either a non-existent debt and/or the



1 HOA's refusal or return of that debt -- or
 2 payments, excuse me. As Ms. Trotter laid out,
 3 the defendants both testified that they did owe
 4 some, there was a little bit of a disagreement
 5 as to the total amount, but they agreed that
 6 they owed some monies to the HOA. And in
 7 response, they -- but they have not made those
 8 payments. And as for the return of payments,
 9 the HOA can't return payments that have not
 10 been made, and I would again reiterate Ms.
 11 Trotter's argument about the area that's listed
 12 as a common area that's actually wetlands, and
 13 the HOA can't do anything to develop or
 14 construct on that area. And we would just ask
 15 that this Court grant summary judgment based on
 16 those grounds.

17 **THE COURT:** All right. Mr. Gambrell?

18 **RESPONSE BY MR. GAMBRELL:**

19 **MR. GAMBRELL:** Part of the problem, Your Honor --
 20 and you asked me if I had filed an affidavit in
 21 opposition, and part of the problem is, Your
 22 Honor, that the affidavits that were attached,
 23 for one, no attorney's fees affidavit is
 24 attached to the motion that I have. If she has
 25 one, I would like to see it so that we can



1 respond at that part. But the affidavit that
2 particularly they submitted this morning was
3 not an affidavit that was attached to the
4 actual motion. And the rules require that if
5 a motion and action spoke -- to be supported by
6 a motion, supported by an affidavit they are to
7 file the affidavit with the motion, that wasn't
8 done. So I didn't have anything to respond to.

9 Additionally, Your Honor, the Millers'
10 argument is centered upon the argument I'd
11 advanced to you at the last hearing, which is
12 that what they, the plaintiffs, have asserted
13 as a right to foreclosure. And that right of
14 foreclosure is bound up in the covenants which
15 they say they can be foreclosed through equity.
16 But, Your Honor, long standing case law in this
17 state says that covenants and restrictions are
18 contracts.

19 THE COURT: Uh-huh.

20 MR. GAMBRELL: And that if it's a contract and that
21 the plaintiff -- and the defendants haven't
22 paid, their true cause of action is a breach of
23 contract, not for foreclosure. Foreclosure is
24 a statutory remedy. All of the foreclosures
25 that we do in this state, apart from this



1 homeowner's association foreclosure, is
2 supported by a statute. Your Honor is well
3 aware mortgage foreclosure is a statute. It's
4 been a statute in an estate since the founding.
5 And that it's been amended and changed over the
6 course of years but the General Assembly
7 created this hybrid cause of action because, at
8 the time the state was still a colony,
9 foreclosure was dealt with by the courts of
10 chancery, not with the courts of law. And so
11 when we abolished chancery and we formed
12 everything into the single court, the General
13 Assembly and the court system have allowed
14 foreclosures to remain an equitable cause of
15 action.

16 THE COURT: Uh-huh.

17 MR. GAMBRELL: Because at the time of the founding,
18 it was not a legal cause of action. Your
19 Honor, home owners associations weren't even
20 dreamed of when that actually occurred. And so
21 it is our position, Your Honor, that any
22 assertion of foreclosure by the Association,
23 in/of itself, is an abuse of process and also
24 a breach because there's essentially no right
25 of foreclosure. All they can do is sue for



1 breach and damages.

2 So anything that they've done in that regard
3 is illegal and considered therefore an abuse.
4 And so that there's justification for the
5 expansion of their attorney's fees is based on
6 the idea that they're foreclosing and they've
7 done all this work in order to do a foreclosure
8 ---

9 THE COURT: Uh-huh.

10 MR. GAMBRELL: --- when all that was required was a
11 simple pleading in order to sue for breach of
12 contract. So, Your Honor, that's the crux of
13 our abuse of process and/or our breach of
14 contract claim, and it is not dependent upon
15 the testimony of the plaintiffs -- I mean of
16 the defendants, excuse me, it's based on the
17 case law. And I submitted to Your Honor a
18 memorandum in that regard. And so I would rely
19 on that previously submitted memorandum, as far
20 as the law here today as far as our opposition
21 to summary judgment and why we believe the
22 abuse of process should go forward, which is
23 why we believe that the Circuit Court should
24 deal with this and not you under the rule that
25 essentially that this is -- whether they have



1 a right to foreclosure or not is bound up in
2 this process by which they've -- they
3 accelerate the debt, they make it to where they
4 threaten -- they scare the potential
5 defendants, like the Millers, into not agreeing
6 with their debt. And I would also point out,
7 Your Honor, that part of the problem is that
8 without the Affidavit of Attorney's Fees, I
9 can't challenge the lawfulness of the debt and
10 challenge the necessity of the attorney's fees.

11 THE COURT: Uh-huh.

12 MR. GAMBRELL: I can't challenge where they -- I
13 mean, Ms. Trotter had a law clerk in the
14 deposition, whether that was double billing.
15 I mean, without the actual attorney's fees, I
16 can't -- essentially, Your Honor, being asked
17 to -- that she has an itemized attorney's fees
18 that she hasn't produced.

19 THE COURT: Now do you have any reason to believe
20 that the statements your client gave in the
21 deposition were untrue?

22 MR. GAMBRELL: No, Your Honor.

23 THE COURT: So she told the truth when she said they
24 never sent any payment?

25 MR. GAMBRELL: That's correct, Your Honor.



1 THE COURT: Okay.

2 MR. GAMBRELL: But our argument is broader than just
3 that. It's bound up in this, and it goes into
4 this challenge of whether we even should be
5 here as far as the foreclosure in the first
6 place.

7 THE COURT: Well, now, now -- but you can't -- in a
8 motion for summary judgment, you can't crit- --
9 mention the facts by contradicting yourself.

10 MR. GAMBRELL: No, Your Honor.

11 THE COURT: All right. All right. And I
12 understand. I've heard your argument very
13 frequently and I, you know, and I'm not
14 unsympathetic to it, however, I think just
15 recently there's been a ruling on that issue.

16 REPLY BY MS. TROTTER:

17 MS. TROTTER: There is, Your Honor. It's a case
18 called Erdogan versus Preserve at Charleston
19 Park, et al. It's a District Court case. Mr.
20 Gambrell is plaintiff's counsel in that. May
21 I approach, Your Honor?

22 THE COURT: Sure, sure.

23 MS. TROTTER: This is just a copy of the Order of
24 Dismissal.

25 THE COURT: Okay.



1 MS. TROTTER: It was dismissed on 12(b)(6). I think
2 the language that Your Honor is talking about
3 is on page six.

4 THE COURT: Uh-huh.

5 MS. TROTTER: It says plaintiff's alleged use of
6 lien and foreclosures is impermissible
7 essentially. This, however, is simply not the
8 case. Contrary to the plaintiff's assertion,
9 South Carolina courts recognize the rights for
10 liens to be imposed based upon restrictive
11 covenants under those liens to ultimately be
12 foreclosed upon.

13 THE COURT: Uh-huh.

14 MS. TROTTER: And it goes on to cite case law. It's
15 the same case law that Your Honor has cited in
16 orders where you have found the Association has
17 no -- a right to do this as well as various
18 masters across the state and circuit court
19 judges.

20 THE COURT: Uh-huh.

21 MS. TROTTER: And I would point out, Your Honor,
22 that's simply not what the defendants have
23 pled.

24 THE COURT: Uh-huh.

25 MS. TROTTER: They very -- they make very specific



1 factual allegations in their counterclaims that
2 talk about my clients returning payments to
3 them for the purpose of generating this
4 lawsuit. Now I will say that that is the same
5 exact factual allegations that Mr. Gambrell
6 asserted in three other cases across this state
7 with different lawyers, HOAs and managers. So
8 I did think it was a little peculiar that he
9 found four clients that have the same exact
10 factual scenario happen to them. But Ms.
11 Miller was very clear in her testimony that she
12 has no idea what that's about. She never
13 claimed that. We did not incur -- the record
14 is clear that on May the 14th when we were here
15 for what we thought was going to be a final
16 foreclosure hearing, we were asking for \$2,075
17 in attorney's fees. That amount has increased,
18 not because we filed a foreclosure action and
19 had to do a bunch of work, but because we
20 received counterclaims from the defendants with
21 these factual allegations about returning and
22 refusing money that we had to investigate. We
23 had to get the facts. We had to determine if
24 that was something the Association faced
25 potential liability for.



1 THE COURT: Uh-huh.

2 MS. TROTTER: We didn't get a response from the
3 defendants that said, we agree we owe the
4 assessments for these years; we don't like
5 everything else and we don't think you can
6 foreclose on us. If we had gotten that
7 response, there wouldn't be this amount of
8 attorney's fees at issue. I think the
9 Affidavit that has been submitted merely
10 authenticates the business record of the
11 Association, which is an account ledger. The
12 factual allegations that are at issue here are
13 whether they stated a cause for abuse of
14 process and for breach of contract. And they
15 haven't done that. So if there was some fact
16 out there that would support those claims, I
17 think that the defendants had to submit that
18 Affidavit before today.

19 You don't have to respond to an affidavit.
20 You've got to present any scintilla of evidence
21 to the court, and that hasn't been done. And
22 for that reason, I believe the Association is
23 entitled to summary judgment on all of their
24 issues. If the defendants would like to
25 question me about attorney's fees, I'm happy to



1 provide testimony about that. I think the
2 right to attorney's fees is to pay them on Your
3 Honor agreeing to summary judgment on the other
4 issues first.

5 THE COURT: All right. Mr. Gambrell ---

6 MR. GAMBRELL: Yeah.

7 THE COURT: --- how much money does your client
8 think they owe the homeowners' association?

9 RESPONSE BY MR. GAMBRELL:

10 MR. GAMBRELL: Less than a \$1,000, Your Honor.

11 THE COURT: Okay.

12 MR. GAMBRELL: And I would point out, Your Honor,
13 that we filed our Answer on June 1st and this
14 case has been in procedural limbo. Obviously,
15 we would amend our Answer but, I mean, this
16 case has not even been pending, from our point
17 of view, with the Answer for 60 days.

18 THE COURT: Uh-huh.

19 MR. GAMBRELL: And that is an extraordinarily short
20 time window in order for us -- we haven't had
21 a chance to serve discovery. We haven't had
22 the chance to do any of the sort of things that
23 in a normal case that we would do. And under
24 the Rule, this case is not even subject for
25 trial for a hundred days. And so the fact --



1 under the jury trial ---

2 THE COURT: Uh-huh.

3 MR. GAMBRELL: --- motion. So, Your Honor, to this
4 point, essentially, as far as the terms of the
5 Court, Your Honor, this is extremely rapid. In
6 other words, this is very precipitous as far as
7 the timing of both the motion. We haven't had
8 a chance to service our own discovery. We
9 haven't had a -- I mean, we've just barely had
10 a reply back.

11 THE COURT: Uh-huh.

12 MR. GAMBRELL: So, Your Honor, to the extent that --
13 at this point, summary judgment is very, very
14 premature. There's lots of case law that says
15 that the plaintiff -- that a claimant party
16 should have sufficient time in order to prove
17 -- in order to prove their allegations. And I
18 would submit to Your Honor in the case law, 60
19 days -- I mean, 60 days is certainly not
20 enough.

21 THE COURT: Okay.

22 MR. GAMBRELL: And that to the extent that there's
23 some errors in our pleadings, Your Honor, we
24 would ask the chance to fix it in order to
25 include those foreclosure allegations. The



1 District Court said that they didn't disagree
2 with me, they just said it -- that the courts
3 haven't had the -- that the District Court
4 Judge Gergel said it's not accepted because the
5 courts have allowed it. He didn't make a
6 ruling to say that it's allowable.

7 THE COURT: Uh-huh.

8 MR. GAMBRELL: And obviously the Supreme Court
9 hasn't weighed in on it.

10 THE COURT: Uh-huh.

11 MR. GAMBRELL: Which we would obviously submit they
12 would have an opportunity to do at some point,
13 hopefully soon. So, Your Honor, to the extent
14 that we're here -- I don't even think we should
15 be here today.

16 THE COURT: Uh-huh.

17 MR. GAMBRELL: Because the matter should be back to
18 the Circuit Court. And to the extent that this
19 Court is pressing forward with a motion ---

20 THE COURT: Uh-huh.

21 MR. GAMBRELL: --- in order to hear this Motion for
22 Summary Judgment, I don't even think that's
23 proper. I don't think it's proper under the
24 Rule. I don't think it's proper under existing
25 case law as far as timing is concerned. I



1 mean, we just haven't simply had enough time.

2 THE COURT: Now the case -- federal case that was
3 ruled upon by Judge Gergel, how did that court
4 get jurisdiction over this -- over that
5 particular case?

6 MR. GAMBRELL: It was under -- alleged under the
7 FDCPA. And those foreclosure hearings are
8 still pending. Some of them have been
9 dismissed for one reason or another.

10 THE COURT: Now, the FDCPA is the Fair Debt
11 Collection Practice Act?

12 MR. GEMBRELL: That's correct, Your Honor.

13 THE COURT: Okay.

14 REPLY BY MS. TROTTER:

15 MS. TROTTER: Your Honor, I believe the plaintiffs
16 also alleged abuse of process against the other
17 -- the HOAs and the managers. HOAs cannot be
18 subject to the FDCPA because they're the
19 original creditor. And so I believe there was
20 an abuse of process claim that these
21 foreclosures were an abuse of process because
22 they weren't allowed without a statute, which
23 sounds like the same argument that the
24 defendant is making today.

25 MR. GAMBRELL: Your Honor, the federal court just



1 simply returned to the state causes of action.

2 THE COURT: Uh-huh.

3 MR. GAMBRELL: He didn't rule on them, he just said
4 I'm declining supplemental jurisdiction.

5 THE COURT: Okay. All right. Anything further
6 today?

7 MR. GAMBRELL: No, Your Honor.

8 RULING OF THE COURT:

9 THE COURT: Okay. I'm ready to Rule on the -- on,
10 Mr. Gambrell, all of your Motions. Those two,
11 we took them under and held in abeyance, are
12 denied. And as far as the Motion for Summary
13 Judgment, that Motion's going to be granted in
14 part. Summary judgment will be granted as to
15 the counterclaims and because I believe there's
16 a general dispute, diminution of material fact
17 as to what they owe, or if they owe anything,
18 the rest of the Motion for Summary Judgment is
19 denied.

20 MS. TROTTER: Thank you, Your Honor.

21 THE COURT: All right.

22 NOTICE OF IMMEDIATE APPEAL BY MR. GAMBRELL:

23 MR. GAMBRELL: Your Honor, we would ask at this time
24 since you have denied our Motion, to allow us
25 to exercise our right to immediate appeal.



1 THE COURT: Oh, yeah.

2 MR. GAMBRELL: And so the rest of this hearing
3 should be ---

4 THE COURT: I guess you're way ahead of me. I was
5 going to say the hearing on the merits that we
6 originally scheduled for today is going to be
7 continued because I -- you know, you may need
8 some more discovery on the reining that you
9 seek.

10 MR. GAMBRELL: Yes, sir.

11 THE COURT: So I'm happy to do it. All right.

12 MS. TROTTER: Thank you, Your Honor.

13 THE COURT: Ms. Trotter, I'll hear from you -- well,
14 electronically I'll hear from you.

15 MS. TROTTER: Yes, Your Honor.

16 THE COURT: I'll see it come in after this. All
17 right. Thank you all.

18 (There being nothing further, the hearing concluded
19 at 10:53 a.m.)
20
21
22
23
24
25



CERTIFICATE

This is to certify that the within hearing consisting of fifty five (55) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 28, 2018.

Sarah Costilow

Sarah Costilow
Court Reporter

Notary Public for South Carolina
My Commission Expires: May 29, 2028



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COURT OF COMMON PLEAS FOR THE
STATE OF SOUTH CAROLINA
FOR THE COUNTY OF RICHLAND

The Homestead Property	)	
Owners' Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.:
vs.	)	2017-CP-40-06634
	)	
Wanda J. Miller and	)	
Orlando F. Miller,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF: WANDA J. MILLER

DATE: Monday, July 16, 2018
TIME: At 10:44 A.M.
LOCATION: LAW OFFICES OF:
McCabe Trotter & Beverly
4500 Fort Jackson Boulevard
Suite 250
Columbia, SC 29209
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Brittany Van Nort, Court
Reporter and Notary Public

APPEARANCES:

FOR PLAINTIFF:

McCabe, Trotter & Beverly, P.C.
Stephanie C. Trotter, ATTORNEY AT LAW
4500 Fort Jackson Boulevard, Suite 250
Columbia, SC 29209
(803) 724-5008

FOR DEFENDANTS:

The Law Offices of Jason E. Taylor, P.C.
Brian C. Gambrell, ATTORNEY AT LAW
1122 Lady Street, Suite 1020
Columbia, SC 29201
(800) 351-3008

ALSO PRESENT: Brian Gavigan and Orlando Miller

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1	(Covenants, Conditions, and Restrictions)	
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STIPULATIONS

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * *

1 WANDA J. MILLER,
2 HAVING BEEN FIRST DULY SWORN,
3 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

4 EXAMINATION

5 BY MS. TROTTER:

6 Q. Thank you, Ms. Miller. I want to
7 introduce myself. My name is Stephanie Trotter,
8 and I'm the attorney for the Plaintiff in this
9 matter. Do you understand that you are under oath
10 today just as if you were in a courtroom?

11 A. Yes.

12 Q. Okay. Have you ever had your
13 deposition taken before?

14 A. Yes.

15 Q. Okay. Can you tell me what that was
16 related to?

17 A. Work.

18 Q. Who was the -- were you a party to that
19 lawsuit?

20 A. What do you mean when you say --

21 Q. Were you a plaintiff or a defendant in
22 that lawsuit?

23 A. I'm sorry?

24 Q. What was that lawsuit about?

25 A. It was a work issue. So it was like an

1 agency versus somebody that worked at the agency.
2 So it was on the agency side of that.

3 Q. Okay. Were you -- was your deposition
4 taken as a witness to the case?

5 A. Yes.

6 Q. Okay. And about when was that, was
7 your deposition taken?

8 A. Maybe eight years ago.

9 Q. Okay. Is there anything that would
10 prevent you from thinking clearly today or
11 testifying truthfully today?

12 A. No.

13 Q. Are you under the influence of any
14 medication?

15 A. No.

16 Q. Okay. I'm going to go over just a few
17 ground rules. If you need a break at any time,
18 just let me know, and we can take a break. We have
19 a court reporter here who is transcribing
20 everything that we say. So, please, try and speak
21 clearly so that she can catch it.

22 I know a lot of times we give nonverbal cues
23 like shaking our head no or nodding our head yes,
24 but the court reporter can't get that on the
25 record. So, please, say "Yes" or "No" as opposed

1 to head shakes, and I'll try to remind you if I see
2 it happening.

3 If I ask you a question, you have to answer that
4 question unless your counsel tells you not to,
5 okay?

6 A. Okay.

7 Q. You cannot ask your counsel any
8 questions once we start unless we agree that that's
9 proper under the rules, okay?

10 A. Okay.

11 Q. Can you tell me your full name for the
12 record?

13 A. Wanda J. Miller.

14 Q. Okay. And when were you born?

15 A. February 26, 1966.

16 Q. Okay. And where are you originally
17 from?

18 A. Due West, South Carolina.

19 Q. Okay. What's your home address today?

20 A. 261 Kenmore Park Drive, Columbia, South
21 Carolina 29223.

22 Q. Who else lives at that property with
23 you?

24 A. My family.

25 Q. Okay. And who is that?

1 A. My husband and our daughter.

2 Q. What's your husband's name?

3 A. Orlando Miller.

4 Q. And what's your daughter's name?

5 A. Faith Miller.

6 Q. How old is your daughter?

7 A. She's 22 -- wait a minute, she's 22 I
8 think.

9 Q. Okay.

10 A. Let me see. She was born in 92. So
11 actually that makes her 26.

12 Q. Okay. How long have you and Orlando
13 been married?

14 A. We been married for a year and a half
15 as far as -- I don't know if you want to say legal,
16 but we had common law marriage many years before
17 that.

18 Q. Can you tell me approximately when you
19 got together?

20 A. 2005, around.

21 Q. Okay.

22 A. For the second time.

23 Q. Were you legally married before?

24 A. Yes.

25 Q. Okay. When was the first time that you

1 became married to Mr. Orlando Miller?

2 A. That was in 1985.

3 Q. Okay.

4 A. '85 or '86.

5 Q. Did you legally divorce sometime after
6 that?

7 A. Yes.

8 Q. When was that?

9 A. That was around -- maybe around '92 --

10 Q. Okay.

11 A. -- I think.

12 Q. And how long were you not in a
13 relationship together?

14 A. From around '92 to around 2005 as far
15 as being divorced. I mean we've been friends, and
16 we've been civil to each other, and we've known
17 each other for the whole time because we have kids.

18 Q. Okay. How many children do you have
19 together?

20 A. We have four kids together.

21 Q. Okay. Do you have -- do you have any
22 other children other than those four children?

23 A. No.

24 Q. Okay. Do you own any other property in
25 South Carolina, what we call real property? So

1 land or land with a house on it, anything like
2 that?

3 A. Yes.

4 Q. What property is that?

5 A. It's a house.

6 Q. Okay. What's the address of that
7 house?

8 A. It's 213 Oak Creek Circle.

9 Q. Okay. And who owns that property with
10 you?

11 A. No one.

12 Q. Anybody? Okay. Who lives in that
13 property now?

14 A. No one.

15 Q. Is that property vacant?

16 A. Yes.

17 Q. Okay. When was the last time someone
18 lived in that property?

19 A. About a year -- maybe a year and a half
20 ago. I'm not really sure.

21 Q. And who lived in the property then?

22 A. Our daughter and her family.

23 Q. Okay. Did your daughter pay rent
24 during the time that she lived there?

25 A. Yes.

1 Q. And how much was that rent per month?

2 A. About 900.

3 Q. Okay. Are you -- do you have a
4 mortgage on that property?

5 A. Yes.

6 Q. Are you current on that mortgage?

7 A. No.

8 Q. Okay. Is that property in foreclosure
9 yet?

10 A. Very close to being.

11 Q. Okay. Have you ever been married to
12 anyone other than Orlando Miller?

13 A. No.

14 Q. Okay. What's your occupation?

15 A. Human resources director.

16 Q. And where do you work?

17 A. South Carolina Commission for the
18 Blind.

19 Q. Okay. How long have you been there?

20 A. Since 2008.

21 Q. Do you have any relatives that live in
22 Richland County, other than Mr. Miller and Faith
23 Miller?

24 A. Yes.

25 Q. Who are they?

1 A. My daughter. Another daughter.

2 Q. What's her name?

3 A. Francesca.

4 Q. Miller?

5 A. Yeah, Miller Jenkins, yeah.

6 Q. Okay. Anybody else who lives in
7 Richland County?

8 A. I'm not really sure if it's Richland
9 County or not, but, you know, I have some family in
10 the area.

11 Q. Okay. Can you tell me their names?
12 I'll explain to you why I'm asking. Your attorney
13 has requested a jury trial in this matter, and so
14 if we have to pick a jury, we'd like to know if any
15 of your relatives are in the pool so that we can
16 ask the clerk to excuse them.

17 A. And what did you need to know?

18 Q. The names of any relatives you believe
19 may live in Richland County?

20 A. Franklin McAdams, Holly McAdams, and
21 their families.

22 Q. Okay. Who in their families might live
23 in Richland County?

24 A. Well, their wives and their children.

25 Q. Are their children over the age of 18?

1 A. No.

2 Q. Okay. Can you think of any other
3 family that lives in Richland County or may live in
4 Richland County?

5 A. I can't think of anyone --

6 Q. Okay.

7 A. -- right now.

8 Q. Sure. Can you tell me about your
9 educational background? Where did you go to high
10 school?

11 A. In Due West, South Carolina.

12 Q. Okay. And did you graduate from high
13 school?

14 A. Yes.

15 Q. Did you attend school after high
16 school?

17 A. Yes.

18 Q. And what was that? Did you attend
19 college?

20 A. Yes.

21 Q. Where did you go?

22 A. Erskine College and Southern Wesleyan.
23 Used to be college. Now it's university.

24 Q. Did you receive a degree from either of
25 those institutions?

1 A. Yes.

2 Q. What degree or degrees did you receive?

3 A. Bachelor's degree and master's degree.

4 Q. And what were those in?

5 A. Bachelor's in human resources and

6 master's in management human resources.

7 Q. Was the Bachelor's from -- I'm sorry,
8 where did you say? Erskine or Winthrop?

9 A. No. I said I went to Erskine, and I
10 also went to Southern Wesleyan.

11 Q. Okay. Did you receive a degree from
12 Erskine?

13 A. No.

14 Q. Okay. So both of your degrees are from
15 Southern Wesleyan?

16 A. Correct.

17 Q. I'm sorry, I don't know where Winthrop
18 popped into my head. Do you have any other
19 licenses or certificates in any other field of
20 work?

21 A. I can't think of anything right now.

22 Q. Okay. Have you ever been arrested?

23 A. No.

24 Q. Have you ever been involved in a
25 lawsuit before?

1 A. Define -- when you say involved,
2 what --

3 Q. Have you ever been a party? So have
4 you ever brought a lawsuit against someone, or has
5 someone ever brought a lawsuit against you?

6 A. I think so. I'm not really sure. You
7 know there's always those class action lawsuits
8 that you'll get a card in the mail, and it'll say
9 you are part of this class action lawsuit, "dah,
10 dah." So I would say yes.

11 Q. Okay. Anything other than those class
12 action type lawsuits?

13 A. Yes.

14 Q. Okay. What -- what was that?

15 A. Some judgments.

16 Q. Okay. And who were those judgments
17 with?

18 A. I can't really remember right now.

19 Q. Okay. I've got a list of some cases
20 that you were -- that -- I'm sorry, that Wanda
21 Miller in Richland County was named a party to. I
22 think their might be another Wanda Miller in
23 Richland County. So I'm going to go down the list,
24 and if you'll tell me whether or not you believe it
25 was a case you were in involved in, I would

1 appreciate it.

2 There was a case in 2009 where The Homestead
3 Property Owners' Association sued Wanda and Orlando
4 Miller. Would that be you?

5 A. Yes.

6 Q. Okay. There is a mortgage foreclosure
7 in 2009 where Wells Fargo was the lender. Would
8 that be you?

9 A. You said it's a what on file? Wells
10 Fargo sounds familiar, but what did you call it.

11 Q. It was a mortgage foreclosure in 2009.
12 Started in 2009.

13 A. I'm a little confused on that one.
14 Wells Fargo was our lender, but I'm not -- I don't
15 remember a foreclosure.

