

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master in Equity

Case No. 2010-CP-08-4140

Marion Creel,

Appellant,

v.

Douglas Creel,

Respondent.

RECORD ON APPEAL

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SC Court of Appeals

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 26, 2014


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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

MARION CREEL,

Plaintiff,

-VS-

DOUGLAS CREEL,

Defendant.

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-08-4140

FINAL ORDER

FILED
2014 APR 23 AM 10:09
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY

Hearing Date:

Hearing Judge:

Plaintiff's Attorney:

Defendant's Attorney:

Court Reporter:

January 11, 2012 and September 30, 2013

Robert E. Watson - Master-In-Equity

Robert R. Thuss

Grover C. Seaton, III

HISTORY

This action was filed on November 19, 2010, by the Plaintiff who is also the father of the Defendant. The Plaintiff set forth three (3) causes of action. Mutual and unilateral mistake, a breach of the covenants of good faith and fair dealing and breach of fiduciary duties allegedly owed by the Plaintiff. The Plaintiff sought reformation of the promissory note or in the alternation a rescission of the transaction. The Plaintiff also plead various damages and requested attorney's fees.

The Defendant, Doug Creel, represented by Grover C. Seaton, III, Esquire answered and counterclaimed on February 1, 2011. The Defendant asserted the Statute of Frauds as an affirmative defense to any application plead by the Plaintiff for alteration, modification or revocation. Further, Defendant asserted that the Plaintiff failed to state a claim pursuant to Rule 12(b)(6) of the Rule of Civil Procedure and that the action is frivolous in nature and set out under the Frivolous Sanctions

Act, Title 15-36-10, et. seq., Code of Laws of South Carolina, 1976, as amended. The Defendant plead various damages and attorney's fees.

ISSUE

The action brought by the Plaintiff concerns a real estate closing concerning property located at 1730 North Main Street, Summerville, SC. The property closing concerning the subject matter of this action was on April 9, 2009. Attorney Peter Wycoff, Esquire acted as the closing attorney and the parties were both present at the closing. The sales price of the property was \$550,000.00 with the Defendant placing \$150,000.00 down and the Plaintiff, owner, financing the remainder of \$400,000.00. As established by the testimony, the payment of \$150,000.00 was to payoff the Plaintiff's primary mortgage on the property. The promissory note prepared by Attorney Wycoff reflected a loan of \$400,000.00 payable to the order of the Plaintiff as follows:

"Together with interest at the rate (4%) percent per annum payable in equal monthly installments of \$2,423.92 commencing on May 9, 2009 and continuing on the same day of each month thereafter until the principal sum of \$400,000.00 and the interest accrued thereon has been paid, and if not sooner paid, shall be due and payable on April 9, 2009. Said Installment when so paid shall be applied first to the interest then accrued and the balance thereof to the reduction of the principal hereof.

The Plaintiff's position was the note should have read 4% a year with a five (5) year call. The cap of the call would not exceed 2%. In other words, the first five (5) years the note would adjust to 6% interest. Five years later the note would increase to 8% and so on. The Defendant's position was that the note was a fixed rate of 4% for 20 years. It should be noted that the note there was a late fee \$5.00 charged on any payment received more than fifteen (15) days after such payment was due. The privilege was further reserved to prepay at anytime all and any parts of indebtedness due there under without premium of fee.

There was also an Offer to Purchase Real Estate between the parties dated March 19, 2009. The property was to be closed on or before April 10, 2009. The Offer to Purchase contained the following:

"1. This offer is subject to buyer obtaining a real estate mortgage for no less than \$OWNER TO HOLD MORTGAGE 400000.00 AT 4% INTEREST FOR 20 YEAR LOAN payable over 20 YEARS with interest not to exceed 4% at customary terms within 30 days from date hereof."

Both parties executed the Offer to Purchase Real Estate and later a copy of the agreement was entered into evidence. As of the date of the last hearing, the parties were complying with the terms of the Offer to Purchase Real Estate and promissory note."

EVIDENCE PRESENTED

The Court took testimony from five (5) witnesses. Robin Creel Chavis and Suzette Creel testified on January 11, 2012 for the Plaintiff. A Dr. David H. Hammet testified by way of deposition that was taken on May 3, 2013. The Plaintiff, Marion Creel, Jr., testified on May 9, 2013. Once Plaintiff testified and Dr. Hammet's deposition was admitted the Plaintiff rested his case. The Defendant rested. The Plaintiff then called two (2) witnesses, Attorney Peter Wycoff and the Defendant, Douglas Creel in reply. Testimony concluded after their testifying on September 30, 2013.

FINDINGS OF FACT

1. I find from the Plaintiff's witness, Robin Creel Chavis, that she is the daughter of the Plaintiff and stepsister of the Defendant. She testified that the Plaintiff, father, had a stroke in September 2008 and as result had a lot of short-term memory loss initially. That on or about November 2009, the Plaintiff called Ms. Chavis and the Defendant concerning the real estate. He executed the power of attorney appointing them as his attorney-in-fact. It appears from the testimony

that the Defendant was limited to making repairs if needed and Ms. Chavis was to handle contracts that needed to be prepared showing units and depositing rent and collecting rent.

2. That I find that Ms. Chavis did not know about the subject sale until after it happened. She did testify that during that time the Plaintiff could remember short-term things.

3. I further find that after potential sign of the Plaintiff's improvement was that he revoked the Power of Attorney.

4. That regarding the contract of sale drawn up and executed by the parties, Ms. Chavis was not present and she did not prepare the contract or attend the closing of the property.

5. Ms. Chavis further testified that she knew of no documents that would declare her father mentally incompetent or incapable of handling his own affairs.

6. I find that the Plaintiff brought this lawsuit without a guardian and that he has a valid South Carolina driver's license.

7. Mrs. Suzette Marie Creel, wife of the Plaintiff, testified and at the time of her testimony the Court finds that she had been married to the Plaintiff for nineteen (19) years. She testified that her husband had a stroke in September 2008 that left his left side paralyze yet she testified that he got back totally within two (2) to three (3) months. There was no testimony of the wife regarding the Plaintiff's suffering short-term memory loss as a result of a stroke.

8. Mrs. Creel was not at the meeting between the Plaintiff and Defendant regarding the subject real estate. That she knew of the sale of the property to the Defendant but did not negotiating any of the terms.

9. That after closing of the property and upon review of the documents the first thing that "jumped out at us" as she testified was that the hand-written late fee and not the interest rate.

The late fee and interest rate I find are on the same document with the late fee subsequent. I further find that she never had direct communications with the Defendant or attorney Peter Wycoff regarding the interest rate.

10. I further find that after the closing Mrs. Creel testified that she and her husband had gone to two (2) attorneys regarding the issue. That the first attorney did write a letter to the Defendant addressing the interest rate. The letter that he sent was dated May 5, 2009.

11. I further find that approximately some five (5) months later the second attorney, Edward Dennis, Esquire, wrote two (2) lengthy letters to the Defendant and nowhere was the interest rate mentioned. Attorney Dennis only addressed the late fee and an insurance issue.

11. Testimony of Dr. David H. Hammet indicated that he was deposed of May 3, 2013. That the Plaintiff's attorney listed the doctor's background, but failed to qualify him as an expert. In fact, there is no evidence in the record that Dr. Hammet had ever been qualified as an expert. Furthermore, I find that his opinion and testimony are not rendered to a reasonable degree of medical certainty. Thus, the Court finds that Dr. Hammet did not testify as an expert. I further find that his testimony should be give little or no weigh at all.

12. Dr. Hammet's testimony does serve some purpose. At the time of his deposition, Dr. Hammet had been seeing the Plaintiff for about six (6) months. This meant that he began seeing the Plaintiff on or about October to November 2012. He further testified that there was not a lot of information that he saw how the stroke affected the Plaintiff in the first few months. He did testify that the stroke did not make the Plaintiff incompetent and at best the stroke "could've" played a factor that day.

13. I further find that cross-examination that Dr. Hammet had no medical opinion

regarding the Plaintiff's cognitive abilities during any of the periods of time that he talks about in his Complaint.

14. I further find that Dr. Hammet testimony only strengthened the Defendant's position and that the terms of the promissory note should be upheld.

15. I further find that Dr. Hammet, without being qualified as an expert, testified as a layman. Even if he was properly qualified his testimony did not bolster Plaintiff's contention that his stroke affected his ability to comprehend the closing.

16. I find from the Plaintiff, Marion Creel, Jr.'s, testimony that the Offer to Purchase the property was his idea and that the Defendant initially said that he couldn't afford it.

17. I find that the parties met on March 10, 2009 and that an Offer to Purchase Real Estate was executed by the parties. The Plaintiff testified that he did not recognize the document because it did not have his original signature on it and that he had to see the original signature on the document that he signed. He further testified that he gave the document to the Defendant to take straight back to Attorney Wycoff's office and that he went back to his home state of Georgia and same was faxed back.

18. During cross-examination the Plaintiff testified that that was a copy of his signature but that that was not his original signature.

19. Even though counsel for the Plaintiff argued that it was his position that Mr. Creel did not sign the Offer to Purchase Real Estate I find this position was not on solid ground.

20. The Court also found that it would be fair to say that the Plaintiff was paying attention during the closing because he noticed the late payment penalty was blank on the promissory note. That the Plaintiff argued over the late fee and even though the Plaintiff testified that he could not

concentrate during the closing his concentration was good enough to notice the blank space and other sheets of paper.

21. Plaintiff testified that he believed that the Defendant and Attorney Wycoff did not do the closing correctly.

22. Attorney Wycoff was not named as a defendant in this action.

23. I find that the Attorney Peter Wycoff testified and that as he remembered everything seemed quite normal. That the interest rate seemed pretty much in line with the prevailing rate at the time of the closing. He went on to testify about the late fee and that the promissory note had a blank for the late fee. He further testified that it was his recollection that the Plaintiff said why don't you just make it \$5.00 so I put \$5.00 in the blank.

24. Attorney Wycoff said that he had no indication before or during the closing that anything was amiss. He further testified that he explained the terms of the note to the Defendant with the Plaintiff present and that during this time the Plaintiff's concentration was directed at the missing late fee and an argument ensued. He further testified to be reasonable to assert that the Plaintiff was privy to the details explanation of note because he was facing in that direction. He further testified that the Plaintiff seemed perfectly normal to him and that he had no reason whatsoever to suspect there were any types of health issues or mental issues or any matters of illiteracy. That he further testified that he had no reason to question anything about the closing.

25. That Attorney Wycoff further testified that he generally always relies on copies to prepare promissory note and that was standard practice. That the Offer to Purchase Real Estate in this matter meet all the requirements of a valid binding agreement and did not believe it was necessary to execute a sales agreement.

26. Testimony of Defendant Douglas Creel. That Defendant testified that his father approached him to purchase the Property. At first he was very reluctant because he lived far away and it would be hard to manage the Property. That he agreed to purchase the property but the price was not determined until they met. He further testified that he and the Plaintiff agreed to a sales price of \$550,000.00 with \$150,000.00 down. The remaining \$400,000.00 would be owner financed at 4% over twenty years. That his testimony, "That was it." When asked about Plaintiff and Defendant discussing a COL feature, Defendant stated, No, because if he had, he wouldn't have bought the building because it only had two tenants in it and that the rent was only bringing in approximately \$2,400.00 monthly. He further testified that no one had a written agreement when they arrived at the property. So, once the terms were negotiated and agreed upon, Defendant typed up the agreement, and both parties signed the agreement and that he read the agreement to the Plaintiff.

27. The Defendant further testified that he agreed to change the late fee feature but would not agree to change the interest rate because that was not discussed when they signed the agreement that had been made. He further testified that he did not respond to the Plaintiff regarding the interest rate because we had discussed this when we were doing the contract and I couldn't offer to pay him a living raise every five (5) years of 2%. That wasn't what we agreed upon. He did testify that he attempted to call the Plaintiff but the Plaintiff hung up on him. He further testified that he bought the building to help out his father. That at the time the economy was way down and houses were being foreclosed everywhere. He further testified that he had complied with the parties' agreement by paying the \$150,000.00 down and keeping the payments current.

CONCLUSIONS OF LAW

9

1. That the Court carefully observed each of the witnesses and their demeanor while testifying and consider the applicable law and arguments of counsel. The greater weight of evidence and the applicable law requires that this Court uphold the written sales terms. The evidence was not clear and convincing that there was a unilateral mistake. That even if there was a unilateral mistake the Plaintiff failed to prove by clear and convincing evidence that the mistake was induced by fraud, deceit or concealment. The Court further concluded that all the terms of the agreement and the Offer to Purchase were clear and unambiguous and all central terms were present.

2. It is the findings of this Court that the Defendant has complied with the terms of the parties' agreement and that the Plaintiff has failed to meet his burden of proof and has failed to show that this was in fact not the parties' agreement. The Court finds that the parties' agreement should be upheld.

WHEREFORE, it is hereby

ORDERED, ADJUDGED, and DECREED that the Complaint be dismissed with prejudice.

Robert E. Watson

Robert E. Watson, Master-In-Equity

Dated this 3 day of April ~~March~~ 2014
in Moncks Corner, SC.

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OF BERKELEY)

NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2010-CP-08-4140

MARION CREEL,)

Plaintiff,)

-VS-)

ORDER

DOUGLAS CREEL,)

Defendant.)

FILED
2013 SEP 19 AM 11:34
HAY P. BROWN
CLERK OF COURT, SC
BERKELEY COUNTY, SC

Hearing Date:**September 4, 2013****Hearing Judge:****Robert E. Watson****Plaintiff's Attorney:****Robert E. Thuss****Defendant's Attorney:****Grover C. Seaton, III****Court Reporter:**

THIS MATTER came before me to be heard by me as Master-In-Equity on
September 4, 2013.

Present at the hearing was the Plaintiff, Marion Creel, along with his attorney of
record, Robert E. Thuss, Esquire, and the attorney of record for the Defendant, Grover
C. Seaton, III, Esquire.

The Plaintiff filed a Notice of Motion and Motion seeking an order for the
Defendant to produce an updated and verified Profit and Loss Statement and relief for
the Plaintiff to inspect the subject property to verify its condition.

The Defendant timely filed a return opposing the Motion and recited an Order that was executed on July 10, 2013 which states, *intra ali*, that the ^{Purpose} ~~propose~~ of the Order from February 27, 2012 addressed that the Profit and Loss statement was to assist in the settlement negotiations and it was the Court's understanding that the Order had been complied with. The Defendant asserts that he is no longer interested in a buyback and that there is absolutely no probative value for the Court to order any type of additional Profit and Loss information and inspection of the property.

After lengthy arguments from counsel of record, the Court concludes that the Plaintiff's motion should be denied and that the Order executed by the Court on February 27, 2012, addressed the Profit and Loss Statement and that the purpose of the Order was to assist in settlement negotiations and it was the Court's understanding at that time and now that the Order has since been complied with. The Court further finds that the Defendant is no longer interested in a buyback and argues for a dismissal of the Complaint and argues that there is absolutely nothing in the record to rescind the transaction. The Court finds that the dismissal argument of the Defendant is premature and further queried the Plaintiff's attorney as to any additional witnesses that he intended to call in his case in chief. The Plaintiff's attorney responded that he was going to call Peter G. Wyckoff, Esquire, the closing attorney and the Defendant,

Douglas Creel.

The Court further finds that should there be any additional witnesses that the Plaintiff wishes to call that the Plaintiff is to notify the Defendant's attorney immediately and if there is insufficient time for the Defendant's attorney to depose same, he is to contact the Court addressing that issue.

It is further found that the Court shall bifurcate the remainder of the case if the Court finds that there is merits to rescind the transaction and that same should be found that the Court shall address appointing an independent CPA to do a Profit and Loss and to render testimony concerning his/her opinion.

WHEREFORE, it is hereby

ORDERED that the Plaintiff's motion for the Defendant to produce an updated and verified Profit and Loss statement is hereby denied; and it is further

ORDERED that the Plaintiff's failure to offer any evidence as to why the subject property needed to be inspected is hereby denied; and it is further

ORDERED that the Plaintiff shall call Peter G. Wyckoff, Esquire, the closing attorney as witnesses in this matter; and it is further

ORDERED that should the Plaintiff desire to call any other witnesses, he shall immediately notify counsel for the Defendant and should the Defendant have insufficient time to depose those witnesses then the Defendant's counsel is to contact

the Court; and it is further

ORDERED that only if the Court finds as a matter of equity that the contract should be rescinded then and only then will the Court order an independent CPA to do a Profit and Loss on the business.

