

THE STATE OF SOUTH CAROLINA  
Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

William O. Spencer, Jr., as Special Referee

Case Number 2008-CP-13-000-25

Walter Mortgage Company ..... Respondents

v

Natasha L. Green and Shilon L. Green ..... Petitioners

**Brief of Petitioners'**

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S.C. Supreme Court

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2. The Trial Court and Court of Appeals erred because there was evidence that the home did not pass inspection nor was the Code Inspector called to inspect the home before being released and the home should have never been released; therefore, the mortgage payment should have never begun until the home was properly inspected and then released.	
3. Petitioners' were the non-moving party. If any genuine issue of material fact was properly alleged by us, Petitioners', and conclusively refuted by evidence before the Court, summary judgment is improper, and the Lower Court's Order must be reversed and this case remanded for a full evidentiary hearing on all claims and defenses.	
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## STATEMENT OF ISSUE

1. DID THE TRIAL COURT ERR BY FINDING NO GENUINE ISSUE OF MATERIAL FACT UPON WHICH TO DENY RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?
2. SHOULD THE HOME HAVE BEEN RELEASED WITHOUT GOING THROUGH PROPER INSPECTION?
3. WAS THE MORTGAGE COMPANY AWARE THAT THE HOME FAILED INSPECTION?
4. DID WILLIAM SPENCER, SPECIAL REFEREE ERR BY NOT FOLLOWING THE JUDGE'S ORDER, BY NOT ALLOWING PETITIONERS' TO CALL WITNESSES THAT WOULD HAVE GIVEN TESTIONMY THAT THIS HOME FAILED AND A CERTIFICATE OF OCCUPANCY COULD NOT BE ISSUED?
5. DID WILLIAM SPENCER, SPECIAL REFEREE ERR BY REQUIRING THE APPELLANTS' TO OBTAIN A BOND WHILE DOCUMENTS WERE FILED IN THE COURT OF APPEAL, IN WHICH, HE KNEW THAT THE HOME DID NOT PASS INSPECTION?
6. DID WALTER MORTGAGE COMPANY AND JIM WALTER HOMES VIOLATED STATE LAWS BY NOT HAVING AN ATTORNEY PRESENT?
7. DID JIM WALTER HOMES AND WALTER MORTGAGE VIOLATED BUILDING CODE?

## STATEMENT OF CASE

We, Natasha and Shilon Green, Petitioners have never denied that on March 7, 2007 we went to Jim Walter Homes located in Florence, South Carolina where we signed all contractual documents, including the Construction Agreement, Financing Agreement, and the Mortgage. There was no Hud-1 Statement nor was there an attorney present at this closing. We were present, along with James (Jim) Hoffman. There was no attorney involved nor present because we were told that Jim Walter Homes/Walter Mortgage does things differently and an attorney was not needed. We were asked to put our initials on the line that says, "No Attorney". The Attorney Preference Statement was also signed at closing, but was not included in the Record of Appeal by our attorney Barry Thompson, before he withdrew himself from the case nor did Mr. Spong request that this form be included in the Record of Appeal. Out of all the documents we have signed at the loan closing, this particular form was not included in the Record of Appeal. In fact, Mr. Spong did not want the Court of Appeal to allow us to include the Attorney Preference Statement in the Record of Appeal, but the documents signed were provided to the lower courts.

On March 7, 2007, a down payment was not required. Kay informed us that their mortgage company approved us for a 90% loan. We were told that we could make a 10% down payment or we could use land for a down payment. We informed them that we did not own land, but was in the process of purchasing land. Kay advised us to purchase the land first, bring them a copy of the deed and title, and we could use it as down payment. Kay also informed us that she would send an appraiser out to appraise the land and that would determine whether we had to put any money down. A few weeks after signing the documents we purchased a half acre of land. We took the deed and title to the Jim Walter Homes office, as we were instructed to do. Kay sent an appraiser out and the value came in at \$13,500, which would have been 10% of the original loan amount \$133,500. Kay called us and informed us that a down payment was not

required, but we were still responsible for painting the home, appliances, the flooring, water, septic tank, electricity and also obtaining the Certificate of Occupancy in order for us to move into the home.