16 Q. Have you ever been in foreclosure with
17 Wells Fargo?

18 A. Again, I can't say foreclosure. We've
19 had some financial problems, but I don't remember
20 foreclosure.

21 Q. Okay. Do you remember ever being
22 served with a lawsuit from Wells Fargo?

23 A. I'm not -- I think -- I'm not really
24 sure.

25 Q. Okay.

1 A. It's possible I could be mixing that up
2 with something else.

3 Q. I have a 2000 -- I'm sorry, 2010 case
4 that Bank of America brought seeking a judgment?

5 A. Yes.

6 Q. Yes, that is you?

7 A. Yes.

8 Q. Okay. There's a 2010 case where
9 Precision Recovery Analytics requested a judgment.
10 Is that you?

11 A. Yes.

12 Q. And do both of those entities have a
13 judgment against you today?

14 A. One does.

15 Q. Which one?

16 A. The second one, Precision.

17 Q. Okay. What happened to the Bank of
18 America case?

19 A. It's resolved or I don't know.

20 Q. Did you pay the amount they were asking
21 for?

22 A. No.

23 Q. When you say, "It's resolved," what do
24 you mean?

25 A. I haven't heard anything from them.

1 Q. Okay. Do you have any reason to
2 believe that their judgment was denied by the
3 court?

4 A. Yes.

5 Q. Okay. And why do you believe that?

6 A. Because there was no follow through
7 from them. So I don't think that that's -- I think
8 it's just -- I think it's just resolved.

9 Q. When you say, "resolved," what do you
10 mean?

11 A. It means I don't have to worry about it
12 anymore.

13 Q. Okay. There's a 2011 case brought by
14 Jonathan and Christine Moore against Wanda Miller.
15 Is that you?

16 A. Yes.

17 Q. Okay. What was that case about?

18 A. They were renters, and I don't remember
19 the specifics of the case. I do remember that they
20 were renters, and there was an issue with some part
21 of the rental agreement.

22 Q. Okay. What were they renting from you?

23 A. A house.

24 Q. Which house?

25 A. 213 Oak Creek Circle.

1 Q. Okay. What was the outcome of that
2 suit?

3 A. It was resolved.

4 Q. How was it resolved?

5 A. In our favor.

6 Q. Did the judge rule in your favor?

7 A. Yes.

8 Q. Okay. There are two cases from 2012
9 where Quail Run Apartments is the plaintiff and
10 Wanda Miller is listed as the defendant. Is that
11 you?

12 A. No.

13 Q. Okay. There's a 2013 case where
14 Waterford, LLC is the plaintiff, and I believe they
15 were doing business as an apartment complex, and
16 Wanda Miller is the defendant. Is that you?

17 A. No.

18 Q. Okay. And there's a 2015 case where
19 Midland Funding is the plaintiff, and Wanda Miller
20 is the defendant. Is that you?

21 A. Yes.

22 Q. Okay. What was that case about?

23 A. An unpaid bill.

24 Q. What kind of bill?

25 A. I don't remember.

1 Q. Was Orlando Miller a party to that
2 lawsuit as well?

3 A. No.

4 Q. If you don't remember what the lawsuit
5 is about, who would know what that lawsuit is
6 about?

7 A. I told you it was a credit card, didn't
8 I? Or --

9 Q. Okay. I'll ask you again. What was
10 the lawsuit about?

11 A. I really don't remember the specifics
12 about it.

13 Q. You just said that you thought you told
14 me it was a credit card. Was it about a credit
15 card?

16 A. It could have been. I don't remember
17 the specifics about it. I'm really trying.

18 Q. Okay. What was the outcome of it?

19 A. It's still -- it's still there.

20 Q. The case is still there or -- is the
21 case still there?

22 A. Yes.

23 Q. Okay. Has a judge ruled in that case
24 yet?

25 A. I don't understand when you say has a

1 judge ruled. I mean I don't -- help me understand
2 what you're asking.

3 Q. Sure. Is there a judgment in that case
4 yet?

5 A. Yes.

6 Q. Is that judgment against you?

7 A. Yes.

8 Q. Okay. Have you paid that judgment?

9 A. No.

10 Q. Okay. Has Midland Funding attempted to
11 execute that judgment against you?

12 A. What do you mean when you say have they
13 tried to execute?

14 Q. Has a sheriff come to your house with a
15 copy of that judgment and asked you what assets you
16 may have?

17 A. I don't remember anybody asking about
18 any assets.

19 Q. Okay. You've told me about two
20 properties that you own. Are there any other
21 properties in the state -- are there any other
22 properties that you own?

23 A. No. I can't think of anything else.

24 Q. Okay. The Oak Creek Circle property --
25 do you have any equity in that property?

1 A. I hope so.

2 Q. How much equity do you believe you have
3 in that property?

4 A. I don't know.

5 Q. What do you believe that property is
6 worth?

7 A. I don't know. I mean I haven't had it
8 appraised. I don't know really. I can't be exact
9 with that.

10 Q. If you had to give a ballpark estimate,
11 what would you guess the property is worth?

12 A. I don't -- I don't really know.

13 Q. Do you think it's worth more than
14 \$100,000?

15 A. I hope so.

16 Q. Do you think it's worth more than
17 \$125,000?

18 A. I hope so.

19 Q. Do you think it's worth more than
20 \$150,000?

21 A. I don't understand. I don't know what
22 the property is worth. I have not had it
23 appraised. So I don't understand.

24 Q. You told me that you hoped it was more
25 than 100, and you hoped it was more than 125. Do

1 **you think it's worth more than 150,000?**

2 A. I still don't understand. Could you
3 just re-ask the question a different way or
4 something because I told you I don't understand. I
5 hope it's worth a zillion, billion dollars. So
6 you're asking me to pinpoint something that I
7 can't. I'm not an appraiser.

8 **Q. You're familiar with the condition of**
9 **that property; correct?**

10 A. Yes, I am.

11 **Q. You're familiar with the location that**
12 **that property is located in; correct?**

13 A. Yes.

14 **Q. You're familiar with what you've paid**
15 **for that property; is that correct?**

16 A. Yes.

17 **Q. Can you explain to me why you can't**
18 **tell me whether you believe the property is worth**
19 **more than \$150,000?**

20 A. Because I'm not an appraiser. I don't
21 know how much the property is worth.

22 **Q. So you don't have any opinion on the**
23 **value of that property?**

24 A. I really don't know exactly how much
25 the property is worth. I -- I have not had the

1 property appraised.

2 Q. So you do not have an opinion on the
3 value of that property today?

4 A. A million, zillion dollars. Anybody
5 wants their property to be worth a lot of money.

6 Q. So it's your testimony today that that
7 property is worth a million, zillion dollars?

8 A. It's my testimony that I hope the
9 property is worth a lot of money.

10 Q. It's your testimony that you can't tell
11 me whether that property is worth a \$150,000; is
12 that correct?

13 A. My testimony is that I'm not an
14 appraiser, and I can't put a number on that because
15 I honestly just don't know. I can only hope.

16 Q. So you do not have an opinion today
17 about the value of that property?

18 A. I hope the property is worth a lot.
19 I'm not an appraiser so I can't really put a number
20 on it.

21 Q. So you do not have an opinion about the
22 value of that property today? If you do have an
23 opinion about the value of that property, I need
24 for you to tell me what that value is?

25 A. I hope it's worth a lot.

1 Q. Okay. What other property do you own
2 in South Carolina?

3 A. I can't think of anything else right
4 now.

5 Q. Do you own any vehicles?

6 A. Yes.

7 Q. Okay. What kind of vehicles are those?

8 A. Let's see. We've got a Mazda, and we
9 have a Ford.

10 Q. What kind of Mazda?

11 A. It's an SUV.

12 Q. Okay. What year is it?

13 A. I'm thinking it's around 2009, I'm
14 thinking.

15 Q. Okay. Is there a lien attached to that
16 car?

17 A. Yes.

18 Q. Okay. Who's that lien with?

19 A. Santander.

20 Q. Okay. Approximately how much do you
21 own on that lien?

22 A. I really don't know.

23 Q. Do you have an opinion about what that
24 car is worth today?

25 A. No.

1 Q. Okay. I think you said you also have a
2 Ford. Is that Ford in your name?

3 A. It's in both our names.

4 Q. Okay. What kind of Ford is it?

5 A. It's a -- this is one of those things
6 if you hadn't asked me, I would of been able to
7 tell you.

8 Q. Is it a sedan or SUV?

9 A. It's a car, yes.

10 Q. Okay. Is it four doors or two?

11 A. It's four doors..

12 Q. What year is it?

13 A. It might be a 2013. I'm not really
14 sure.

15 Q. Okay. Do you have a lien on that car?

16 A. Yes.

17 Q. Okay. And who is that lien with?

18 A. Oh, gosh. Let me think for a minute.
19 I can't -- I can't think who that's with right now.

20 Q. Okay. Do you know how much you owe on
21 that lien?

22 A. No, not really.

23 Q. Do you have a guess as to what you owe?

24 A. I can't -- no, I'm not going to try to
25 guess.

1 Q. Do you think that you have equity in
2 either of those vehicles?

3 A. Probably not. Cars depreciate, so.

4 Q. Okay.

5 A. Could I get some water?

6 Q. Sure.

7 (WHEREUPON A BREAK WAS TAKEN FROM

8 11:08 A.M. UNTIL 11:11 A.M.)

9 Q. Okay, Ms. Miller, before we went off
10 the record, we were talking about some cars that
11 you own. Do you own any land that does not have a
12 building on it?

13 A. No. I can't think of anything right
14 now.

15 Q. Okay. Do you -- do you own any boats
16 or jet skis or any other vehicle of that nature
17 that's not a car?

18 A. No.

19 Q. Do you own any jewelry?

20 A. Yes.

21 Q. What do you think the value of that
22 jewelry is?

23 A. It's invaluable.

24 Q. Okay. Are there any liens on that
25 jewelry? Do you owe anybody money for that

1 jewelry?

2 A. No.

3 Q. What jewelry do you own?

4 A. My rings that I have.

5 Q. And for the record, is that a diamond
6 wedding ring and band?

7 A. Yes.

8 Q. Okay. And what's the other ring?

9 A. It's engagement ring I guess you could
10 call it.

11 Q. Okay. Do you own any businesses, or
12 are you a director or officer of any businesses?

13 A. No.

14 Q. Did you bring any documents with you
15 today?

16 A. No.

17 Q. Okay. Did you review any documents
18 prior to your deposition?

19 A. No.

20 Q. Okay.

21 MS. TROTTER: Mark this.

22 (WHEREUPON PLAINTIFF'S EXHIBIT NO.1
23 WAS MARKED FOR IDENTIFICATION PURPOSES
24 (6 PAGES) - DEPOSITION NOTICE)

25 Q. Ms. Miller, I'm going to hand you

1 what's been marked as Plaintiff's Exhibit 1
2 entitled Notice of Deposition of Defendant Wanda J.
3 Miller. Have you seen this document before?

4 A. I don't understand this document. It
5 says, "To Brian C. Gambrell --

6 Q. Well, first, Ms. Miller --

7 A. -- as counsel for Defendant April C.
8 Evans."

9 Q. My question was whether you had seen
10 this document before?

11 A. I'm not really sure.

12 Q. You're not sure if you've ever seen
13 this piece of paper before or a Copy of this
14 document before?

15 A. I can't say that I have.

16 Q. Okay. Can you turn to the second page?
17 Do you see about the middle of the page where it
18 says, "You are commanded to produce and permit
19 inspection"? It's the second box with an X in it.

20 A. Yes.

21 Q. Okay. Did you bring any of those
22 things with you today?

23 A. I did not bring anything with me today.

24 Q. Is there a reason you didn't bring
25 anything as commanded by the subpoena?

1 A. I don't have anything. I don't
2 understand what you're asking me. Let me read this
3 sentence here.

4 **Q. Sure.**

5 A. Anything that I have, I would of given
6 it to my attorney.

7 **Q. Did you bring it with you today?**

8 A. I did not bring anything with me today.

9 **Q. Is there a reason you didn't bring what**
10 **was requested in the subpoena?**

11 A. Anything that I would of had, I would
12 of given to my attorney.

13 **Q. That doesn't answer any question. Is**
14 **there a reason you didn't bring it with you today**
15 **as requested by the subpoena?**

16 A. That's my answer to the question.
17 Because anything I would of had, I would of given
18 it to my attorney.

19 **Q. Did you know that you had been**
20 **subpoenaed to bring documents with you today?**

21 A. I knew I was supposed to be here today.

22 **Q. When did you know that you were**
23 **supposed to be here today?**

24 A. I can't tell you exact date that I
25 found out but --

1 Q. Was it before today?

2 A. Yes.

3 Q. Okay. Was it the beginning of July?

4 A. Again, I can't tell you when. A couple
5 weeks maybe.

6 Q. Okay. Did you review any documents in
7 preparation for your deposition today?

8 A. No.

9 Q. Other than your lawyer, who did you
10 discuss this deposition with?

11 A. My husband.

12 Q. Okay. And what did y'all discuss?

13 A. We discussed that we had to be here
14 today.

15 Q. Did you discuss any of the facts
16 involved in this case?

17 A. Well, what we discussed was just our
18 opinion of having to do this.

19 Q. And what's your opinion -- strike that,
20 please. When you say, "having to do this," what do
21 you mean?

22 A. Come to have a deposition done today
23 and the reason.

24 Q. Okay. What was your opinion about
25 having to be deposed?

1 A. We just couldn't understand why we are
2 in this situation.

3 Q. And what do you mean by "in this
4 situation"?

5 A. Here today.

6 Q. Just so I understand, you don't
7 understand why you have to be deposed in this case
8 today?

9 A. I don't understand why we are at this
10 point that we have to be here today.

11 Q. Okay. I'm going to mark as Plaintiff's
12 Exhibit 2 a deed for lot 62 in The Homestead
13 Subdivision.

14 (WHEREUPON PLAINTIFF'S EXHIBIT NO.2

15 WAS MARKED FOR IDENTIFICATION

16 PURPOSES (2 PAGES) - DEED)

17 Q. Have you seen this document before?

18 A. I would say it looks familiar, yes.

19 Q. Is that your signature in the bottom
20 left-hand corner?

21 A. Yes.

22 Q. Okay. Is this the deed to the property
23 that you own at 261 Kenmore Park Drive?

24 A. Well, I would say yes because it has
25 deed on it.

1 Q. Okay. Do you have any reason to
2 believe this document is something other than that,
3 other than the deed to the property at 261 Kenmore
4 Park Drive?

5 A. No.

6 Q. Okay. I'm going to mark as Plaintiff's
7 3 a document titled Covenants, Conditions, and
8 Restrictions-The Homestead.

9 (WHEREUPON PLAINTIFF'S EXHIBIT NO.3
10 WAS MARKED FOR IDENTIFICATION PURPOSES
11 (18 PAGES) - COVENANTS, CONDITIONS, & RESTRICTIONS)

12 Q. Have you ever seen this document?

13 MR. GAMBRELL: Let's go talk about it.

14 (WHEREUPON A BREAK WAS TAKEN FROM
15 11:21 A.M. UNTIL 11:34 A.M.)

16 Q. All right. Ms. Miller, we went off the
17 record so that you had a chance to discuss what's
18 been marked as Plaintiff's Exhibit 3 with your
19 counsel. Did you guys have any discussion other
20 than Plaintiff's Exhibit 3?

21 A. I mean --

22 MR. GAMBRELL: No.

23 A. That's what we talked about.

24 Q. Okay. Have you ever seen Plaintiff's
25 Exhibit -- the document that's contained in

1 **Plaintiff's Exhibit 3 before?**

2 A. It looks familiar.

3 Q. Okay. Before today have you read this
4 document?

5 A. Well, it looks familiar. It doesn't
6 look like the exact one that I have seen before.

7 Q. Okay. Have you read the covenants,
8 conditions, and restrictions for The Homestead
9 before?

10 A. Yes.

11 Q. In their entirety?

12 A. Yes.

13 Q. Okay. When was that?

14 A. Before buying the house.

15 Q. Okay. Does this document appear to be
16 a complete copy of the covenants for The Homestead
17 to your knowledge?

18 A. I'm not really sure. The format -- it
19 just seems to be a little bit different than what I
20 remember.

21 Q. Okay. If you'll turn to the last page
22 of Exhibit 3, does it have a signature on it?

23 A. Yes.

24 Q. Does it look like there's anything that
25 would follow that signature that would indicate

1 **this is not a complete copy of the covenants?**

2 A. I don't understand what you mean.

3 **Q. Do you have any reason to believe that**
4 **this isn't a complete copy of the covenant?**

5 A. I don't know if it is or not. It looks
6 like a different format than what I've seen before.

7 **Q. How is it different?**

8 A. Well, for one thing I remember
9 initialling off on the covenant. That's one thing.
10 So I really couldn't --

11 **Q. On the front page of Exhibit 3, is**
12 **there a date at the top?**

13 A. Can we go back to your question? You
14 asked me to go and look at the last page, and I
15 looked at the last page, which actually is the
16 deed.

17 **Q. It's the deed to --**

18 A. Yeah, but the -- were you talking about
19 the last page of the covenant itself or the page --
20 because when you said look at the last page, I just
21 went to the very last page.

22 **Q. Yeah, it looks like the deed got**
23 **attached to that exhibit. So if you'll like at the**
24 **page that at the top says, "Book R 1169/3294."**

25 A. Okay.

1 Q. Do you see a date right next to that?

2 A. Date 4-5-2006.

3 Q. Was that before you bought your
4 property in Kenmore? I mean, I'm sorry, at Kenmore
5 Park?

6 A. Yes.

7 Q. Okay. So would there be any reason for
8 your signatures to appear on this document?

9 A. The reason would be is that I remember
10 initialling off on each page of the covenant.

11 Q. Could that have been your copy of the
12 covenants, or would that be the copy that was filed
13 with the county?

14 A. I don't know what was filed with the
15 county. All I know is I had to sign off on each
16 page.

17 Q. Okay. And I'm going to ask you to turn
18 to the page that at the top says, "1169/3281." Are
19 you a member of The Homestead Property Owners'
20 Association?

21 A. I imagine I am.

22 Q. Is that a "Yes" or a "No"?

23 A. It's a yes.

24 Q. Okay. Can you tell me about the common
25 area that the Association owns in your

1 neighborhood?

2 A. It's not really a common area. There's
3 a swamp area behind my house that --

4 Q. Okay.

5 A. -- you can't really get to, and then
6 there's a -- near the front entrance, there's a
7 sign and --

8 Q. Okay. I'm going to hand you -- I'm
9 going to mark as Plaintiff's Exhibit 4 the account
10 statement from your homeowners' association.

11 (WHEREUPON PLAINTIFF'S EXHIBIT NO.4
12 WAS MARKED FOR IDENTIFICATION PURPOSES
13 (3 PAGES) - ACCOUNT STATEMENTS FOR HOA)

14 MR. GAMBRELL: Let's go talk.

15 MS. TROTTER: Brian, at the same time,
16 I'm going to go ahead and mark 5.

17 MR. GAMBRELL: We'll talk about them
18 separately.

19 MS. TROTTER: They're the same thing.
20 Mark this as Exhibit 5.

21 BY MS. TROTTER:

22 Q. This is also a statement from your
23 homeowners' association.

24 MS. TROTTER: You can discuss them
25 together, or you can file a protective order.

1 MR. GAMBRELL: We'll file a protective
2 order.

3 MS. TROTTER: Okay. Then let's get a
4 judge on the phone. Go ahead and call him.

5 MR. GAMBRELL: Or we can suspend it,
6 and I can file --

7 MS. TROTTER: I'm not suspending it.

8 MR. GAMBRELL: If you want me to
9 file --

10 MS. TROTTER: You can discuss --

11 MR. GAMBRELL: -- a protective order,
12 Stephanie, I have to go to the court and do it. I
13 can't file a protective order over the phone. I
14 can't get a judge on the phone because I mean --

15 MS. TROTTER: You can get Judge
16 Strickland on the phone, or you can discuss the
17 account statement together.

18 MR. GAMBRELL: They're separate
19 exhibits. I'm entitled to --

20 MS. TROTTER: Okay. I would like to
21 mark them as one exhibit. Could you change that to
22 Exhibit 4? Thank you very much.

23 (WHEREUPON A BREAK WAS TAKEN FROM

24 11:41 A.M. UNTIL 11:56 A.M.)

25

1 BY MS. TROTTER:

2 Q. Ms. Miller, we went off the record so
3 that you and your attorney could discuss what's
4 been marked as Plaintiff's Exhibit 4. Did y'all
5 discuss anything other than Plaintiff's Exhibit 4?

6 A. We talked about how old my daughter
7 was.

8 Q. Okay. Did you discuss anything else
9 other than Exhibit 4?

10 A. No, just what I said.

11 Q. Okay. Ms. Miller, tell me about the
12 contract between yourself and The Homestead
13 Property Owners' Association?

14 A. What -- what do you mean?

15 Q. Where can I find a copy of that
16 contract?

17 A. Are you talking about the covenant that
18 you just gave me?

19 Q. I'm talking about the contract that you
20 have referenced in your pleadings?

21 A. Are you talking about the covenant?

22 Q. I'm asking you where I can find the
23 contract between yourself and the homeowners'
24 association?

25 A. I don't understand what you mean. Are

1 you talking about the covenant?

2 Q. I'm asking you do you have a contract
3 between the Association and the homeowners' -- I'm
4 sorry, yourself and the homeowners' association?

5 A. I don't understand the question.

6 Q. Is there a contract between yourself
7 and the homeowners' association?

8 A. Can you please clarify because I asked
9 you for clarification? I asked you if you're
10 talking about the covenant, and you keep talking
11 about a contract. Is there a difference? I don't
12 understand.

13 Q. Do you believe the covenants are a
14 contract between yourself and the homeowners'
15 association?

16 A. I think that the covenant is the
17 covenant.

18 Q. Your counterclaim alleges that there's
19 a contractual relationship between yourself and the
20 homeowners' association. Where is that contract
21 located?

22 A. Again, are you speaking of the covenant
23 because I don't understand your question?

24 Q. Ms. Miller, I'm asking you -- you filed
25 a pleading with the court that states there's a

1 contractual relationship between yourself and the
2 homeowners' association. I'm asking you what that
3 contract is. Is it the covenants? Is it some
4 other document?

5 A. So, again, what is your question? Are
6 you asking me about the covenant because I need you
7 to be a little more clear?

8 Q. You alleged as a result HOA has
9 breached its contract with Defendants. What
10 contract were you speaking about?

11 A. Are you talking about the covenant?

12 Q. Ms. Miller, I'm asking you to explain
13 to me what you meant by contract. I don't know.
14 That's why I'm asking you the question.

15 A. Well, it must be the contract -- I mean
16 the covenant.

17 Q. So the covenant is the contract between
18 you and the Association?

19 A. Well, the covenant is the covenant. I
20 mean sometimes I think when folks don't know all
21 the legal terms to use, they might use a term that
22 might not be what the legal law says it is.
23 Covenant is this document that you have showed me.

24 Q. For the record you're referring to what
25 has been marked as Plaintiff's Exhibit 3?

1 A. Plaintiff's Exhibit 3 says, "Covenants,
2 Conditions, and Restrictions-The Homestead."

3 **Q. And is that the contract you allege the**
4 **Association has breached?**

5 A. I'm having difficulty with that
6 question.

7 **Q. You have made an allegation against my**
8 **client called breach of contract, and you said that**
9 **HOA has breached its contract with Defendants. Is**
10 **Plaintiff Exhibit's 3 the contract that you allege**
11 **has been breached?**

12 A. I'm not sure right now.

13 **Q. Did you read the counterclaim before it**
14 **was filed in this matter?**

15 A. I'm not sure right now.

16 **Q. You're not sure right now. When would**
17 **you be sure?**

18 A. Well, you know, you have all of the
19 documents that you knew you were going to ask me
20 about, and I'm just not sure if that's what I was
21 thinking at that time, that specific time.

22 **Q. I've asked you -- that's not what I**
23 **asked you. I asked you if you read this**
24 **counterclaim before it was filed?**

25 A. Well, you're holding the counterclaim

1 right now.

2 Q. Did you read the counterclaim before it
3 was filed?

4 A. Perhaps if you give me a copy.

5 Q. I'm not asking you about the
6 counterclaim. I'm asking you if you read it before
7 it was filed?

8 A. Again, it sounds like you're -- you're
9 confusing me actually.

10 Q. Ms. Miller, did you --

11 A. Could I see a copy of what you're
12 referring to?

13 Q. No, ma'am. Did you read the
14 counterclaim before it was filed in this matter?

15 A. Could the record show that I don't
16 understand the question?

17 Q. The attorneys will talk about the
18 record. I'm asking you if you read the
19 counterclaim before it was filed in this matter?

20 A. I don't know because I don't really
21 understand.

22 Q. Do you know what a counterclaim is?

23 A. Yes.

24 Q. Okay. Do you understand that a
25 counterclaim was filed in this lawsuit on your

1 **behalf?**

2 A. I don't -- you know, I'm really
3 confused right now because it sounds like we're
4 talking about something different than what I came
5 here to talk about.

6 Q. Okay. Do you understand that a
7 counterclaim has been filed on your behalf against
8 my clients in this matter?

9 A. I'll say yes.

10 Q. Okay. Did you read that counterclaim
11 before it was filed?

12 A. I don't know.

13 Q. Okay. Tell me about your claims
14 against my client?

15 A. I do not agree with what you all are
16 saying that we owe.

17 Q. Okay. What are your other claims?

18 A. You know, I -- I can't remember right
19 now. This is really just nerve-racking.

20 Q. Do you understand that your deposition
21 today is for the purpose of giving testimony
22 related to this case?

23 A. Yes, I do.

24 Q. Okay. But today you can't tell me what
25 your claims against the Association are?

1 A. Well, I've given you one. I'm just
2 telling you right now it's just -- this is really a
3 nervous position to be in right now, and I can't
4 really remember the others.

5 Q. Okay. I need for you to tell me what
6 your claims are. This is my chance to learn what
7 you know about this case. So now is the time for
8 you to tell me what your claims against the
9 Association were.

10 A. Well, I guess the claim is with the
11 Association --

12 Q. What does that mean?

13 A. -- and not with -- not with you.

14 Q. What do you mean your claim is with the
15 Association?

16 A. My claim is with the Association
17 charging us all this money. I don't agree with
18 that. I don't agree with there being -- there's --
19 you asked me about the common areas earlier, and
20 there really aren't any common areas for us to go
21 and have a get-together or something to that
22 effect. There's -- there's no -- there's not even
23 a sidewalk in our community, which I would -- I
24 would consider that a common area. And there's
25 just a lot of fees being charged that I don't -- I

1 don't understand any of that either.