AND IT IS SO ORDERED!

Robert E. Watson

Robert E. Watson, Presiding Judge

Dated this 18 day of September 2013
in Moncks Corner, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
MARION CREEL,)
Plaintiff,)
-VS-)
DOUGLAS CREEL,)
Defendant.)

IN THE COMMON PLEAS COURT
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-08-4140

ORDER

FILED
2013 JUL 11 AM 9:05
PAUL P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Hearing Date: May 9, 2013
Hearing Judge: Robert E. Watson
Plaintiff's Attorney: Robert E. Thuss
Defendant's Attorney: Grover C. Seaton, III
Court Reporter: Lorraine A. Wharton

THIS MATTER came before me to be heard by me as Master-In-Equity on May 9, 2013.

Present at the hearing was the Plaintiff, Marion Creel, along with is attorney of record, Robert E. Thuss, Esquire, the Defendant, Douglas Creel, and his attorney of record, Grover C. Seaton, III, Esquire.

After oral argument and testimony, the Court admitted into evidence, over the Defendant's objection, the deposition of David H. Hammett, MD ^{NEW} ~~be allowed into~~ ~~evidence~~ on the condition that the Plaintiff would immediately provide all relevant

medical records regarding the Plaintiff's physical and mental condition. The Defendant may call any medical witness to reply if he so desires.

The Plaintiff attempted to call an accountant as a witness, but was not allowed by the Court until such time that the Defendant had the opportunity to depose the witness if so desired. The Plaintiff must submit a summary of the facts known by the witness within ten (10) days of this order. The Defendant shall have twenty (20) days thereafter to depose the witness.

An order was signed by this Court on February 27, 2012, addressing the Profit and Loss statement. The purpose of the order was to assist in settlement negotiations and it is the Court's understanding that this order has been complied with. If the matter needs to be addressed further, then a proper motion should be filed with the Court.

That due to the above, the matter was continued.

WHEREFORE, it is hereby

ORDERED that the Plaintiff shall provide all relevant medical records regarding the Plaintiff's physical and or mental condition relating to this case to the Defendant within ten (10) days from the signing/filing of this order and the Defendant may call any medical witness in reply if he so desires; and it is further

ORDERED that should the Plaintiff present the accountant as a witness, the Plaintiff shall submit a summary sufficient of the facts known by the witness to inform

the Defendant of the facts known by the witness to the Plaintiff within ten (10) days of the date of this order and the Defendant shall then have an additional twenty (20) days to depose the witness if so desired; and it is further

ORDERED that any further matter regarding the Profit and Loss statement shall be addressed with this Court by filing a proper motion; and

ORDERED that this matter shall be set for a final day certain hearing within sixty (60) days of this order; and it is further

ORDERED that this order shall not be amended except by further order of this Court.

AND IT IS SO ORDERED!

Robert E. Watson

Robert E. Watson, Presiding Judge

Dated this 10 day of July 2013
in Moncks Corner, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF BERKELEY)

CASE NO. 2010-CP-08-4140

Marion Creel,)

Plaintiff,)

Vs.)

Complaint

Douglas Creel,)

Defendant.)

FILED
2010 NOV 19 AM 11:05
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiff, complaining of the Defendant, respectfully alleges and would show:

1. This action concerns real estate located in Berkeley County, State of South Carolina. In April, 2009, the parties executed a promissory note and mortgage in Berkeley County, State of South Carolina.

2. This Court has subject matter jurisdiction and venue is proper in Berkeley County.

3. Marion Creel owned the real property that is the subject of this action.

4. In the Fall of 2008, Marion Creel suffered a stroke, causing him to be hospitalized for a period of time. Following his stay in the hospital, Marion Creel experienced ongoing impairment as a result of the stroke, including headaches, inability to focus, and inability to read, and other symptoms. His physicians prescribed a period of convalescence care and rehabilitation for these impairments during the Winter of 2008.

5. Concerned about his ongoing health and ability to manage his affairs, Marion Creel met with two of his children in Berkeley County, South Carolina.

6. During this meeting, Marion Creel discussed his condition and also disclosed certain assets he owned. In December, 2008, Marion Creel executed a Specific Power of

Attorney granting his son, Douglas Creel, and his daughter, Robin Renee Chavis, power to manage real and personal property.

7. At some point, there-after, the parties discussed the Defendant's purchase of the real estate that is the subject of this action.

8. The Plaintiff advised the Defendant of his terms for this sale, which included the Plaintiff receiving an adjustable rate promissory note secured by a first lien mortgage, consistent with other such financings the Plaintiff had undertaken in the past.

9. The Plaintiff trusted and relied on the Defendant, as his son and fiduciary.

10. The Defendant had knowledge of his father's condition.

11. The Defendant mistakenly or wrongly drafted a fixed rate written offer, which led to preparation of a fixed rate promissory note.

12. On April 9, 2009, a real estate closing occurred.

13. A fixed rate promissory note was executed by the Defendant. The Plaintiff was not aware of the error.

14. The Plaintiff deeded the property to the Defendant with the mistaken belief that the promissory note signed by the Defendant contained adjustable rate terms.

15. Within four days of the closing, the Plaintiff contacted the Defendant and the closing attorney concerning the mistake.

16. The Defendant told the Plaintiff he would correct the mistake, but he has not done so, despite subsequent efforts of the Plaintiff, including written communications. The Defendant has breached duties he owes to the Plaintiff.

17. Previous averments are incorporated by reference.

18. Due to mutual or unilateral mistake, the written offer and promissory note were incorrectly drafted or wrongfully drafted to include a fixed interest rate. The Plaintiff intended an adjustable rate note and the Defendant was so aware.

19. The Defendant has wrongfully ignored the Plaintiff's demand that the Defendant execute a corrected promissory note, thus breaching covenants of good faith and fair dealing. Also, as a fiduciary to the Plaintiff, the Defendant breached fiduciary duties owed the Plaintiff.

20. The Plaintiff respectfully requests the court reform the promissory note from a four percent fixed rate note to an adjustable rate note. The Plaintiff is to have the right to increase the interest rate by two percent at the end of each five year period during the term of the note. The adjusted interest rate will apply to the outstanding principal at the time the adjustment applies.

21. Alternately, the Plaintiff requests rescission of the transaction with costs and expenses of returning the parties to their status prior to the transaction borne by the Defendant.

22. Additionally, the Defendant is liable for breach of fiduciary duties, and damages flowing therefrom, including reformation or rescission.

23. Other damages include various attorney fees previously incurred by the Plaintiff in an unsuccessful attempt to bring this issue to the Defendant's attention.

24. Damages also incur other utility costs and other costs associated with the original transaction owed to the Plaintiff by the Defendant but never paid.

25. The Plaintiff is entitled to attorney fees and costs for this action.

WHEREFORE, the Plaintiff respectfully prays the Court grant him judgment against the Defendant, and:

- a. Reform the Note to include the adjustable rate terms contemplated by the parties;

- b. Alternately, rescind the transaction with costs and expenses borne by the defendant;
- c. Find the Defendant has breached duties owed to the Plaintiff and award the Plaintiff actual and consequential damages, or other appropriate relief;
- d. Award the Plaintiff attorney fees and costs; and
- e. For such other relief the Court deems just and proper.

Respectfully Submitted,


Robert R. Thuss, Esq.
Thuss Law Office LLC
P.O. Box 589
Swansea, SC 29160
(803) 640-1000

Attorney for the Plaintiff

November 15, 2010.
Swansea, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OF BERKELEY)

NINTH JUDICIAL CIRCUIT

MARION CREEL,)

CASE NUMBER: 2010-CP-08-4140

Plaintiff,)

-VS-)

**ANSWER AND
COUNTERCLAIM**

DOUGLAS CREEL,)

Defendant.)

FILED
2011 FEB -1 PM 3:15
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Defendant answering the Complaint alleges:

1. That any allegation of the Complaint not specifically admitted is expressly denied.
2. That the Defendant answering the allegations contained in paragraph 1 admits same and further avers that the Plaintiff deeded the subject real estate to the Defendant.
3. That the Defendant answering the allegations contained in paragraphs 2 and 3 admits same.
4. That the Defendant answering the allegations contained in paragraphs 4 and 5 avers same to be self-serving conclusions that need not be answered and subject to proof thereon.

5. That the Defendant answering the allegations contained in paragraph 6 admits same.

6. That the Defendant answering the allegations contained in paragraph 7 avers that the Plaintiff contacted the Defendant offering the subject property for sale to him and that they did discuss his purchasing the real estate thereafter.

7. That the Defendant answering the allegations contained in paragraph 8 avers that the written offer to purchase real estate presented to the Defendant on March 19, 2009 is the best evidence as to the terms for the sale and the subsequent sale.

8. That the Defendant answering the allegations contained in paragraphs 9 and 10 avers same to be self-serving conclusions that need not be answered.

9. That the Defendant answering the allegations in paragraph 11 verily denies same and demands strict proof thereon.

10. That the Defendant admits the allegations contained in paragraph 12.

11. That the Defendant answering the allegations contained in paragraph 13 admits that a fixed rate promissory note was executed by the Defendant. The Defendant has insufficient knowledge to admit or deny the remaining sentence contained therein and therefore verily denies same and demands strict proof thereon.

12. That the Defendant answering the allegations contained in paragraph 14 avers same to be a self-serving conclusion that need not be answered and further avers

that the written promissory note is the best evidence as to the terms and conditions contained therein.

13. That the Defendant verily denies the allegations contained in paragraphs 15 and 16 and demands strict proof thereon.

14. That the Defendant answering the allegations contained in paragraph 17 avers same to be self-serving conclusions that need not be answered.

15. That the Defendant verily denies the allegations contained in paragraphs 18, 19, 20, 21, 22, 23, 24, and 25 and demands strict proof thereon.

FURTHER ANSWERING THE COMPLAINT

AND BY WAY OF AFFIRMATIVE DEFENSE

The Defendant avers:

16. That each and every allegation of the Defendant's answers is hereby incorporated by referenced as if repeated herein verbatim.

17. That the Defendant asserts the Statute of Frauds as to any application plead by the Plaintiff for alteration, modification, and revocation and asserts that the parties hereto are bound by the written terms of the promissory note, mortgage and deed.

FAILURE TO STATE A CAUSE OF ACTION

18. That the Defendant reavers each and every answer of the Complaint as

if repeated herein verbatim.

19. That the Defendant asserts under Rule 12(b)(6) of the Rules of Civil Procedures, State of South Carolina that the Plaintiff has failed to state facts sufficient to constitute a cause of action.

FURTHER ANSWERING THE COMPLAINT

BY WAY OF COUNTERCLAIM

20. That the Defendant repeats each and every answer of the Complaint as if repeated herein verbatim.

21. This Defendant avers the action to be frivolous in nature against him and under the Frivolous Sanctions Act, Title 15-36-10, et seq., Code of Laws of South Carolina, 1976, as amended, seeks compensatory damages and attorney's fees as this Court may find.

WHEREFORE, having fully answered the Complaint, the Defendant prays:

- a.) That the Court issue an order dismissing the Complaint;
- b.) For all attorney's fees and costs incurred in the defense of this matter;
- c.) For an order barring any and all relief to the Plaintiff under the Statute of Frauds;
- d.) For an order granting all attorney's fees and costs under the

Frivolous Sanctions Act; and

e.) For any such other relief that this Court may deem meet and proper.

Grover C. Seaton, III

Grover C. Seaton, III
Attorney for the Defendant
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Dated this 31st day of January 2011
In Moncks Corner, SC

26

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) Case No. 2010-CP-08-4140

3

4

MARION CREEL,

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6 Plaintiff,

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vs.



ORIGINAL

8

DOUGLAS CREEL,

9

Defendant.

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12

13

TRANSCRIPT OF HEARING

14

15

16

17 DATE: January 11, 2012

18 TIME: 1:45 p.m. - 2:22 p.m.

19 LOCATION: Berkeley County Courthouse
300 California Avenue
20 Moncks Corner, South Carolina

21 REPORTED BY: Kimberly S. DeMichele

22 *****

23

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6
7 **INDEX TO EXAMINATIONS**

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9 By: Robert R. Thuss, Esquire
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1 where I'm headed and see how far I have to go
2 with it.

3 MR. SEATON: Yes, Your Honor. Thank you.

4 THE COURT: Thank you.

5 All right, sir. You may call your first
6 witness, if you're ready.

7 MR. THUSS: Yes, Your Honor. I'd like to
8 Robin Chaviss.

9 THE COURT: Come forward, please.

10 (Witness complies.)

11 THE COURT: I'd like for you to give me your
12 full name.

13 THE WITNESS: Robin Creel Chavis.

14 (Witness was sworn by the Court.)

15 THE COURT: Thank you. You may be seated.

16 The witness is yours.

17 **DIRECT EXAMINATION**

18 BY MR. THUSS:

19 Q Good afternoon, Ms. Chavis. Can you please
20 tell us what your age is?

21 A I'm 40, sir.

22 Q What's your relationship to the Plaintiff?

23 A He's my father.

24 Q And what's your relationship to the Defendant?

25 A He's my half-brother.

30

1 Q Concerning the subject matter that
2 we're here for today, I want to go back to about 2008.

3 Can you tell me, did anything occur in your father's life
4 regarding his health, I believe in two thousand -- in
5 2008?

6 A He had a stroke in 2008, September.

7 Q Now, were you close to him where you were able
8 to see him during that time?

9 A I came to the hospital when that happened.

10 Q Okay. Can you tell me about his condition?

11 A They had -- he was stabilized when I got
12 there. Over the next couple of days, it kind of
13 deteriorated a bit each day.

14 Q So what sort of affect did the stroke have you
15 on your father?

16 MR. SEATON: Objection.

17 THE COURT: Yes, sir?

18 MR. SEATON: Soliciting medical opinion from a
19 lay person. They've listed the doctor. I understand
20 there will be no doctor called and this witness, absent on
21 expertise, cannot give an opinion on medical conditions.

22 THE COURT: Yes. She cannot give a medical
23 opinion. I'll allow her to share what she observed, if
24 anything, and I'll place whatever value that is on her
25 testimony.

1 MR. THUSS: Thank you, Your Honor.

2 THE COURT: She can give me no medical
3 opinion.

4 MR. THUSS: I understand.

5 THE COURT: No diagnosis or anything.

6 BY MR. THUSS:

7 Q Without making a diagnosis, did you -- did you
8 observe your father's condition?

9 A I did.

10 Q And what was his condition?

11 A I noticed a lot of short-term memory loss.
12 That was my initial thing that I noticed.

13 Q Well, approximately when did the stroke occur?

14 A It was the early part of September, because I
15 was pregnant with my daughter and I had her toward the end
16 of the month.

17 Q Do you know how long your father was in the
18 hospital?

19 A Probably a couple weeks, a week and a half.

20 Q And you saw him when he was in the hospital?

21 A I did.

22 Q When did you notice that there was something
23 to do with a short-term memory being affected?

24 A Mostly when I got home because he was
25 medicated when he was in the hospital a good bit. But I

32

1 noticed after he was home and recuperating that
2 there was some short-term memory loss.

3 Q Okay. Do you -- when did your father go home?

4 A It was -- it was after I had my daughter,
5 which would have been after September 25th. He had -- he
6 went to rehab for a little bit before he actually went
7 home.

8 Q And do you know how long he was in this rehab?

9 A I know at least a week. But then I -- like I
10 said, I had my daughter, so then I wasn't around there for
11 30 days.

12 Q At some point in time did you and -- your
13 father call you, to meet with him concerning the property
14 that's the subject of this action?

15 A Yes. He called myself and my brother to meet
16 with him.

17 Q Do you know when that occurred?

18 A I'm thinking around November. My daughter was
19 very small still so it maybe a month and a half, two
20 months old, so. It's probably around November, I'm
21 thinking.

22 Q Okay. What happened?

23 A We went to his office and he told us that he
24 wanted us to act as power of attorney over the building,
25 the office building, and that he wanted me to handle any

1 contracts that needed to be prepared if anyone
2 wanted to lease a unit and, you know, anybody wanted to
3 see a unit, I would show it, and, also, that if we needed
4 to make any deposits for rent, collect rent, that we would
5 do that and Douglas would handle any repairs and I would
6 call him if I was having trouble getting rent or had
7 problems with anybody.