On June 27, 2007, we had a walk through with the construction manager Ray Hardwick. We went through the home and found some items that were incomplete. Ray promised to get those items corrected, if we signed his paper stating that he reviewed the home with us and there was nothing wrong with the home. He told us that his office needed that form. We signed the form and then received a phone call from Ray on June 28, stating that he wanted to meet us again at the home on June 29, 2007. We agreed to meet.

On June 29, 2007, we received the keys and the home was released to us. Again we made the same complaints on this day as we did on June 27, 2007. Ray promised to come back first thing Monday, July 1, 2007, to fix those items we complained about on June 27. Ray never came back out to the property. We called him every week, but he never came. We called Jim Walter Homes' office and Kay agreed to meet us at the property. We met; she viewed the items we complained about and made a phone call to Steve Campbell who later spoke with me (Shilon). Jim Walter Homes and Walter Homes wanted us to sign a forbearance, but we refused to sign it because we never did anything wrong. Finally Jim Walter Mortgage and Walter Mortgage agreed to move the first payments to October 5, 2007 instead of September 5, 2007.

On October 30, 2007, we called the Chesterfield County Code Enforcement informing them that our home was released to us on June 29, 2007 and we wanted to obtain our Certificate of Occupancy so that we could move into the home. David Wilks, the Chesterfield County inspector, informed us that he could not provide us with a Certificate of Occupancy because he did not complete a final inspection nor was called to perform a final inspection before the home was released. We met David Wilks, the code inspector at the home. He completed a portion of the inspection and the home failed. This court will find

emails that were sent in the Record on Appeal where we notified Walter Mortgage Company and Jim Walter Homes that the inspector was not called out to complete a final inspection before the home was released and that the home failed inspection. Again, there were several emails that we sent to Jim Walter Homes and Walter Mortgage Company informing them that the house had failed and we could not obtain a Certificate of Occupancy. Mr. Spong asked the Court of Appeal to deny these emails because they were not presented to the lower courts, but we provided our attorney with every single document we had in our possession. We had no way of knowing what documents were or were not presented to the lower court until after they were filed. In fact, William Spencer, Special Referee stated to us that we could not ask our attorney any questions which violated the order that was given by Judge Paul Burch at the foreclosure hearing. On page 49 of the Record on Appeal states that on November 5, 2007, about six days after finding out that the home failed inspection, an email was sent between Jim Walter Homes and Walter Mortgage Home stating, "I THINK TOM HAS BEEN RIGHT ALL ALONG AND WE NEED TO PURSUE AGGRESSIVELY AS HE WILL NEVER LET US RESOLVE." The October payment was not 30 days late and they wanted to get rid of us. Once they found out the home did not pass inspection and it should have never been released, they had to do everything in their power to get rid of us instead of working with us. All we asked for in the beginning was for them to correct the problems so that we could move in our new home. When we signed the Tender Agreement on June 29, 2007, we did not know that the inspector did not complete the final inspection nor did we know the home failed. This court will find evidence in the other briefs and the Record on Appeal that one of their handbooks states that we had no choice, but to accept this home. It states, "If you are unavailable or unwilling to sign the Tender Agreement, the home will automatically be released to you with notice by mail". We were told that we were responsible for obtaining the Certificate of Occupancy, but according to David Wilks, Chesterfield County Code Inspector, whoever applies for the building permit is required to obtain the Certificate of Occupancy in Chesterfield County. Again, Judge Paul Burch, in his order to William Spencer, Special

Referee was to take testimony, but he would not allow us to call any witnesses. Mr. David Wilks was willing to provide testimony that the home should have never been released, just as he gave testimony before James Bruner, Arbitrator.

December of 2008 we went to arbitration and James Bruner, the arbitrator ruled in our favor. This court will also find evidence that he said that some of the arguments were beyond his scope to rule upon. In fact, Charles McDonald said in his closing arguments that he agreed that the mortgage has some major problems. We went before William Spencer, Special Referee and J. Kershaw Spong mislead Mr. Spencer by telling him that we received the award that was ordered by James Bruner. This document is not included in the Record of Appeal, but we have proof that we did not receive the money awarded to us until after William Spencer, Special Referee made his ruling against us. In fact, this court will find Judge Paul Burch's order to William Spencer, Special Referee shall take testimony. William Spencer, Special Referee informed us before the hearing began that we could not answer any questions from our attorney, ask any questions, nor could we call any witnesses.