2 Q. Okay. Are those all of your claims
3 against the Association?

4 A. I don't know. I'm trying to remember.
5 I'm trying to tell you as I remember.

6 Q. Is that all the ways -- strike that,
7 please. Can you tell me what your damages are in
8 this case?

9 A. When you say, "damages," what are you
10 referring to?

11 Q. You've asked the court to award you
12 actual and consequential damages fees and costs,
13 what would those be?

14 A. I don't think we should have to pay
15 those things that can't be accounted for.

16 Q. Okay. Do you -- do you contend that
17 the HOA owes you money?

18 A. If we were to have to pay all those
19 fees that I don't agree with, then yes, I would
20 think that they would owe us that money back. If
21 all of those extra fees and charges and all that
22 kind of stuff, then yes.

23 Q. Okay. Other than money that you may in
24 the future pay to the Association, what are your
25 damages?

1 A. Well, I been trying to explain them to
2 you. Again, this is -- when people are in this
3 seat, it's a hard seat to be in. So I'm trying to
4 explain it to you the best that I can.

5 Q. Do you contend that the Association
6 should have to pay you anything other than a refund
7 for any amounts you may wrongfully pay in the
8 future?

9 A. Repeat that again.

10 Q. I asked you if you thought the HOA owed
11 you any money, and you said -- I believe you said
12 if you have to pay the charges you disagree with,
13 then you think you should get that money back; was
14 that correct?

15 A. That sounds like what I said, yeah.

16 Q. Other than that money back, do you
17 contend that the Association should have to pay you
18 any money?

19 A. I can't think of anything right now.

20 Q. Well, now is the time to tell us. Do
21 you have any claim that the Association should pay
22 you any money, other than the amount we discussed
23 just now?

24 A. Well, I can't think of anything right
25 now. I know you'll be talking to my husband later.

1 So I can't think of anything right now.

2 Q. You're not aware of any money the
3 Association should have to pay you?

4 A. I can't think of anything right now. I
5 know you'll be talking to my husband later. So I
6 can't think of anything right now.

7 Q. I am going to take your husband's
8 deposition, but I'm asking for your testimony
9 today. Do you have any other damages?

10 A. At this moment I can't think of
11 anything.

12 Q. Okay. Who is Dana Rumer?

13 A. Who?

14 Q. Dana Rumer?

15 A. I don't know.

16 Q. Do you know why your counterclaim would
17 pray -- would say Defendant Dana Rumer prays that
18 the HOA be dismissed and the Defendants be awarded
19 cost?

20 A. Is that the president of the
21 homeowners' association? I don't -- I don't -- I
22 can't remember that right now.

23 Q. Okay. What costs have you incurred in
24 this matter?

25 A. Coming here. I'm out of work. Gas

1 back and forth.

2 Q. Back and forth to where?

3 A. Like here, you know.

4 Q. What costs had you incurred in this
5 matter as of June 1st, 2018?

6 A. I guess it would be my time.

7 Q. Okay. How much --

8 A. I can't think of anything else right
9 now.

10 Q. Okay. How much in attorneys fees have
11 you incurred in this matter?

12 A. I can't say that I've incurred
13 attorneys fees right now.

14 Q. Okay. Are you going to incur attorneys
15 fees in the future?

16 A. I don't know.

17 Q. Well, you've asked for fees in your
18 counterclaim. So I'm trying to figure out why you
19 asked for those if you haven't incurred them?

20 A. Well, you'll be talking with my husband
21 a little bit later, and maybe he can help because I
22 can't remember right now.

23 Q. I understand that you keep saying you
24 can't remember right now, but this is our chance to
25 get your testimony. So I need to know what your

1 testimony is. If your testimony is that your
2 husband handles that matter for your household, I'm
3 happy to ask him about it. But this is your chance
4 to tell me what your testimony is related to
5 attorneys fees.

6 A. When you speak to my husband, he can
7 talk to you about that because he does -- he
8 handles most of that.

9 Q. Okay. Do you claim that there is a
10 contract between you and the Association that would
11 award you fees and costs in this matter?

12 A. When you speak to my husband, perhaps
13 he can better understand you to respond.

14 Q. Ms. Miller, do you have any testimony
15 about a contract between you and the Association
16 that would grant you a right to attorneys fees and
17 costs?

18 A. Do I have any --

19 Q. Testimony. Do you know of any contract
20 -- do you know of any contract between yourself and
21 the homeowners' association that would grant you
22 attorneys fees and costs from the Association?

23 A. I don't really understand that question
24 because it sounds like it's like three parts to it.

25 Q. Are you aware of a contract between

1 yourself and the Association that would grant you
2 attorneys fees and costs from the Association?

3 A. I can't think of that right now. I
4 can't think of one right now.

5 Q. You don't know of any contract today
6 that grants you fees and costs from the
7 Association?

8 A. I can't think of anything right now.

9 Q. Well, today is your chance to tell me
10 about it. Do you have any facts or testimony
11 related to a contract between yourself and the
12 Association that would entitle you to fees and
13 costs?

14 A. I'm sorry, I just -- I can't -- I don't
15 understand the question, and so I don't know is my
16 answer.

17 Q. Plaintiff's Exhibit 3 is a copy of the
18 covenants. Are you aware of a contract between
19 yourself and the homeowners' association, other
20 than what might be contained in Plaintiff's Exhibit
21 3?

22 A. No.

23 Q. Okay. Can you show me where in
24 Plaintiff's Exhibit 3 that document would allow you
25 to recover attorneys fees and costs from the

1 **Association?**

2 A. I cannot do that.

3 Q. Okay. When was your last payment to
4 **the homeowners' association?**

5 A. I would say it was around sometime
6 2014, somewhere around there, about four years back
7 maybe.

8 Q. Okay. Have you paid any payments to
9 **the Association since that time?**

10 A. That was our last payment. We tried to
11 make a payment, but we were not able to.

12 Q. Okay. When did you try to make a
13 **payment?**

14 A. My husband was in negotiation with
15 them, and it seemed like each time we thought we
16 had something, and we'd call back to confirm, it
17 seemed like the amount would go up, and it would be
18 something different.

19 Q. Did you mail any payments to the
20 **Association since 2013?**

21 A. I can't say that we did. I remember
22 trying to negotiate something. My husband and I
23 were talking about that.

24 Q. Did you mail any payment -- I'm sorry,
25 **go ahead. Did you mail any payments to the**

1 **homeowners' association after January 1st, 2014?**

2 A. What I was saying is that it seemed
3 like we couldn't pin down an amount. Each time we
4 thought we had something, again, it seemed like the
5 amount went up that would be acceptable. And so we
6 have not mailed anything in.

7 **Q. You have not mailed any payments to the**
8 **Association since January 1st, 2014; is that**
9 **correct?**

10 A. Sometime in 2014 I'd say that would be
11 accurate -- we haven't mailed any payments in.

12 **Q. Did the Association return any payments**
13 **to you after January 1st, 2014?**

14 A. The Association didn't accept any
15 payments.

16 **Q. I asked you if they returned any**
17 **payments to you?**

18 A. Well, I don't understand because you
19 asked me if I sent any in, and I said no, and now
20 you're asking me if they returned anything. So I
21 don't understand.

22 **Q. I'm just asking you if the Association**
23 **returned any payments to you after January 1st,**
24 **2014?**

25 A. No.

1 Q. Okay. Did you attempt to make any
2 payments to the Association electronically; for
3 example, on a website or through bank draft after
4 January 1st, 2014?

5 A. I can't say for sure. It seems like we
6 tried to do something online, but it -- the system
7 wouldn't accept it, but I can't really -- I
8 couldn't tell you when that was or anything.

9 Q. Okay. Did the Association return any
10 payment to you that you made electronically after
11 January 1st, 2014?

12 A. Since there wasn't anything that they
13 accepted, there wasn't anything returned.

14 Q. Okay. Did you mail any payments to my
15 law firm in this matter?

16 A. What are -- I guess I'm confused. Are
17 you -- I thought you were -- okay. Orlando did a
18 lot of the negotiation, and I'm thinking that you
19 are the homeowners' association. You asked me all
20 those questions. I was speaking overall.

21 Q. Okay. So let me clarify the question.
22 You have testified that you did not mail any
23 payments to the Association after January 1st,
24 2014; is that right?

25 A. Yes.

1 Q. And by association, do you mean just
2 the homeowners' association, or does that statement
3 include their management company and their lawyer?

4 A. That's who I thought -- well, I guess I
5 should ask you that question. Is that what your
6 question to me entailed?

7 Q. My question was whether you had mailed
8 anything to the Association? My follow-up question
9 was to determine whether you may have mailed
10 anything to my law firm as the attorney for the
11 Association?

12 A. Okay. So we tried to negotiate some
13 things, and each time we thought we had something,
14 the amount would change. And so we would be kind
15 of like back to the drawing board again.

16 Q. So is that a, no, you did not mail any
17 checks or money orders to my law firm?

18 A. That's correct. I don't remember doing
19 that.

20 Q. Did my law firm return any payments to
21 you?

22 A. No. I don't remember getting any of
23 that.

24 Q. Did you attempt to make a payment
25 towards your Association balance on my law firm's

1 website?

2 A. There was a website. I really don't
3 know if it was yours or homeowners'. I don't know.

4 Q. Is that something --

5 A. But there was an attempt to try to make
6 a payment, yes.

7 Q. Who attempted to do that?

8 A. We both did.

9 Q. Okay. You attempted, but you don't
10 know which website it was on?

11 A. No, I don't remember that.

12 Q. Do you know approximately when that
13 was?

14 A. No, I can't tell you when that was.

15 Q. Do you have any printout or other
16 document that would help you figure out when that
17 was or what website that was?

18 A. No. I didn't bring anything with me
19 like that.

20 Q. Do you have anything at all, even if
21 you didn't bring it with you?

22 A. I can't remember if I do or not. I
23 don't know. There might be something on an e-mail
24 or something. I don't know.

25 Q. You testified you have not incurred any

1 attorneys fees in this matter. What is your fee
2 agreement with your attorney?

3 A. You know what? I don't know.

4 Q. Okay. Is there somebody that would
5 know that?

6 A. You can ask Orlando.

7 Q. Do you know if you signed a fee
8 agreement with your attorney?

9 A. I remember signing something. Whether
10 it's a fee agreement or what, I don't -- I don't
11 know. I don't remember.

12 Q. Which charges on Plaintiff's Exhibit 4
13 do you contest?

14 A. Okay. So on this -- on the page at the
15 top where it says, "Account Statement for Wanda and
16 Orlando Miller," I -- anything that's not the
17 assessment, the \$180, I don't -- I don't agree with
18 it.

19 Q. Okay. Why not?

20 A. Well, I don't know what this interest
21 is on here. I don't know how it's being charged as
22 far as the percentage. I don't know if any of this
23 is accurate.

24 Q. Okay. Why do you believe it may not be
25 accurate?

1 A. Well, I didn't add it up. I didn't --
2 I don't know, again, what this percentage is. I
3 don't know if that's calculated right. I don't
4 agree with that. I don't -- legal fees down here,
5 what is that? I don't know what that is.

6 **Q. Do you agree the Association has a**
7 **right to charge interest?**

8 A. Do I agree?

9 **Q. Um-hum (affirmatively responds.)**

10 A. No, I don't agree.

11 **Q. Why not?**

12 A. Because I don't think that they should.
13 I don't think -- I don't agree with that.

14 **Q. Is that in the contract with you and**
15 **the Association?**

16 A. I don't think it is. I don't remember.
17 All I can tell you is that I don't agree with it.

18 **Q. Why don't you take a look at**
19 **Plaintiff's Exhibit 3. The top, it says,**
20 **"1169/3282." Do you see there under section one,**
21 **subsection two, where it says, "The annual and**
22 **special assessments, together with interest, costs**
23 **and reasonable attorneys fees, shall be a charge on**
24 **the land"?**

25 A. Say it again. Where?

1 Q. Next to -- to the double I, "Special
2 assessments for capital improvements, such
3 assessments to be established and collected as
4 hereinafter provided. The annual and special
5 assessments" -- do you see where I am?

6 A. I see that.

7 Q. -- "together with interest, costs and
8 reasonable attorneys fees, shall be a charge on the
9 land." If this is the contract between you and the
10 Association, why aren't they entitled to collect
11 interest?

12 A. Well, I don't see where it says what
13 percent.

14 Q. Okay.

15 A. And, you know, --

16 Q. Do you agree that it says --

17 A. -- that's what this says. That's what
18 this paper says.

19 Q. Well, you've testified this is your
20 contract with the Association and that you weren't
21 aware of anything else that constituted the
22 contract.

23 MR. GAMBRELL: She was in the -- she
24 was in the middle of an answer. Finish her answer.

25 A. What I was going to say is that this --

1 what I had testified to earlier is that I remember
2 signing my name on each page, and this doesn't have
3 my signature. This doesn't have my initials on it.
4 So I'm not really sure now that you brought it up
5 if this is the correct covenant or not.

6 Q. Okay. Can you flip to the front of
7 Exhibit 3 for me. Do you see a bar code down at
8 the bottom?

9 A. Yes, I do.

10 Q. Does it have -- what are the words
11 underneath that bar code?

12 A. There's some numbers first, and it
13 says, "John G. Norris, Richland County ROD."

14 Q. Okay. And is there something near that
15 bar code that has the word book in front of it?

16 A. At the top of that sticky.

17 Q. Okay. And what does that say?

18 A. "Book 1169-3279."

19 Q. Okay. I'll represent to you that
20 that's the sticker the county puts on it when they
21 record it in their register of deeds office. If
22 the copy that you signed is the same as this one,
23 would you agree the Association has a right to
24 charge interest?

25 A. I would agree that that's what's on

1 this paper.

2 Q. Would you agree that this is the
3 contract between you and the Association?

4 A. Well, I'm not really sure now that you
5 brought it to my attention because I remember
6 putting my initials on a covenant, and this might
7 not be what I put my initials on. I mean the pages
8 -- I don't know now that you brought it to my
9 attention if this is what I initialled or not.

10 Q. Okay. Earlier you testified for me
11 that you're a member of the Association; was that
12 right?

13 A. Yes, I do recall that.

14 Q. Okay. Is your property subject to the
15 covenants for The Homestead?

16 A. It's in the division. It's in the
17 subdivision.

18 Q. Okay. How are you a member of the
19 homeowners' association?

20 A. Because we have a property in the
21 subdivision.

22 Q. Are all the properties in the
23 subdivision members of the Association?

24 A. Yes.

25 Q. You filed a counterclaim alleging that

1 the Association breached its contract with you; is
2 that right?

3 A. Is that the same that we were talking
4 about earlier? We filed a -- we filed -- yes.

5 Q. Okay. What contract did the
6 Association breach?

7 A. Is that that same question you asked me
8 before because I --

9 Q. Well, I thought we --

10 A. I'm still trying to understand that,
11 and I think I told you I'm not sure because this is
12 what we are considering. It says, "Covenants,
13 Conditions, and Restrictions-The Homestead."

14 Q. Okay. I thought we ended that line of
15 questioning with you saying that this Exhibit 3 was
16 the contract between you and the Association. Now
17 you're telling me you don't know if that is the
18 contract, that I might have changed it in some way,
19 or it might not be the same one. So I'm asking you
20 to identify for me the contract that you claim has
21 been breached?

22 A. Since you brought it to my attention
23 that I'm not sure that this is because I remember
24 initialling a covenant. So it -- you're really
25 making it confusing because I remember initialling

1 a covenant. This doesn't have my initials on it,
2 and so I'm not sure.

3 **Q. You don't know which contract the**
4 **Association breached with you?**

5 A. I'm not really sure because this says,
6 "The Covenants, Conditions, and Restrictions-The
7 Homestead." I remember initialling the copy, and
8 this doesn't have my initials on it. So I don't
9 know what has been changed or if something has been
10 changed. You know, that's why --

11 **Q. So where can I --**

12 A. -- I have to say I don't know.

13 **Q. Where can I find a copy of the contract**
14 **between you and the Association?**

15 A. I don't know right now.

16 **Q. Do you have a copy of it?**

17 A. I -- you know, I remember signing -- I
18 remember initialling pages of the covenant.

19 **Q. Ms. Miller, you've told me that. I'm**
20 **asking you if you have a copy of that document?**

21 A. It's possible.

22 **Q. Okay. And you didn't bring that today**
23 **despite the subpoena; is that right?**

24 A. I didn't think I was going to need to
25 bring anything today but myself.

1 Q. Did you review the subpoena before you
2 came today?

3 A. I don't remember. I think we've talked
4 about that too.

5 Q. You don't remember if you reviewed the
6 subpoena before you came today? Is that your
7 testimony?

8 A. My testimony is what I said earlier
9 when you asked me the question.

10 Q. And what was that?

11 A. Well, it's in the -- it's in the
12 record.

13 Q. Ms. Miller, I'm asking you again. Did
14 you review the subpoena before you came today?

15 A. It sounds like you're harassing me, but
16 I'm telling you what I said. I want it to stand as
17 what I said.

18 Q. Ms. Miller, it's an easy question.
19 Yes, you read it before you came today; or, no, you
20 didn't? Which one?

21 A. I believe I told you that I did not see
22 that.

23 Q. So, no, you didn't read it before
24 today?

25 A. I believe that's what I told you.

1 **Q. Okay. Turn to page 1169/3284 of**
2 **Plaintiff's Exhibit 3 for me. Can you read the**
3 **first sentence of section eight for me out loud?**

4 MR. GAMBRELL: What page?

5 MS. TROTTER: 1169/3284.

6 **A. "Effect of Nonpayment of Assessments;**
7 **Remedies of the Association."**

8 **Q. Can you read the next sentence?**

9 **A. "Any annual assessment not paid within**
10 **30 days after the due date shall bear interest from**
11 **the due date at that rate which is equal to the**
12 **rate of interest chargeable by law in the state of**
13 **South Carolina on money judgments."**

14 **Q. Okay. Can you read the next sentence**
15 **for me?**

16 **A. "The Association may bring an action at**
17 **law against the owner personally obligated to pay**
18 **the same or foreclose the lien against the property**
19 **in like manner as a mortgage of real property, and,**
20 **in either event, interest, costs and a reasonable**
21 **attorneys fee shall be added to the amount of such**
22 **assessment."**

23 **Q. Okay. If you were to rent your house,**
24 **how much do you think you could get in rent each**
25 **month?**

1 A. I don't know. I haven't -- I don't
2 know.

3 Q. What's your mortgage payment every
4 month?

5 A. My mortgage payment is about 1,349,
6 somewhere around there.

7 Q. Are you current on your mortgage?

8 A. I think so. I been late, but I think
9 so.

10 Q. How many bedrooms is your house?

11 A. Five.

12 Q. Okay. And how many bathrooms?

13 A. Three.

14 Q. And approximately how many square feet
15 is it?

16 A. 3,000.

17 Q. And you never looked into the rental
18 value of properties in your area?

19 A. I don't know what my house would rent
20 for.

21 Q. You don't have any testimony about
22 that?

23 A. No.

24 Q. Okay. Are you aware the Association is
25 entitled to seek the reasonable rental value of the

1 property during this foreclosure in addition to the
2 assessments that you owe?

3 A. What is your question? Am I aware?

4 Q. Did you know that?

5 A. Where does it say that?

6 Q. In section eight on page 3284.

7 A. Again, we're on this same document that
8 I'm not sure is the document that I signed. You
9 know, my initials are not on this document.

10 Q. Were you aware that that's contained in
11 the covenants, conditions, and restrictions for The
12 Homestead that's filed in book 1169 and page 3279
13 with the Richland County Register of Deeds?

14 A. Well, if that's what this document
15 says. I believe on that front page, you had me
16 read that.

17 Q. Were you aware -- hold on, listen to my
18 question. Were you aware that this provision was
19 contained in this document -- that the Association
20 -- the owner shall be required to pay reasonable
21 rental for the lot after commencement of the
22 foreclosure action?

23 A. I don't remember that.

24 Q. Okay. And you don't have any opinion
25 on what a reasonable rental value for your property

1 would be?

2 A. No.

3 Q. Okay. Why do you disagree with the
4 attorneys fees in this case or the -- I'm sorry,
5 the legal fees in this case?

6 A. Well, what are the legal fees? I don't
7 have any type of listing of what legal fees are.

8 Q. Do you agree the Association is
9 entitled to collect legal fees associated with this
10 foreclosure from you?

11 A. I don't agree to that -- this document.

12 Q. I wasn't --

13 A. This statement of account says that's
14 what's on there. I don't agree to that.

15 Q. Listen to my question. Do you agree
16 the Association has a right to collect attorneys
17 fees from you associated with this foreclosure
18 suit?

19 A. I think that we need to have -- you
20 know, you asked me earlier what my contentions
21 were, and I think that -- I think the Association
22 should provide something for us to pay for. And so
23 nothing is really being provided for us to pay for,
24 but yet interest and legal fees are being added on.
25 So it is my opinion that I do not agree with all of

1 these extra expenses.

2 Q. Do you agree the Association has a
3 right to collect attorneys fees from you if they
4 have to hire an attorney to collect delinquent
5 assessments from you?

6 A. No. I think the homeowners'
7 association should pay that themselves.

8 Q. Okay. Do you have any evidence that
9 the attorneys fees being sought here are not
10 reasonable?

11 A. I guess evidence is lack of evidence.
12 Because I don't know what \$400 or any other -- if
13 there's any other legal fees on here, I don't know
14 what that's for, and I don't agree.

15 Q. Do you have any evidence that the
16 attorneys fees the Association is seeking are
17 unreasonable for the work that's been performed?

18 A. Again, I guess the evidence is there's
19 no evidence of work being done to charge legal
20 fees.

21 Q. Okay. Have you received any
22 correspondence from my office related to this
23 matter?

24 A. I'm sure we probably have, yes.

25 Q. Would that be evidence that an attorney

1 performed from work in this matter?

2 A. Not \$400 worth of sending a letter.

3 Q. Have you ever worked in a law firm?

4 A. No, but it doesn't take \$400 to type a
5 letter.

6 Q. Have you ever gone to law school?

7 A. No.

8 Q. Do you have any experience in a law
9 firm in any manner?

10 A. No. My testimony is I have not worked
11 for a law firm, but in real life tells me it's not
12 \$400 to type a letter.

13 Q. Ms. Miller, were you served with a copy
14 of this lawsuit in November of 2017?

15 A. I was -- I received something. I don't
16 remember if it was November. I don't remember.

17 Q. Okay. If a process server filed an
18 affidavit in this matter stating that he delivered
19 the lawsuit to you on November the 8th, 2017 at
20 1:41 P.M., would you have any reason to doubt that?

21 A. Again, I don't have -- I don't remember
22 the date. I remember seeing some papers, yes.

23 Q. Were they delivered by a man at your
24 house?

25 A. I think so.

1 Q. Okay. How many times did you attempt
2 to contact the Association before May of 2016
3 between -- let me go back just a little bit. How
4 many times did you attempt to contact the
5 Association about your balance between January 1st,
6 2014 and May of 2016?

7 A. I don't know how many times.

8 Q. Did you try to contact them once? At
9 least once?

10 A. I don't know how many times during that
11 time frame.

12 Q. Do you know of any time that you
13 attempted to contact them?

14 A. Yes, several times. We've tried to --
15 we've tried to make arrangements.

16 Q. In that time period?

17 A. I don't remember the time. All I can
18 tell you is that I remember we tried to make
19 arrangements to pay, and each time we tried, we
20 thought we had something. Then we'd get ready, and
21 then it would be something more.

22 Q. And who did you make those negotiations
23 with?

24 A. You need to talk with my husband in
25 regards to that.

1 Q. Did you ever contact my office about
2 this matter personally?

3 A. You need to talk to my husband about
4 who contacted. I don't remember doing that.

5 Q. I'm asking if you contacted my office
6 about this matter?

7 A. I don't remember doing that.

8 Q. Okay.

9 (WHEREUPON PLAINTIFF'S EXHIBIT NO.5
10 WAS MARKED FOR IDENTIFICATION PURPOSES
11 (2 PAGES) - E-MAILS)

12 (WHEREUPON A BREAK WAS TAKEN FROM
13 12:45 P.M. UNTIL 12:52 P.M.)

14 BY MS. TROTTER:

15 Q. Ms. Miller, we went off the record so
16 that you could speak with your counsel about what's
17 been marked as Plaintiff's Exhibit 5. Is that --
18 is this an e-mail that you sent?

19 A. Yes.

20 Q. Okay. Macnmill@yahoo.com is your
21 e-mail address?

22 A. Yes.

23 Q. Okay. Can you tell me what this e-mail
24 was about?

25 A. Trying to request a payment agreement.

1 Q. This was an offer from you to pay the
2 amount due; is that right?

3 A. "We would like to set up a payment
4 arrangement for the Homestead Association fees. We
5 can make an initial payment of 200 on
6 December 29th, and then 100 every two weeks."

7 Q. Okay. After the man came to your house
8 with some papers, did you file any response with
9 the court?

10 A. I don't remember doing that. If we
11 did, Orlando may have done it, but I don't
12 remember.

13 Q. What do you believe you owe The
14 Homestead Property Owners' Association?

15 A. I believe that I owe 180 times four
16 years.

17 Q. Is that 2015, 2016, 2017, and 2018?

18 A. Yeah, since the last -- I think it's
19 '14, '15, '16, '17, '18, yes.

20 Q. Okay. Do you believe that you owe \$180
21 per year for 2014, 2015, 2016, 2017, and 2018?

22 A. From 2014, '15, '16, '17, '18. So the
23 four years -- '14 -- from 2014 -- and then from '14
24 to '15, '15 to '16, '16 to '17, '17 to '18.

25 Q. Okay. Let's look at it in a different

1 way. All right. Looking at Plaintiff's Exhibit 4,
2 there's a beginning balance of \$180 on 12-31-2014.

3 Do you owe that amount?

4 A. Okay. Wait, now. This is a little
5 confusing because as I'm looking at it, I see the
6 very next day another \$180.

7 Q. Okay. Can you turn to page three of
8 Exhibit 4?

9 A. And then on the 1st in 2017, another
10 \$180. So it's like it's at the 1st of every year.
11 I believe I owe \$180 times the years that I didn't
12 pay.

13 Q. Okay. Can you turn to the last page of
14 Exhibit 4, which says, "Synergy" at the top with
15 several houses. Flip to the next page. It says
16 \$180 August 1st, 2014. Do you see that?

17 A. Yes.

18 Q. And it says, "Assessment." Do you see
19 that?

20 A. Yes.

21 Q. Do you owe that money?

22 A. I'm not really sure because if it's an
23 annual assessment, it's billed annually, and
24 annually is one year. So that says August, and the
25 next one says January. So I'm just -- I'm a little

1 confused now. But this says my balance is \$360.