8 Q Now, that was in November?

9 A Approximately November; yes.

10 Q Okay. Thereafter, did you actually begin to
11 do that with the building?

12 A There wasn't a lot of activity that I
13 remember, but I probably did maybe two late-payment
14 letters to some tenants, so. I didn't really actually
15 have a lot to do because there just wasn't any activity.

16 Q Okay. At that meeting, in addition -- well,
17 did anything else happen --

18 A Uh-huh.

19 Q -- besides him discussing the power of
20 attorney and --

21 A He --

22 Q -- helping him with the building?

23 A -- you know, showed us the files on the
24 tenants, the contracts. He also has another piece of
25 property that he told us about that, you know, he would

34

1 want us to collect the payment on that every
2 month. And he just went over things about the building.

3 Q Okay. So you said he showed you documents
4 like contracts and things?

5 A Right.

6 Q What kind of contracts?

7 A Well, the lease agreements for each unit that
8 we would have to show. And then he showed us the contract
9 for the other building, how it was worded that we would
10 collect the money for the other building.

11 Q Following that meeting -- pardon me. At that
12 meeting, did the three of you discuss anything about what
13 was going to be done?

14 A We just talked about who would do what. And,
15 you know, I said that I could handle the paperwork part
16 and collecting and -- you know. He told us, you know,
17 different things about the buildings and went through each
18 unit and looked at them. He mentioned, you know, what he
19 owed on them and that, you know, he was basically -- that
20 was his retirement income.

21 Q Okay. And you said that he said something
22 about a power of attorney?

23 A Yes. He let us know that we were over the
24 power of attorney, that he had appointed both of us.

25 Q Okay. So Douglas was aware of that?

1 A Yes.

2 Q You were aware of that?

3 A Yes. He showed us the power of attorney.

4 Q Did you understand what that meant?

5 A I understood that it was just for this
6 building, yes, to handle this building and the mini
7 warehouses as far as collecting rent.

8 Q Okay.

9 A It was limited.

10 Q Did you understand anything about what it
11 means, what sort of duties you have as -- once you've
12 accepted power of attorney?

13 A That we were to take care of it because he
14 didn't feel like he was able to at the time.

15 Q Okay. Did he -- he said he wasn't able to
16 take care of it?

17 A He did. And you know, he said, you know, I'm
18 just not able to deal with all this right now. And he was
19 still not feeling himself.

20 Q Okay. Did you ever see the power of attorney?

21 A He had it there that day, a copy of it.

22 Q Okay. Apart from -- apart from doing --
23 collecting a few rents and all, there wasn't much else
24 that you did?

25 A It was a slow time. It wasn't a lot of

1 activity. He, you know, told us that we may have
2 to make some deposits. But it just worked out that he
3 was in town and did the few deposits we had, you know,
4 himself.

5 Q Thank you.

6 Were you being paid to do any of this stuff?

7 A No.

8 Q Did your father -- do you believe that the
9 information that he was sharing with you was
10 confidential-type information, private information?

11 A Yes.

12 Q You believe that he was putting trust in you?

13 A Yes.

14 Q Now regarding the sale of the property that
15 occurred later; do you know anything about those
16 circumstances, what was said or what was done?

17 A I did not know about it until afterwards.

18 Q Okay. Have you -- did you see your father
19 during the first part of 2009 at all?

20 A I did. I mean I visited at least once a
21 month.

22 Q How was his -- what did you observe of his
23 health and his condition?

24 A Still -- it was several months before I found
25 that, you know, he could remember short-term things. I

1 may say I'm coming on Saturday and he couldn't
2 remember if I said Saturday or Sunday, those type things,
3 if we talked by phone.

4 Q Did you observe him doing the same sort of
5 things he did before the stroke then, since the stroke?

6 A I'm sorry?

7 Q Have you observed him doing the same sort of
8 activities and acting in the same manner since the stroke,
9 as before?

10 A Occasionally; yes. I still do. I mean it's
11 gotten a little better, but I still see it; yes.

12 Q Okay. When did you really begin to -- did it
13 take time for him to really begin to improve or was it
14 immediate?

15 A No; it wasn't immediate. It's been -- it was
16 very slow at first. And, you know, now he's -- he's
17 somewhat better, but it's still -- there's occasions when
18 I notice it.

19 MR. THUSS: May I approach, Your Honor?

20 THE COURT: Yes; you may.

21 BY MR. THUSS:

22 Q You mentioned a -- that you saw a power of
23 attorney document. I want to show you a document and let
24 me see if you recognize it.

25 A Yes; this is it.

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1 Q Okay. This is the document --

2 A This is the document.

3 Q -- that you recognize?

4 A Uh-huh.

5 MR. SEATON: Is that one of December 8th?

6 MR. THUSS: Huh?

7 MR. SEATON: December the 8th?

8 MR. THUSS: December the 8th.

9 MR. SEATON: This power of attorney is undated
10 as a probate, Your Honor, but it is dated for -- the
11 execution of the document was date -- except December of
12 '08.

13 THE COURT: All right.

14 MR. SEATON: Subject to that limitation.

15 MR. THUSS: I'd like to admit this as --

16 THE COURT: Let me take a look at it.

17 MR. THUSS: Yes, Your Honor. And I have a
18 copy for the Court if the Court would like it.

19 MR. SEATON: The (inaudible) is completed,
20 Your Honor. It was the actual instrument itself that does
21 not have a numbered date.

22 THE COURT: I see that. It's been -- I'll
23 receive it into evidence over that limited objection
24 there. This will be Plaintiff's 1; is that correct?

25 MR. THUSS: Yes, Your Honor.

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1 THE COURT: The court reporter will
2 mark it, please.

3 (Power of Attorney, Plaintiff's Exhibit No. 1 is
4 marked for identification and received into evidence.)

5 MR. THUSS: Your Honor, would you like a copy
6 up here or --

7 THE COURT: Yes.

8 BY MR. THUSS:

9 Q Let me ask you just a couple questions about
10 this. What's the title of the document?

11 A A specific power of attorney to operate and
12 manage business.

13 Q And to whom does -- from reading it, can you
14 state whom it grants these powers of attorney?

15 A Myself and Douglas.

16 Q And this is power of attorney over what?

17 A This is over the building at 1731 North Main
18 Street, which is the office building.

19 Q Now does it enumerate specific powers?

20 A Yes.

21 Q And is this the property that's the subject
22 matter of this lawsuit?

23 A It is.

24 Q And do you -- looking at the second to the
25 last page, do you recognize that signature?

40

1 A Yes.

2 Q Is that your father's signature?

3 A It is.

4 Q Thank you.

5 MR. THUSS: I have no further questions of the
6 witness, Your Honor.

7 BY MR. THUSS:

8 Q Please answer any questions on cross.

9 THE COURT: Any cross-examination?

10 **CROSS-EXAMINATION**

11 BY MR. SEATON:

12 Q I'm going to ask you some simple questions.

13 If you do not understand me, would you stop me, ask me to
14 repeat it? You and I have a commitment about that?

15 A Yes, sir.

16 Q Okay. Tell His Honor what your dad did for a
17 livelihood.

18 A He had a construction company, and he also
19 managed this building and leased it.

20 Q Would you agree with me that -- and how many
21 years did he do that?

22 A Construction was probably about 45 years, and
23 this has probably been 20-something years.

24 Q Build houses?

25 A Yes, sir.

41

1 Q You know about his business of
2 building houses?

3 A Somewhat.

4 Q Would you want to estimate how many loan
5 closings that he's been to during his career as a
6 contractor?

7 A No, sir. I would have no clue.

8 Q Would you agree with me that he closed
9 numerous loans?

10 A Probably.

11 Q Now Plaintiff's Exhibit 1 that you have a copy
12 to your immediate right --

13 A Uh-huh.

14 Q It doesn't give you any -- you or your brother
15 any specific power to buy, sell or mortgage this real
16 estate; does it?

17 A No.

18 Q And do you know when it was revoked [ph];
19 that is, that your dad unilaterally canceled it?

20 A It was later, something like that. I don't
21 know the date.

22 Q Well, there came a time when he said he could
23 handle his business himself. He took it back over; didn't
24 he?

25 A I thought there was a power of attorney that

1 was issued for just me. I don't know, but.

2 Q Well, you want to take time and go through
3 your documents? I've never been provided with that, that
4 you had an individual power of attorney.

5 A I said I thought I did, but I don't know.
6 That's what I was under the impression was, that it was
7 changed.

8 Q You were of the impression. Do you have any
9 type of proof other than impression that you took over as
10 power of attorney for your father, individually?

11 A I do not have it with me; no. I don't -- I
12 don't have a copy of it; no. It was never given to me.

13 Q You discussed with his lawyer your proposed
14 testimony; didn't you?

15 A I did.

16 Q I asked in discovery. He provided your name.
17 There's nothing in there about you having an individual
18 power of attorney, ma'am. Didn't you discuss that with
19 your dad's attorney?

20 A I don't remember if we even -- all we
21 discussed was this power of attorney.

22 Q Okay. And when -- this piece of property;
23 when there was a contract of sale drawn and executed by
24 your dad and by my client, were you present?

25 A I was not.

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1 Q Did you have anything do with
2 preparing it?

3 A Not the contract.

4 Q And when there was a subsequent loan closing
5 at the Wycoff Law Firm selling this piece of property,
6 preparing the mortgage and note, were you present?

7 A No.

8 Q Now do you have any documents at any time that
9 your dad was declared mentally incompetent and incapable
10 of handling his own affairs?

11 A I do not.

12 Q Do you know of any such document?

13 A I'm not aware of one; no.

14 Q And he brings this lawsuit in his name without
15 a guardian; didn't he?

16 A Yes.

17 Q I know the answer to this because I've seen
18 him drive. He has a valid South Carolina driver's
19 license; doesn't he?

20 A Uh-huh.

21 Q The State says he's competent to get on the
22 highway and drive; doesn't it?

23 A (Nods head.)

24 Q Ma'am?

25 A Yes, sir.

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1 Q And, realistically, all you have to
2 offer today is your dad unfortunately had a stroke, you
3 saw a recovery, some short-term loss of memory. You had a
4 power of attorney to collect some rents, write some
5 receipts, make some deposits. You wrote a couple of
6 late-payment letters, a couple of lease agreements. And
7 that's everything you know about this?

8 A Up to the point of the sale, I don't know
9 anything else.

10 Q You're called as a witness. You know anything
11 about the drafting of this document, the terms, the
12 agreement, who paid what to whom?

13 A No.

14 MR. SEATON: Excuse me just a second, Your
15 Honor.

16 (Discussion off the record.)

17 MR. SEATON: Thank you, ma'am.

18 THE WITNESS: Okay.

19 THE COURT: Any redirect?

20 MR. THUSS: Briefly, Your Honor.

21 THE COURT: Go ahead.

22 **REDIRECT EXAMINATION**

23 BY MR. THUSS:

24 Q Your dad was in the construction business for
25 many years?

45

1 A Uh-huh.

2 Q Do you know anything about he did -- knowledge
3 that he performed loan closings, and do you know anything
4 about his -- the amount of education that he had?

5 A He has about a sixth-grade education. Sixth,
6 maybe seventh.

7 Q Sixth or seventh-grade education? And is he
8 an avid reader?

9 A Not really.

10 Q Do you know anything about how well he reads
11 or comprehends?

12 A Probably -- doesn't read probably but on maybe
13 a third or fourth-grade level, probably.

14 Q Did you notice whether or not that ability was
15 affected at all by the -- by the stroke?

16 A He --

17 MR. SEATON: Your Honor, that's been asked and
18 answered now three times.

19 THE COURT: Yes. Let's move on. I understand
20 where you're going with that. Let's move on.

21 MR. THUSS: Thank you, Your Honor.

22 No further questions.

23 THE COURT: Thank you. You may step down.

24 (Witness leaves the witness stand.)

25 MR. THUSS: I'd like to call Suzette Creel to

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1 the stand, Your Honor.

2 THE COURT: That be fine.

3 (Witness came to the witness stand.)

4 THE COURT: Good afternoon, ma'am. Please
5 give me your full name.

6 THE WITNESS: Suzette Marie Creel. I'm --
7 yes: Creel.

8 (Witness sworn by the Court.)

9 THE COURT: Thank you. You may be seated.

10 **DIRECT EXAMINATION**

11 BY MR. THUSS:

12 Q You're married to Mr. Marion Creel?

13 A Yes; I am.

14 Q How long have you been married?

15 A 19 years, November.

16 Q Where do you-all reside?

17 A 211 Chaplin Road, Swansea, South Carolina.

18 Q Without giving a diagnosis and medical
19 opinion, he had a stroke in 2008?

20 A Yes; he did. Before that, he had -- he had
21 bypass surgery. A year later, because -- and then he had
22 two stents put in. And then after, a year later, he had a
23 stroke in September of 2008.

24 Q All right. During that period of time, was
25 his general health affected?

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1 A Yes; it was.

2 Q His ability to do things being affected?

3 A Yes; it was. His -- his left side was
4 paralyzed for a time. It was probably a good two or three
5 months before he got that back totally. He did go into
6 rehab after the hospital. He stayed in ICU about three
7 days. He did go into rehab for about a week and a half;
8 however, the rehab wasn't the best place for him and I
9 took him home and we worked from there to get him where he
10 is today.

11 Q Okay. Approximately what time frame was that?

12 A That was about -- that was probably around the
13 first week or so in October.

14 Q Of 2008?

15 A 2008.

16 Q At the meeting that occurred between Marion
17 Douglas and Robin, you were not present --

18 A No, sir.

19 Q -- for that, know anything about that. Do you
20 know anything about the sale of the building from Marion
21 Creel to Douglas Creel?

22 A I do know of it. I helped with the -- the
23 calculations, trying to come up with the mortgage, the
24 terms of the mortgage, the interest rate that was going to
25 be charged. I used the mortgage calculator on the

48

1 internet to come up with the monthly payments at
2 different rates.

3 Q Let me ask you, is this something Mr. Creel
4 was able to do by himself?

5 A No, sir. He doesn't even know how to use a
6 computer.

7 Q So is it customary for you to act to help him
8 with providing and computer-related things?

9 A Yes, sir.

10 Q Does he write his own letters?

11 A No, sir. I write everything.

12 Q You said something about the -- on the --
13 generating payments and all on the computer. What did you
14 do?

15 A I went on the mortgage calculators and put
16 different terms in. He was trying to come up with a
17 payment that Douglas could afford and start going getting
18 the -- getting used to the buildings. Over all of his
19 loans that he's done, he usually has terms in there of so
20 much per a certain amount of time and then it's capped on
21 all his commercial loans.

22 So he was going over different periods of
23 time to make sure that he could recoup enough money in
24 the end, not only for his own living, but he had five
25 other children, so he was trying to make sure that he had

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1 a different -- he had a -- he started out with an
2 interest rate where he could afford -- tried a couple
3 others and then brought it back down.

4 Q And when was this going on, approximately what
5 months? Do you remember?

6 A Oh, this was probably sometime in February or
7 so.

8 Q Of 2009?

9 A 2009.

10 Q Okay.

11 A February/March, in that time. We did a lot of
12 calculations.

13 Q Okay. Did you help him prepare any documents
14 related to this transaction?

15 A All documentations that -- when he came home
16 from -- from signing the contract that he had --
17 originally he had made up one himself and he had -- he had
18 taken one and whited-out some stuff and -- and made one.
19 He left that one at home. I did not do anything on that
20 one. But when he came home with the paperwork and started
21 reviewing it, did notice some things were off that he had
22 told the attorney to have to be --

23 MR. SEATON: Objection, Your Honor.

24 THE COURT: Yes.

25 MR. SEATON: Violation of the hearsay rule.

1 THE COURT: Right.

2 You can't tell me -- you can't tell him what

3 your husband said at that closing unless --

4 THE WITNESS: Okay.

5 THE COURT: -- you were there and --

6 A The only thing I know is what he told me
7 before he went to closing and what he -- when he reviewed
8 the paperwork afterwards.

9 BY MR. THUSS:

10 Q And when you're saying he reviewed it, did you
11 assist him in reviewing it?

12 A I did.

13 Q Is this something that he was able to read and
14 digest by himself?

15 A No.

16 Q Now, you said this occurred after the closing?

17 A Yes. This was probably -- I was dealing with
18 a sick mother, so this was probably a day or maybe two
19 days afterwards, when he showed me the paperwork. And,
20 you know, the first thing that jumps out at us was the
21 late fee.