### ARGUMENT

Foreclosure is an action in equity. Wrongs committed by a foreclosing lender against a mortgagee can bar the lender from foreclosure by application of the doctrine of unclean hands. Matrix Fin. Servs. Corp. v. Frazer et al., Op. No. 26859 (S.C. Sup. Ct filed Aug. 8, 2011) (Shearouse Adv. Sh. No. 26). Even adjudicated third party claims, while not actions against the lender for damages can nevertheless be valid defenses to foreclosure. Whittle v. Jones, 79 S.C. 205, 60 S.E. 522 (1908).

Without having an attorney supervising a loan closing violates SC state laws. South Carolina requires lawyer involvement in mortgage loan closings, said the court, "for the protection of the public." Matrix, Adv. Sh. No. 26 at 20. Thus in the majority's view, "(e)nforcing this requirement will come as no

surprise to any lender.” *Id.* The court was emphatic: “We take this opportunity to definitively state that a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by our law. *Id.*”

In 1987, the South Carolina Supreme Court held that a lawyer must conduct residential real estate closings. Title work, document preparation, closing, and recordation—four steps in the mortgage lending process—are all tasks that constitute the practice of law, and a lay person cannot perform these tasks in a residential mortgage loan closing.

Jim Walter Homes and Walter Mortgage violated Residential Code R109.3 which states, “It shall be the duty of the permit holder or their agent to notify the building official that such work is ready for inspection. It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work. This court will evidence that the code inspector was never called before the home was released on June 29, 2007 to complete a final inspection.

Jim Walter Homes and Walter Mortgage also violated Residential Code R110.1 which states, “No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefore as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

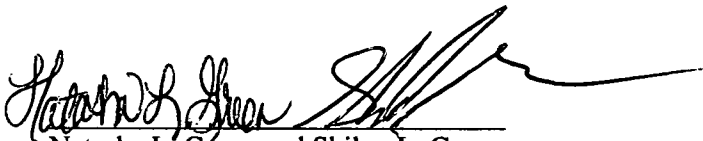
Jim Walter Homes and Walter Mortgage also violated Residential Code R110.3 which states, “After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws are enforced by the department of building safety, the building official shall issue a certificate of occupancy.

Taken as a whole, the allegations and evidence before the Special Referee indicated there was a genuine issue of material fact in this matter as to whether or not, we, Appellants had legitimate defenses to Respondent's foreclosure action. Craps v Jim Walter Homes & Mid-State Homes (civil action no. 3:94-3285-17

### CONCLUSION

For these reasons, the Special Referee's Order, along with the Court of Appeals decision to uphold his ruling should be reversed and this matter remanded to the Special Referee for a full hearing on the merits of all claims and defenses.

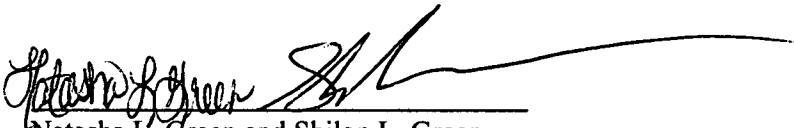
Respectfully submitted,



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Certification of Petitioners'

The undersigned Petitioners certify that the foregoing Brief of Petitioners complies with the SC Supreme Court Rules.

A handwritten signature in black ink, appearing to read "Natasha L. Green and Shilon L. Green", is written over a horizontal line. The signature is stylized and extends to the right with a long, sweeping flourish.

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**Proof of Service by Mail**

We, Natasha L. Green and Shilon L. Green, Petitioners, do hereby certify that we have on April 5, 2012 served a copy of **Brief of Petitioners'** on J. Kershaw Spong Attorney for RESPONDENTS And Tanya A. Gee, clerk for SC Court of Appeals by mailing a certified copy thereof to the addresses indicated below.

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