2 Q. Do you see a date in the bottom
3 left-hand corner of Exhibit -- page three of
4 Exhibit 4?

5 A. Yeah.

6 Q. What's that date?

7 A. Date says January 12th, 2015.

8 Q. Okay. If you did not make a payment to
9 the Association in 2014, would you agree that you
10 owe the Association \$180 in assessments for 2014?

11 A. That would be accurate.

12 Q. Okay. Do you owe \$180 in assessments
13 for 2015?

14 A. I owe \$180 for each year, and this is
15 kind of getting confusing the way it's done here.
16 So it's either '14 to '15, '15 to '16, '16 to '17,
17 '17 to '18 is how I do it. That's how I came up
18 with my four years, and that's my testimony.

19 Q. Do you agree that you owe \$180 for the
20 assessment in 2015?

21 A. It is my testimony that I owe \$180 for
22 the years that I have already stated.

23 Q. Looking at Exhibit 4, do you see a
24 charge with a date of 1-1-2015 operating assessment
25 2015 in the amount of \$180?

1 A. That's what's on this paper, yes.

2 Q. Do you agree that that was the annual
3 assessment for The Homestead Property Owners'
4 Association in 2015?

5 A. The homeowners' association fee has
6 always been \$180.

7 Q. And you didn't make any payments in
8 2015; correct?

9 A. That's correct.

10 Q. Okay. Do you agree that the annual
11 assessment for The Homestead Property Owners'
12 Association for 2016 was \$180, and it was due -- do
13 you agree it was \$180?

14 A. It's always been \$180.

15 Q. Do you agree it was due on January 1st,
16 2016?

17 A. That's what the paper says. That's
18 when they -- that's when the paper says it was
19 assessed I guess you could say. But, again, my
20 testimony is from '14 to '15, '15 to '16, '16 to
21 '17, '17 to '18. That's how I got my four years.

22 Q. Do you agree that the annual assessment
23 for 2016 was due January 1st, 2016?

24 A. That's what's on this paper.

25 Q. Do you have any reason to believe it

1 was not due that day?

2 A. That's what's on this paper.

3 Q. Do you have any reason to believe that
4 it was not due that day?

5 A. That is what is on this paper, okay.

6 Q. Ms. Miller, I understand that that's
7 what's on the paper. I handed you Exhibit 4. I'm
8 asking you if you have any reason to believe that
9 this paper is wrong? That the assessment was due
10 some other day?

11 A. I already testified that I didn't
12 really agree with this paper, but I think that the
13 assessment goes '14 to '15, '15 to '16, '16 to '17,
14 '17 to '18 -- four years. Each time you ask me
15 that, that's how I -- that's how I view it.

16 Q. You're not answering my question. I
17 understand that you're counting four years, and I
18 understand that's the methodology by which you got
19 four years. I'm asking you if you have some
20 evidence or reason to believe that the annual
21 assessment for 2016 was due some day other than
22 January 1st, 2016?

23 A. I don't know how to answer that
24 question other than it's due yearly. This paper
25 says it's due on the 1st of each year. So that's

1 what this paper says. My methodology is different
2 I guess.

3 Q. When do you believe the annual
4 assessment is due every year?

5 A. Well, you know what? I'm -- I'm really
6 not sure now that you brought it to my attention.

7 Q. Okay. Are you aware of any documents
8 or other evidence in your possession that would
9 indicate that this assessment is not due
10 January 1st, 2016?

11 A. I don't know. Something sticks out in
12 my memory about December, but I am not really --
13 like I said, I'm not really sure.

14 Q. Okay.

15 A. But my --

16 Q. Are you aware of any documents listing
17 the due date as December?

18 A. I'm not really sure. Seems like
19 December sticks out in my head, but my methodology
20 stands '14 to '15, '15 to '16, '16 to '17, '17 to
21 '18.

22 Q. Okay. So '14 to '15 would be
23 January 1st, 2014 through January (sic) 31st, 2014;
24 is that right?

25 A. Okay.

1 Q. Okay. And then '15 to '16 would be
2 January 1st, 2015 to December 31st, 2015; is that
3 right?

4 A. That sounds like the same thing you
5 just said, so.

6 Q. Okay. Well, let's start over. You
7 said your methodology is '14 to '15; right?

8 A. Um-hum (affirmatively responds.)

9 Q. I'm trying to define that. Is that
10 January 1st, 2014 through December 31st, 2014?

11 A. That's kind of a good question. When
12 -- like I say, when I think about it, I didn't
13 really assign a month to it or a group of months.
14 I just -- '14 to '15: One year; '15 to '16, so
15 forth and so on.

16 Q. Because I think where we are
17 disconnecting is should there be a year for '18 to
18 '19?

19 A. What's your question?

20 Q. When I look at Exhibit 4, I count five
21 charges of \$180 that have a description of
22 operating assessment. I have one that has a date
23 of 2014; one that has a date of 2015; one has a
24 date of 2016; one has date of 2017; and one has a
25 date of 2018. That's five charges.

1 A. Okay.

2 Q. You have testified that you owe four
3 charges. How are we coming up with different
4 numbers?

5 A. I don't know. I told you how I came up
6 with mine. So I guess it's just a matter of how
7 you look at it.

8 Q. What does '14 to '15 mean? What are
9 the date ranges covered in '14 to '15?

10 A. I'm just -- I'm looking at it just as
11 together. '14 to '15 that's one year. '15 to '16,
12 '16 to '17, '17 to '18. So I'm just -- I'm not
13 really defining.

14 Q. Does '17 to '18 include the 2018
15 assessment?

16 A. Well, doing it your way, I guess it
17 would. But I guess I'm not really including 2018.
18 I'm including '14 to '15, '15 to '16, '16 to '17,
19 '17 to '18. So I guess we're looking at it two
20 different -- two different ways. So I can't really
21 answer that question.

22 Q. Do you believe you owe the 2018 annual
23 assessment to The Homestead Property Owners'
24 Association?

25 A. Right now I believe I owe four times

1 180, four years. That's what I believe I owe right
2 now this day.

3 Q. And I'm trying to determine what's in
4 that four charges of 180. Do you believe that you
5 currently owe \$180 for the 2018 Homestead Property
6 Owners Association assessment?

7 A. I just believe I owe the four payments
8 of -- '18 to 19 I guess would count as another one.

9 Q. Okay. Do you owe four charges of 180
10 or five charges of 180?

11 A. I owe four charges. I believe I owe
12 four charges of 180.

13 Q. So you do not owe the 2018 assessment
14 at this time? Is that your testimony?

15 A. My testimony is how my thinking is
16 around the years. '14 to '15 is one year. So I
17 believe I owe four years right now.

18 Q. Explain to me what '14 to '15 means.
19 What dates are included therein?

20 A. I'm just looking at it as a whole, and
21 I already testified I really can't give you the
22 dates because I'm just looking at it as a whole --
23 '14 to '15, '15 to '16, '16 to '17, '17 to '18.

24 Q. Would January 1st, 2014 be included in
25 the category that you have called '14 to '15?

1 A. I haven't really divided the months up
2 yet. I'm just looking at it from a overall
3 viewpoint.

4 Q. So you don't know what '14 to '15 is?

5 A. On a calendar, yes, but for this, I'm
6 just dividing it up as I -- as I look at it.

7 Q. Okay.

8 A. I believe I owe four -- four years.

9 Q. Looking at Plaintiff's Exhibit 4, with
10 this orange highlighter, please highlight the
11 charge that you believe goes in what you have
12 categorized as '14 to '15?

13 A. I can't because this isn't how I view
14 it. This is how someone else views it. I have
15 already given you the indication. I can write down
16 what I view. I view 2014 to 2015 as \$180.

17 Q. Ms. Miller, thank you. That wasn't my
18 question. Are you refusing to highlight the charge
19 on page -- on Exhibit 4 that you believe is the
20 \$180 in '14 to '15?

21 A. I can't because it's not divided that
22 way. So it's not that I'm refusing. I'm just
23 telling you that I can't because it's not divided
24 out. It's not looked at as an overall '14 to '15
25 year.

1 Q. Okay. There are five charges marked as
2 \$180 on Plaintiff's Exhibit 4. Can you circle --
3 strike that. You have testified that you owe four
4 charges of \$180. Can you circle the 180 dollar
5 charge on Exhibit 4 that you do not owe?

6 A. This paper is not divided the way I
7 would do it. Here's how I would do it right here.
8 As I've demonstrated, '14 to '15: 180. As being
9 2014 to 2015: 180. 2015 to 2016 would be another
10 180, and that's just how I look at it, and I --
11 that's just how I view it.

12 Q. So you cannot circle on Plaintiff's
13 Exhibit 4 the charge you believe you don't owe --
14 the 180 dollar charge you do not owe?

15 A. It's not divided the way I have it
16 thought out in my head. So if it's not presented
17 that way, I can't mark it.

18 Q. You cannot look at a chronological
19 statement from your homeowners' association and
20 identify which operating assessment you do not owe?
21 Is that your testimony today?

22 A. I don't know where this came from, but
23 I can tell you I owe 2014 to '15 as I've stated
24 before, so forth and so on for four years. And so
25 I can't mark it. I can't circle it because it's

1 not on here the way I'm envisioning it.

2 Q. So your testimony is you cannot circle
3 on Plaintiff's Exhibit 4 the charge you do not owe?

4 A. My testimony is that on Plaintiff's
5 Exhibit No.4, it is not divided the way that I
6 would divide it. That is my testimony and so --

7 Q. Can you circle, yes or no, the charge
8 on Plaintiff's Exhibit 4 that you do not owe?

9 A. Plaintiff's Exhibit 4 isn't the way
10 that I would do it. So I can't circle something on
11 Plaintiff's Exhibit 4 that to me isn't the way I
12 have it thought out in my head.

13 Q. So you cannot circle what you don't owe
14 on Plaintiff's Exhibit 4?

15 A. I've already answered the question.

16 Q. Yes or no? No, you cannot?

17 A. It's not on here. That is my
18 testimony. That is my answer. It's not on here
19 the way I would do it. So if it's not on here,
20 there's nowhere for me to mark it. I can write it
21 on there if you would like for me to.

22 Q. When do you believe the -- the --
23 strike that. When do you believe the 2014
24 assessment to The Homestead became due? Was it in
25 the year 2014 or in the year 2015?

1 A. I don't know why December just keeps
2 sticking out in my head for some reason, but I'm
3 looking at it from year to year as I have already
4 stated -- '14 to '15 --

5 Q. Ms. Miller, I understand that's your
6 testimony. I'm asking you the 2014 assessment --
7 was it due in a year called 2014, or was it due in
8 the year called 2015?

9 A. Well, it was due in the middle.

10 Q. Middle of what?

11 A. In the middle of those two years.

12 Q. The date on which it became due, was
13 that date on the calendar, did it in end in 2014,
14 or did it end in 2015?

15 A. I don't know.

16 Q. Okay.

17 A. Because I think about it as a whole
18 from year to year. It's like a flow to me.

19 Q. When will be the next time that you owe
20 The Homestead Property Owners' Association an
21 assessment?

22 A. Well, now that you brought all this to
23 my attention, I don't know because I can't give you
24 a specific date.

25 Q. You don't have any idea when your

1 **assessments are due?**

2 A. This paper says the 1st of every year
3 it's -- there's a charge, operating assessment, on
4 the 1st of every year except for that one there.
5 So I'm -- honestly, I'm trying to give you how I --
6 how I view it, and I feel like you are trying to
7 force me to say something other than how I view it.
8 I don't think that's right, but I'm telling you how
9 I -- how I view it just overall -- '14 to '15: 180;
10 '15 to '16: 180. That's just how I view it, and it
11 doesn't seem like we're going to be able to agree
12 that that's how I view it, but that's just how I
13 view it.

14 **Q. When will the 2018 assessment be due?**

15 A. Now that you brought all this to my
16 attention, I don't know because you want me to put
17 a date -- a specific date down, and I can't do that
18 because I'm looking at it from an overall
19 perspective.

20 **Q. Is the 2018 assessment included in the**
21 **category you've called '18 to '19? I'm sorry, the**
22 **category you've called '17 to '18?**

23 A. I don't know if it would be.

24 **Q. Okay. Is the 2017 assessment included**
25 **in the category you've called '17 to '18?**

1 A. I'm really trying to be as -- I don't
2 know how to explain it any other way, other than
3 from '14 to '15, I look at that as one year.

4 **Q. Ms. Miller, I understand that you've**
5 **said that.**

6 A. And then from '15 to '16, I consider
7 that one year, and I consider that 180. I can't
8 put a date to it.

9 **Q. Listen to my question, please. Would**
10 **the 2017 assessment -- would that fall in the**
11 **category that you have called '17 to '18?**

12 A. I would consider that due now.

13 **Q. Is it in the category that you've**
14 **called '17 to '18?**

15 A. '17 to '18 would be -- since we have to
16 put a -- since you're being so specific on a
17 specific date, I would say that would be due now.

18 **Q. Is that in the -- are we currently in**
19 **the category that you have called '17 to '18?**

20 A. Yeah.

21 **Q. So the 2017 assessment is in the**
22 **category you have called '17 to '18?**

23 A. '14 to '15: 180. '15 to '16: 180.

24 **Q. But you cannot tell me when --**

25 A. I'm trying to tell you.

1 Q. -- '14 to '15 starts, can you? When
2 does '14 and '15 start?

3 A. I'm looking at it as an overall
4 picture. I see that you're writing notes, so.

5 Q. Well, I'm scratching through some
6 notes. I've asked when '14 to '15 starts? Does
7 that include the 2013 assessment? Does it include
8 the 2014 assessment? Does it include the 2015
9 assessment? Is it one of those, some of those, or
10 all three of those?

11 A. You know, it's very difficult to put a
12 specific date on that. '17 to '18 would be due --
13 I'm saying that that's due now. So I believe I
14 testified that that was for '17.

15 Q. Okay. So is '16 to '17 the 2016
16 assessment?

17 A. The year before.

18 Q. Okay. Is '15 to '16 the 2015
19 assessment?

20 A. The year before.

21 Q. Year before what?

22 A. The one that you just said.

23 Q. Okay. So it's 2015. I just said 2016,
24 and you testified year before. So that the record
25 is clear, that's 2015; correct?

1 A. That's before '16 is.

2 Q. And the '14 to '15 category, is that
3 for 2014's assessment?

4 A. Yeah, fine.

5 Q. Okay. So when is the 2018 assessment
6 due?

7 A. You know, you keep wanting me to put a
8 date on it, and I can't put a date on it. I've
9 given you what -- really I've stretched it as far
10 as I could with the '17 to '18. So --

11 Q. Do you believe the 2018 assessment is
12 currently due?

13 A. Can you look at it from a whole -- from
14 the whole thing?

15 Q. Ms. Miller, I'm asking you if you
16 believe the 2018 assessment is currently due?

17 A. I told you what's currently due.

18 Q. Do you believe the 2018 assessment is
19 currently due?

20 A. I've already told you what I think is
21 currently due. You keep asking me, but I've
22 already answered the question for you.

23 Q. Ms. Miller, it's a yes or no question.
24 Do you believe that the 2018 assessment is
25 currently due?

1 A. The year that you just wrote down for
2 2017 is what I testified that's due.

3 Q. Ms. Miller, will you take a look at
4 Exhibit 4 for me?

5 A. Yes.

6 Q. On page two, do you see a charge that
7 says, "1-1-2018, Operating Assessment 2018, \$180"?

8 A. Yes, I see that.

9 Q. Do you owe that money?

10 A. I've told you what I owe, and you keep
11 asking me the same question that I've given you. I
12 told you I cannot put a specific date on it.

13 Q. Ms. Miller, do you owe the amount
14 listed as 1-1-2018 operating assessment 2018, \$180?

15 A. I believe that I owe \$180 times four.
16 That's my testimony.

17 Q. Because '14 to '15 is 2014, '15 to '16
18 is 2015, '16 to '17 is 2017 (sic), and '17 to '18
19 is 2017; right?

20 A. That's what you have in your notes, and
21 I believe that's what I said.

22 Q. That's what you testified to; right?

23 A. That's what I said.

24 Q. Explain to me why the lien and
25 foreclosure in this matter is illegal?

1 A. I don't think that the charges are
2 right. I don't think that -- I don't know. I
3 don't even know if they're accurate. I don't
4 really -- the homeowners' association can pay the
5 legal fees on here. You know, I -- that's how I
6 feel. That's some of the reasons that I think that
7 this is not legal.

8 **Q. What are the other reasons?**

9 A. I can't remember right now.

10 **Q. Today is your chance to tell me. This**
11 **is your chance to give me testimony about why this**
12 **case is illegal?**

13 A. Well, I've given you some information
14 already. I can't remember everything right now,
15 but when you talk to my husband, I'm sure he'll be
16 able to provide more information to you.

17 **Q. Do you have any facts that would**
18 **explain why this lawsuit is illegal?**

19 A. When you speak with my husband, I'm
20 sure he will be able to provide some additional
21 information to you, but right now I'm just --

22 **Q. I'm happy to speak with Mr. Miller**
23 **about it. I've asked you about the facts that you**
24 **know. If you don't know, that's fine. Mr. Miller**
25 **can speak for himself, but I'm asking you what**

1 facts you are aware of. Now is your opportunity to
2 tell me about those.

3 A. I've just provided some to you already,
4 and that's my testimony.

5 Q. You keep saying --

6 A. It's already in there.

7 Q. Right. And the reason I'm asking a
8 follow-up is because you keep saying those are some
9 of the facts, which insinuates there are others.
10 Are there others, other than what you have already
11 testified that you have personal knowledge of?

12 A. I just can't remember them all right
13 now.

14 Q. Why can't you remember them?

15 A. Because you've asked me a lot of
16 questions today, and this isn't the easiest chair
17 to sit in, and I am really trying the best that I
18 can today. I just don't remember everything
19 related to all of these reasons.

20 Q. What would refresh your memory? What
21 could I provide you to refresh your memory?

22 A. I don't think you could provide me with
23 anything to refresh my memory.

24 Q. What would you do to refresh your
25 memory before trial in this matter?

1 A. Possibly now that you have brought all
2 this to my attention, go home, and just review what
3 I have.

4 **Q. What do you have at home?**

5 A. Whatever it is that I can find. If
6 there are any documents or anything just try to
7 just look at everything. But right now I don't
8 have that, and I can't remember everything right
9 now.

10 **Q. Did you provide all of that to your**
11 **attorney at the beginning of this case?**

12 A. My attorney has everything.

13 **Q. So there's not anything you would go**
14 **home and look for; is that right?**

15 A. No, I'm not saying that either. I
16 would go home, like I said before, and just kind of
17 look at whatever it is that I need to look for,
18 especially some of these questions that you're
19 asking. And if I can find something that might jar
20 my memory, then that's -- that's good.

21 **Q. Did you provide your attorney with**
22 **everything that you have that's relevant to this**
23 **matter at the beginning of your counterclaim, or do**
24 **you have to go look for things now?**

25 A. I believe as I recall correctly, I

1 provided him what I could provide him with already.

2 Q. Okay. And remind me again what your
3 claims against the Association are? I believe your
4 testimony was that the Association was charging you
5 things you didn't think you should have to pay; is
6 that right?

7 A. And not providing what they're to
8 provide.

9 Q. Okay. What are they to provide?

10 A. Common areas that are accessible. That
11 would be one thing.

12 Q. Where -- where is there an obligation
13 for them to provide accessible common areas?

14 A. Wouldn't that be in the covenant?

15 Q. I'm asking you. It's your allegation.

16 A. I'm thinking it would be in the
17 covenant.

18 Q. Okay. Is that what's been marked as
19 Plaintiff's Exhibit 3, or is that some other
20 document?

21 A. Well, I'm not sure if this is the one
22 that I signed or not, but I believe it's in the
23 covenant somewhere.

24 Q. Okay. Can you show me where -- I
25 understand that you're saying this may not be the

1 same document. Just for the record, can you show
2 me where in Exhibit 3 it says the Association must
3 provide accessible common areas?

4 A. Wouldn't that be why they call it
5 common because you can access it? I will look
6 through here.

7 Q. Okay.

8 A. Well, I just opened the thing up, and
9 on this particular document, section -- well -- oh,
10 page -- Book/Page R 1169/3280 makes reference to a
11 common area -- section four.

12 Q. I see that. Where -- where in Exhibit
13 3 does it provide that the Association must make
14 that common area accessible to you?

15 A. Well, it says in that -- just that
16 section just by flipping it open, for the exclusive
17 use and enjoyment of owners and others. So you
18 have to be able to access something to enjoy it.

19 Q. Okay. Is there anywhere else in this
20 document that you believe obligates the Association
21 to provide you access to the common areas?

22 A. There might be something else in this
23 document.

24 Q. Can you show me what that is?

25 A. Well, I just happen to flip open, and

1 it was right there -- common area. And I answered
2 the question. So I don't understand --

3 Q. Is there anywhere else other than
4 section four of article one?

5 A. Well, what I can do is while we're
6 sitting here, I can look for section titles, and
7 see if anything says common area because --

8 Q. Okay.

9 A. -- I can't just say, "Oh, look at
10 section 'dah, dah' page ten, number four."

11 (WITNESS REVIEWING EXHIBIT)

12 A. Okay. So there are a couple of
13 subtitles that have the words common area in it
14 that I found as I was just scanning through. Maybe
15 one or two said something about the enjoyment of
16 the people that are -- that can use it.

17 Q. Okay. I'm going to hand you -- we're
18 going to mark it as Plaintiff's Exhibit 6. It's a
19 GIS printout.

20 (WHEREUPON PLAINTIFF'S EXHIBIT NO.6
21 WAS MARKED FOR IDENTIFICATION PURPOSES
22 (1 PAGE) - GIS MAP)

23 MR. GAMBRELL: Let's go talk about it.

24 (WHEREUPON A BREAK WAS TAKEN FROM
25 1:33 P.M. UNTIL 1:37 P.M.)

1 Q. Ms. Miller, we're back on the record.
2 We went off the record for you to discuss what's
3 been marked as Plaintiff's Exhibit 6 with your
4 counsel. Do you recognize the area depicted on
5 this map?

6 A. Yes.

7 Q. What is it?

8 A. Well, it's a layout of I guess, one,
9 the North Brickyard Road and the housing
10 development that I live in --

11 Q. Okay.

12 A. -- mainly.

13 Q. I'm going to hand you this orange
14 highlighter. Can you draw -- can you trace the
15 boundaries of the common area of the Association
16 that you been discussing?

17 A. Back in here. Okay.

18 Q. Do you mind if I see it?

19 A. Oh.

20 Q. Thank you. So for the record, you've
21 put a mark in the middle of Stoneheath Drive where
22 it connects to North Brickyard Road. Is that a
23 separate area to the right of that area?

24 A. Yes.

25 Q. Okay. And what -- what's located

1 there?

2 A. Flowers, sign.

3 Q. Is there not another sign to the left
4 of Stoneheath Drive?

5 A. There might be.

6 Q. Okay. And then you've got some
7 scribbles in the back in an area that has a dark
8 black line with a little window that says,
9 "R20103-05-44;" is that right?

10 A. That's the area near the creek, Crane
11 Creek, back there.

12 Q. Okay. Is that the common area the
13 Association owns?

14 A. Yes.

15 Q. Okay. Do they own the area at the
16 beginning of the neighborhood that you've
17 identified as well?

18 A. Yeah, that -- right up there where I've
19 marked.

20 Q. Okay. How are they failing to maintain
21 that area at the front by North Brickyard Road and
22 Stoneheath Drive?

23 A. I didn't say they were failing to
24 maintain that area. It's a sign, some flowers.

25 Q. Have they maintained that area?

1 A. Yes.

2 Q. Okay. What areas have they not
3 maintained?

4 A. The swampy area back there near Crane
5 Creek.

6 Q. What have they failed to do?

7 A. There's -- there's -- nothing has been
8 done. It's grown up. It's wild. Trees, branches,
9 whatever. There's no way to get there.

10 Q. Is there a fence between each of these
11 lots and the common area?

12 A. Each family has their own fence.

13 Q. Okay. Is there any fence the
14 Association built?

15 A. Not back there that I'm aware of. I
16 know that anything that's back there, we put it
17 back there.

18 Q. Okay. And by "back there," you were
19 pointing to the fence line --

20 A. Yes.

21 Q. -- at the rear of the lots?

22 A. Yes.

23 Q. Okay. And you're talking about these
24 lots that border what on Exhibit 6 has been marked
25 as R20103-05-44?

1 A. In that area, yes.

2 **Q. Okay. And so it's your testimony they**
3 **have failed to maintain this area because it's wild**
4 **and overgrown; is that right?**

5 A. The area is wild and overgrown. It has
6 not been maintained.

7 **Q. What are they required to do to this**
8 **area?**

9 A. They should tell us what they're doing
10 to the area so it can be accessible. It needs to
11 be -- we need to be able to enjoy it.

12 **Q. What do you believe needs to be in this**
13 **area?**

14 A. Whatever it would take for a family to
15 enjoy that area. I mean the issue that there's no
16 common area for us to enjoy as homeowners. So that
17 would be up to an architect or land people,
18 whoever, you know, is responsible for doing the
19 land -- what could go back there.

20 **Q. So you believe the Association has an**
21 **obligation to clear this area and build something**
22 **for the homeowners to use?**

23 A. If they're calling that the common
24 area, it needs to be I guess common to everybody.
25 We need to be able to access it -- access it and be

1 able to enjoy it.

2 Q. What would they need to do so that you
3 could access and enjoy that area?

4 A. Well, I don't know exactly what they
5 would need to do because I don't do landscaping I
6 guess is the word I was looking for. So I don't
7 know what would be needed for back there from that
8 perspective.

9 Q. How long has this area that you've
10 marked back here at the back of the neighborhood --
11 I think you called it a swamp -- how long has it be
12 in this condition?

13 A. For a long time.

14 Q. Since before 2013?

15 A. Yeah. We moved in there in 2007, so.

16 Q. Was it like this when you moved in?

17 A. Yes.

18 Q. Did the Association -- strike that.

19 Have you ever attended a homeowners' association
20 meeting?

21 A. Yes.

22 Q. When was that?

23 A. I don't remember when it was. A couple
24 years ago, several years ago.

25 Q. Have you ever run for office with the

1 **Association?**

2 A. No.

3 **Q. Are you aware of any liens on your**
4 **property in -- in The Homestead?**

5 A. Are you calling what y'all do a lien?
6 I'm not -- I'm not aware of anything else. I can't
7 remember anything else.