22 Q There was something wrong about that?

23 A There was something wrong. There was a
24 handwritten "5" and -- because it was supposed to be a
25 five percent late fee each month if the payments were

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1 late. I also -- my husband saw that and he said
2 he saw that Douglas wrote that in at the time, you know.
3 Then, I also looked at it and I said, well, this says five
4 dollars, not five percent. And I drafted a fax to
5 Mr. Wycoff to inform him. And I also sent Douglas a copy,
6 certified copies of what we'd sent Wycoff.

7 Q Now, do you know when -- do you remember the
8 date when the closing occurred?

9 A It was April 9th, I believe.

10 Q Do you know how long afterwards you sent
11 something to Wycoff and Douglas?

12 A It was a few days. I think it might have been
13 -- like I said, I was dealing with a sick mother. I think
14 it might have been around the 16th, 17th, somewhere in
15 there.

16 MR. THUSS: May I approach, Your Honor?

17 THE COURT: Yes; you may.

18 BY MR. THUSS:

19 Q I'm going to show you a document and let's see
20 if you recognize it.

21 A [Reviewing.] Yes.

22 Q And can you look at all the pages and see if
23 you recognize it?

24 A [Complying.] Yes.

25 MR. THUSS: I have a copy for you.

1 MR. SEATON: No objection to this
2 document on the top of this. She prepared it.

3 BY MR. THUSS:

4 Q Can you tell me what this -- what this
5 document is? Is this the document that you had sent?

6 A That's the document I sent, a copy of the --
7 the one that I sent to Mr. Wycoff, the certified copy that
8 I sent to Douglas. I also attached a re-typed contract
9 that -- as it should have been.

10 MR. THUSS: May it please the Court, I'd like
11 to enter this as Exhibit 2.

12 THE COURT: Any objection, sir?

13 MR. SEATON: Well, I -- I don't know what
14 relevance -- the best evidence in this is the note and the
15 mortgage executed by these parties and closed by their
16 attorney, not a document with blanks in it, no signatures.
17 So I would object to it. Besides, it doesn't have any
18 relevance, your Honor.

19 THE COURT: Yes, sir.

20 I'm going to allow it to come in as documents
21 that she says she prepared for her husband and sent to
22 Wycoff and sent to your client, I believe and -- so that
23 will be Plaintiff's 2.

24 MR. THUSS: Yes, Your Honor.

25 THE COURT: Please mark that, Madam Court

1 Reporter.

2 (Copy of Loan and Contract, Plaintiff's Exhibit
3 No. 2 is marked for identification and admitted into
4 evidence.)

5 MR. THUSS: And a copy for the Court.

6 BY MR. THUSS:

7 Q And would you take a look at this and read
8 what this document says?

9 A Attached is -- and this is to Douglas Creel.
10 It's -- attached is a copy of a note that I sent to the
11 attorney. You need to follow up with the attorney to
12 correct the late fee and the promissory note. Also
13 attached is a contract of how the contract should have
14 read if the one for -- this warehouse was used as an
15 example.

16 MR. SEATON: Well, this is after the fact.

17 THE COURT: Yes, sir. I understand that and
18 I'm --

19 MR. SEATON: This is self-serving.

20 THE COURT: I understand. I -- I'll let --

21 MR. SEATON: For seller's remorse or whatever
22 it might be. I don't know what some other sale and this
23 lady sending something after this transaction has to do
24 with --

25 THE COURT: Right. I've allowed it in,

1 Mr. Seaton, and I'll -- I'll take it under
2 consideration as in -- as to the extent of the relevancy
3 or the impact of this testimony on my decision.

4 Go ahead.

5 BY MR. THUSS:

6 Q Ms. Creel, so that was -- what date was that
7 sent?

8 A April 17th.

9 Q And that was how many days after the original
10 -- after the closing, then?

11 A The closing was on the 9th. This was the
12 17th.

13 Q Okay. Between the time that -- of the closing
14 and the time that you sent this letter out, in the
15 intervening time did you make any calls on behalf of -- of
16 Mister -- of Marion, or try to do anything to address the
17 problem?

18 A Marion talked to Mr. Wycoff himself and he
19 talked to Douglas, trying to address the problem.

20 Q And this was before this letter was sent?

21 A Right. And -- and even -- and even afterward.

22 Q Okay. So immediately after you perceived a
23 problem, Mister -- Marion took action to try to correct
24 it?

25 A Yes.

55

1 Q And object to it?

2 A Yes.

3 Q Did you ever have any direct conversations
4 with Douglas concerning this matter?

5 A No.

6 Q Okay. Or any direct conversations with the
7 attorney concerning this matter?

8 A No. All I -- all -- I was in the background,
9 as Marion was talking to the -- to the attorney. All I
10 could hear was what Marion was saying, before the loan was
11 even closed.

12 Q But you -- but he did rely on you to assist
13 him in anything that had to be written?

14 A Absolutely.

15 Q Any correspondence, you actually --

16 A Absolutely.

17 Q You actually were responsible for doing for
18 him?

19 A Right.

20 Q Because he was not able to do it for himself?

21 A He was not.

22 Q Okay. All right. Do you have anything else
23 pertaining to this that -- that you know, concerning
24 the -- the sale of the property that --

25 MR. SEATON: I object to that. That's --

1 that's --

2 THE COURT: Well, don't --

3 MR. SEATON: -- not a specific

4 question. That's one that -- that calls for speculation
5 and immaterial things. I don't know, Your Honor.

6 THE COURT: All right. Let's pinpoint your
7 question a little bit more --

8 MR. THUSS: I apologize.

9 THE COURT: -- Mr. Thuss.

10 MR. THUSS: I apologize, Your Honor.

11 BY MR. THUSS:

12 Q Do you know anything about Marion going to the
13 attorneys prior to retaining me?

14 A Yes; I do. We went to, I think, Reid Boldon
15 [ph], and I forget the other one's name, to try to get
16 them to get Mr. Wycoff and Douglas to -- to change the --
17 at that point, the late fee terms had still not been
18 changed and the terms of the contract with the call had
19 not been changed.

20 Q Okay. And when you say call, you mean that
21 after so many years, they'll be an opportunity to
22 adjust --

23 A Right.

24 Q -- the interest rate?

25 A Right. Any -- anything that I calculated for

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1 him on the computer, he was telling me figure it
2 for five years with a -- a -- figure it five years, the
3 interest rate, with a cap every five years, two percent
4 cap.

5 Q Okay.

6 A So he would call it every five years. That
7 way, he would make up for the money for the other
8 children.

9 MR. THUSS: I have no further questions, Your
10 Honor.

11 THE COURT: You may cross-examine.

12 **CROSS-EXAMINATION**

13 BY MR. SEATON:

14 Q Good afternoon, ma'am.

15 A Hi.

16 Q I'm sorry we're in this unfortunate
17 disagreement.

18 A So am I.

19 Q But I need to ask you just a few questions.

20 Would you tell His Honor, since April of '09
21 when this was closed, what is the status of payments by
22 my client to your husband?

23 A The payments have been on time.

24 Q And --

25 A There was a problem with insurance.

1 Q Ma'am?

2 A There was a problem with insurance, but
3 monthly payments have been on time.

4 Q When you start talking about these lawyers,
5 you remember hiring Ned Dennis, a local lawyer here in
6 Moncks Corner, and him contacting Marion on two lengthy
7 letters, one about insurance and one about whether it was
8 five percent or five dollars?

9 A I know that he did use -- but I didn't -- I
10 didn't go in with -- with him, to the attorneys. I do not
11 know what they talked about.

12 Q Well, you told Counsel that you were familiar
13 with all --

14 A I am familiar.

15 Q -- contacts.

16 A I am familiar.

17 Q Not even one of those letters from Ned Dennis,
18 who was then with the Manley Law Firm, October of 2009 and
19 November of 2009, neither one of them address your
20 complaint about interest rate; do they?

21 A I don't know. I don't recall those letters.
22 I mean I -- I've --

23 Q You haven't --

24 A -- read them; yes. But I don't recall at
25 this --

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1 Q Well, let me just share with you,
2 that's what -- and then you can tell me whether or not

3 A If I'm not mistaken, the -- Dennis was
4 obtained after the attorney that --

5 Q I'll answer [sic] the questions, ma'am.
6 That's not my question. My question was, the two letters
7 that your husband hired Mr. Dennis --

8 MR. SEATON: You seen these?

9 MR. THUSS: I -- I'm sure you turned them
10 over; yeah.

11 BY MR. SEATON:

12 Q I hand you the letters that I made reference
13 to of October 1, 2009 and November 5, 2009. You ever seen
14 those letters?

15 A (Witness reviews documents). Yes.

16 Q Now my question was, other than insurance
17 premium on the building and a late fee of whether it was
18 to be five dollars a month or five percent, did either of
19 Mr. Dennis's letters state anything about the interest on
20 the promissory note being wrong?

21 A No; not that I can see.

22 MR. SEATON: Enter this was Defendant's 1 and
23 2.

24 THE COURT: Any objections?

25 MR. THUSS: No, Your Honor.

1 STATE OF SOUTH CAROLINA)
2) SS:
3 COUNTY OF BERKELEY)

4 IN THE MASTER-IN-EQUITY COURT

5 MARION CREEL,)
6)
7 Plaintiff,)
8)
9 vs.) No. 2010-CP-08-4140
10)
11 DOUGLAS CREEL,)
12)
13 Defendant.)

 COPY

14 REPORT OF PROCEEDINGS at the hearing of
15 the above-entitled cause before the Honorable ROBERT E.
16 WATSON, Judge of the said court, on May 9, 2013, at 9:30
17 a.m.

18 APPEARANCES:

19 FOR THE PLAINTIFF:

20 By: ROBERT R. THUSS, ESQ.
21 THUSS LAW OFFICE, LLC
22 P.O. Box 589
23 Swansea, SC 29160

24 FOR THE DEFENDANT:

25 By: GROVER C. SEATON, III, ESQ.
SEATON LAW FIRM
105 Carolina Avenue
Moncks Corner, SC 29461

I N D E X

THE WITNESS:

MARION CREEL, JR.

	DX	CX	Re-DX	Re-CX
By MR. THUSS	5			
By MR. SEATON		57		

E-X-H-I-B-I-T-S

Plaintiff's	I.D.	Admit
No. 1	23	23
No. 2	38	39
No. 3	38	39
No. 4	38	39
No. 5	45	46

Defendant's

No. 1	57	59
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1 THE WITNESS: Marion Creel, Jr.

2 THE COURT: Marion Creel, Jr.?

3 THE WITNESS: Yes.

4 (Witness sworn.)

5 THE COURT: The witness is yours.

6 MR. THUSS: May it please the Court.

7 THE COURT: Yes.

8 MARION CREEL, JR.,

9 called as a witness herein, having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION BY

12 MR. THUSS:

13 Q Mr. Creel, where do you reside?

14 A Swansea, South Carolina.

15 Q What's the address, sir?

16 A 211 Chapman Road.

17 Q And what is your age?

18 A 76 years old.

19 Q 76?

20 A Right.

21 Q And can you tell me what your educational
22 background is, for schooling?

23 A For schooling? I got out of school around the
24 6th grade. I went back to school some, a little bit on
25 and off. I would say probably about 6th or 7th grade,

1 something like that. That's about all the schooling I've
2 gotten.

3 Q We're here today concerning the transaction,
4 the sale of the property with your son. Can you tell me
5 what caused you to enter into this transaction?

6 A What caused me to enter into it?

7 Q Yeah. What was your reason for doing it?

8 A My health to some extreme.

9 Q What was going on with your health?

10 A I had a stroke and embolism of the brain in my
11 head.

12 Q And when did that occur?

13 A It occurred in September, sometime in
14 September. I don't know the date. I can't remember the
15 date.

16 Q Do you know the year?

17 A 2008.

18 Q 2008. Okay. When you had the stroke, were you
19 hospitalized?

20 A Yes, sir.

21 Q And where were you hospitalized?

22 A I was hospitalized in Columbia at the Palmetto
23 Heart Clinic. I think that was the name of it. The
24 hospital is where I was at, but it's right there.

25 Q How long were you in the hospital?

1 was. I don't know if my wife didn't tell me then that I
2 was in a home.

3 Q You said something about hemorrhaging?

4 A Hemorrhage in the brain.

5 Q So there was hemorrhaging in your brain?

6 A Yeah.

7 Q From the stroke?

8 A Yeah.

9 Q Do you know when you returned home?

10 A I returned home, I think it was about two or
11 three weeks after that or something like that. I
12 returned home on the condition that I continue therapy at
13 home. And I continued therapy for four or five months at
14 home and continued on for less than a year before I come
15 back to realize different things.

16 I couldn't even read or write. The only
17 time I would drive is when I had to drive, and that was
18 after I went back to the heart doctor and he made me go
19 to a eye glass [sic] and get eyeglasses and stuff before
20 I could drive. I was seeing double lines all the time
21 just about. I seen that for probably four or five, six
22 months before the glasses helped that some.

23 Q And how else did the stroke affect you?

24 A The stroke affected my left side and my vision
25 on the left side and still yet today on my left side.

1 This hand will move (indicating). At one time I couldn't
2 move this hand. I couldn't do this to my nose
3 (indicating). In other words, I couldn't come around
4 (indicating).

5 Q When you're explaining it, you're bringing your
6 arm around to touch your nose?

7 A I was trying to touch my nose. I couldn't do
8 it for at least four or five months. And that's when
9 they quit coming to the house, helping with this therapy.
10 Therapy was coming there for that whole time, checking
11 me.

12 Q After you left the hospital and you came home,
13 you were convalescing, how did -- did you get in touch
14 with Douglas, or what happened in that time?

15 A Douglas was at the hospital. He knew my
16 condition. He called me often and checked on me, and I
17 talked with him. I told him what I was doing, knocking
18 over water with this hand, running into the wall on the
19 left side.

20 It affected me all the way down the left
21 side, but it didn't affect my walking around ability too
22 much, but I know that sometime I dragged my feet all
23 during that time on the left side. It was a good while
24 before I could ever get back to know what I was really
25 doing.

1 If I got a headache, that was it. I just
2 couldn't focus at all if I got a headache. Couldn't read
3 at all. I could read a little bit, and I'd have to quit
4 because I could not read. It's 'cause I got a headache.
5 It got worse and worse and worse when I would read.

6 Q Were you able to manage your affairs?

7 A To a certain extent, but I wasn't doing much.
8 My wife was doing most of writing the checks and all that
9 stuff at that time. If I writ one, she checked it. I
10 wasn't doing no checks much at that time, writing any
11 checks when I first got out the home.

12 Q And what month and year would that be?

13 A Two oh eight.

14 Q And what month?

15 A I don't know the exact month. I can't remember
16 the exact date that all this stuff was going on. This
17 has been four years or five years since that's been going
18 on, you know.

19 Q Did you ask Douglas to help you with the
20 buildings?

21 A I called Robin and I called Douglas, and we met
22 at my office. And we talked about the business. I
23 showed them every aspect of the business and told them
24 how I was running it all the way till then. And I talked
25 with them about the taxes and everything on that building

1 lawyer told him.

2 MR. THUSS: No, Your Honor, I don't have any
3 argument against that.

4 THE COURT: Don't tell me, sir, what your
5 lawyer said. He's not here --

6 THE WITNESS: I'm not talking about my lawyer.
7 I'm sorry.

8 MR. THUSS: Mr. Creel, please, if the judge is
9 speaking, let him finish.

10 THE WITNESS: All right. I will.

11 BY MR. THUSS:

12 Q Tell me then, why did you choose these two
13 children to give the power of attorney to?

14 A Because I had trust in them. And I know one
15 more thing is that they told me when I talked with them
16 at the office that they didn't want to work with one of
17 the other daughters I had, so I told them, then work
18 together. I asked them to let Rita come in, talk with
19 them. And I talked with them, they said they didn't
20 particularly want to work with her because she was
21 difficult to work with. So I choose them two.

22 Q This occurred toward the end of 2008?

23 A Yeah, it was sort of -- I think it was
24 February, as well as I can remember. I can't remember
25 exactly the date. It's been pretty long.

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1 Q Now, we know that we're here because there's a
2 dispute over the sale of the property. What happened
3 where you and Douglas -- what happened where you-all
4 entered into an agreement for you to sell the property to
5 him? What were the circumstances, please?