8 **Q. Do you have a mortgage on the property?**

9 A. Yes.

10 **Q. Okay. Do you have one mortgage or more**
11 **than one mortgage?**

12 A. One.

13 **Q. Did you give a mortgage to South**
14 **Carolina Housing Corporation?**

15 A. Do I have one? Yes. Not for this
16 house.

17 **Q. Which house do you have a mortgage with**
18 **the South Carolina Housing Corporation for?**

19 A. I have a mortgage with South Carolina
20 Housing Authority for 213 Oak Creek Circle.

21 **Q. How did that lien -- how did that**
22 **mortgage come about?**

23 A. I don't understand your question. We
24 -- because we bought the house. I don't understand
25 your question.

1 Q. Okay. Were you in mortgage foreclosure
2 for the 261 Kenmore Park Drive property sometime
3 around 2013?

4 A. I don't think we actually went to
5 foreclosure. We had some difficulty paying the --
6 the mortgage, yes.

7 Q. Did you do a program called South
8 Carolina Help?

9 A. Yes.

10 Q. Okay. As part of the South Carolina
11 Help, did you grant a mortgage to South Carolina
12 Housing Corp. in the amount of \$36,000 for the
13 property at 261 Kenmore Park?

14 A. I remember the South Carolina Help. I
15 don't remember the amount. I remember we did get
16 assistance.

17 Q. Have you paid off that \$36,000, or is
18 that still a lien on your property?

19 A. No, that's not a lien anymore. That
20 has been completed, closed. Our obligation has
21 been met. I believe that's what --

22 Q. That's all that I have.

23 (WHEREUPON THE DEPOSITION WAS

24 CONCLUDED AT 1:47 P.M.)

1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition, was by me duly sworn to testify to the
5 truth in the within-entitled cause; that said
6 deposition was taken at the time and place therein
7 named; that the testimony of said witness was
8 reported by me, a Court Reporter, Notary Public for
9 the state of South Carolina, and a disinterested
10 person, and was thereafter transcribed into
11 typewriting.

12 I further certify that I am not of counsel or
13 attorney for either or any of the parties to said
14 deposition, nor in any way interested in the
15 outcome of the cause named in said caption.

16 I further certify that the original of said
17 transcript shall be hereafter sealed and delivered
18 to Stephanie Trotter, McCabe Trotter & Beverly,
19 4500 Fort Jackson Boulevard, Suite 250, Columbia,
20 SC 29209. This sealed original transcript shall be
21 retained by the above party, who shall be
22 responsible for filing same with the Court prior to
23 trial or any hearing which might result in a final
24 order on any issue.

25 IN WITNESS WHEREOF, I have hereto set my hand
this 23rd day of July 2018.

Brittany Van Nort, Court Reporter and
Notary Public for the State of South
Carolina.

My commission expires November 15, 2026.

1 Verification of Deponent

2
3 I, Wanda J. Miller, have read the foregoing
4 deposition testimony, which was reported by
5 Brittany Van Nort, Court Reporter and Notary Public
6 for the state of South Carolina, on July 16, 2018.

7 I find the transcript of the deposition to be a
8 true and accurate transcript according to my
9 testimony on that date, with the exception
10 of _____ corrections as listed on the attached
11 errata page, which was filled in by me.
12
13
14
15
16

17 _____
WANDA J. MILLER

18
19 Date: _____
20
21
22
23
24
25

E R R A T A P A G E

Page	Line	Change/Correction/Explanation

_____	_____	_____
_____	_____	_____
_____	_____	_____
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_____	_____	_____

The above changes were noted by me on this
errata page before signing the attached
Verification of Deponent. I have retained a copy
of this errata page for my records, and the court
reporter is to attach this page and my verification
to the original transcript.

Dated: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2017-CP-40-06634
	)	
The Homestead Property Owners' Association, Inc.,	)	
	)	
Plaintiff,	)	NOTICE OF DEPOSITION OF
vs.	)	DEFENDANT WANDA J. MILLER
	)	
Wanda J. Miller and Orlando F. Miller,	)	
	)	
Defendants.	)	

TO: BRIAN C. GAMBRELL AS COUNSEL FOR DEFENDANT APRIL C. EVANS:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Plaintiff, The Homestead Property Owners' Association, Inc., by and through its undersigned counsel, will take the deposition of Wanda J. Miller upon oral examination before a Notary Public, or before some other official authorized by the law of this State to take depositions, commencing Monday, July 16, 2018, at 10:00 a.m. at McCabe, Trotter & Beverly, P.C., 4500 Fort Jackson Boulevard, Suite 250, Columbia, South Carolina, 29209.

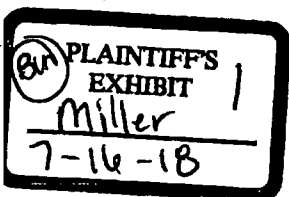


Stephanie C. Trotter (SC Bar 77680)
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Boulevard Suite 250
Post Office Box 212069 (29221)
Columbia, SC 29209 803-724-5008
Email: Stephanie.Trotter@mccabetrotter.com

Attorneys for Plaintiff

Columbia, South Carolina
July 2, 2018

This communication is for the purpose of collecting a debt. Any information obtained will be used for that purpose.



STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

The Homestead Property Owners' Association, Inc.,
Plaintiff,

v.

SUBPOENA DUCES TECUM IN A CIVIL CASE

Wanda J. Miller and Orlando F. Miller, Defendants

Case Number: 2017-CP-40-06634

Pending in Richland County

TO: Wanda J. Miller

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

McCabe, Trotter & Beverly, P.C., 4500 Fort
Jackson Boulevard, Suite 250, Columbia,
South Carolina, 29209

DATE AND TIME July 16, 2018, 10:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

Any and all records in your possession regarding any claims or defenses you have raised or intend to raise in this civil action.

PLACE

McCabe, Trotter & Beverly, P.C., 4500 Fort
Jackson Boulevard, Suite 250, Columbia,
South Carolina, 29209

DATE AND TIME July 16, 2018, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

7/2/2018

Date

Stephanie Trotter

Print Name

Stephanie Trotter; McCabe, Trotter, & Beverly, P.C., P.O. Box 212069, Columbia, SC 29211; 803.724.5000

• Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and Telephone Number :

Date

Print Name

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(III) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2017-CP-40-06634
	)	
The Homestead Property Owners' Association, Inc.,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Wanda J. Miller and Orlando F. Miller,	)	
	)	
Defendants.	)	
	)	

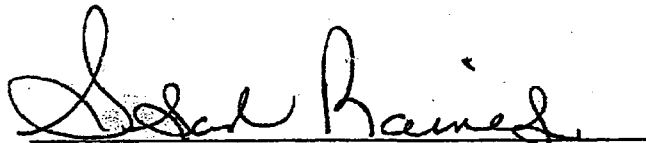
I, Susan Raines, an employee with the Law Firm of McCabe, Trotter & Beverly, PC, attorneys for Plaintiff, hereby certify that I have served or caused to be served a copy of the foregoing documents upon the below-named individual and/or counsel this the 3rd day of July 2018, via *hand-delivery* at the address as follows:

DOCUMENTS SERVED

Notice of Deposition of Defendant Wanda J. Miller and Subpoena Duces Tecum

PARTIES SERVED

Brian Gambrell, Esq.
The Law Offices of Jason E. Taylor, PC
810 Dutch Square Blvd., Suite 112
Columbia, SC 29210


Susan Raines

Columbia, South Carolina

This communication is for the purpose of collecting a debt. Any information obtained will be used for that purpose.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

DEED

KNOW ALL MEN BY THESE PRESENTS, That

SHUMAKER HOMES, INC.

in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty-Four Thousand Two Hundred Thirty-Seven and 50/100 (\$234,237.50) Dollars, to it paid by WANDA J. MILLER AND ORLANDO F. MILLER {hereinafter GRANTEE(s)} in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, by these presents does grant, bargain, sell and release unto the said

WANDA J. MILLER AND ORLANDO F. MILLER

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as LOT SIXTY-TWO (62) on a plat of THE HOMESTEAD SUBDIVISION prepared for Brickyard 44, LLC by W. K. Dickson & Associates, Inc. dated September 9, 1005, last revised November 8, 2005, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1163 at page 2534. Said lot is more specifically shown and delineated on a plat prepared for Wanda J. Miller and Orlando F. Miller by C. Thomas Hixson, Jr., RLS, dated November 13, 2007.

The above plats are incorporated herein by reference and are made a part hereof for a more complete and accurate description. All measurements shown on said plats are a little more or less.

This is a portion of the property conveyed to Shumaker Homes, Inc. by deed of Brickyard 44, LLC dated March 13, 2007, recorded March 15, 2007, in Record Book 1292 at Page 3389.

THE LIMITED WARRANTY ISSUED TO YOU IN CONNECTION WITH THIS TRANSACTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY WARRANTY OF HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY EXCLUDED AND DISCLAIMED. WARRANTOR IN NO EVENT SHALL BE HELD LIABLE FOR CONSEQUENTIAL DAMAGES.

Wanda J. Miller
WANDA J. MILLER

Orlando F. Miller
ORLANDO F. MILLER

Grantee's Mailing Address:

261 Kenmore Park Drive
Columbia, SC 29223

TMS No.: 20103-05-28

Book 1383-2579

2007109676 12/12/2007 15:39:09:587

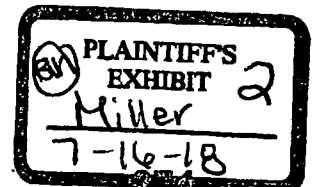
Deed

Fee:\$10.00 County Tax:\$257.85 State Tax:\$609.70



2007109676 Richard W. Rodden

Richland County ROD



This conveyance is made subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to, any shown on recorded plats.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said GRANTEE(S) and GRANTEE(S)' Heirs and Assigns forever.

And it does hereby bind itself and its successors, to warrant and defend all and singular the said premises unto the said GRANTEE(S)' Heirs and Assigns, against it and its successors and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the within Deed has been executed this 11th day of December, 2007.

Signed, Sealed and Delivered
In The Presence of:

SHUMAKER HOMES, INC.

Mr. Eric Demand

By:

[Signature]
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named SHUMAKER HOMES, INC. by its duly authorized officer sign, seal and, as its act and deed, deliver the within deed and that (s)he with the other witness subscribed above, witnessed the execution thereof.

Sworn To Before Me This 11th
day of December, 2007.

[Signature]
(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3/29/09

STATE OF SOUTH CAROLINA) COVENANTS, CONDITIONS AND RESTRICTIONS-
COUNTY OF RICHLAND) THE HOMESTEAD

THIS DECLARATION made the date and year hereinafter set forth, subscribed by BRICKYARD 44, LLC, (hereinafter referred to as "Declarant")

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain property located in Richland County, South Carolina, more particularly described as :

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Parcels A, containing 13.79 acres, Parcel B, containing 15.34 acres, and Parcel C, containing 14.79 acres, on a plat prepared for Mattie Lee Jones Estates by Inman Land Surveying Company, Inc., dated July 14, 2003, and recorded in the Office of the Register of Deeds for Richland County in Record Book 859 at Page 540. Reference to said plat being made for a more complete and accurate description.

WHEREAS, the Declarant is developing on the property hereinabove described a residential community known as THE HOMESTEAD, providing a residential community and desires to impose these Covenants, Conditions and Restrictions upon the said lots.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, affirmative obligations and conditions, all of which are for the purpose of protecting the value and desirability of the property described above, and which shall run with the real property and be binding on all persons having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

Section 1. "Association" shall mean and refer to THE HOMESTEAD PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Book 1189-3279

2006030810 04/05/2008 13:50:28:350

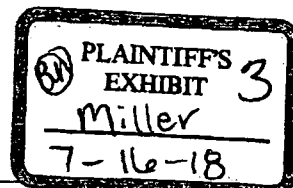
Fee:\$22.00 County Tax:\$0.00

Declaration of Covenants
State Tax:\$0.00



2006030810 John G. Norris

Richland County ROD



276

Section 3. "Properties" shall mean and refer to that real property hereinabove described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean and refer to all real property (including the improvements thereon) owned by the Association for the common and exclusive use and enjoyment of the owners and others, entitled to the use thereof.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties, together with the improvements thereon, with the exception of the roads and common area.

Section 6. "Member" shall mean and refer to every person who is a member of the Association.

Section 7. "Declarant" shall mean and refer to BRICKYARD 44, LLC, or any person or entity who succeeds to the title of Declarant to any portion of the Properties by sale or assignment of all of the interests of the Declarant in the Properties, if the instrument of sale or assignment expressly so provides, or by exercise of a right of foreclosure of a mortgage given by the Declarant or a deed in lieu thereof. Any such person or entity shall be entitled to exercise all rights and powers conferred upon Declarant by this Declaration, the Articles of Incorporation or Bylaws of the Association.

ARTICLE II Property Rights

Section 1. Owners Easements of Enjoyment. Every Owner shall have the right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to formulate, publish and enforce rules and regulations regarding the use of the Common Area; and

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by at least two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his rights of enjoyment of the Common Area to members of his family, his tenants, or contract purchasers, provided, however, that each such delegee shall reside upon a Lot of such Owner.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area described herein to the Association free and clear of all liens and encumbrances, subject only to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and utility and drainage easements specifically reserved or indicated on any recorded plat.

Section 4. Transfer or Mortgage of the Common Area. Unless the Association shall receive the prior written approval of at least two-thirds (2/3) of the lot owners (exclusive of the Declarant), the Association shall not be entitled to, by act or omission, abandon, partition, subdivide, sell, mortgage or transfer all or any portion of the Common Area, except that wetlands, detention ponds and drainage ways may be transferred to appropriate governmental entities.

No portion of the common area may be sold or transferred to any other party for any other use than is set forth in this document and no subdivision of the common area may occur unless such property is brought into compliance with the then existing subdivision regulations of the County of Richland, South Carolina, regarding lots for other than support facilities.

ARTICLE III
Membership and Voting Rights

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant, and each shall be entitled to one (1) vote for each Lot owned. If more than one person owns an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they may determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership upon the happening of the earlier of the following:

(i) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(ii) On December 31, 2016.

ARTICLE IV
Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(i) Annual assessments or charges, and

(ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the maintenance of the Common Area, the payment of any taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the establishment of an adequate reserve for the maintenance, repair and replacement of the improvements in the Common Area, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Amount of Annual Assessments. The maximum annual assessment for each Lot in the Properties shall be payable annually, in advance, and the amount thereof shall be determined as follows:

(a) Up to and including December 31, 2006, the maximum annual assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot.

(b) The maximum annual assessment for the calendar year beginning January 1, 2007, and for each calendar year thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed Ten Percent (10%) of the maximum annual assessment of the previous year.

(c) The maximum annual assessment may be increased without limit by the affirmative vote of two-thirds

(2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum. When the Board of Directors fixes the annual assessments for each calendar year, the Board shall, at the same time and in connection therewith prepare, or cause to be prepared, an annual budget showing the services furnished by the Association and the cost thereof per lot.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related hereto, Provided that any such assessment shall have the assent of Two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on an annual basis, or on such other basis as may be approved by the Board of Directors.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast Sixty Percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be One-Half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date set for the preceding meeting.

Section 6. Uniform Rate of Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots and shall be collected annually in advance, or on any other basis approved by the Board of Directors.

Section 7(a). Date of Commencement of Annual Assessments:

The annual assessments provided for herein shall commence as to each lot on the first day of the first month following the construction of a residence on the lot and the issuance of a certificate of occupancy. The first annual assessment

shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment and give every owner subject thereto written notice of each assessment. Due dates shall be established by the Board of Directors. The Association, upon demand at any time and for a reasonable charge, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 7(b). Initial Start Up Fee: In addition to the annual assessments as set forth herein and in lieu of paying a prorata assessment for the year of conveyance of each lot, a one time start up fee in the amount of One Hundred Eighty and No/100 (\$180.00) Dollars will be payable by the initial Purchaser of each lot at the time of closing of the sale and purchase of each lot.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any annual assessment not paid within thirty (30) days after the due date shall bear interest from the due date at that rate which is equal to the rate of interest chargeable by law in the State of South Carolina on money judgements. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in like manner as a mortgage of real property, and, in either event, interest, costs and a reasonable attorneys fee shall be added to the amount of such assessment. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the annual assessment due and payable and collect the same through foreclosure. In the event of any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot after commencement of the foreclosure action; the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to (1) the lien of any first mortgage, and (2) the lien of any unpaid ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall be deemed to require any Mortgagee to be responsible for the collection of assessments.

ARTICLE V
ARCHITECTURAL CONTROL

No building, fence, wall, mailbox or other structure, and no change in topography, landscaping, grading, filling or any other item, shall be commenced, erected or maintained upon any portion of the Property or any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, so long as Declarant owns any lot in the Subdivision or until such time as Declarant relinquishes such rights in writing, and thereafter, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event approval or disapproval is not given within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been completed.

ARTICLE VI
Use Restrictions

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors shall be recorded in a book of resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. The Properties shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws and other applicable restrictions of record:

a. No structure shall be erected on any Lot in the subdivision other than one permanent single-family dwelling and detached or attached garage of similar design, and no use shall be made of the Property or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family; Provided, however, the Declarant reserves to itself, as well as the right to assign to builders during construction, the right to use one or more such dwellings as a temporary office, model home, information center and real estate sales office, provided further that no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities and drainage facilities within the areas provided hereinafter. Any temporary construction used as administrative, information or

real estate sales office shall be promptly removed when it shall come to be used for such purposes. No other temporary structure or apartment shall be erected upon any Lot.

b. No Lot in the subdivision shall be subdivided or reduced in size without the written consent of the Declarant, provided, however, that no Lot in the subdivision shall be subdivided or reduced in size so as to have a total area less than the smallest Lot shown on the above referenced plat, nor shall any Lot so subdivided leave a residual lot with a total area less than the smallest Lot shown on said plat.

c. Any consequence of alteration to the natural grade of any Lot shall be the responsibility of the Purchaser of said Lot. Said Purchaser shall also be responsible for the channeling of any surface water in accordance with the approved grading Plan of the subdivision.

d. No residence containing less than Nine Hundred (900) square feet of heated space shall be erected on any lot.

e. All sewage disposal shall be by central sewer service approved by appropriate governmental utility authorities, or by public utility at such rates as shall be established by governmental authority or approved by the South Carolina Public Service Commission.

f. The placement, design, type and color of any mailbox and its support must be approved by the Declarant or the Architectural Committee appointed by it in accordance with Article V above.

g. The placement, design, type, material and color of any fencing shall be first approved by the Declarant or the Architectural Committee appointed by it in accordance with Article V above.

h. No building shall be closer than twenty five (25) feet to the street or road right of way upon which it faces, no building shall be closer to the interior side lot boundary line than a minimum of five (5) feet, nor closer than twenty (20') feet to the rear lot line, nor closer to any side street line than a minimum of ten (10.0) feet; further provided, however, that no side, rear or front setback distance shall be less than the side or front setback lines as shown on the above referenced plat.

i. No noxious or offensive activity or other thing shall be had or done upon any Lot in the subdivision, and nothing shall be had or done thereon which constitutes or becomes an annoyance or nuisance to the neighborhood, or constitutes an unsanitary condition. No livestock or other such animals shall be allowed or kept on any lot in the subdivision. Nothing shall be done or allowed, and no conditions or situation shall be permitted on any such Lot which shall constitute, cause or

become a nuisance or otherwise detract from the desirability of the neighborhood as a residential section.

j. No radio or television transmission or reception towers, antennas, or satellite dishes shall be erected on a Lot other than customary satellite dishes which do not exceed sixteen (16") inches in width, provided that such satellite dishes shall not be visible from the street on which the house faces. In no event shall freestanding transmission or receiving towers or discs or dishes be permitted which are greater than sixteen inches in diameter.

k. No tent, shack, trailer, bus, camper or motor home or temporary structure of any kind shall be erected, kept, had or allowed at any time on any Lot or parked on the street or road adjacent thereto; provided, however, that a camper or motor home may be parked in an enclosed garage where such recreational vehicle is not visible from the street, or adjoining homes, and also provided such garage meets all requirements for buildings and improvements contained elsewhere in these restrictions. No automobiles, trucks or other motor vehicles shall be parked within the right of way of any public street for a period of longer than twenty four hours, nor shall any such vehicle be parked on any portion of a lot other than in an approved garage or on an approved concrete driveway for a period of longer than twenty four (24) hours. All garage doors shall remain closed except for ingress and egress. No clothesline may be erected or maintained on any Lot. All rubbish, garbage and trash shall be kept in closed cans, or other suitable containers, which shall be placed and kept in such manner as to be out of sight from the street. The Lot, property and premises shall be kept clean at all times.

l. Water, sanitary sewer, drainage and public utility easements are reserved over each Lot in the subdivision along the side five (5) feet and front and rear ten (10) feet and such others as are shown on the recorded plat referred to in these restrictions. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels. The Declarant hereby reserves the right to create and impose additional easements or rights-of-way over unsold Lots or for street, drainage and utility installation purposes by the recording of appropriate instruments, and such shall not be construed to invalidate any of these covenants. Declarant may grant written easements to specific utility providers within the easement areas described herein as reserved for utilities, and such easements shall be effective whether recorded before or after the sale of a lot affected thereby.

m. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than five (5)

square feet advertising the property for sale or rent, or signs approved by Declarant and used by a builder to advertise the property during construction and sales period. During the initial period of construction on the vacant Lots, no sign shall be placed on any Lot unless the style and design thereof shall have been approved in writing by the Declarant, its successors or assigns. Provided, however that nothing contained in this paragraph shall prohibit Declarant from approving a sign or signs larger than provided in this paragraph for use at model home sites or at the entrance to the development.

n. These restrictions shall run with the land and be binding upon all parties, persons, firms or corporations claiming under them until January 1, 2037. Thereafter said restrictions shall automatically be extended for successive periods of ten (10) years unless changed in part or in whole by written instrument signed by a majority of then record owners of the Lots.

o. If any person shall violate, or attempt to violate, any of these restrictions, any person who shall own real property in the subdivision may enforce these restrictions by proceedings at law or in equity, to either recover damages or restrain such violation. All costs and expenses incurred in the successful enforcement of any restriction, including a reasonable attorney's fee, shall thereupon become due and payable by the losing party.

p. In the event of the unintentional violation of any of the building line restrictions or minimum Lot residence square foot requirements as set forth herein, Declarant reserves the right, by and with the mutual written consent of the owner or owners for the time being of such Lot, to change the building line restriction set forth in this instrument; provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Richland, State of South Carolina.

q. Use of Common Area. No person shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area or facilities except under the direction of and with the express consent of the Association. The Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the residences, subject to any rules and regulations that may be adopted by the Association pursuant to its Bylaws. Plants and trees now or hereafter located on the Common Area shall be maintained by the Association and may not be removed except by permission of the Board of Directors. No additional plants, trees or shrubs may be planted upon the Common Area without the written approval of the Board of Directors.

r. Subdivision streetlighting . In the event subdivision streetlighting is provided by South Carolina Electric and Gas Company (SCE&G), then such street lighting will be provided under the terms approved by the South Carolina Public Service Commission. Each homeowner will have a prorata share of streetlighting costs included in their monthly electric bills from SCE&G. The amount of this monthly charge is determined by SCE&G, is on file with the South Carolina Public Service Commission and is subject to change as approved by the South Carolina Public Service Commission.

ARTICLE VII Easements

Section 1. Reservation. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats for use by Declarant, utility companies and public agencies in connection with this development. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which obstruct or retard the flow of water through drainage channels and the easements. The use of such easement areas by the Association for access, ingress and egress to and from common areas and the public streets is hereby specifically granted.

Section 2. Common Areas. Declarant hereby reserves unto itself, its successors and assigns, easements to cross the Common Area with pipes, utilities, power lines, gas lines, drainage and other usual and customary subdivision service facilities. The Association shall have the power and authority to grant and establish in, over, upon and across any Common Area conveyed to it such further easements as may be requisite for the convenient use and enjoyment of the property.

ARTICLE VIII Rights of First Mortgagees

The following provisions, in addition to the provisions set forth elsewhere in this Declaration, shall be applicable to the holders, guarantors or insurers of first mortgages upon Lots subject to this Declaration and any Amendments hereto:

Section 1. Planned Unit Development. This Declaration and other constituent documents create a planned unit development hereinafter referred to as a "PUD."

Section 2. Assessment. Any first mortgagee who obtains title to a Lot pursuant to the remedies provided in its mortgage shall not be liable for unpaid assessments which accrued prior to the acquisition of title to such Lot by the mortgagee.

Section 3. Material Changes. Unless the Association shall

receive the prior written approval of at least two-thirds (2/3) of the first mortgagees (who have informed the Association of their addresses in writing and requested to participate in such decisions), the Association shall not be entitled to do any of the following:

(a) By act or omission, seek to abandon, partition or subdivide, sell or transfer the Common Area owned, directly or indirectly, provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area, shall not be deemed a transfer within the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other changes which may be levied against any Lot or the Owner thereof;

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance residential dwellings, the maintenance of party walls or common fences and driveways, or the upkeep of lawns, plantings and improvements located in or on the Common Area;

(d) Use hazard insurance proceeds for loss to any Common Area improvements for other than the repair, replacement or reconstruction of such improvements.

Section 4. Taxes and Other Charges. First mortgagees of Lots subject hereto may, jointly and severally, pay taxes or other charges which are in default and which may, or have become, a charge against any of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of such policies for such Common Area, and first mortgagees making such payments shall be immediately reimbursed therefor by the Association.

Section 5. Rights in Insurance Proceeds and Condemnation Award. No provision of the PUD constituent documents gives an Owner or any other party priority over any of the rights of any first Mortgagee contained in its mortgage, in or to a distribution to such owner of insurance proceeds or condemnation award or losses to or a taking of the Common Area or any part thereof.

Section 6. Notice to Mortgagee. A first mortgagee, upon request, is entitled to written notification from the association of the following: (a) any default in the performance by its borrower of any obligations under the PUD constituent documents which is not cured within sixty (60) days; (b) any condemnation loss or any casualty loss which affects a material portion of the Properties or any of such mortgagee's security; (c) any lapse, cancellation or material modification of any insurance policy or

fidelity bond maintained by the Association, and (d) any proposed action which would require the consent of a specified percentage of the mortgage holders.

Section 7. Further Rights of Mortgagees. The Association shall make this Declaration, any bylaws or other rules pertaining to the Properties, as well as all books, records and financial statements, available for inspection by any mortgagee during normal business hours or under other reasonable circumstances. Any mortgagees, upon its request, shall be entitled to a financial statement for the immediately preceding fiscal year.

Section 8. Contract Services. No agreement or lease, entered into on behalf of the Association prior to the termination of Class B membership, as provided in Section 2(b) Article III, shall be binding on the Association, unless the agreement or lease shall permit termination by either party without cause and without payment of a termination fee upon written notice of ninety (90) days or less.