6 A That day it was mentioned something or another
7 about -- you know, I told them I had -- the building
8 already had been up for sale. And it come up somehow. I
9 told him that I would like to see him with the building
10 and Rita with the building. That was one of my
11 daughters. I said but I don't particularly want two
12 people on a note. So he come up, I told him why didn't
13 he buy it. He said, no, he couldn't afford it. And then
14 that subject was dropped until we got on the phone. And
15 he come on the phone, and that's when he -- I don't know
16 exactly when it come all together, to agreeing that we'd
17 do that, until the 10th.

18 Q The 10th?

19 A 10th of March.

20 Q In what year?

21 A In two oh nine.

22 Q What happened on the 10th of March?

23 A We sat down. We was going to make a -- I left
24 the contract home. I was going to bring a contract with
25 me. I left it at home. I forgot it. I left it home.

1 When we got to the office, I told him I did not have a
2 contract, I left it at home.

3 We had also before that talked about
4 interest payments. And my wife on the computer had come
5 up with a payment. But when we talked about the
6 payments, we agreed to what I would do. And we would --
7 then he come back to the office. I met him at the
8 office, and we went over it. And he said -- I didn't
9 have the contract, so he said he could type one.

10 And I told him go back in the back office
11 and look in the file and get some of this contract that I
12 had already had a note. That was note and a mortgage.
13 And he done seen it. I done showed it to him. But I'm
14 going to show it to Robin and him. Both of them looked
15 at it. And I told them you going to have to make it by
16 that for me to sign a contract. He come back in the
17 front and it was too big, he couldn't type that. It was
18 too much to type.

19 And he tried to get me to sign some kind
20 of contract at one time. I told him I wouldn't sign no
21 contract. I said I'm not signing a contract. I said
22 I'll sign a proposal. You take it to Mr. Wyckoff's
23 office. And if you take it there -- I said if you take
24 it straight there, is what I told him, take it straight
25 there and give it to him and make the contract, when we

1 go to the closing, we'll sign the contract. And that's
2 what I told him.

3 Q That was on?

4 A That was on the contract.

5 Q That was in March 10, 2009?

6 A March 10.

7 Q What occurred after that?

8 A When he come back there and we made the
9 proposal, I told him -- you have to bear with me a little
10 bit because I get confused easy. We made the proposal,
11 and we signed the proposal, and the proposal read a
12 20-year mortgage with a 5-year call the first, the
13 first --

14 MR. SEATON: Your Honor, I got to object.

15 THE COURT: Hold on, Mr. Creel. Don't testify
16 right now.

17 MR. SEATON: Parol evidence rule. There is a
18 contract signed by these parties March 10th, has the
19 terms on it. So there's a note, and I would object to
20 any testimony. Parol evidence variance. Statute of
21 frauds also.

22 THE COURT: Mr. Thuss, I'll hear from you on
23 that.

24 MR. THUSS: Your Honor, I think I'm going to
25 have to approach this question in a different way, so

1 I'll withdraw the question.

2 THE COURT: All right, sir.

3 BY MR. THUSS:

4 Q I will ask you if you recognize a document,
5 Mr. Creel. Do you recognize this document?

6 A No, sir, not that document. Because that ain't
7 what I signed. Where is the original signature on the
8 document? I have to see the original signature on what I
9 signed. I have asked for it four or five times. And
10 I've called him. I called Mr. Wyckoff. I talked to him
11 about this document. And I can't get it.

12 To testify on something or another like
13 that that I've never signed -- unless it's a real estate
14 contract or made by an attorney, I've never signed in 62
15 years no kind of stuff like that. And I've did proposals
16 and I've did contracts ever since 1962. And I quit in
17 '97. I had to quit with my back. That's why I quit. As
18 professionals, to me, that is no professional thing I
19 would sign.

20 Q Do you see a signature appearing on it?

21 A That signature is not my original signature.
22 When I give him that to take straight back to Wyckoff's
23 office, it went back to Georgia and was faxed back. I
24 know nothing about that contract. That's what I said. I
25 can't get up here and testify to something that I didn't

1 even see it until after closing. With my package, it
2 wasn't in my closing packet. When I got home, I had to
3 go back to Wyckoff. If you turn it over, you'll see on
4 the back of it -- if you don't got one, I got one, on the
5 back of it, I picked it up from Mr. Wyckoff's office.

6 THE COURT: Hold on a minute, Mr. Seaton.

7 MR. SEATON: Same objection, Your Honor.

8 THE COURT: I've understood Mr. Creel to say
9 that he does not know what that document is.

10 MR. THUSS: Yes, Your Honor.

11 MR. SEATON: I understood him to say that was
12 his signature, but that ain't what he signed. And
13 again --

14 A I --

15 THE COURT: Hold on, Mr. Creel.

16 MR. SEATON: I'm objecting under parol evidence
17 rule, statute of frauds.

18 THE COURT: I'm going to allow him to testify,
19 but he is not in agreement that that's a document that he
20 signed. Is that the position I'm hearing him take?

21 MR. THUSS: Yes, Your Honor.

22 BY MR. THUSS:

23 Q Mr. Creel, have you ever seen this document
24 before?

25 THE COURT: I will let him testify for the time

1 being, Mr. Seaton.

2 A I seen it when it was in your file when you
3 subpoenaed the packets. When I picked it up at his
4 office. I picked up one at his office several years
5 after the closing.

6 Q Did it have a cover sheet on it like this?

7 A It's right there is where it's writ on there.
8 I didn't write that on there. It was on there when I
9 picked it up from Mr. Wyckoff's, I picked it up.

10 MR. THUSS: I would like to admit this because
11 he says he does recognize it. He's seen the document --

12 A After the closing.

13 MR. THUSS: -- after the closing.

14 MR. SEATON: I object, sir. Again, parol
15 evidence rule, statute of frauds. It's totally
16 irrelevant.

17 THE COURT: Let me see that document, please.

18 THE WITNESS: There you go.

19 MR. SEATON: If you look at the plaintiff's
20 Complaint, attached to it is a contract sale.

21 THE COURT: You lawyers help me a minute. Are
22 the terms in this offer to purchase real estate, are they
23 any different than the contract of sale?

24 MR. SEATON: No, sir.

25 MR. THUSS: Your Honor, there is no contract of

1 sale.

2 THE COURT: So it's your position there is no
3 contract of sale.

4 MR. SEATON: Hold on a second. Attached to the
5 plaintiff's Complaint is an offer to purchase real
6 estate. It appears to be a standard document signed by
7 the parties attached to the Complaint.

8 THE COURT: Is that true, Mr. Thuss? Is that
9 an attachment to your Complaint?

10 MR. THUSS: Your Honor, I didn't have it --
11 well, on -- I'd have to check the Court's file, but
12 on. . .

13 MR. SEATON: May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. SEATON: Here is what my client was served.
16 It has one staple through it. That's what he was served.

17 THE COURT: Did you look at that?

18 MR. THUSS: I saw the last page. I don't know
19 if that is in the file with the Court's file.

20 THE COURT: I don't see it attached to the
21 Complaint in the Court's files.

22 MR. THUSS: I don't know how it got attached on
23 there.

24 THE COURT: That's not in the clerk's file,
25 Mr. Seaton, so I don't have an explanation. I'm not

1 saying you weren't served with that. I looked at the
2 Complaint in a hurry. I do not see where it refers to
3 anything being attached to the Complaint. And so now I'm
4 faced with this.

5 I understand, Mr. Thuss, you want to
6 introduce it into evidence, but yet your client says that
7 he was not familiar with that, and so that's giving me a
8 problem. I don't see how he can be the one introducing
9 it if he says he's not familiar with that. He doesn't
10 admit that that's his signature on the document, so I
11 don't know how you can get it in from him.

12 BY MR. THUSS:

13 Q Mr. Creel, did you become familiar with this
14 document after the closing?

15 A After the closing I come familiar with it to
16 know that I didn't sign it. Wasn't no capital letters in
17 that thing --

18 THE COURT: That's not what I am interested in
19 right now. He says he became familiar with it after
20 closing. Is that correct?

21 MR. THUSS: Yes, Your Honor.

22 THE COURT: Is that correct, Mr. Creel?

23 THE WITNESS: Yes, sir, that's correct.

24 THE COURT: All right. I'm going to allow it
25 to come in based on that. I'm not going to get into

1 signature issues at the moment.

2 MR. SEATON: Yes, sir.

3 MR. THUSS: Thank you, Your Honor.

4 I'd like to have this marked.

5 THE COURT: Let's just start all over with
6 today's date, and what would be Plaintiff's 1 on the
7 second day of hearing. We had a different court
8 reporter, and we don't know the numbers from last time.
9 I'm just going to call it Plaintiff's 1, second day
10 hearing.

11 MR. SEATON: Yes, sir.

12 (Plaintiff's Exhibit No. 1
13 was marked for identification.)

14 (Whereupon, Plaintiff's Exhibit No. 1
15 was admitted into evidence.)

16 BY MR. THUSS:

17 Q Mr. Creel, after March 10 then your testimony
18 was you met with Douglas. Did you meet at the buildings?

19 A Yeah.

20 Q And you do believe you signed something that
21 day, you said?

22 A I signed the proposal. I've did them for
23 years, did jobs, and the contract came after. And I told
24 him that. We was -- I told him plainly that any real
25 estate transaction that we've ever taken was three

1 original contracts that were to be made. And that didn't
2 happen. He didn't do that. I mean something is trying
3 to be pinned on me, and I don't know what's going on. I
4 mean anybody's entitled, to me, his original signature or
5 see it. And all I'm asking this Court is to see the
6 original copy of my signature.

7 Q After you met with Douglas and you signed the
8 proposal --

9 A The proposal, right.

10 Q -- what happened next after that?

11 A After we signed the proposal?

12 Q Right.

13 A He was left to take that thing straight to
14 Mr. Wyckoff's office. That's what he told me he was to
15 do. Okay. Instead of going to Mr. Wyckoff's office, he
16 had to go home because he faxed it back from Georgia back
17 to South Carolina to Mr. Wyckoff. I never seen the
18 thing. I was in a closing, something I've never seen
19 till I went back and picked it up from his office.

20 Q Are you saying that was because of the --

21 A The reason I had to pick it up.

22 Q Are you saying that he faxed it because of the
23 cover sheet?

24 A No, I'm not saying that.

25 Q No?

1 A I'm saying he faxed the whole thing back. I'm
2 not saying anything about the cover sheet.

3 Q Okay.

4 A No, uhn-uh. If you look on the one I had, if
5 you look on the one I got, everything is faxed back from
6 there.

7 Q Do you see it on this one? Can you read it on
8 this one?

9 A Can I read what, the fax?

10 Q Uh-huh.

11 A The 19th of March.

12 Q And what does it say?

13 A It says Creel Construction Company.

14 Q Is that you?

15 A That's not me, no. I don't got nothing in
16 Georgia.

17 Q Does it have the phone number --

18 A I quit with Creel Construction Company in 1997.
19 I just told you that.

20 Q Does this have a fax number on it that you can
21 see?

22 A Yeah, I can see the fax number. Sure, I can
23 see the fax number.

24 Q Can you say what the number is?

25 A I don't know if I can see it that good it.

1 Look like 7025223-300 [sic], look to me like it.

2 Q Mr. Creel, how well do you read? Withdrawn.
3 How well did you read before the stroke?

4 A Before the stroke?

5 Q Uh-huh.

6 A I read well enough to know when a contract was
7 right because I never signed nothing like that in my
8 life. Not nothing like that. All my contracts, just
9 like I've told you, everything I got, and I got some of
10 them right there. In fact, my wife got some of them over
11 there on the floor, and I think I've told you about it.
12 And I got a note that Mr. Wyckoff did for me hisself.
13 And he initial it where he had read it, and anything that
14 was changed in it was initialed. The file that I've got
15 in that note has been put in there by him, and it's not
16 initialed, and I don't -- I just don't know how this
17 thing happened. I'm sorry.

18 THE COURT: Stop, Mr. Creel, please. I'm going
19 to stop this for just a second. I had a hearing that was
20 scheduled for around noon. Let me see if anybody is out
21 there. I might can take care of it in a hurry.

22 Off the record.

23 (Recess taken.)

24 THE COURT: We can get back on the record in
25 this case.

1 Mr. Thuss, your client is still under
2 oath.

3 MR. THUSS: Thank you, Your Honor.

4 BY MR. THUSS:

5 Q You were talking about contracts being drafted
6 prior to closings. Are you aware of any contract that
7 you're describing having been drafted for this closing?

8 A No, it wasn't a contract drafted. It was
9 supposed to be drafted at Mr. Wyckoff's office. And we
10 got there, we were supposed to sign it. But I had a
11 headache that morning, and I forgot all about that. When
12 I went in there to close, the packet was on the table.
13 And no contract. I never seen the contract. When I went
14 home, it wasn't in my folder. It wasn't nothing in my
15 folder except the note and the mortgage and the closing
16 statement. That's what was in my folder when I got back.
17 I couldn't read it that same day because I had the
18 headache, and I told him I had the headache before I left
19 the office.

20 Q What occurred at the closing? You said there
21 was -- was Wyckoff the attorney who handled it?

22 A Wyckoff's that one. But this one, before -- I
23 called Mr. Wyckoff before we ever took that contract
24 there to see if he brought it there. He said he hasn't
25 seen it --

1 MR. SEATON: Objection, Your Honor.

2 THE COURT: Hearsay?

3 MR. SEATON: Yes.

4 THE COURT: I'm going to allow him to testify
5 to that.

6 Let's move on, Mr. Thuss.

7 BY MR. THUSS:

8 Q What was your condition at the closing, your
9 physical condition, your health condition?

10 A I had a headache at the closing. And my
11 concentration, I couldn't concentrate, and when he writ
12 the 5 in it, he jerked it and pushed it back in the
13 package.

14 Q When you're saying -- what document did he
15 write the 5 on? Do you know what the document was?

16 A It was the note.

17 Q It was the promissory note?

18 A The promissory note. And I don't sign the
19 promissory note, and I know that. And when he jerked it
20 and put it back in the package, I didn't see the rest of
21 the terms on it.

22 Q So what happened with the promissory note after
23 you saw him write a 5 in there?

24 A He jerked it, took it. In other words, he
25 jerked it, writ the 5 in it and pushed it back in the

1 stack of papers with the rest of the papers.

2 THE COURT: Mr. Creel, help me out here now.
3 Who is "he" put a 5 on it, put it back in the papers?

4 THE WITNESS: My son.

5 THE COURT: Okay. Thank you.

6 BY MR. THUSS:

7 Q And what was Mr. Wyckoff doing?

8 A When we started arguing about the late fee is
9 when this happened, is when he pulled it over, the late
10 fee. He wanted me to leave it out. And that's when he
11 writ the 5 in it for \$5. And I thought he writ 5 percent
12 because I'd done told him to give it back to Mr. Wyckoff,
13 for him not to interfere with the papers. To me, I've
14 never had nobody, for an attorney to get up from the
15 table while a closing was going on, and I've never had
16 somebody pull a paper and put something in without
17 somebody witness it or initialing it. That thing is not
18 initialed, and the note is not initialed. I have some
19 that Mr. Wyckoff did for me. They are initialed. And I
20 can't figure what. . .

21 Q Who was there at the closing?

22 A Karen was there. It's supposed to be his
23 secretary. She was there. I had called Karen about this
24 thing. And before it was recorded. I called her
25 somewhere right at the time it was being recorded after

1 it was done and told her what was wrong with this thing.
2 Then when I went there to make the second, because he
3 messed up, to correct it, they gave me another one and
4 took that one out and corrected the 5 and still paid no
5 attention to what I had done told him about what was
6 wrong with the note.

7 Q And what was wrong with the note?

8 A The note didn't have the -- the 20 years,
9 5-year call and the 4 percent interest was right. But it
10 was a call every 5 years on that note with a 2 percent
11 cap in that note. And that's what we had made out, the
12 promissory note, he was supposed to take over there to
13 make the contract by to do the note.

14 And I've always been told the contract was
15 what you make the note from. Over and over at closings,
16 and I have did many one of them, and this is what we
17 needed to do with it. And I just don't know what went
18 on. I'm sorry. This could have been settled with this
19 because he told me he would fix it when I call him. I've
20 got phone numbers that I called him too and told him
21 about this thing and to fix it. And he said he would fix
22 it.

23 He said one time it was a joke. That's
24 what he told me on the phone. And I've got the phone
25 numbers, every one of them, showing where I called,

1 Wyckoff and every one of them that I called on this
2 thing.

3 I never been so hurt with something in my
4 life, and it's killing my health. I'm back to the doctor
5 a couple of weeks ago. My head busted wide open with
6 this fool. I'm just so aggravated with it that I don't
7 know what to do with it. A young'un to do something like
8 this to me, and I'm a sick man. If I was. . . Excuse
9 me, I'm sorry.

10 THE COURT: Are you okay now, Mr. Creel?
11 Mr. Creel, are you all right?

12 THE WITNESS: I guess I'm just hurt with this
13 thing. That's all. I'm tired of it. It's been four
14 years of hell with this thing.

15 THE COURT: You want to take a break?

16 THE WITNESS: Yes, sir, but I don't got much
17 more to say no how. Just I know I was did wrong by both
18 him and Mr. Wyckoff. Not just one, both of them. For
19 what, I don't know. I never did nobody nothing. Just
20 hurt.

21 THE COURT: Any other questions, Mr. Thuss?

22 BY MR. THUSS:

23 Q Mr. Creel, during that closing were you
24 physically able to read the documents at that closing?

25 A I couldn't see the documents that good.

1 Q How did you realize there was a mistake --

2 A Anybody that had a stroke is not well. My
3 daddy had one, my mother had one, and I got three sisters
4 that had some of the same stuff, and I was around. And
5 they ain't never read well again.

6 Q Did you have anyone, any family members,
7 anybody with you that day?

8 A No, because I trusted him. Because if I'd have
9 brought my wife, I'd have brought my daughter, he said I
10 didn't trust him. And I didn't feel like that was right
11 either because I have trust in him. And I love him. I
12 don't care what he did to me, I still love him. But I
13 just ain't going to put up with somebody lying to me, and
14 he lied to me over and over.

15 I called and told him if he carry that
16 thing to Mr. Wyckoff. I called Mr. Wyckoff first. And
17 he said he hadn't seen the thing, he said, but Karen
18 could have it upstairs. And I called him, turned right
19 around and called him and told him about it. And there
20 is the phone numbers there to prove it, every bit. I
21 don't know what else to do with it. I'm 76 years old,
22 and this kind of stuff I got to go through with, I just
23 don't know what to do.

24 Q So how long after the closing did you realize
25 there was a mistake?

1 A It was about -- when I left, the headache
2 didn't leave me. And I left and went home, and I told my
3 wife, I said, I can't read that thing. I have to see if
4 I can get it a little bit later and read it. But when I
5 got to where one morning and I could read it, I went back
6 to sleep, the first thing I picked up was that contract
7 that I ain't never seen. Don't know what it was. It
8 ain't no contract, to me, because my 16-year-old daughter
9 could have writ something better than that. And I know I
10 wouldn't sign nothing like that. I read it, and then
11 turned right around and called Karen at Mr. Wyckoff's
12 office and told her about it, and take it in the next
13 day, I believe it was, and carry it back to him and asked
14 him to correct that contract. He said it was too far
15 gone, he couldn't --

16 MR. SEATON: Your Honor, I'm going to continue
17 to object about Mr. Wyckoff this and Karen that. I mean
18 call Mr. Waycroft as a witness, call Karen as a witness.

19 THE COURT: I agree. You can't tell me what
20 Karen or Mr. Wyckoff said to you at all. You can say
21 what you did. You can say you took this back to them and
22 you said this, and that's all you can tell me.

23 THE WITNESS: All right. I'm sorry. I don't
24 understand.

25 THE COURT: That's all right.

1 BY MR. THUSS:

2 Q Mr. Creel, you said you made phone calls. What
3 was the date of the closing; do you recall? Do you
4 recall the date of the closing?

5 A It was April 9th.

6 MR. THUSS: Phone records (indicating).

7 MR. SEATON: No, sir, I'll not stipulate.

8 BY MR. THUSS:

9 Q You made phone calls. Did you talk with
10 Douglas about it, too, shortly after the closing?

11 A I talked with him about all of it. He told me
12 that -- he told me that he was going to fix it, that it
13 was a joke and he was going to fix it. That's the words
14 he told me.

15 Q At some point did you, with the help of your
16 wife, write Douglas?

17 A Sure did. Wrote him a letter.

18 Q Do you recognize these documents?

19 A Yes, sir.

20 Q What are these documents?

21 A That's the document that was supposed to have
22 been typed, that he was supposed to type the contract,
23 but said he couldn't type it, it was too long. He
24 couldn't type it.

25 Q What's the first page?

1 A The first page is something about the light
2 bill, I believe.

3 Q Can you read this at the top, what this says?

4 A Certified receipt.

5 Q Certified mail receipt. And the second page
6 is?

7 THE COURT: Those were admitted at the last
8 hearing.

9 MR. THUSS: What should I refer to this as,
10 Your Honor?

11 THE COURT: I have that particular one as
12 Plaintiff's 2, which I am assuming it shows the receipt?

13 MR. THUSS: Yes, Your Honor.

14 THE COURT: And a date on it, 4-17-2009?

15 MR. SEATON: Yes, sir.

16 THE COURT: It's a short letter dated that same
17 date?

18 MR. SEATON: Yes, sir.

19 THE COURT: That was admitted last time. In
20 fact, I have another short letter dated April 17, 2009.

21 MR. THUSS: Yes, Your Honor.

22 THE COURT: Then I have -- it's called an
23 Agreement of Sale contract also attached to this, which
24 was admitted last time.

25 MR. THUSS: Okay.

1 BY MR. THUSS:

2 Q Your wife testified to mailing these to
3 Douglas. So these were mailed to Douglas on April 17,
4 2009?

5 A Yeah.

6 Q And that was eight days after the closing?

7 A Uh-huh.

8 MR. SEATON: I got to object. He's leading
9 this witness. Now either, if he wants to make himself a
10 witness -- but he's testifying.

11 THE COURT: I'm going to allow it. These
12 things have already been admitted. Those are the dates
13 that are on these things. So I'm going to allow it. You
14 admitted these. I'm looking at my notes.

15 MR. SEATON: Yes, sir, the documents. I'm
16 objecting about him continuing to lead his witness.

17 THE COURT: So, Mr. Thuss, these have already
18 been admitted into evidence by his wife.

19 MR. THUSS: His wife, yes. Then I'd like to
20 hear Mr. Creel's explanation for what was intended by
21 this written communication to his son.

22 BY MR. THUSS:

23 Q Can you tell me what was intended by this?

24 A It was intended to notify the thing was wrong
25 and he needed to correct it.

1 Q And I will ask you to look at Page No. 2 at the
2 top of the page, Paragraph 4. Can you tell me what that
3 paragraph says?

4 A "The party agrees to buy, sell, execute and
5 adjust the rate, mortgage rate to the seller and shall
6 have the right to increase the interest rate at the end
7 of each five years. The first objecting party shall be
8 April 30, 2014." I can't read this thing. It'll start
9 my head hurting. I'll have to get up from here if I read
10 much of that. That's my problem, is reading.

11 THE COURT: He doesn't have to read that. I
12 can see that part of that document.

13 MR. THUSS: Thank you, Your Honor.

14 BY MR. THUSS:

15 Q What was the reason for the -- why is the
16 call -- why is it so important to have this call and
17 these terms in --

18 A The mortgage I had on it was a five-year
19 adjustable rate at around 9 percent.

20 MR. SEATON: Your Honor, I got to again
21 continue to object, statute of frauds and parol evidence
22 rule.

23 THE COURT: What mortgage is he talking about,
24 the one that he had on the property?

25 THE WITNESS: Yes, sir.

1 BY MR. THUSS:

2 Q I want to go back to what I was asking you
3 about. In your business dealings the idea of having a
4 call, having a promissory note adjusted at certain dates
5 during the life of the note, is this something that you
6 have used in the past?

7 A Yes.

8 Q Have you had to pay loans that had that sort of
9 a feature in it?

10 A Yes, all of my loans have that I've ever had on
11 the building.

12 MR. SEATON: Move to strike. That's
13 irrelevant.

14 THE COURT: What's the purpose of giving the
15 history of other loans he has had, and how does it relate
16 to this case?

17 MR. THUSS: This was his custom in all his
18 business transactions to include this sort of a feature
19 and a promissory note.

20 THE COURT: What sort of a feature?

21 MR. THUSS: An adjustable --

22 THE WITNESS: Inflation is what I call it.

23 THE COURT: I'm not asking you, Mr. Creel. I'm
24 asking your lawyer to respond --

25 THE WITNESS: I'm sorry.

1 THE COURT: -- to Mr. Seaton's motion of
2 relevancy.

3 MR. THUSS: That it was his custom in all of
4 his business transactions and commercial transactions for
5 him to always have some sort of a call feature in his
6 promissory notes in the transactions that he did.

7 MR. SEATON: It would be totally irrelevant
8 unless Douglas Creel, the defendant, was in all those
9 transactions.

10 THE COURT: I'll allow it to come in. I'll
11 allow him to testify. Go ahead.

12 Over your objection, Mr. Seaton.

13 MR. SEATON: Yes, sir.

14 BY MR. THUSS:

15 Q Mr. Creel, you can answer the question.

16 A On account of inflation, he could raise his
17 rent any time. And any banker told me this. I sat down,
18 talked with banks about it, when you put it in your --

19 MR. SEATON: Objection, Your Honor.

20 THE COURT: Please don't tell me anything that
21 some banker has told you that's not here to testify
22 today.

23 THE WITNESS: I'm sorry. That's about the only
24 way I can hardly just say it, Your Honor, so I'm sorry.
25 I just don't know --

(Whereupon, Plaintiff's Exhibit No. 5
was admitted into evidence.)

BY MR. THUSS:

Q Mr. Creel, this document, on the second
paragraph, do you know what this document means?

A From what I can understand of it, it means that
he did it from the contract that he had, but that ain't
the contract that I signed. I can't find my original.
How can I say that he did it right? I'm confused with
this stuff. I don't know what to make out of some of
them things that they're putting in here. He says he did
it by what he had. What he had was faxed. It wasn't my
contract. My signature is not on that.

THE COURT: Hold on.

Q Hold on a second, Mr. Creel. That's not what I
meant. Do you know whether or not Mr. Wyckoff
represented you at the closing?

A That was not in my folder when I brought back
to the house. Them things come afterward. When I got
that was when you subpoenaed the contract that was in
your folder. That's where that come from.

Q Did you sign this document where Mr. Wyckoff
said he was not your attorney?

A He didn't read it to me. I signed it. Yes, I
signed it, but he didn't read it to me. Yes, I signed

1 it, but he didn't read it to me. I didn't know he wasn't
2 my attorney.

3 Q You learned that after the fact?

4 A That's right, after the fact.

5 Q How long after the fact?

6 A The same time that I notified is when -- I
7 didn't learn that, no, till you took it out of your
8 folder before I learned that. You're going to get me
9 confused. To tell this thing, I need to tell it all the
10 way through because this is going to confuse me. I
11 explained this to you, that I cannot tell the story, like
12 what happened, with you piecing it and ruining it, it's
13 hard to do. I can't do that. On account of my sickness,
14 I can't do it.

15 Q Okay. Well, we're up to the point where the
16 closing has occurred. And now you recognized --

17 A I'm getting tired. I'm going to start messing
18 up.

19 Q -- there was a mistake. And then you wrote a
20 letter to Douglas. What happened after that? What was
21 Douglas' response to your letter here?

22 A He didn't respond to me.

23 Q He didn't?

24 A No, he didn't.

25 Q Did you talk with him about it anymore?

1 A I talked with him several times about all that
2 stuff. I called him after the closing. I called these
3 people before the closing. Eight days before the closing
4 I called every one of them, told them the terms of the
5 contract. Eight days. I told Wyckoff. Called Karen in
6 his office. Mr. Wyckoff called me back, I told
7 Mr. Wyckoff what the terms was in that thing. There was
8 no excuse for what happened on this thing. Douglas did
9 it. There is no excuse for what he did. And he's my
10 son, but I'm really hurt by this son's stuff because I
11 don't -- I never did believe in no kind of ugly dealing.
12 And both of them is hurting me. I believed in
13 Mr. Wyckoff. I had my confidence in him too. And both
14 of them, because I trusted both of them to do what was
15 right when I had called them the day before the closing
16 and told them make sure these things was right. I just
17 don't know what to do with it. I mean it's just -- I did
18 everything under my power to keep this from happening
19 that I could do, and no man could do no more.

20 Q Now, I want to ask you just a couple more
21 questions.

22 A Okay.

23 Q How did you determine -- do you know what the
24 value of the property was?

25 A At the time?

1 Q Uh-huh.

2 A It was \$650,000 is what the tax recording
3 office had it at, somewhere in there. And I also had an
4 appraisal I showed to him before he bought it, for about
5 five or six months before that. It was -- the appraisal
6 was a commercial appraisal. It was \$1,200,000. And I
7 remember that too. Nobody was trying to sell something
8 to my son to make a profit off it. I wasn't trying to do
9 that.

10 Q Do you believe that based on the accounting
11 records -- was it one piece of ground or more than one?

12 A It was two pieces of property, front building
13 and a back building. One had 2,000 square feet. The
14 other had 9,000 square feet in it.

15 Q The tax assessor value for the two of them was
16 approximately what?

17 A About \$650,000. Somewhere in there.

18 Q What did you sell the property to your son for?

19 A First we talked about \$650,000. I told him I
20 would reduct [sic] it from the 650,000 to 550. And he'd
21 have to give me \$150,000 down on it because that's what
22 the payment was. That's what we talked about. That was
23 the final conversation we had about that kind of stuff.

24 Q You said "the payment". What do you mean by
25 the payment?

1 A I had a payment of \$150,000 on it.

2 Q A mortgage?

3 A A mortgage. What gets me with all this is how
4 did Mr. Wyckoff -- and I'm not saying I'm sorry about
5 Mr. Wyckoff, but it was a \$150,000 payment on it. And
6 the mortgage had it in it. How was it recorded the day I
7 called her on the 13th of April, and it was recorded that
8 same day and almost the same time that I called her, the
9 mortgage was recorded. I can't figure that. I went
10 through all of it and looked at it. I can't see where I
11 did nothing wrong by what I did in trying to stop it.
12 And I don't know what else to say about it. I just don't
13 know.

14 Q The difference between getting a \$5 late fee
15 and 5 percent, why does it matter?

16 A What did it matter?

17 Q Yeah.

18 A Every mortgage I ever did, it was typed in the
19 mortgage. Any late fee is typed in the mortgage. I was
20 paying more than that on the commercial mortgage I had on
21 there, late fee. I think when he deducted payment out of
22 my payoff, it was about \$70 that he deducted out of a 142
23 mortgage.

24 Q The same thing, your dispute here is over the
25 interest rate, and what you allege is the term that's

1 missing. Why does it matter whether or not your son
2 stays at a 4 percent fixed rate or whether or not there
3 is a call where the interest rate could be increased?
4 Why does it matter to you?

5 A Why does it matter?

6 Q Yes, sir.

7 A From all that I've ever did on it is the reason
8 it matter, and I've had to pay. Anything I've ever did,
9 the late fee is in there for anything you do. In other
10 words, if you late, then that's what the late fee is
11 there for.

12 Q Right, and does it -- is there consideration
13 for any others that factor in, that factors in to why it
14 matters?

15 A It matters because of -- to me because it's
16 late and my money is setting out there when it's time for
17 it to be in, and it's not in. And I'm due some kind
18 of -- even in my rental contract, that's in it.

19 Q After you didn't receive any response from
20 Douglas on the letter, what did you do? Did you do
21 anything else to try to straighten it out?

22 A I went to Reibold & Walker to try to get it
23 straight. And I went to a couple more to try to get it
24 straight. And some of them agreed to work with it. Some
25 did not. They didn't want to mess with it on account of

1 it was family, some of them said. And some of them said
2 they just didn't want to get involved. One of them was
3 about insurance, the insurance he didn't pay on time. I
4 sent him a letter, and it got messed up in the mail
5 somehow. I don't know what happened to it. But he
6 didn't call me, tell me he didn't send it when I sent him
7 the letter.

8 This is not all about this. This is the
9 stuff that started that I see that I'm going to have
10 nothing but trouble with him all the way with the loan.
11 And I don't want to carry the loan no more on account of
12 the foolishness he started. If I got to be pestering
13 with something I'm trying -- didn't push it on him. Told
14 him not to buy it if he couldn't afford it. I said don't
15 buy this if you can't afford it.