ARTICLE IX

Annexation and Further Development

Section 1. Other Residential Property. Additional residential property and common area may be annexed to the Properties at any time, with the consent of the Owners of two-thirds (2/3) of the lots. Any land owned by Declarant and adjacent to the property which is subject to this Declaration may be annexed without the consent of members.

Section 2. Common Areas. Title to any common areas located within such portions of land annexed by the Declarant as provided in Section 1 may be conveyed to the Association without its consent, or the consent of the Owners, and shall be held, improved and administered in the same manner and for the same purposes, as the land described in Article I, Section 4, hereof.

Section 3. Effect of Annexation. Additional properties and improvements, including common area, so annexed shall be merged with the Properties described herein and with any previously annexed property, and shall be subject to the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association. Annexation as provided in this Article may increase or decrease the benefits which each Owner expects to derive from the Common Area, and may increase or decrease the cost of maintenance and operation thereof; any increase or decrease in such costs may require the Association to change the annual assessments levied in accordance with this Declaration.

ARTICLE X

General Provisions

Section 1. Application. All Owners, employees of Owner and tenants or any other persons who may, in any manner, use the

Properties or any portion thereof shall be subject to the provisions hereof and to the provisions of the Articles of Incorporation and the Bylaws of the Association.

Section 2. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so.

Section 3. Severability. Invalidation of any one of these covenants or restrictions, by judgment or court order, shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with the land and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3rds) of the lots; provided, however, that the Board of Directors may amend this Declaration without the consent of Owners to correct any obvious errors or inconsistencies in drafting, typing or reproduction or to make any changes required for FHA, VA or Conventional loan approval. All Amendments shall forthwith be recorded in any public office where this Declaration may be recorded and shall be effective upon such recordation.

Section 5. Lease of Residence. No residence shall be leased for transient or hotel purposes, nor may any Owner lease less than his entire residence. Any lease must be in writing and provide that the terms of the lease and occupancy of the dwelling shall be subject in all respects to the provisions of this Declaration and of the Bylaws and Articles of Incorporation, and that any failure by any lessee to comply with the terms of such documents shall be in default of such lease.

Section 6. Liability Insurance. The Association shall obtain and maintain a broad form public liability insurance policy covering all of the Common Area and all damage or injury caused by the negligence of the Association or any of its agents, officers or employees in an amount of not less than One Million and No/100 (\$1,000,000.00) Dollars for each occurrence, and such policies shall contain a waiver of the right of subrogation against the Association, its members, officers, agents or employees.

Section 7. Fidelity Bonds. The Association may maintain, as a common expense of the Association, blanket fidelity bond coverage against dishonest acts by officers directors, agents and employees and all other persons handling or responsible for funds of or administered by the Association. Such fidelity bonds

shall:

- (a) Name the Association as an obligee;
- (b) Be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual budget of the Association, including reserves;
- (c) Contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expressions; and
- (d) Provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days, prior written notice to the Association.

Similar bonds may be required covering any management agent employed by the association for such agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

Section 8. Waiver. No provision hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may occur.

Section 9. Conflicts. In the event of irreconcilable conflicts between this Declaration and the Bylaws or Articles of Incorporation, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between the Articles of Incorporation of the Association and the Bylaws of the Association, the provisions of the Articles of Incorporation shall control.

Section 10. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and nonpersonal entities, as well as the singular and plural wherever the context provides or permits.

Section 11. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

IN WITNESS WHEREOF, BRICKYARD 44, LLC has caused this Declaration to be executed on this the 27th day of March, 20056.

WITNESSES:

BRICKYARD 44, LLC (SEAL)

Janet S. Hingling
J. S. H.

By: *Dexter O. Kinard*
Its: MEMBER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness who, on oath, says that (s)he saw the within-named BRICKYARD 44, LLC, by its duly authorized Member, sign the within Declaration of Covenants, Conditions and Restrictions, and, as its act and deed, deliver the same, and that (s)he with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 27th day of March, 2006.

Janet S. Hingling

J. S. H.
Notary Public for South Carolina
My Commission Expires: 8/25/15

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

DEED

KNOW ALL MEN BY THESE PRESENTS, That

SHUMAKER HOMES, INC.

in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty-Four Thousand Two Hundred Thirty-Seven and 50/100 (\$234,237.50) Dollars, to it paid by WANDA J. MILLER AND ORLANDO F. MILLER {hereinafter GRANTEE(s)} in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, by these presents does grant, bargain, sell and release unto the said

WANDA J. MILLER AND ORLANDO F. MILLER

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as LOT SIXTY-TWO (62) on a plat of THE HOMESTEAD SUBDIVISION prepared for Brickyard 44, LLC by W. K. Dickson & Associates, Inc. dated September 9, 1005, last revised November 8, 2005, and recorded in the Office of the Register of Deeds for Richland County in Record Book 1163 at page 2534. Said lot is more specifically shown and delineated on a plat prepared for Wanda J. Miller and Orlando F. Miller by C. Thomas Hixson, Jr., RLS, dated November 13, 2007.

The above plats are incorporated herein by reference and are made a part hereof for a more complete and accurate description. All measurements shown on said plats are a little more or less.

This is a portion of the property conveyed to Shumaker Homes, Inc. by deed of Brickyard 44, LLC dated March 13, 2007, recorded March 15, 2007, in Record Book 1292 at Page 3389.

THE LIMITED WARRANTY ISSUED TO YOU IN CONNECTION WITH THIS TRANSACTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY WARRANTY OF HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY EXCLUDED AND DISCLAIMED. WARRANTOR IN NO EVENT SHALL BE HELD LIABLE FOR CONSEQUENTIAL DAMAGES.

Wanda J. Miller
WANDA J. MILLER

Orlando F. Miller
ORLANDO F. MILLER

Grantee's Mailing Address:

261 Kenmore Park Drive
Columbia, SC 29223

TMS No.: 20103-05-28

Book 1383-2579
2007109678 12/12/2007 15:39:09:587 Deed
Fee: \$10.00 County Tax: \$257.95 State Tax: \$609.70



2007109678 Richard W. Rodden Richland County ROD

This conveyance is made subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to, any shown on recorded plats.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said GRANTEE(S) and GRANTEE(S)' Heirs and Assigns forever.

And it does hereby bind itself and its successors, to warrant and defend all and singular the said premises unto the said GRANTEE(S)' Heirs and Assigns, against it and its successors and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the within Deed has been executed this 11th day of December, 2007.

Signed, Sealed and Delivered
In The Presence of:

SHUMAKER HOMES, INC.

Mr. Eric Demard

By:

Its:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named SHUMAKER HOMES, INC. by its duly authorized officer sign, seal and, as its act and deed, deliver the within deed and that (s)he with the other witness subscribed above, witnessed the execution thereof.

Sworn To Before Me This 11th day of December, 2007.

Mr. Eric Demard
(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3/29/09

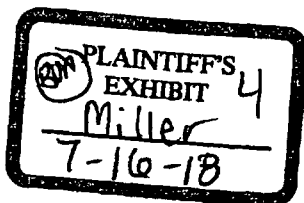
Account Statement for Wanda & Orlando Miller

Account: HM160-46 Date: 07/13/2018
E-mail Address: orlandofmiller@gmail.com Home Phone:
Association: SC The Homestead Property Owners Association Work Phone:
Home Address: 261 Kenmore Park Drive Columbia, SC 29223
Mailing Address: 261 Kenmore Park Drive Columbia, SC 29223

14-15 180

Transaction History

Date	Description	Charges	Payments	Balance
12/31/2014	Beginning Balance	180.00	0.00	180.00
01/01/2015	Operating Assessment 2015	180.00	0.00	360.00
02/23/2015	Late fee/Penalty Income (Delinquent Interest) 2015	2.63	0.00	362.63
01/01/2016	Operating Assessment 2016	180.00	0.00	542.63
02/01/2016	Late Interest on Unpaid Assessment	3.96	0.00	546.59
03/01/2016	Late Interest on Unpaid Assessment	3.96	0.00	550.55
04/01/2016	Late Interest on Unpaid Assessment	4.01	0.00	554.56
05/01/2016	Late Interest on Unpaid Assessment	4.04	0.00	558.60
06/01/2016	Late Interest on Unpaid Assessment	4.07	0.00	562.67
07/01/2016	Late Interest on Unpaid Assessment	4.10	0.00	566.77
08/01/2016	Late Interest on Unpaid Assessment	4.13	0.00	570.90
09/01/2016	Late Interest on Unpaid Assessment	4.16	0.00	575.06
10/01/2016	Late Interest on Unpaid Assessment	4.19	0.00	579.25
11/01/2016	Late Interest on Unpaid Assessment	4.22	0.00	583.47
12/01/2016	Late Interest on Unpaid Assessment	4.25	0.00	587.72
01/01/2017	Late Interest on Unpaid Assessment	4.29	0.00	592.01
01/01/2017	Operating Assessment 2017	180.00	0.00	772.01
02/01/2017	Late Interest on Unpaid Assessment	5.63	0.00	777.64
03/01/2017	Late Interest on Unpaid Assessment	5.63	0.00	783.27
04/01/2017	Late Interest on Unpaid Assessment	5.71	0.00	788.98
05/01/2017	Late Interest on Unpaid Assessment	5.75	0.00	794.73
06/01/2017	Late Interest on Unpaid Assessment	5.79	0.00	800.52
07/01/2017	Late Interest on Unpaid Assessment	5.84	0.00	806.36
08/01/2017	Late Interest on Unpaid Assessment	5.88	0.00	812.24
08/04/2017	Legal Fees - HM160-46	400.00	0.00	1212.24
09/01/2017	Late Interest on Unpaid Assessment	5.92	0.00	1218.16
10/01/2017	Late Interest on Unpaid Assessment	8.88	0.00	1227.04



Account Statement for Wanda & Orlando Miller

Account: HM160-46 **Date:** 07/13/2018
E-mail Address: orlandofmiller@gmail.com **Home Phone:**
Association: SC The Homestead Property Owners Association **Work Phone:**
Home Address: 261 Kenmore Park Drive Columbia, SC 29223
Mailing Address: 261 Kenmore Park Drive Columbia, SC 29223

Transaction History (cont.)

Date	Description	Charges	Payments	Balance
11/01/2017	Late Interest on Unpaid Assessment	8.95	0.00	1235.99
12/01/2017	Late Interest on Unpaid Assessment	9.01	0.00	1245.00
01/01/2018	Late Interest on Unpaid Assessment	9.08	0.00	1254.08
01/01/2018	Operating Assessment 2018	180.00	0.00	1434.08
02/01/2018	Late Interest on Unpaid Assessment	10.46	0.00	1444.54
02/09/2018	Legal Fees 2016 - HM160-46	65.00	0.00	1509.54
02/23/2018	Legal Fees - HM160-46	134.00	0.00	1643.54
03/01/2018	Late Interest on Unpaid Assessment	10.46	0.00	1654.00
04/01/2018	Late Interest on Unpaid Assessment	12.06	0.00	1666.06
05/01/2018	Late Interest on Unpaid Assessment	12.15	0.00	1678.21
06/01/2018	Late Interest on Unpaid Assessment	12.24	0.00	1690.45
07/01/2018	Late Interest on Unpaid Assessment	12.33	0.00	1702.78
Balance Due:				1702.78



COMMUNITY SPECIALISTS

Accredited Association Management Company®

P.O. Box 24917 • Columbia, SC 29224

Office: (803) 454-3064 • Fax: (803) 454-3074

Email: helpdesk@synergy-communities.com

www.synergy-communities.com

The Homestead Property Owners Association

PO Box 24917

Columbia, SC 29224

Wanda & Orlando Miller

261 Kenmore Park Drive

Columbia, SC 29223

Property Address: 261 Kenmore Park Drive

Account #: 14287

Code	Date	Amount	Balance	Check#	Memo
Assessment	8/1/2014	180.00	180.00		Beginning Balance
Assessment	1/1/2015	180.00	360.00		Annual Assessment
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	360.00
180.00	0.00	0.00	180.00		

Synergy Community Specialists | PO Box 24917 | Columbia, SC 29224 | (803)454-3064

Make check payable to: The Homestead Property Owners Association

1/12/2015

Page 1 of 1

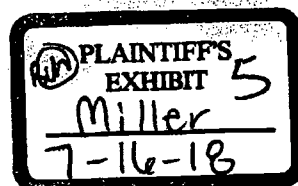
296

Stephanie Trotter

From: WJ Miller <macnmill@yahoo.com>
Sent: Thursday, December 14, 2017 4:30 PM
To: Payoff, Orlando Miller
Subject: Payment schedule
Attachments: Homeowners.docx

Hello,
We are requesting a payment arrangement. Could you please review the attached? If you have questions, please call 509 3151.

Thank you,
Wanda and Orlando Miller



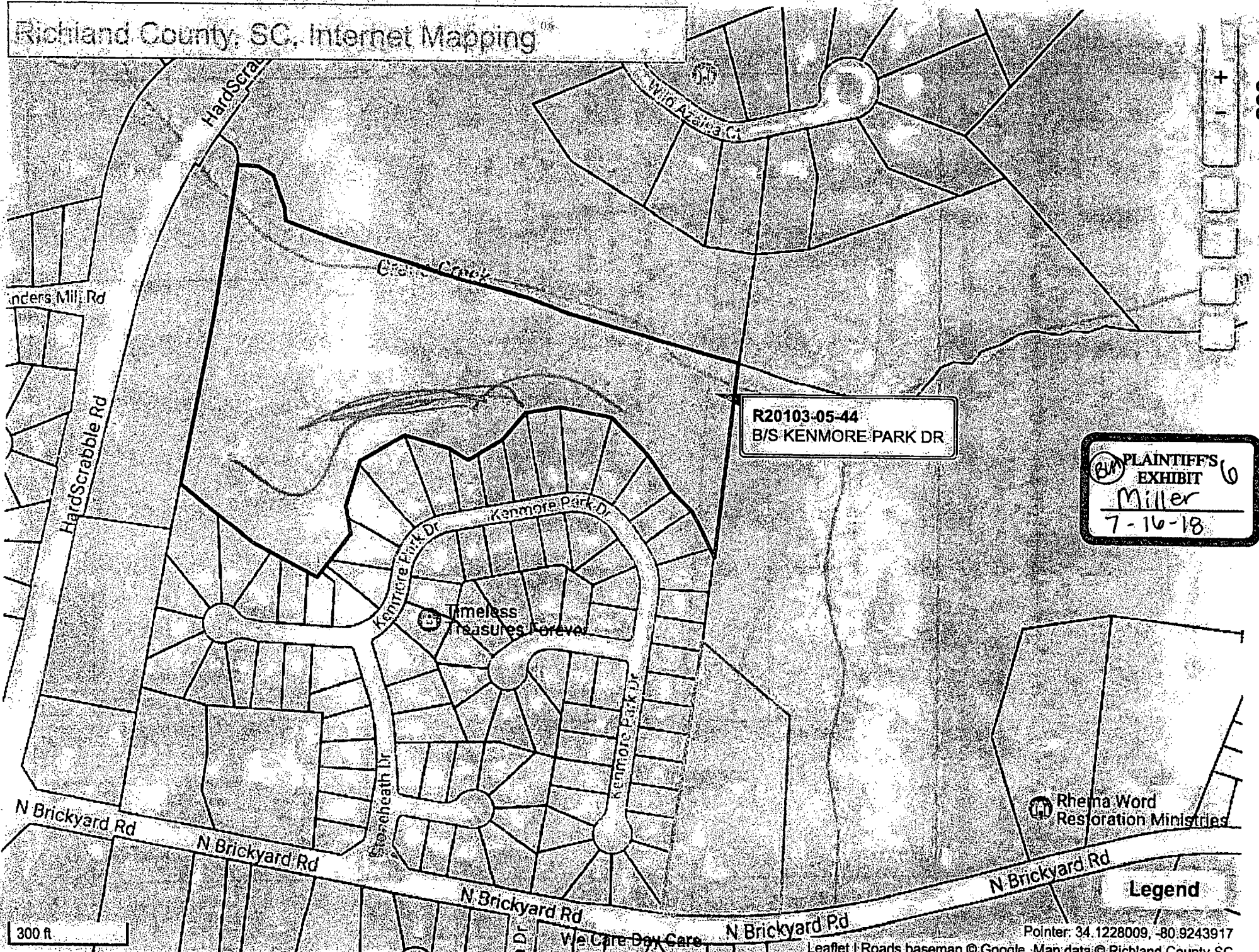
December 14, 2017

To Whom It May Concern,

We would like to set up a payment arrangement for the Homestead Homeowners Association Fees. We can make an initial payment of \$200.00 on December 29, 2017, and then \$100 every two weeks.

Thank you,

Wanda and Orlando Miller
261 Kenmore Park Drive
Columbia, SC 29223



R20103-05-44
B/S KENMORE PARK DR

PLAINTIFF'S
EXHIBIT 6
Miller
7-16-18

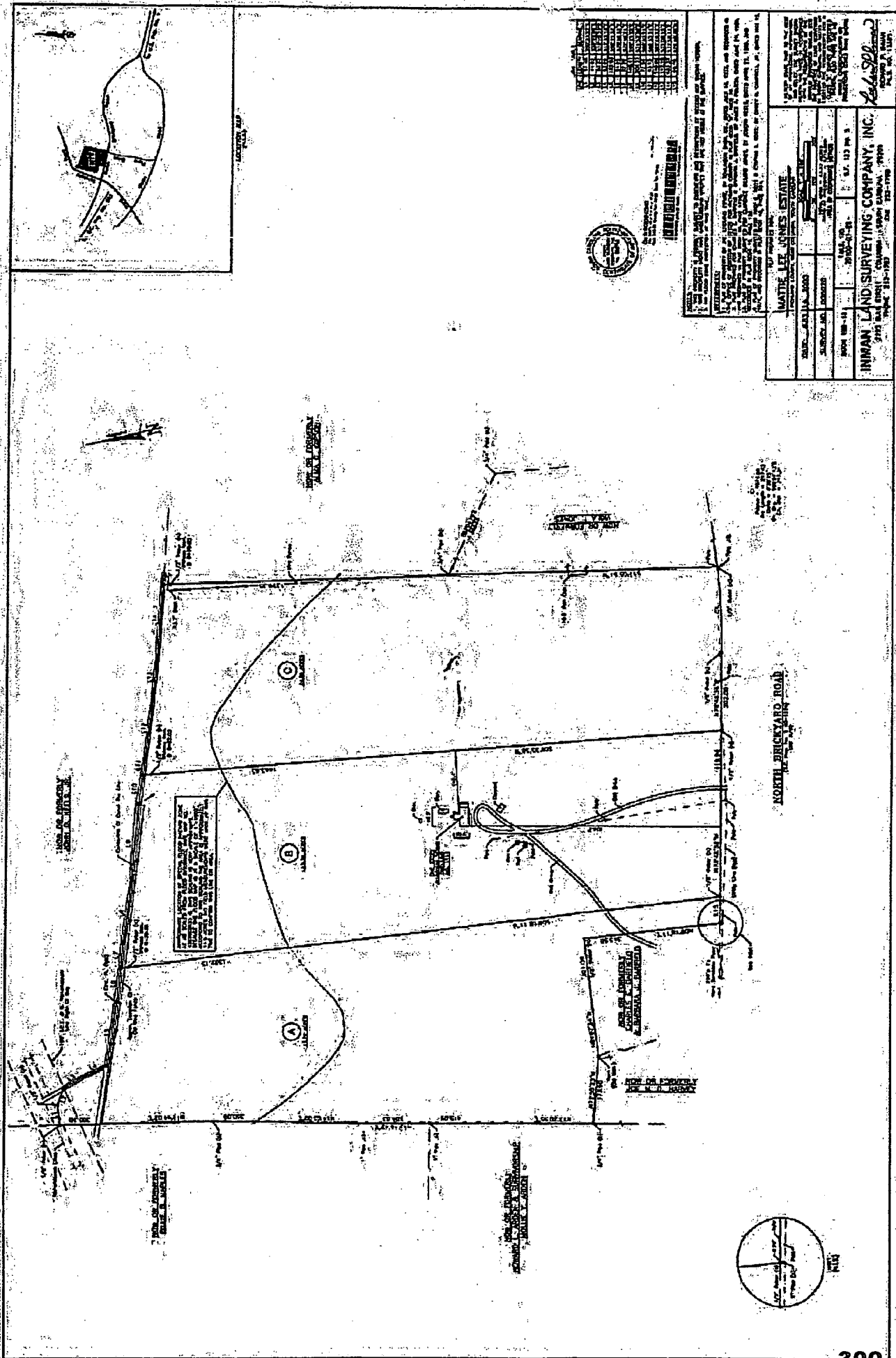
Rhema Word
Restoration Ministries

Legend

300 ft

Pointer: 34.1228009, -80.9243917

Leaflet | Roads basemap © Google, Map data © Richland County SC



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COURT OF COMMON PLEAS FOR THE
STATE OF SOUTH CAROLINA
FOR THE COUNTY OF RICHLAND

The Homestead Property)
Owners' Association, Inc.,)
)
Plaintiff,)
)
vs.)
)
Wanda J. Miller and)
Orlando F. Miller,)
)
Defendants.)
_____)

CIVIL ACTION NO.:
2017-CP-40-06634

DEPOSITION OF: ORLANDO F. MILLER

DATE: Monday, July 16, 2018
TIME: At 2:31 P.M.
LOCATION: LAW OFFICES OF:
McCabe Trotter & Beverly
4500 Fort Jackson Boulevard
Suite 250
Columbia, SC 29209
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Brittany Van Nort, Court
Reporter and Notary Public

APPEARANCES:

FOR PLAINTIFF:

McCabe, Trotter & Beverly, P.C.
Stephanie C. Trotter, ATTORNEY AT LAW
4500 Fort Jackson Boulevard, Suite 250
Columbia, SC 29209
(803) 724-5008

FOR DEFENDANTS:

The Law Offices of Jason E. Taylor, P.C.
Brian C. Gambrell, ATTORNEY AT LAW
1122 Lady Street, Suite 1020
Columbia, SC 29201
(800) 351-3008

ALSO PRESENT: Brian Gavigan and Wanda Miller

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E X H I B I T S

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(Deed)	
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(Covenants, Conditions, and Restrictions)	
Plaintiff's Exhibit No.4 (3 pages).....	39
(Account Statements for HOA)	

1	Plaintiff's Exhibit No.5 (2 pages).....	44
2	(E-mails)	
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4	(Deposition Notice - referenced as Exhibit 1 but	
5	changed to Exhibit 7 as continuing Exhibits)	
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STIPULATIONS

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * *

1 ORLANDO F. MILLER,
2 HAVING BEEN FIRST DULY SWORN,
3 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

4 EXAMINATION

5 (Whereupon Plaintiff's Exhibit No.7
6 was marked before the proceeding
7 (6 pages) - Deposition Notice)

8 BY MS. TROTTER:

9 Q. All right, Mr. Miller, you sat through
10 your wife's deposition, but I'm going to go over
11 just a few of the housekeeping matters again. My
12 name is Stephanie Trotter. I'm the attorney for
13 The Homestead Property Owners' Association. Do you
14 understand that you're under oath the same today as
15 if you were in a courtroom?

16 A. Yes.

17 Q. Okay. Is there anything that would
18 prevent you from thinking clearly or testifying
19 truthfully today?

20 A. No.

21 Q. Are you on any medication that would
22 effect your ability to think or testify?

23 A. No.

24 Q. Okay. Have you ever had your
25 deposition taken before?

1 A. No.

2 Q. Okay. The same ground rules that we
3 went over in Ms. Miller's case -- if you need any
4 breaks, just let me know. Please, try and speak
5 clearly so that the court reporter can transcribe
6 everything that you're saying. Please try and use
7 "Yes" and "No" as opposed to a head shake. I'll
8 try and help you if you forget.

9 A. All right.

10 Q. Try not to speak over each other. I'll
11 try to remember that as well. It's hard for her to
12 transcribe things when people are talking at the
13 same time.

14 A. I gotcha.

15 Q. You have to answer my question unless
16 your counsel tells you not to, and if you have any
17 questions, you need to direct them to me and not
18 your counsel, unless we agree and give you
19 instructions otherwise, okay?

20 A. Okay.

21 Q. Can you state your full name for the
22 record?

23 A. Orlando Fitzgerald Miller.

24 Q. Okay. And when were you born?

25 A. September 23rd, 1967.

1 Q. Okay. And where are you from?

2 A. Antreville, South Carolina.

3 Q. Where is that?

4 A. Abbeville County.

5 Q. Okay.

6 MR. GAMBRELL: It's between Belton

7 and --

8 THE WITNESS: No. It's between

9 Anderson and Abbeville. Antreville.

10 MR. GAMBRELL: But you can get there

11 from -- anyway, we'll talk about it later.

12 THE WITNESS: Yeah, you can get there

13 that way, yes.

14 MR. GAMBRELL: Yeah. My brother's

15 girlfriend was from Antreville.

16 THE WITNESS: Yeah, you can get there

17 from -- yeah.

18 MR. GAMBRELL: Yeah, yeah, got it.

19 BY MS. TROTTER:

20 Q. What's your home address now?

21 A. 261 Kenmore Park Drive, Columbia, South
22 Carolina 29223.

23 Q. Okay. Do you own any other property?

24 A. No.

25 Q. Okay. Are you married?

1 A. Yes.

2 Q. To who?

3 A. Wanda Miller.

4 Q. You were here earlier. You heard
5 Ms. Miller describe the dates of your marriage.
6 Were those generally accurate?

7 A. Yes.

8 Q. Okay. I won't make you go through
9 those again.

10 A. All right. Thank you.

11 Q. Where are you employed?

12 A. Dorn VA.

13 Q. Okay. And what do you do there?

14 A. I'm a restorative nursing assistant.

15 Q. What does that mean?

16 A. I work in the physical therapy area as
17 an assistant.

18 Q. Okay. How many children do you have?

19 A. Four.

20 Q. Okay. And those are the same children
21 that Ms. Miller talked about in her deposition?

22 A. Yeah.

23 Q. Okay. Where did you go to high school?

24 A. Dixie High School.

25 Q. And did you attend school after high

1 school?

2 A. Yes.

3 Q. Where did you attend?

4 A. I've gone to Midlands Tech, and I went
5 to Virginia College.

6 Q. Okay. Do you have any degrees or
7 certificates from those schools?

8 A. Yes. I have certificate in cardiac
9 care from Midlands Tech, and I have an Associate's
10 degree in medical assistance from Virginia College.

11 Q. Okay. Do you have any relatives that
12 live in Richland County?

13 A. Yes.

14 Q. Are they different than the ones that
15 Ms. Miller identified in her deposition?

16 A. One, yes.

17 Q. Okay. Who is that?

18 A. Robert -- my uncle Robert Scotland.

19 Q. Okay. Have you ever been involved in a
20 lawsuit before?

21 A. Yes I guess would be the answer to
22 that.

23 Q. Okay. I have a list of lawsuits that
24 your name came up on, and if I go through them, can
25 you tell me if it's you --

1 A. Sure.

2 Q. -- if you're the same Orlando Miller?

3 A. I hope so.

4 Q. A 2009 case that The Homestead Property
5 Owners' Association brought against you? Are you
6 familiar with that case?

7 A. Yes.

8 Q. What was the outcome of that case?

9 A. It was the -- we paid the fees and that
10 was the end of it.

11 Q. Okay. There was a case in 2009 called
12 Barbara Evans versus Eggroll Queen?

13 A. No.

14 Q. Okay. A 2009 mortgage foreclosure with
15 Wells Fargo?

16 A. I don't think we were ever in
17 foreclosure. So that would not be accurate.

18 Q. Okay. Does Wells Fargo have the
19 mortgage on your home at 261 Kenmore Park?

20 A. They did at that time, yeah.

21 Q. Okay.

22 A. But they don't have it any longer, no.

23 Q. Okay. Did it get sold or --

24 A. Yes.

25 Q. Did you refinance?

1 A. No, we did not refinance. We did a
2 modification.

3 Q. Okay. Jonathan and Christine Moore in
4 2011?

5 A. Yes.

6 Q. Do you know what that lawsuit was
7 about?

8 A. The rental property.

9 Q. Do you remember what the claims were?

10 A. They were saying that they didn't
11 receive their deposit back.

12 Q. Gotcha. Do you know what the outcome
13 of that lawsuit was?

14 A. We won the lawsuit because they didn't
15 pay the last month's rent. So the judge rewarded
16 us the -- the security deposit to cover that and
17 damages.

18 Q. Gotcha. I believe you testified that
19 you're not the owner of that -- the rental
20 property?

21 A. Correct.

22 Q. Were you an owner in 2011?

23 A. No, I was not.

24 Q. Okay. Okay. And then I have -- okay.
25 That's all the lawsuits that I have. Are you aware

1 of any other lawsuits that you've been a party to?

2 A. No, just the -- the -- this one and the
3 -- this is the only one.

4 Q. Okay.

5 A. There aren't anymore I can think of.

6 Q. Do you own any businesses?

7 A. No.

8 Q. Okay. Are you an officer or director
9 in any corporation?

10 A. No, I'm not.

11 Q. Okay. What documents did you bring
12 with you today?

13 A. None.

14 Q. Okay. We have marked as Plaintiff's
15 Exhibit 1 a document called Amended Deposition of
16 Defendant Orlando Miller. Have you seen this
17 document before?

18 A. No, ma'am, I have not.

19 Q. On page two do you see where it says,
20 "You are commanded to produce and permit
21 inspection"? And it's about mid way through.

22 A. Yes, I do.

23 Q. All right. Is there a reason you
24 didn't bring anything today in light of this
25 subpoena?

1 A. Well, my lawyer has all these
2 documents. And like I stated before, I haven't
3 seen this document before today.

4 Q. Okay. What documents did you review
5 prior to your deposition today?

6 A. Really nothing. Just -- nothing I can
7 recall. I didn't review any documents that I can
8 say I reviewed anything.

9 Q. Okay. Other than your lawyer, who did
10 you speak with about this deposition?

11 A. Just my wife.

12 Q. Okay. What did y'all discuss about the
13 deposition?

14 A. Just general things; what it would be
15 like, what kind of questions you may ask, who would
16 be here, what the environment would be like.

17 Q. Okay. I am going to hand you what was
18 marked as Plaintiff's Exhibit 2 in your wife's
19 deposition. It says "Deed" at the top of it. Is
20 that a deed to the property that you own with Wanda
21 Miller?

22 A. Yes, this is what it says.

23 Q. Do you have any reason to believe that
24 it's not a copy of the deed -- copy of the original
25 deed to your property?

1 A. No, I do not.

2 Q. Okay. I'm going to hand you what's --
3 what we marked as Plaintiff's Exhibit 3 in Wanda
4 Miller's deposition and ask you if you recognize
5 that document?

6 A. I do recall a covenant, yes, but maybe
7 not this exact one because as my wife stated
8 before, she initialled the one that we -- we
9 signed.

10 Q. Did you have to initial a different
11 document at that same time?

12 A. No, I don't think so. My wife is -- my
13 wife did that from my memory.

14 Q. Do you have a copy of the covenant that
15 your wife initialled?

16 A. I do not know the answer to that
17 question, honestly.

18 Q. Okay. Did you review your files before
19 filing the counterclaim in this matter?

20 A. No, I did not.

21 Q. Okay. Tell me about your claims
22 against the Association.

23 A. Can you be a little specific, please,
24 about what exactly you want me to answer for you.

25 MR. GAMBRELL: Is that your phone?

1. THE WITNESS: Excuse me. Let me fix
2 that. I apologize.

3 Q. What claims do you have against the
4 Association?

5 A. I mean if there's something specific
6 you want to ask me about, I'm willing to answer
7 that.

8 Q. I want to know --

9 A. But I can't give you a specific answer
10 to that.

11 Q. I would like to know what you want from
12 the Association?

13 A. I want what they promised us is what I
14 would like for the Association to do.

15 Q. Okay. What did they promise you?

16 A. That we would have access to a common
17 area.

18 Q. Okay. And when did they promise you
19 that?

20 A. Here it says that we will be able to
21 use the common area, which there is no common area
22 for us to get any use from.

23 Q. Okay. What else would you like from
24 the Association?

25 A. Well, just for them to abide by the

1 agreement. That's all.

2 Q. Okay. And what's the agreement?

3 A. Abide by the covenant.

4 Q. Just for the record, you've pointed to
5 Exhibit 3. Are you talking about Exhibit 3 or some
6 other document?

7 A. Since this is the document that's in
8 front of us -- I don't have the one that my wife
9 initialled. So I don't know if this is the
10 original or not. Whether this is the same document
11 or this is a different document from the one that
12 my wife initialled.

13 Q. Do you have some reason to believe that
14 Plaintiff's Exhibit 3 does not apply to your
15 property?

16 A. I can't say that because I don't know
17 when this document was written or if it's the same
18 one that my wife and I -- that my wife initialled.

19 Q. I'm sorry, go ahead.

20 A. I don't know if it's the same one she
21 initialled or not.

22 Q. Do you see a barcode on that
23 Plaintiff's Exhibit 3?

24 A. Yes, I do.

25 Q. Does it say anything about being

1 recorded? Is there a book and page listed there?

2 A. There's a book and some numbers. The
3 word book and some numbers.

4 Q. Okay. Is there somebody's name
5 underneath the barcode?

6 A. John G. Norris.

7 Q. Is there a title next to his name?

8 A. Richland County ROD.

9 Q. Okay. Are there some dollar figures
10 written on that sticky on that barcode?

11 A. Yes, there are.

12 Q. What do they say?

13 A. "Fee \$22. County tax zero. State tax
14 zero."

15 Q. Okay. So if you don't know if
16 Plaintiff's Exhibit 3 is the contract between the
17 parties, where can I find the contract that you say
18 the Association has breached?

19 A. I never stated that. That was --
20 you -- you stated those words. I never said
21 anything. I never stated that. That was your
22 statement just now.

23 Q. Which -- okay. Do you contend the
24 Association breached a contract with you?

25 A. I can't answer that because I don't

1 know if this is --

2 Q. Regardless of which contract -- let's
3 back up before that. Do you believe the
4 Association breached a contract with you?

5 A. Once again, I can't give you an answer
6 to that because this is -- I don't -- this is not
7 the same thing that my wife and I signed.

8 Q. Okay. Do you believe the Association
9 breached the document that you and your wife or
10 your wife signed?

11 A. Once again, I can't give you an answer
12 to that because I don't have it in front of me
13 today.

14 Q. Okay. Do you understand that this
15 deposition is my chance to ask you questions about
16 what you might testify about at trial?

17 A. Yes, I understand that.

18 Q. Okay. So today I need for you to tell
19 me whether or not the Association has breached a
20 contract with you?

21 A. I think that depends on what your
22 definition of a contract is.

23 Q. Okay. Earlier you said you wanted the
24 Association to keep their promise?

25 A. Correct.

1 Q. Okay. And I asked you where they
2 promised that, and you said in the covenants; was
3 that right?

4 A. Yes.

5 Q. Okay. Where can I find the covenants
6 where they promised to give you access to the
7 common area?

8 A. I can't tell you that. I don't have it
9 in my possession today, and I don't know if this
10 was the one that I signed and my wife signed or if
11 this is something that was made after that fact.

12 Q. Okay. Do you see a date on that
13 document?

14 A. Yes, I do see a date.

15 Q. What's the date on that document?

16 A. 4-5-2006..

17 Q. Was that before or after you purchased
18 the property in The Homestead?

19 A. Before.

20 Q. Okay. If you don't know where the
21 covenants are, how do you know that it contained a
22 promise to provide you access to the common area?

23 A. Because it says that we would have --
24 get enjoyment from the common areas.

25 Q. Where does it say that?

1 A. On this one I think you and my wife
2 went over it earlier.

3 Q. Your testimony is that you don't know
4 if that's the contract that you have with the
5 Association because it doesn't have either yours or
6 your wife's or both of yours' signature; correct?

7 A. Correct.

8 Q. So tell me where I can find the
9 contract that you contend exist between you and the
10 Association?

11 A. I can't -- I can't give you that
12 answer.

13 Q. If you can't tell me where that
14 contract is, how do you know what that contract
15 says?

16 A. Because I know this -- because this
17 paper here does not have any initials on it of my
18 wife or myself.

19 Q. I understand that. You've testified
20 there is a document somewhere that says covenants
21 that has at least your wife's signature on it;
22 right?

23 A. It should -- it should exist somewhere.

24 Q. Where would that be?

25 A. I can't give you the answer to that.

1 Q. Okay. When was the last time you read
2 that document?

3 A. I can't give you the answer to that
4 either.

5 Q. If you don't know where it is, and you
6 don't know when you read it last, how do you know
7 it contains a promise to give you access to the
8 common areas?

9 A. Because that's what I recall reading in
10 that agreement is that it says that we would get
11 enjoyment from the common areas. If you are
12 purporting that I can enjoy something, how can I
13 enjoy something that I have no access to?

14 Q. You just told me that you don't
15 remember when the last time you read it, and you
16 don't know where it would be, but you remember
17 something about the common areas from that
18 document?

19 A. Yes, I do.

20 Q. Do you remember what that document says
21 about attorneys fees?

22 A. No, I do not.

23 Q. Do you remember what that document says
24 about annual assessments?

25 A. No, I do not.

1 Q. Do you remember what that document says
2 about architectural control?

3 A. No, I do not.

4 Q. Do you know what that document says
5 about rules and regulations regarding the common
6 area?

7 A. No, I do not.

8 Q. What else do you remember that that
9 document says?

10 A. I can't remember at this moment.

11 Q. So the only thing you remember from
12 that document is that you shall have use and
13 enjoyment of the common areas?

14 A. Yes. That's the main thing -- that's
15 one of the main things that I remember from that
16 covenant is that we would get use and enjoyment
17 from our common area, which we do not have any
18 access to.

19 Q. Did you remember that before your wife
20 read it in her deposition today?

21 A. Yes, I did.

22 Q. Okay. Was there a -- you can strike
23 that. What else do you want the Association to do?

24 A. Oh, I can't think of anything else at
25 this moment.

1 Q. So if we were in front of the judge
2 today, and he said, "Mr. Miller what can I grant
3 for you," the only thing you would ask is for the
4 Association to provide a common area that you can
5 use and enjoy?

6 A. And I would ask him to stop this
7 proceeding.

8 Q. Okay. And what would be the reason to
9 stop the proceeding?

10 A. Because I don't think it's fair to my
11 wife and myself.

12 Q. Okay. Why not?

13 A. Because this is where I live.

14 Q. Okay.

15 A. This is where I come to rest my head in
16 the evenings, and I don't think it's fair for
17 someone to try to take something away from me and
18 my family that they have no vested interest in.

19 Q. Okay. What else would you ask the
20 judge for?

21 A. That's all I can think of at this time.

22 Q. Would you ask the judge to make the
23 Association pay you any money?

24 A. I can't answer that right now. I don't
25 know.

1 Q. Well, Mr. Miller, this is your day to
2 tell me all the things you're going to say at
3 trial. So I need to know if you're going to ask
4 the judge to make my client pay you money?

5 A. I can't answer that because my answer
6 is I don't know at this time.

7 Q. Have you suffered any damages in light
8 of the Association breaking its promise to you?

9 A. It depends on what your definition of
10 damages is.

11 Q. Did you read the counterclaim before it
12 was filed in this matter?

13 A. No, ma'am I did not because I have my
14 lawyer for that.

15 Q. I'm sorry?

16 A. No, ma'am, I did not read the
17 counterclaim.

18 Q. Okay. Are you aware that you have
19 asked the Court to award you all actual and
20 consequential damages, fees, and costs?

21 A. I did not read the document, ma'am.

22 Q. Okay. But are you aware that your
23 attorney on your behalf asked the Court to award
24 you actual and consequential damages, fees, and
25 costs from my client?

1 A. If that's what my lawyer asked for then
2 I'm relying on my lawyer's expertise.

3 Q. Okay. And what actual and
4 consequential damages have you incurred?

5 A. I would once again refer you to my
6 lawyer to get an answer to that question, ma'am.

7 Q. You can't do that. You're the person
8 who would know the facts about your case. So have
9 you been harmed in some way by the Association's
10 acts in this matter?

11 A. Once again, I would have to refer you
12 to my lawyer.

13 Q. Are you refusing to answer my question?

14 A. I'm not refusing to answer your
15 question, ma'am. I'm giving you the answer to your
16 question that I have at this moment, and that is I
17 refer you to my lawyer.

18 Q. Mr. Miller, are you aware of any -- any
19 reason my client should have to pay you money?

20 A. Once again, ma'am, I would have to
21 refer you to Mr. Gambrell for the answer to that
22 question.

23 Q. This isn't something you can refer me
24 to your lawyer for. Are you aware of any facts
25 that would support the Court awarding you money

1 from my client? For example: If you're in a car
2 wreck, somebody hits you from behind, and you have
3 a hurt neck, you're going to go to the Court and
4 say, "My neck is hurt. I want to be compensated
5 for my neck being hurt." Your lawyer can argue off
6 the wall for you and can articulate all that, but
7 you're the one who knows your neck is hurt. So I'm
8 asking you today, tell me what's hurt. Tell me how
9 you've been damaged in this lawsuit.

10 A. The fact that I'm here today.

11 Q. Okay. Other than being here today?

12 A. The fact that I had to even call
13 Mr. Gambrell.

14 Q. Okay. How do you want to be
15 compensated for having to call Mr. Gambrell?

16 A. I can't give you an answer to that,
17 ma'am. I don't know. I haven't even thought about
18 that.

19 Q. Do you have a fee agreement with
20 Mr. Gambrell?

21 A. Yes, ma'am, I do.

22 Q. Okay. What's that fee agreement?

23 A. I can't articulate that to you at this
24 moment.

25 Q. Did you agree to pay him an hourly

1 **rate?**

2 A. I can't remember what -- what the
3 agreement says, ma'am.

4 Q. Did you -- have you paid him any money?

5 A. No, ma'am, I have not.

6 Q. Has he billed you for any money?

7 A. I have no idea, ma'am.

8 Q. Have you received a bill from
9 Mr. Gambrell?

10 A. No, ma'am, I have not.

11 Q. Okay. Other than your time here today
12 and having to call Mr. Gambrell, how else have you
13 been hurt in this matter?

14 A. I can't give you -- I've given you the
15 answers. Those two are -- that's my only answers I
16 have for you today.

17 Q. Okay. Today is your chance to tell me.
18 So is that the totality of how you've been damaged?

19 A. I can't give you an answer to that. I
20 haven't sat back and said, "Well, this is how I've
21 been damaged." I haven't sat back and contemplated
22 all the things that I could say have damaged me.
23 My answer is what I've given you today.

24 Q. Well, do you want to take a minute to
25 sit back and think about it?

1 A. No, ma'am, I do not. I don't need
2 that.

3 Q. Well, then I need an answer to my
4 question, please.

5 A. I've given you --

6 Q. I'm happy to give you the time to sit
7 back and think about your answer as long as you
8 need to say it so that it's full for the record,
9 but this is your chance today to tell me your
10 testimony so that I can prepare for trial in this
11 matter.

12 A. Ma'am, I don't have anything else to
13 say today --

14 Q. Okay.

15 A. -- other than what I stated today.

16 Q. Okay. When was the last time you made
17 a payment to the homeowners' association or its
18 manager or my law firm?

19 A. I don't recall.

20 Q. Was it after 2013?

21 A. I don't recall. I don't think so.

22 Q. Where would you go to find that out?

23 A. Right now I really don't know.

24 Q. Would you look at your bank records?

25 A. I can't say that I would. I don't

1 know.

2 Q. Okay. Where would you look to find out
3 when the last time you made a payment to the
4 Association?

5 A. Once again, I don't know where I would
6 look. I would start -- I have no idea right now
7 where I would look.

8 Q. Is there a reason it wouldn't be
9 contained in your bank records?

10 A. I don't know. It could be a reason,
11 but I don't know.

12 Q. Then what is that reason?

13 A. I could have paid cash. I don't know.

14 Q. Do you --

15 A. I could have gotten a money order and
16 mailed it. I have no idea.

17 Q. Do you usually pay your bills with
18 money orders?

19 A. It varies.

20 Q. Okay. Do you keep the receipts for
21 those money orders when you do?

22 A. I may.

23 Q. Where do you get your money orders
24 from?

25 A. It varies.

1 Q. Give me an example.

2 A. Walmart, the post office, the general
3 store.

4 Q. Who do you usually pay with a money
5 order?

6 A. It varies.

7 Q. When's the last time you can remember
8 using a money order?

9 A. I can't remember the last time.

10 Q. Okay. Has the Association returned any
11 payments to you uncashed?

12 A. Not to my knowledge.

13 Q. Okay. Has my law firm returned any
14 payments to you uncashed?

15 A. Not to my knowledge.

16 Q. Do you remember receiving a lien and
17 demand letter from my law firm in May of 2016?

18 A. I can't say that I do.

19 Q. Do you remember receiving a foreclosure
20 warning letter from my law firm in May of 2017?

21 A. I can't be -- I can't say that I do
22 recall exact dates, no.

23 Q. Do you remember receiving a letter from
24 my law firm telling you the Association was going
25 to start foreclosure proceedings?

1 A. I recall receiving a letter from your
2 law firm, yes.

3 Q. Okay. Did it say the Association was
4 going to start foreclosure proceedings?

5 A. I can't say that I remember that exact
6 verbiage, no, ma'am.

7 Q. What do you remember the letter being
8 about?

9 A. I really don't recall. I recall
10 receiving a couple of things from you guys, so.
11 And I don't remember exactly what they were about.

12 Q. Okay. Tell me why you shouldn't have
13 to pay the amount the Association is seeking today?

14 A. For number one, I don't know what that
15 amount is.

16 Q. What do you believe you owe the
17 Association?

18 A. From prior testimony, I believe we owe
19 them \$720.

20 Q. And where do you come up with \$720?

21 A. For -- like my wife said, from '14 to
22 '15, '15 to '16, '16 to '17, '17 to '18.

23 Q. Okay. When do you believe the 2018
24 assessment is due?

25 A. I believe it's the end of the year.

1 Q. Okay. So help me understand. Well,
2 let me back up. So would you agree that at least
3 by December 31st, 2018, you will owe \$900? \$720
4 plus 180 for 2018?

5 A. I would say that would -- yes, I would
6 say.

7 Q. Do you agree that you owe interest to
8 the Association?

9 A. I don't know.

10 Q. Okay. Do you believe that you owe the
11 Association for legal fees and costs?

12 A. No.

13 Q. Why not?

14 A. Because who's to say what that cost is?

15 Q. Okay.

16 A. And --

17 Q. Let's say the cost was 1 dollar, would
18 you be responsible for it if it was 1 dollar?

19 A. No, ma'am, because there's nowhere --
20 where does it say that I'm responsible for the
21 Association's legal fees?

22 Q. If the contract that you and your wife
23 agreed to called covenant that may have her
24 signature on it -- if it says you're responsible
25 for the Association's legal fees, does that change

1 **your answer?**

2 A. No because you can put anything on a
3 piece of paper. That doesn't mean that I'm
4 responsible for it. Because there's something
5 written on a piece of paper doesn't make me
6 responsible for it.

7 Q. Okay. Couldn't the Association claim
8 the same thing with regard to use and enjoyment of
9 the common areas? Just because it's on a piece of
10 paper doesn't mean they have to do it?

11 A. No.

12 Q. Why is that different?

13 A. Well, it has to be enforceable by law.

14 Q. Okay. Why would the attorney fees not
15 be enforceable by law?

16 A. I can't say they're not, but because
17 they're written on a piece of paper doesn't say
18 they are.

19 Q. You've testified that you're not
20 responsible for them. I'm trying to determine why
21 you are not responsible for them. Is there a law
22 that says that they're not enforceable?

23 A. No, but I didn't hire you. I didn't
24 hire you. The Association did.

25 Q. I understand that. My question was if

1 the contract that your wife signed says that you
2 have to pay the Association's legal fees, would
3 that change your answer about being responsible for
4 them?

5 A. No, ma'am, it would not.

6 Q. So the Association has to follow the
7 use and enjoyment part of the covenants, but you
8 don't have to follow the Association's legal fee
9 part?

10 A. Well, that -- that's for someone else
11 to decide, not me. That's not for me to decide.

12 Q. Well, I'm asking you why you believe
13 that?

14 A. Because I didn't hire you.

15 Q. Okay.

16 A. I didn't hire a lawyer for the
17 Association.

18 Q. Do you agree that you were delinquent
19 in paying your assessments?

20 A. Yes, I was delinquent in paying my
21 assessments.

22 Q. Okay. Do you admit the Association has
23 a right to file a lien and foreclose that lien
24 against owners who are delinquent in paying their
25 assessments?

1 A. No, ma'am, I do not.

2 Q. Why not?

3 A. Because they don't have any equity in
4 my house.

5 Q. Why do they have to have equity in your
6 house to foreclose on it?

7 A. Because what right do they have to
8 foreclose on my property that I pay for every
9 month? They're not a mortgage company.

10 Q. Well, let's look at that. If you'll
11 look at Plaintiff's 3, and if you'll turn to the
12 page 1169/3284. Do you see in section eight where
13 the Association is empowered to foreclose the liens
14 just like a mortgage foreclosure?

15 A. Once again, ma'am, because something is
16 written on a piece of paper does not make it legal.

17 Q. Okay. What makes it illegal?

18 A. They have no equity in our home.
19 Because I can write -- I can write on this piece of
20 paper that you owe me a million dollars. Does that
21 mean you owe me a million dollars?

22 Q. So your -- your only argument against
23 the Association lienning and foreclosing is that
24 they don't have equity in your property?

25 A. And I don't think it's legal.

1 Q. Why is it not legal?

2 A. Because that's my belief.

3 Q. What research have you done based on
4 that belief?

5 A. I haven't done any.

6 Q. Did you do anything to attempt to see
7 if it was legal?

8 A. No. That would be my lawyer.

9 Q. I don't want to know anything about
10 what you talked to your lawyer about.

11 MR. GAMBRELL: I was about to intervene
12 and say that that's bordering on the advice I've
13 given him.

14 MS. TROTTER: That's fine.

15 MR. GAMBRELL: So leave it alone.

16 BY MS. TROTTER:

17 Q. I'll keep asking questions, but I will
18 clarify that any of these questions, I don't want
19 to know anything you've told your lawyer. That's
20 privileged, and I'm not entitled to talk about it,
21 so. It's hard for me to know sometimes when the
22 answer out of your head is going to be "Well,
23 because my lawyer told me." You know, because I
24 don't know what he's told you.

25 A. I understand that.

1 Q. Other than speaking with your lawyer,
2 did you do any research before today about whether
3 this is legal?

4 A. No, not that I can recall.

5 Q. Did you -- did you read anything in a
6 case called Erdogan versus Preserve at Charleston
7 Park?

8 A. Not that I can recall.

9 Q. Have you ever heard of that case?

10 A. Not that I can recall.

11 Q. All right. Do you know what your costs
12 in this matter have been?

13 A. No, ma'am.

14 Q. Okay. Tell me about the common area in
15 The Homestead. What does it consist of?

16 A. It consists of a sign at the front of
17 our -- at the entrance to our subdivision, two
18 little barriers on the side, and the swamp area,
19 the area behind our house, which is a swamp area
20 basically.

21 Q. Do you have any complaint about the way
22 the Association maintains the areas at the front of
23 the neighborhood?

24 A. No, not the front of the neighborhood.
25 They're okay.

1 Q. Okay. Is there a fence that the
2 Association has erected that prohibits you from
3 accessing the common area at the back of the
4 neighborhood?

5 A. No, there is not.

6 Q. Was the -- is the common area at the
7 back of the neighborhood in the same condition
8 generally that it was when you purchased the
9 property?

10 A. No. It's worse.

11 Q. Okay. How's it worse?

12 A. It looks more overgrown. The trees are
13 larger. The leaves are -- the limbs are longer.
14 There's more foliage back there.

15 Q. When you purchased your property, was
16 that area clear cut, or did it consist of trees and
17 vegetation?

18 A. It consisted of trees and vegetation.

19 Q. What did the Association do about that
20 common area between 2007 and 2012?

21 A. Nothing to my recollection.

22 Q. How did their behavior change from 2013
23 to 2016?

24 A. What -- to go back to your earlier
25 question before -- nothing, nothing, not at all.

1 Q. For the record, are you saying their
2 behavior did not change between 2013 and 2016?

3 A. It depends on what do you mean as far
4 as behavior?

5 Q. You testified the Association did
6 nothing to maintain the common elements between
7 2007 and 2012; is that right?

8 A. As far as my recollection, correct.

9 Q. How did their behavior, activities,
10 maintenance, anything that they were doing with
11 regard to those common areas change between 2013
12 and 2016?

13 A. As far as my recollection, they've
14 remained the same.

15 Q. What about their behavior, their
16 maintenance, their activities, anything related to
17 the common areas after 2016 -- how has it changed?

18 A. As far as my recollection, it hasn't
19 changed.

20 Q. Okay. Can you explain to me why your
21 counterclaim alleges that the HOA failed to
22 maintain the common elements and areas during 2013
23 through 2016?

24 A. What are the common elements?

25 Q. It's your pleading. I don't know.

1 A. I have to refer to my lawyer on that.
2 Because common areas are the common areas, and they
3 are the same.

4 Q. Well, this says, "The HOA failed to
5 maintain the common elements and areas during 2013
6 to 2016." I'm trying to figure out why you've
7 listed this date range when your testimony today
8 has been that their behavior has never changed?