16 And he said he could buy it, you know, he
17 could afford it. So that's why I sold it to him, you
18 know, if he wanted it. And I told him I'd like to see
19 him with it. But not for me to have trouble with it the
20 rest of my life. I don't need that with the kind of
21 sickness I've got. I don't need them things. The money
22 is -- as far as the money, that don't mean that much.
23 It's him telling me a lie and doing what he did to me for
24 no reason. For no reason at all. I wouldn't do nobody
25 like that myself.

1 you say you've never seen.

2 A No, sir, purchase of real estate.

3 Q No, sir, that's not my question. Have you ever
4 seen this document?

5 A After closing.

6 Q Yes, sir. And is that your signature?

7 A When I went and picked it up.

8 Q And is that your signature on it?

9 A That's a copy of my signature, but that's not
10 my original signature on that document.

11 Q Well, what part of this document is wrong?

12 A What part of it is wrong? The 2 percent, the
13 4 percent, the 20 years, and a straight loan, it was
14 never discussed.

15 MR. SEATON: Your Honor, I will offer this in
16 evidence at this particular point for reasons of
17 comparative signature for the Court and numerous exhibits
18 signed.

19 THE COURT: Have we admitted that before?

20 MR. SEATON: No, it's not, sir.

21 THE COURT: Any objection?

22 MR. THUSS: No, Your Honor.

23 MR. SEATON: It now becomes Defendant's
24 Exhibit 1.

25 THE COURT: Defendant's No. 1, second day of

1 trial.

2 (Whereupon, Defendant's Exhibit No. 1
3 was admitted into evidence.)

4 BY MR. SEATON:

5 Q Now, you have identified the copy. I think it
6 is in evidence as Plaintiff's Exhibit No. 5. Let me hand
7 you what was placed in evidence. Did you understand
8 when -- that is your signature on it, isn't it?

9 A That is really my signature. This is where I
10 got a copy of my original signature and the only one when
11 I subpoenaed the document.

12 Q Sir, just answer my questions. We'll get this
13 done quickly.

14 A Okay.

15 Q Is that your signature?

16 A Yes, sir.

17 Q And without going through this entire document,
18 you consented to multiparty representation, being you and
19 your son, at this law firm. Wyckoff's Law Firm is going
20 to represent you and your son in that closing. Do you
21 understand that?

22 A Yes, sir, I do, with the contract.

23 Q Show me in there where it says with the
24 contract.

25 A It says something about a contract right here

1 in the document, somewhere that he did it by the
2 contract he gave me, not by the contract I gave him.

3 Q It don't say that in there, sir. You're making
4 all that up.

5 A It don't say that that way, but it says by the
6 contract.

7 Q You take your time and you find that language
8 in there for me that you're trying to testify to, because
9 I'll tell you it's not in there.

10 A Okay. But I didn't receive that in my file
11 until after the closing. It wasn't in my closing package
12 and it was with the subpoena when I seen it.

13 Q Your testimony was that your son and
14 Mr. Wyckoff got together and did something against you?
15 Sir?

16 A That's not my original signature --

17 Q That's not my question, sir --

18 A -- on that contract.

19 Q -- that's not my question. You testified that
20 your son and Mr. Wyckoff didn't do this closing
21 correctly.

22 A That's right.

23 Q Where is Mr. Wyckoff?

24 A I don't know that.

25 Q Why hasn't he been called as a witness?

1 A The first document, it was in his concern,
2 Wyckoff, when we put this thing, come here the first time
3 for trial. I don't know what happened to that. I can
4 only present to a lawyer what I'm supposed to take to
5 him.

6 Q Where is Mr. Wyckoff in your case?

7 A I don't know. He --

8 Q Why didn't you name him as a defendant in this
9 case if he did something wrong?

10 A Well, I guess he needs to be here. I didn't
11 ask him to come here.

12 Q It's your lawsuit, sir.

13 A I asked Robert about anything to start off with
14 in these things. I don't know what to do with them.
15 That's why we get lawyers, is when I go to a lawyer I go
16 to a lawyer to talk to him and to protect me and
17 whoever's interest that we got. That's what lawyers, I
18 thought, was for, so I --

19 Q But you said Mr. Wyckoff didn't do that. And
20 my question to you is why isn't he a named defendant by
21 you? Why is he not being called as a witness? He's the
22 closing attorney.

23 A It wasn't in my closing package the first time.
24 That's what I am telling you.

25 Q Your answer doesn't even make sense, sir.

1 A He was pulling papers -- he put the papers in
2 the folder. I didn't put them in there. My son put them
3 in here.

4 Q That isn't even close to answering my question.

5 A I'm sorry.

6 Q Why is Mr. Wyckoff not a named defendant?

7 A I'll withdraw it because I don't know how to
8 answer your question.

9 Q Okay.

10 A I don't know how to answer your question.

11 Q Previously in your case there was placed two
12 exhibits, October 1, 2009 and November 5, 2009.

13 MR. SEATON: Your Honor, can I have those?
14 They are letters from the Manly Law Firm by Ned Dennis to
15 my client.

16 THE COURT: Here they are, Mr. Seaton.

17 MR. SEATON: Thank you, sir.

18 THE COURT: You put them into evidence.

19 MR. SEATON: Yes, sir.

20 BY MR. SEATON:

21 Q Handing you Defendant's Exhibit 1 from my prior
22 proceeding is a letter dated October 1, 2009 to Douglas
23 Creel. Show me anywhere in that letter that you have
24 complained that there is an error in the note and
25 mortgage.

1 A I asked him about this when I first went there,
2 talked with him, told him my problem, told him what was
3 wrong with the mortgage.

4 Q That's not my question. My question is the
5 letter that your son --

6 A My signature is not on that letter. I can't
7 answer something I don't know nothing about.

8 Q Sir, your lawyer has already admitted that
9 without objection into evidence that you hired this
10 lawyer to write this --

11 A For insurance. For insurance purpose --

12 Q Sir, let me finish my question.
13 -- about insurance coverage and
14 threatening foreclosure. Show me anywhere in that letter
15 that there is an error -- that you're complaining about
16 an error in the note and mortgage.

17 A He said that he couldn't help me with that.

18 Q It's not in that letter, is it?

19 A I didn't hear you say --

20 Q Defendant's Exhibit No. 2.

21 A -- the first --

22 MR. THUSS: Your Honor --

23 MR. SEATON: That's not responsive to my
24 question, Your Honor.

25 THE COURT: Hold on. Mr. Thuss?

1 MR. THUSS: Your Honor, I don't want Mr. Creel
2 to be responding to attorney-client conversations that he
3 had with the Manly Law Firm. The letter, what's in
4 there, speaks for itself. And I'm concerned whether or
5 not Mr. Creel can actually read this letter at this time
6 to refresh himself.

7 MR. SEATON: I have advised counsel numerous
8 times that if there's any question of competency of his
9 client that there is a procedure that you take up with
10 the Court and have this man appointed a guardian. Either
11 his client is competent or he's incompetent.

12 THE COURT: I agree. And I perceive him as
13 competent. Can you read that letter today?

14 THE WITNESS: No, sir, I couldn't read that
15 letter. In fact, I couldn't read nothing that long. I'm
16 being honest with you. I get a headache.

17 BY MR. SEATON:

18 Q I guess there's no sense showing you the other
19 letter.

20 A That was --

21 Q About a --

22 (Whereupon the court reporter advises
23 the Court that speakers are talking
24 over each other.)

25 THE COURT: Let's try to speak one at a time.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY) Case No. 2010-CP-08-4140

MARION CREEL,

Plaintiff,

vs.

DOUGLAS CREEL,

Defendant.

TRANSCRIPT OF HEARING

DATE: September 30, 2013
TIME: 9:28 a.m. - 10:37 a.m.
LOCATION: Berkeley County Courthouse
 300 California Avenue
 Moncks Corner, South Carolina
REPORTED BY: Naomi E. McCracken

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6
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1 BY MR. THUSS:

2 Q So you say you remember that it occurred. Do
3 you remember specifics about the closing itself?

4 A Not in vivid detail, but I remember some.
5 Some of it; yeah.

6 Q What do you remember?

7 A Well, I remember that -- well, that everything
8 seemed quite normal. The interest rate seemed pretty much
9 in there with the prevailing rate at the time. I remember
10 discussing the late fee because -- and I do closings the
11 same way every time. I get to --

12 The second to the last document in the file
13 is the note. The last document's the mortgage. When we
14 get to the note, as usual, there is a blank space for the
15 late fee. And -- and I always say -- what is always
16 neglected prior to sitting down and closing a transaction
17 where there is financing is what the late fee's going to
18 be.

19 In the residential mortgage industry, there
20 is a four or five percent late fee 15 days after the due
21 date, which is typically the first day of the month,
22 depending on what type of residential loan we're talking
23 about. "We have to put something in the blank. What do
24 you want to put in the blank, four percent or five
25 percent of the payment?"

1 And I had to put something in the
2 blank. And I thought that Marion Creel said, "Well, why
3 don't you just put \$5." So I put \$5 in the blank. And I
4 understand that there is testimony to the contrary. And
5 later -- later, my former law partner sent a letter to
6 Mr. Creel, Jr. asking to re-execute a new note where the
7 late fee was charged at five percent. And he did that, so
8 I guess that's a non-issue.

9 But I remember thinking, "Well, this is a
10 father that doing something for his son. A \$5 late fee is
11 fine." So I believe that's my "5" in that blank on the
12 note.

13 Q On the note that was eventually replaced,
14 the --

15 A The five percent late fee; right.

16 Q But do you know whether or not that was your
17 writing, or could it have been written in by --

18 A I think -- I think that's my "5." And my
19 office manager, who's known me since '88, thinks that's my
20 "5," too.

21 Q Was there some confusion about that during the
22 closing?

23 A Not that I recall. I recall -- I do it the
24 same way every time. We never discuss the late fee on a
25 private finance deal until we get to it in the note. And

1 I tell the parties, residential mortgages --
2 there is a four or five percent late fee, depending on
3 what type it is, usually 15 after the due date. "I need
4 to fill in the blank. Do you want to put in a percentage
5 or do you want to put in a flat fee for being late?" And
6 I recall Mr. Creel saying, "Well, just put \$5 in there."

7 Q Now, when did you become -- did you become
8 aware at some point there some controversy between these
9 parties over -- over the terms of the note?

10 A I seem to recall getting a phone call from
11 Marion Creel that he didn't agree with the terms but I
12 don't really specifically recall. I had forgotten all
13 about it until I got a phone call from Grover Seaton that,
14 "We have been litigating this thing for two years," or
15 whatever. I was not aware of the litigation.

16 Q Did -- I had seen a copy of your file that we
17 subpoenaed, and Grover had, also. I did notice that it's
18 -- a copy of our Complaint in your closing file. Were you
19 -- at some point Mr. Seaton did contact you and talked to
20 about you this?

21 A Fairly recently, yeah, a week or ten days ago
22 or something. I don't know exactly.

23 Q If that Complaint was in the closing file that
24 you produced to me last year, would you argue that it
25 could have been in 2012 or earlier that you became aware

1 But I understand further that I have to give
2 everyone involved in the transaction good advice, to the
3 best of my ability.

4 Q Do you recall -- following the closing, do you
5 recall when Marion Creel might have contacted you
6 concerning issues with the note?

7 A No; I don't. I don't recall when that was.

8 Q And during --

9 A I seem to have a vague recollection that he
10 called me and said that the terms weren't correct.

11 Q And at that point, did you ever speak with
12 Douglas Creel about -- about that?

13 A I don't think so. My former law partner, Russ
14 DeMott, typically handled most post-closing issues.

15 Q Was there anything that you could have done to
16 stop the transaction after it closed?

17 A Well, after it closed, it's closed. And I had
18 no indication of -- before or during the closing, that
19 there was anything amiss.

20 Q Do you recall whether or not Marion Creel read
21 the note at the closing?

22 A Typically, sellers don't read the note. It's
23 -- I explained the terms of the note to the buyer in
24 detail. That's the most important document in the
25 closing, is the note, because that's what defines the

1 buyer's obligation to the mortgagee, in this case,
2 Marion Creel. He was sitting right there next to me.

3 I sit at the head of the table. I put the
4 buyers to my left and the sellers to my right is the way I
5 do it every time. So he was sitting one chair away from
6 me when I explained the -- the details in the note, to his
7 son.

8 Q In the --

9 A And he was provided the original note at the
10 end of the closing and a copy of the mortgage because we
11 have to record the original mortgage. So my practice is
12 to provide the -- the mortgagee -- the seller, in this
13 case -- the original note and a copy of the mortgage. And
14 then when we get the original mortgage back from the RMC
15 office from recording, then we mail the original mortgage
16 to the mortgagee. So he walked away with a debt
17 instrument, with the original note witnessed.

18 Q In the -- in this sort of transaction,
19 Mr. Creel; what documents would he normally be signing in
20 a closing like this?

21 A Well, he'd sign the HUD statement which has
22 all the money on it, all the closing costs, the loan
23 amount, things like that. He would sign several
24 affidavits. He would sign a conflict of interest
25 acknowledgment waiver. Lien affidavits. Something that

1 answer that, if he can. Repeat your question.

2 BY MR. THUSS:

3 Q Were you aware of anything about Marion
4 Creel's health condition?

5 A He seemed perfectly normal to me. I had no
6 reason whatsoever to suspect that he had any type of
7 health issues or mental issues or, for that matter,
8 matters of illiteracy. I mean the man is selling a piece
9 of real property, over half a million dollars. I mean he
10 seems to have done pretty darn well for himself. I have
11 no way of -- no reason to question anything. Everything
12 was very cordial.

13 Q In the -- just a couple of questions about --
14 about the closing package. Do you recall what sort of a
15 mortgage instrument that you prepared for this closing?

16 A It was just a standard mortgage that we have
17 in our computer, basically, as far as I know.

18 MR. THUSS: If it please the Court, the
19 mortgage has been entered into evidence as an exhibit.

20 THE COURT: Is that with the first court
21 reporter? I don't have it here.

22 MR. THUSS: I think we had entered it in
23 the --

24 THE COURT: Right. But sometimes the court
25 reporter keeps those things. I don't have a copy. Do you

1 statements. We have paid off the wrong loan."

2 And all that was fixed later.

3 Q That you said you prepared the -- the -- the
4 promissory note according to the contract?

5 A Correct.

6 Q Do you have -- have you seen the -- are you
7 familiar with the contract?

8 A Not so much. Again, any gals are pretty
9 self-sufficient when it comes to this kind of stuff.

10 Q Do you have copy of that in your file that you
11 can refer to?

12 A I can look. I have an Offer to Purchase Real
13 Estate.

14 Q I'd like to ask you a couple of questions
15 about that then. Is -- can you tell from looking at your
16 file copy whether or not that that's an original document?

17 A This is -- this appears to be a copy.

18 Q Would you normally rely upon a copy of a
19 contract such as that to prepare the note?

20 A Do it every day. People e-mail us contracts,
21 fax us contracts. Still occasionally -- rarely do I --
22 original contracts usually go to the lender.

23 Q Can you take a moment and -- and read the
24 substance of that document?

25 A This is provided to me, I think, by Grover

1 Seaton. It says that Douglas Creel, his address,
2 by our office purchased from Marion, real estate, 1731
3 North Main Street, Summerville, County of Berkeley, State
4 of South Carolina, and where the deed's recorded.
5 Purchase price is \$550,000. Owner to hold mortgage
6 \$400,000 at four percent interest for 20 years, interest
7 not the exceed four percent over broker.

8 Buyer has to pay for the satisfactory home
9 inspection report, per my best report. The property be
10 sold free and clear, good market titles. "I agree to
11 execute a standard purchase settlement agreement."
12 Closing shall occur before April 10th, 2009.

13 It's signed. It appears to be signed by both
14 parties.

15 Q Let me ask you: You said there was something
16 there about parties agreed to execute a sales agreement?

17 A It says that.

18 Q And if something like that came across your
19 desk, would that lead you to believe that there was some
20 step before a closing that would occur?

21 A Well, this meets all the -- all the
22 requirements of a valid binding agreement so, in my
23 opinion, it wasn't necessary to -- to sit down and draw up
24 a bunch of whereases and wherefores and that kind of
25 stuff.