9 A. That's just what it is, ma'am. I can't
10 -- I don't have any other answer for you than what
11 I've given you.

12 Q. Are you aware of any facts that would
13 support that allegation, that they failed to do it
14 specifically between 2013 and 2016?

15 A. My answer stays the same. I have -- I
16 gave you the answer.

17 Q. What's that answer?

18 A. The answer is they've stayed the same.

19 Q. Okay. And the answer is you don't know
20 why it says 2013 to 2016 in your counterclaim?

21 A. No, ma'am.

22 Q. Okay. I'm going to hand you what we
23 marked as Plaintiff's 4 in Wanda Miller's
24 deposition. Can you tell me which charges on that
25 paper are fraudulent?

1 A. I can't tell you if they are fraudulent
2 or not because I don't know how these figures were
3 calculated.

4 Q. Okay. What did you mean in your
5 counterclaim when you said the Association has
6 asserted fraudulent charges? What charges were you
7 referring to?

8 A. Ma'am, I can't tell you that, once
9 again, because I don't know how these figures were
10 calculated.

11 Q. Okay. Well, ignoring what's on
12 Plaintiff's 4, tell me any charges the Association
13 is alleging from you that are fraudulent.

14 A. Once again, I don't have anything to
15 reference so I can't give you the answer to that
16 question.

17 Q. Tell me any charges you believe are
18 fraudulent. Tell me the categories of charges you
19 believe are fraudulent.

20 A. I don't have anything in front of me to
21 reference, once again, to give you an answer to
22 that question.

23 Q. What would you look at to go find the
24 answer to that question?

25 A. I don't know at this moment.

1 Q. You're going to have to testify about
2 this at trial? What are you going to say?

3 A. I don't know, ma'am.

4 Q. Tell me about your abuse of process
5 claim.

6 A. Please explain that.

7 Q. You've asserted that the Association
8 took certain actions for an ulterior and that
9 you've been damaged in that way. Tell me about
10 that ulterior purpose.

11 A. Can you please explain that a little
12 bit better for me?

13 Q. This is your counterclaim. So you have
14 filed an action against my client, and I'm asking
15 you to tell me about the facts related to it.

16 A. Once again, could you please explain
17 that question a little more?

18 Q. Okay. You have alleged the HOA by and
19 through its agents returned Defendants assessment
20 payments inside of accepting them for purposes of
21 generating this lawsuit. Are you familiar with
22 that allegation?

23 A. No, ma'am, I'm not.

24 Q. Your testimony earlier was that my law
25 firm had never returned a payment to you; is that

1 true?

2 A. If that was my testimony.

3 Q. Okay. Your testimony earlier was the
4 Association had not returned any payments to you;
5 is that true?

6 A. If that was my testimony.

7 Q. Any idea why it's in your counterclaim
8 if payments have never been returned to you?

9 A. No, ma'am. I would ask you to talk to
10 my lawyer about that.

11 Q. Okay. Tell me about your breach of
12 contract claim against The association? Do you
13 know any facts related to it?

14 A. Once again, I think we went over this
15 information once before, and my answer stays the
16 same as it was before.

17 Q. Okay. Paragraph 38, you say, "Under
18 South Carolina law the relationship between HOA and
19 Defendants is based in contract." Are you aware of
20 that allegation in your counterclaim?

21 A. No, ma'am, I am not.

22 Q. Do you know what contract that's
23 referring to?

24 A. No, ma'am, I do not.

25 Q. What contracts are you aware of that

1 exist between you and the Association?

2 A. Only thing I know is we have a
3 covenant.

4 Q. Okay. And you're not sure if that's
5 the same thing that's in Plaintiff's Exhibit 3?

6 A. Correct.

7 Q. Okay. How has the HOA unlawfully
8 refused to accept your payments?

9 A. By continuously moving the goalposts.

10 Q. Okay. What do you mean by that?

11 A. We would call them or e-mail them and
12 try to set up something, and then they would call
13 back and say, "That's not acceptable. Here's what
14 we can accept."

15 Q. Okay. Did you ever attempt to pay the
16 full balance due?

17 A. No, ma'am.

18 Q. Did you ever attempt to pay \$720 in a
19 lump sum?

20 A. I attempted to pay more than that, yes.

21 Q. Okay. When did you attempt to pay more
22 than that?

23 A. I e-mailed your person here. I think
24 her name is Hailey (phonetic). I e-mailed her and
25 offered to pay her \$800, and she replied to me with

1 saying that the -- that -- that was -- that wasn't
2 good enough.

3 Q. Okay.

4 A. For lack of not quoting her verbatim.

5 Q. You did that by e-mail you say?

6 A. Yes, I believe so.

7 Q. Okay. Can you put that with -- those
8 are both 4. I don't want to get them separated.
9 I'm going to hand you what's already been marked as
10 Plaintiff's Exhibit 5. Do you recognize that
11 document?

12 A. Yes.

13 Q. Okay. Is that an e-mail that your wife
14 -- is she listed as the sender of that e-mail?

15 A. Yes.

16 Q. Are you listed as a recipient of that
17 e-mail?

18 A. I don't see it. So no.

19 Q. Do you see where it says "To"?

20 A. Yes.

21 Q. Do you see the words "Payoff; Orlando
22 Miller"?

23 A. Yes.

24 Q. Is your name Orlando Miller?

25 A. That is my name.

1 Q. Do you think that you were a recipient
2 on this e-mail?

3 A. I can't say that because this is a copy
4 of something. So I can't say that I am recipient
5 of this.

6 Q. Okay. Looking at page two of Exhibit
7 5, can you tell me what the offer is on that page?

8 A. The offer is \$200 on December 29th and
9 then \$100 every two weeks.

10 Q. Okay. All right. I'm going to mark
11 this --

12 MS. TROTTER: How do you want to mark
13 them? Should we have marked 1 -- Orlando's as
14 continuing?

15 THE COURT REPORTER: We can. I'll just
16 change the stickers.

17 MS. TROTTER: Okay. I'm sorry.

18 (OFF THE RECORD)

19 (WHEREUPON PLAINTIFF'S EXHIBIT NO.8

20 WAS MARKED FOR IDENTIFICATION PURPOSES

21 (8 PAGES) - E-MAILS)

22 (WHEREUPON A BREAK WAS TAKEN FROM

23 3:21 P.M. UNTIL 3:31 P.M.)

24 BY MS. TROTTER:

25 Q. All right. Mr. Miller, we went off the

1 record so that you and your counsel could discuss
2 what's been marked as Plaintiff's Exhibit 8. Did
3 you have a chance to speak with him about anything
4 other than Plaintiff's Exhibit 8?

5 A. No, ma'am, this is what we discussed.

6 Q. Are you familiar with those e-mails?

7 A. Yes, I'm familiar with the e-mails.

8 Q. Okay. Do these appear to be e-mails
9 between you and a member of my office?

10 A. Yes, they do.

11 Q. Okay. Can you tell me where in this
12 e-mail chain you offered to pay \$800?

13 A. It's not here. Maybe I was mistaken
14 about the amount. I remember \$800, but maybe I'm
15 mistaken, but I do recall offering \$800 to my
16 recollection.

17 Q. Okay. And did you do that by e-mail or
18 by telephone?

19 A. I believe it was by e-mail, but I could
20 be wrong.

21 Q. Could you be wrong about the amount as
22 well?

23 A. I could be wrong about the amount, yes.

24 Q. Okay.

25 A. But the fact that I offered to pay

1 anything --

2 Q. Go ahead. Finish your sentence.

3 A. That completed it.

4 Q. What significance do you attribute to
5 the fact that you offered to pay quote anything?

6 A. It's the fact that you all continuously
7 decline anything that we offer to pay.

8 Q. Looks like Plaintiff's Exhibit 8 starts
9 Thursday, December 21st, 2017 with an e-mail from
10 Haylen in my office to you. And it says, "The
11 alternate payment plan was declined. The standard
12 payment plan that we discussed is the only one I
13 can offer you at this time." Had you and Haylen
14 discussed a different payment plan via telephone
15 before this e-mail?

16 A. I don't recall.

17 Q. What do you think she meant by "the
18 standard payment plan that we discussed is the only
19 one I can offer you at this time"?

20 A. I don't know, ma'am.

21 Q. When you got this e-mail, did you think
22 it was weird that she said, "The standard payment
23 plan that we discussed is the only one I can offer
24 you at this time"?

25 A. I do not recall.

1 Q. Did you wonder what she was talking
2 about when she said, "the standard payment plan
3 that we discussed"?

4 A. Once again, ma'am, I do not recall.

5 Q. Do you remember speaking with Haylen in
6 December of 2017 via telephone?

7 A. Ma'am, I do not recall.

8 Q. What would refresh your memory?

9 A. I don't know what would refresh my
10 memory. I don't recall speaking with her.

11 Q. At all?

12 A. I didn't say -- I don't recall the
13 dates or the times that I spoke with her.

14 Q. Do you think that you spoke to her
15 before the e-mail marked as Plaintiff's Exhibit 5?

16 A. I don't recall.

17 Q. Why would you have sent Plaintiff's
18 Exhibit 5? What prompted you to send that?

19 A. It may have been in response to one of
20 the letters we received from you all.

21 Q. What letter would that have been?

22 A. I don't recall, ma'am.

23 Q. The next packet in Plaintiff's Exhibit
24 8 is an e-mail dated April 24, 2008 (sic) from you
25 to Haylen or that's the chain that starts. Do you

1 recognize that e-mail?

2 A. What time?

3 Q. April 24th, 2018 at 12:52 P.M.?

4 A. Yes.

5 Q. Is that an e-mail from you to Haylen in
6 my office?

7 A. Yes, it is.

8 Q. Okay. Reading back through that chain,
9 it looks like it starts December 21st, 2017 at 3:30
10 P.M. with Haylen indicating that the alternate
11 payment plan was declined.

12 A. Correct.

13 Q. Okay. And what was your response to
14 her December 21st, 2017 e-mail?

15 A. I don't see a response here.

16 Q. Do you see where it says, "On Thu, Dec
17 21, 2017"?

18 A. Yes, I do.

19 Q. Do you see immediately above that where
20 it says, "From: Orlando Miller. Sent: Tuesday,
21 April 24, 2018"?

22 A. Yes, I do.

23 Q. What does that e-mail say?

24 A. "Hello Haylen. I can pay 600 dollars
25 and do payments on the remainder."

1 Q. Is that e-mail from you to Haylen in my
2 office?

3 A. Yes, but I think you are -- yes, that's
4 an e-mail to Haylen.

5 Q. Okay. And is that almost four months
6 after the e-mail immediately below it?

7 A. Yes, it is.

8 Q. Okay. Did Haylen respond to your offer
9 to pay \$600 and do payments on the remainder?

10 A. Looks like on this page, yes, she did.
11 Looks like August (sic) 24th at 2:52 she replied
12 and said it was declined.

13 Q. Do you see immediately above your offer
14 to pay \$600 -- I see an e-mail from Haylen Tuesday,
15 April 24th, 2018 at 12:38 P.M. "Haylen Hammond
16 wrote: This communication is for the purpose of
17 collecting a debt. Any information obtained will
18 be used for that purpose. What monthly amounts are
19 you offering? I need a complete alternate plan to
20 submit to the attorney." Do you see that?

21 A. Yes.

22 Q. What was your response?

23 A. My response was "I can pay \$600 and do
24 payments on the remainder."

25 Q. Do you see above the information that I

1 just wrote from Orlando Miller sent Tuesday, April
2 24th, 2018 at 12:52 P.M. "I can pay 200 monthly"?

3 A. I see that there.

4 Q. Okay. So am I correct in summarizing
5 this by saying: You reached out to Haylen on
6 April the 24th, said you could pay \$600 and do
7 payments on the remainder; Haylen asked you what
8 payments on the remainder would be, and you said
9 \$200 a month?

10 A. Correct.

11 Q. Okay. Did you get a response from
12 Haylen to that offer to pay \$600 dollars down and
13 \$200 a month?

14 A. I think the response is here at 2:52.
15 She sent me saying, "The alternate payment plan was
16 declined. You may enter the standard payment
17 plan."

18 Q. Okay. Do you have any e-mails or
19 recorded conversations or other evidence
20 demonstrating that you attempted to pay \$720 in a
21 lump sum immediately?

22 A. At this moment I can't say that. Right
23 now I don't know.

24 Q. Are you aware of any such offer?

25 A. I don't know at this moment.

1 Q. You weren't attempting to pay four
2 years of assessments? You were attempting to work
3 out a payment plan with the Association; is that
4 right?

5 A. At that time I was attempting to save
6 my home from foreclosure. So I was cooperating
7 with what was presented to me.

8 Q. Were you offering the Association a
9 payment plan? Were you -- I'm sorry, strike that.
10 Were you asking the Association to take a payment
11 plan for the balance owed?

12 A. Once again, at the time what I was
13 doing was offering something that I thought would
14 prevent foreclosure on my home.

15 Q. What's that something?

16 A. I was -- I was going by what I was
17 offered at the time.

18 Q. You said you were offering something?

19 A. Attempted to work out something at the
20 time to save my home to prevent my home from going
21 into foreclosure.

22 Q. And was that something a payment plan
23 with the Association?

24 A. That would be accurate, yes.

25 Q. Okay.

1 A. Because at the time, that's what was
2 offered to me -- a payment plan.

3 Q. So you acknowledge the Association was
4 offering you a repayment plan?

5 A. I acknowledge that I called to try to
6 work out an agreement to prevent my home from going
7 into foreclosure.

8 Q. Okay. Do you remember speaking to
9 Haylen in July of 2017, and stating you would speak
10 to your wife and call back the next day?

11 A. No, I don't recall that.

12 Q. Okay. Do you remember speaking to
13 Haylen in December of 2017? Do you remember
14 speaking to her in December of 2017 by telephone?

15 A. I don't recall. I could have.

16 Q. Do you remember speaking with Haylen
17 during a time where she offered you a payment plan
18 over the phone?

19 A. Yes, I do.

20 Q. Do you remember approximately when that
21 was?

22 A. No, I do not.

23 Q. Do you remember what the terms of that
24 payment plan would be?

25 A. No, I do not.

1 Q. Okay. Do you remember agreeing to --
2 agreeing with Haylen that you would e-mail an
3 alternate proposal?

4 A. I do not.

5 Q. Do you ever recall a phone call with
6 her where you told her you would e-mail a different
7 proposal?

8 A. No, ma'am, I do not.

9 Q. Do you think that might be Plaintiff's
10 Exhibit 5?

11 A. That's possible.

12 Q. Okay. Do you remember talking to
13 Haylen via telephone in January of 2018?

14 A. I don't recall.

15 Q. Do you remember talking to Haylen via
16 telephone in April of 2018?

17 A. I could have.

18 Q. Do you remember what you talked about?

19 A. No, ma'am. I'm sure it was about this.

20 Q. Okay. Do you remember the payment plan
21 that she offered?

22 A. No, I do not.

23 Q. Do you remember telling her you
24 couldn't afford the payment plan she offered?

25 A. It's possible that I did if it was

1 something that I felt like I couldn't afford.

2 Q. Okay. Do you remember speaking to the
3 board president about this matter in April of 2018?

4 A. Yes, I do.

5 Q. Do you remember that the offer -- do
6 you remember what offer you made to the board
7 president at that time?

8 A. No, I do not.

9 Q. If I told you it was \$400, would that
10 sound accurate or not accurate?

11 A. Not accurate.

12 Q. Okay. It was more than \$400 that you
13 offered to pay or less than \$400?

14 A. I don't know.

15 Q. Okay. Why do you believe \$400 isn't
16 accurate?

17 A. Because at the time I spoke to her, I
18 had already offered you all this amount of money,
19 and y'all had already turned it down. So I
20 wouldn't offer her anything less.

21 Q. Okay. So I asked you if you thought
22 what you offered the president would be more than
23 \$400 or less than \$400?

24 A. I believe it was more.

25 Q. Okay.

1 A. Based on these documents here.

2 Q. Are you basing it solely on that
3 document, or are you basing it on your recollection
4 at all?

5 A. Based on my recollection and these
6 documents here.

7 Q. Tell me about the South Carolina Help
8 program and 261 Kenmore Park. Did you participate
9 in that program?

10 A. Yes, we did.

11 Q. Okay. And what did you receive through
12 that program?

13 A. We received funds to catch up our
14 mortgage at 261 Kenmore Park Drive.

15 Q. How much was that?

16 A. I don't recall the exact amount.

17 Q. Was it more or less than \$30,000?

18 A. I can't recall the exact amount.

19 Q. Was it more or less than \$75,000?

20 A. I don't recall the exact amount.

21 Q. You don't have any idea about whether
22 it was less or more?

23 A. I don't recall the exact amount.

24 Q. Are you familiar with the terms and
25 requirements of that program?

1 A. I don't recall the terms and
2 requirements, no, I do not.

3 Q. Were you familiar with them when you
4 signed the agreement?

5 A. I am sure I read the agreement.

6 Q. Are you aware that you agreed not to
7 let any other liens attach to the property?

8 A. As far as?

9 Q. You told South Carolina Help you
10 wouldn't allow any other liens to attach to the
11 property; is that true or no?

12 A. I don't recall what the document said
13 at this moment.

14 Q. Are you aware of any other liens that
15 attached to this property other than your Wells
16 Fargo mortgage or whoever it's owned by now? Are
17 you aware of any other liens?

18 A. No, ma'am.

19 Q. You don't have any state tax liens?

20 A. It's possible.

21 Q. Okay. Are you aware of why they
22 wouldn't attach to this property?

23 A. No, ma'am, I'm not aware of any state
24 tax liens on my property.

25 Q. I'm sorry, let me re-ask that question.

1 I might have asked it as a double negative. Are
2 you aware of any state tax liens in your name?

3 A. No, ma'am, I'm not.

4 Q. Have you ever had state tax liens
5 before?

6 A. Yes, ma'am, I have.

7 Q. Okay. What happened to those liens?

8 A. I don't know.

9 Q. Did you pay them?

10 A. Yes. Money was taken out of my check
11 so I don't know if they're there or not -- still
12 there or not, ma'am.

13 Q. Okay. Have you done anything to see if
14 the tax liens have been released?

15 A. No, ma'am, I have not.

16 Q. Your wife testified about a Ford and a
17 Mazda that you own. Are you an owner on both of
18 those cars?

19 A. Yes, I am.

20 Q. Do you know whether there's any equity
21 in those cars?

22 A. No, I do not. Cars depreciate when you
23 drive them off the lot.

24 Q. Sure. Are you aware of any -- can you
25 tell me what equity you have in 261 Kenmore Park

1 Drive?

2 A. No, ma'am, I cannot.

3 Q. Do you have any idea what you owe on
4 that mortgage?

5 A. I think it's about 200.

6 Q. How much do you think that property is
7 worth?

8 A. I have no idea.

9 Q. You don't have any opinion on how much
10 your house is worth?

11 A. No, ma'am.

12 Q. Do you have any idea what the
13 reasonable rental value for your property would be?

14 A. No, ma'am.

15 Q. You said that you were in trouble
16 financially. 2013 you did the South Carolina Help
17 program; right?

18 A. Yes.

19 Q. How far was your mortgage behind at the
20 time you did the South Carolina Help program?

21 A. I don't recall.

22 Q. A year?

23 A. I don't recall.

24 Q. Two years?

25 A. I do not recall.

1 Q. Less than a year?

2 A. I do not recall.

3 Q. How would you find out how much equity
4 is in your house?

5 A. I have no idea. I'm not a Realtor nor
6 an appraiser. So I don't know.

7 Q. Would you call one of them?

8 A. If I had a need to know maybe.

9 Q. Your wife testified about some
10 judgments, and I did not write down whether they
11 were in her name only or your name only. Is there
12 a judgment against you from Bank of America?

13 A. No.

14 Q. Okay. From Midland Funding?

15 A. No. That's in my wife's name I
16 believe.

17 Q. What about Portfolio -- Precision
18 Recovery Analytics?

19 A. I think that's all my wife I believe.
20 I don't think any of those things are attached to
21 me.

22 Q. Are you aware of any judgments that are
23 in your name?

24 A. No, I'm not.

25 Q. Do you know how much money your wife

1 makes per year?

2 A. No.

3 Q. You have no idea how much your spouse
4 makes?

5 A. Not off the top of my head, no. I
6 can't tell you.

7 Q. You got a ballpark?

8 A. Mid 50.

9 Q. Okay. What about you -- what do you
10 make per year?

11 A. 32.

12 Q. Do you know who Dana Rumer is?

13 A. No, I do not.

14 Q. Do you know why he would be listed in
15 the prayer for release in your counterclaim?

16 A. Maybe my lawyer made a mistake.

17 Q. Okay.

18 MS. TROTTER: I'm going to take just a
19 small break, Brian.

20 MR. GAMBRELL: Okay.

21 (WHEREUPON A BREAK WAS TAKEN FROM

22 3:53 P.M. UNTIL 3:56 P.M.)

23 BY MS. TROTTER:

24 Q. Mr. Miller, can you tell me about any
25 attempts to pay this debt that you made before May

1 of 2016?

2 A. I can't recall anything right now.

3 Q. Again, now is your chance to tell me
4 about it. Are you aware of any attempt that you
5 made to pay this debt before May of 2016?

6 A. I can't recall anything at this moment.

7 Q. Do you admit that as of November of
8 2017, you owed a debt to the Plaintiff?

9 A. Say that again, please.

10 Q. Do you admit that as of November of
11 2017, you owed money to The Homestead Property
12 Owners' Association?

13 A. Yes, I agree with that.

14 Q. Between you and your wife who handled
15 -- who was primarily responsible for things related
16 to the HOA?

17 A. Myself.

18 Q. Okay. Have you ever been arrested?

19 A. Yes.

20 Q. Okay. Can you tell me about that?

21 A. I was arrested for fraudulent check
22 charges. I paid restitution.

23 Q. When was that?

24 A. Multiple times between 2003 and 2007 I
25 think it was.

1 Q. When you say "multiple," how many?

2 A. I can't recall how many.

3 Q. Was it more than ten?

4 A. No, ma'am, I don't think so.

5 Q. Has there been anything since -- have
6 you been arrested for any crime since 2008?

7 A. I don't think so.

8 Q. Do you recall a fraudulent check charge
9 out of Greenville County in September of 2009?

10 A. No, ma'am.

11 Q. Okay.

12 (WHEREUPON PLAINTIFF'S EXHIBIT NO.9
13 WAS MARKED FOR IDENTIFICATION PURPOSES
14 (1 PAGE) - FACEBOOK POST)

15 MS. TROTTER: Do you want to talk to
16 him about it?

17 MR. GAMBRELL: Yeah.

18 (WHEREUPON A BREAK WAS TAKEN FROM
19 4:03 P.M. UNTIL 4:06 P.M.)

20 Q. All right. Mr. Miller, we're back on
21 the record to talk about Exhibit -- what's been
22 marked as Plaintiff's Exhibit 9. Is this a copy of
23 something you posted to your Facebook?

24 A. Something I shared, yes.
25

1 Q. Okay. That's all that I have.

2 (WHEREUPON THE DEPOSITION WAS

3 CONCLUDED AT 4:07 P.M.)

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1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition, was by me duly sworn to testify to the
5 truth in the within-entitled cause; that said
6 deposition was taken at the time and place therein
7 named; that the testimony of said witness was
8 reported by me, a Court Reporter, Notary Public for
9 the state of South Carolina, and a disinterested
10 person, and was thereafter transcribed into
11 typewriting.

12 I further certify that I am not of counsel or
13 attorney for either or any of the parties to said
14 deposition, nor in any way interested in the
15 outcome of the cause named in said caption.

16 I further certify that the original of said
17 transcript shall be hereafter sealed and delivered
18 to Stephanie Trotter, McCabe Trotter & Beverly,
19 4500 Fort Jackson Boulevard, Suite 250, Columbia,
20 SC 29209. This sealed original transcript shall be
21 retained by the above party, who shall be
22 responsible for filing same with the Court prior to
23 trial or any hearing which might result in a final
24 order on any issue.

25 IN WITNESS WHEREOF, I have hereto set my hand
this 24th day of July 2018.

Brittany Van Nort, Court Reporter and
Notary Public for the State of South
Carolina.

My commission expires November 15, 2026.

1 Verification of Deponent
2

3 I, Orlando F. Miller, have read the foregoing
4 deposition testimony, which was reported by
5 Brittany Van Nort, Court Reporter and Notary Public
6 for the state of South Carolina, on July 16, 2018.

7 I find the transcript of the deposition to be a
8 true and accurate transcript according to my
9 testimony on that date, with the exception
10 of _____ corrections as listed on the attached
11 errata page, which was filled in by me.
12
13
14
15
16

17 _____
ORLANDO F. MILLER

18
19 Date: _____
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24
25

E R R A T A P A G E

Page	Line	Change/Correction/Explanation

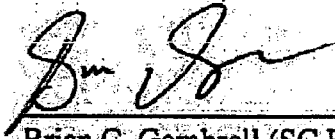
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The above changes were noted by me on this
errata page before signing the attached
Verification of Deponent. I have retained a copy
of this errata page for my records, and the court
reporter is to attach this page and my verification
to the original transcript.

Dated: _____

CERTIFICATE OF COUNSEL

I, Brian C. Gambrell, the attorney for Appellants, do hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Brian C. Gambrell (SC Bar # 68253)

PROOF OF SERVICE

I, P. Dawn Nettles, an employee of the Law Offices of Jason E. Taylor, P.C. the attorneys for Appellants, do hereby certify that I served the Amended Record on Appeal on Respondents' counsel via UPS mail or hand delivery on February 20, 2019.

VIA U.S. MAIL

Stephanie C. Trotter
MCCABE TROTTER & BEVERLY, P.C.
PO Box 212069
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VIA HAND DELIVERY

George C. James, III
Heath M. Stewart, III
MCANGUS GOUDELOCK & COURIE, LLC
PO Box 12519
Columbia, SC 29211



Brian Gambrell

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Richland County Master In Equity
Joseph M. Strickland, Master in Equity

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SC Court of Appeals

Civil Action No. 2017-CP-40-06634

The Homestead Property Owners Association, Inc.....Respondents

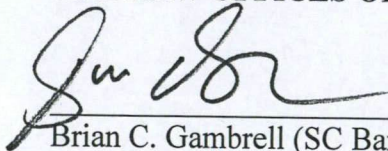
v.

Wanda J. Miller and Orlando F. Miller.....Appellants

CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies the final briefs of Appellants comply with Rule
211(b) of the South Carolina Rules of Appellate Procedure.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.



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