1 DIRECT EXAMINATION

2 BY MR. THUSS:

3 Q Good morning, Mr. Creel.

4 A Good morning.

5 Q Mr. Creel, I'm not -- would it be okay for me
6 to refer to you as Douglas versus --

7 A Yes.

8 Q Instead of me calling you Mr. Creel?

9 A That's fine.

10 Q I don't want to confuse the record.

11 A No problem.

12 Q In 2008, do you recall that your dad began to
13 have some health -- serious health problems?

14 A Yes, sir.

15 Q And can you tell me what your recollection is
16 of what happened?

17 A He had a -- some heart work before and he had
18 like mild stroke, from what I understand. I went to
19 Columbia and seen him in the hospital.

20 Q So you do you remember, then, going to the
21 hospital and spending time with your dad?

22 A I was only in there for a little while. He
23 was in ICU.

24 Q Okay. And do you agree that happened in the
25 fall of 2008?

1 A I think so. I don't remember.

2 Q After that, later on in 2008 did you have some
3 sort of communication with your father?

4 A Yes, sir. We spoke some. Excuse me. Yes,
5 sir. We spoke some.

6 Q And following his -- his stroke, did you check
7 up on him and keep tabs on how he was doing?

8 A Yeah.

9 Q And how did he seem to be doing?

10 A He seemed to be doing pretty good.

11 Q We're here because of the controversy over the
12 building. At some point did you and he begin to have some
13 discussions about the -- about the building?

14 A Yes, sir. He wanted me to buy the building
15 from him.

16 Q And do you recall when those conversations
17 occurred?

18 A I don't remember, but it's -- you know.

19 Q Before that, did you and he and your sister
20 Robin meet at the building and talk about helping him with
21 it?

22 A Yes, sir; we did.

23 Q And do you recall, you know, what the
24 agreement was between the three of you?

25 A Something about managing the building, I

1 think. I mean I don't -- I don't recall the
2 whole conversation. But it was about him -- he wanted --
3 it was supposed to be managed by me and him and Robin.

4 Q Did you and Robin ever have to actually do
5 anything?

6 A No, sir.

7 Q Then in -- sometime in early 2009, you and
8 your dad talked about you buying the building?

9 A He called me and asked me -- he wanted me to
10 buy the building.

11 Q And what was your response to that?

12 A I said I lived a long ways away.

13 Q Okay.

14 A And that it was kind of hard for me to manage
15 the building from where I was at.

16 Q It's quite a distance from Newnan --

17 A To Charleston, it's five hours.

18 Q At some point, did you and your dad have
19 further conversations about you buying the building?

20 A We had quite a few conversation about buying
21 the building.

22 Q What was the substance of those?

23 A Most of the time I called him he said couldn't
24 talk because -- I don't know why, but -- I don't know. I
25 know we had conversations about mostly of me buying the

1 building. I mean that's all we discussed.

2 Q Okay. At some point, did you and he meet and
3 come to an agreement?

4 A We didn't come to an agreement on the price
5 and until I met him in his office, which is on the
6 property in question.

7 Q Okay. And do you recall what happened that
8 day when you met him?

9 A Yeah. We talked about me buying the building.
10 And it was \$550,000. We finally agreed to that and
11 \$150,000 down payment, which I paid. And charged me --
12 pay four percent for 20 years. That was it.

13 Q Do you recall your dad ever talking with you
14 about a COL feature? That's really what this case is
15 about, the call -- the five-year COL. Did he ever discuss
16 anything with you about that?

17 A No, because if he had, I wouldn't have bought
18 the building because he only had two tenants in the
19 building when I bought the building, which was only
20 paying -- I think it was twenty -- I don't remember what
21 it was, \$2,400 or \$2,800.

22 Q The day that he met with you at the building
23 to put the terms together, do you recall him saying that
24 he had left his agreement at his house?

25 A No, sir.

1 Q Did you have an agreement with you
2 when you got to the building?

3 A No, sir.

4 Q What happened; do you recall?

5 A I had a laptop and bubble-jet printer.

6 Q And how did the -- do you recall how that
7 putting it on paper happened? You sat down and typed it?

8 A Yes, sir.

9 Q And printed it?

10 A Yes, sir.

11 Q And did your dad read it before he signed it?

12 A I read it to him.

13 Q And after that, do you recall whether or not
14 your dad asked you to take it to Mr. Wycoff's office
15 immediately?

16 A No, sir; he didn't.

17 Q What happened?

18 A We just tried find a lawyer. And I assume
19 that's when he told me who to get: Mr. Wycoff.

20 Q And I assume that, at some point, you faxed
21 the agreement?

22 A Yes, sir. I did fax it to him.

23 Q Do you recall the closing?

24 A Yes, sir.

25 Q Was there any sort of confusion over the note

1 with you and your dad at the closing?

2 A No, sir; there was not.

3 Q After the closing, did you become aware that
4 your -- your dad had some concerns about the note?

5 A About the late fee.

6 Q About the late fee?

7 A Yeah. He sent a copy of it and it was changed
8 and set to five percent late fee.

9 Q Okay. Do you recall him having any other
10 concerns about the -- about the closing and the terms of
11 the -- of the note?

12 A Yeah. I remember he said he wanted to change
13 the interest rate every -- every five years, which is --
14 we did not discuss that. That was not discussed then when
15 we signed the agreement he and I made.

16 Q When your dad raised this with you, what did
17 you do to respond to him?

18 A I didn't. I didn't respond to him.

19 Q Is there a reason why you didn't?

20 A Because we didn't discuss this when we were
21 doing the contract. I mean I couldn't offer to pay him a
22 living raise every five years, two percent. That wasn't
23 what we agreed on.

24 Q So you never spoke with him on the phone,
25 never told him that you'd fix it?

1 A I told him I'd fix the five percent
2 late fee.

3 Q Do you recall how soon after the closing he
4 wrote you about adding the adjustable feature to the note?

5 A I don't remember.

6 Q Did you receive a certified letter from him?

7 A I think I did.

8 Q Do you agree that would be the April 17th
9 certified letter?

10 A I don't remember. I really don't.

11 Q After that, did you -- you said you didn't
12 respond. Did you have any further discussions with your
13 dad about -- about this --

14 A I called him couple of times. He hung up the
15 phone on me.

16 Q Were you ever communicated with by any
17 attorneys on behalf of your dad?

18 A A guy named Edward -- I don't remember his
19 last name. He called me.

20 Q I'm going to ask you to take a look at the
21 letter here and see if it's --

22 A I don't know. I don't remember. But I
23 remember I got sent something from the attorney about some
24 insurance. I don't know.

25 Q You don't reckon -- this is a letter to you in

1 May of 2009?

2 A Yes, sir; it is. I mean it was -- I mean I'm
3 sure it was. I don't know. I don't remember a letter,
4 but I'm sure I got it.

5 MR. THUSS: I'd like to admit this as a
6 Plaintiff's Exhibit.

7 THE COURT: It's admitted. It will be
8 Plaintiff's Exhibit 2/3.

9 (Letter dated 5/5/2009 from Blankenship to D. Creed,
10 Plaintiff's Exhibit 2/3 (1 page) was marked for
11 identification and admitted into the record.)

12 MR. SEATON: Plaintiff's 3.

13 THE COURT: That's Plaintiff 3? Today.

14 MR. SEATON: Yes, sir.

15 THE COURT: Sorry.

16 MR. SEATON: Well, we found the mortgage;
17 didn't we?

18 MR. THUSS: That was admitted.

19 MR. SEATON: All right.

20 MR. THUSS: There was -- that was admitted in
21 the April --

22 THE COURT: It wasn't admitted today. What
23 was admitted today was a letter --

24 MR. SEATON: The letter from Wycoff --

25 THE COURT: To Wycoff. And that was

1 Plaintiff's 1, Day 3.

2 MR. SEATON: I thought we were doing the
3 mortgage, but, evidently we found it.

4 THE COURT: Yes. And then this it would be
5 Plaintiff 2/3.

6 BY MR. THUSS:

7 Q And I'd ask you to read that letter for me.

8 A It says, "Dear Mr. Creel: Our firm represents
9 Marion Creel, Jr. in connection with a real estate
10 transaction between you and him that closed on April 9,
11 2009. Please let this letter serve as notice that Marion
12 seeks to rescind or reform the contract based on his
13 unilateral mistake which was caused by your overreaching
14 and deceit, inducing him into the transaction.

15 "The note needs to be reformed to reflect
16 your actual agreement for an adjustable interest rate.
17 The agreement was that after the first five years, Marion
18 was to have the right to adjust the interest rate up to
19 two percent on top of the initial four percent (that is,
20 up to six percent.) the current note provides for a flat
21 four percent rate.

22 "You know Marion trusted you and you took
23 advantage of the fact that he couldn't read the contract.
24 Please contact us as soon as possible so that we may
25 hopefully resolve this matter. This letter is written in

1 connection with settlement. Nothing herein may be
2 construed as an admission of any kind."

3 Q And the date of that letter was?

4 A April 9th, 2009.

5 Q Okay. Did you respond to that letter at all?

6 A No, sir; I did not, as I recall.

7 Q Can you tell me why -- the reason why you
8 bought the building from your dad?

9 A He said when I bought the building that he
10 wanted -- in case he got put in a home, or later in life
11 that he will have the money to pay for to be put in a home
12 or something. I can't remember what it was about.

13 Q So that he'd have some income?

14 A Absolutely.

15 Q And so was that the primary reason you that
16 decided to buy the building?

17 A One of the reasons; yes.

18 Q Did -- the price you-all agreed to; was that a
19 good price for the building?

20 A He said he had been offered \$550,000 for the
21 building by somebody and that he would sell it to his kid
22 before he would, you know, sell it to whoever. But he
23 made him an offer at \$550,000.

24 Q Were you aware that he had a mortgage to pay
25 off?

1 A Yes, sir.

2 Q Was that why the \$150,000 --

3 A Yes, sir.

4 Q -- was put up front? Were you aware of the --
5 the market value of the property?

6 A Well, during the time I bought the building,
7 the economy was way down. I mean it's like -- it's like
8 houses were being foreclosed everywhere. It was a bad
9 market to buy anything. I only bought the building to
10 help him out.

11 Q So you really did this to help your father?

12 A Absolutely.

13 Q Do you believe your father trusted you when
14 you went into this transaction?

15 A Just like I trusted him. I trusted him, too.

16 Q What's -- you know, I understand that you said
17 that you agreed to four percent.

18 A Yes, sir.

19 Q If you were doing this to help your dad, why
20 is it that you and he haven't been able to make some sort
21 of a compromise or some discussion to resolve this issue?

22 A Because there's -- I mean I bought the
23 building. We both sat down and talked about the building,
24 \$550,000. I paid \$150,000 and a four percent interest
25 rate. I mean he had two tenants in there; there's no way

1 I could pay him no more than that. And he agreed
2 on that. That's what he agreed on and that's what I
3 agreed on. We both had an agreement.

4 Q You know, is there any way that this could be
5 resolved or some compromise be reached instead of having
6 to -- would you be willing to --

7 MR. SEATON: Your Honor, we have -- that's
8 been off the table a long time ago.

9 THE COURT: I'm not going allow any testimony
10 about the settlement.

11 MR. THUSS: Okay.

12 BY MR. THUSS:

13 Q Were you aware of your father's ability to
14 read and understand documents following the stroke?

15 A No; I was not.

16 Q Were you -- were you aware until recently just
17 how severe the stroke was and how it impacted --

18 MR. SEATON: Your Honor, it's been testified
19 to through by a doctor and that's been in front of you and
20 the issues of mental competency have been ruled on.

21 THE COURT: I'll allow him to testify on what
22 he saw and what he recognized concerning his father's
23 mental and physical condition, if you can do that.

24 I'm not allowing you to go -- the issue of
25 mental competency to take place. But he can answer the

1 question relating to what he observed from his
2 father.

3 A I mean he seemed fine to me. I don't know.

4 BY MR. THUSS:

5 Q But are you familiar with the -- with the
6 deposition of Dr. Hammock (ph) concerning your dad's
7 stroke?

8 MR. SEATON: You can't pit a witness against a
9 witness.

10 THE COURT: That's correct.

11 MR. THUSS: I don't have any further
12 questions, Your Honor.

13 THE COURT: Thank you.

14 Mr. Seaton?

15 MR. SEATON: I'm going to be extremely
16 limited, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SEATON:

19 Q Can you identify this document?

20 A Yes, sir. That's what I gave you --

21 Q "Yes, sir?"

22 A Yes, sir; I did.

23 Q Did you and your dad get copies from the
24 closing attorney, the closing of this?

25 A No, sir. That's what I gave you for -- at the

1 end, the interest rate was compounding interest.

2 Q Did it come from Mr. Wycoff?

3 A No, sir.

4 Q Where did it come from?

5 A It came from Charter Bank.

6 Q Was your farther furnished a copy of it; do
7 you know?

8 A No, sir.

9 Q Okay. You paid your dad 150,000 grand --

10 A Yes, sir.

11 Q -- down?

12 A Yes, sir.

13 Q The payments are current?

14 A Yes, sir.

15 MR. SEATON: I have no further questions, Your
16 Honor.

17 THE COURT: Anything else?

18 MR. THUSS: I'm not sure what documents --

19 MR. SEATON: The file documents. He didn't
20 give me a chance to see the file documents before we came.

21 MR. THUSS: Okay. I didn't.

22 MR. SEATON: Yeah.

23 THE COURT: All right. You may step down.

24 THE WITNESS: Thank you, your Honor.

25 THE COURT: Do you have any other witnesses?

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State of South Carolina	)	
	)	
County of Berkeley	)	
	)	
Marion Creel,	)	2010-CP-08-4140
	)	
Plaintiff,	)	
	)	
vs.	)	Deposition
	)	
Douglas Creel,	)	of
	)	
Defendant.	)	David H. Hammett, MD
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Deposition of David H. Hammett, MD, taken before Kathleen R. Tackett, CVR, a notary public in and for the State of South Carolina, commencing at the hour of 9:14 a.m., Friday, May 3, 2013, at the office of Columbia Medical Group, 4540 Trenholm Road, Columbia, South Carolina.

Reported by
Kathleen R. Tackett, CVR

APPEARANCES

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Also Present:

Marion Creel

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EXHIBITS

Defendant's Exhibit Number 1, Letter to Grover Seaton, Esq. from Robert Thuss, Esq, dated 4/23/13.	3
--	---

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1 A Okay.

2 Q Doctor, you're Marion Creel's physician?

3 A I'm his neurologist.

4 Q You're his neurologist. Okay.

5 How did he come to be a patient of yours?

6 A He was referred, as -- as best I can remember, by
7 one of his other physicians. I think it was the
8 cardiologist, Dr. Isbell.

9 MR. CREEL: Isbell.

10 Q And --

11 A Recently. This would've been within --

12 Q Recently?

13 A -- within the last year.

14 Q Within the last year. Can you tell me about what
15 your -- let me start with your -- with your
16 professional licensing and all.

17 Are you licensed here in South Carolina?

18 A Yes.

19 Q Okay. And you're a physician?

20 A Yes.

21 Q And -- and what is your area of practice?

22 A So I'm a specialist in neurology and then actually
23 a vascular neurology specialist -- a stroke
24 specialist.

25 Q A stroke specialist?

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1 A I did a fellowship in vascular neurology.

2 Q Okay. And can you tell me about your formal
3 education?

4 A I did my undergraduate work at Wake Forest
5 University; then stayed there for medical school,
6 Bowman Gray School of Medicine; did my residency in
7 neurology at Vanderbilt University in Nashville;
8 and then stayed for an additional fellowship after
9 my residency.

10 Q Okay. And when did you complete your residency?

11 A 2005 and then another year of -- of fellowship --
12 vascular neurology, and I moved to Columbia to join
13 the faculty here at the School of Medicine, so I
14 was a clinical professor at School of Medicine for
15 the next four years after that until 2010.

16 Q And -- and what did you teach at -- at USC?

17 A Well, when I joined the School of Medicine, there
18 was only -- there was only one other faculty member
19 in the department of neurology, so I joined that
20 department, and we began to build the department.
21 By the time I left four years later, there were six
22 faculty members for a new department of neurology,
23 so neurology was my responsibility.

24 Q Okay. And have long have you been now at private
25 practice?

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1 A For three years.

2 Q Okay. The -- have you been able to -- what records
3 and all have you been able to review in -- since
4 Mr. Creel's become a patient of yours?

5 A I believe either I or one of his other physicians
6 got a recent MRI, a picture of his brain, which was
7 informative about the prior stroke, which, I think,
8 dates to 2008. The fall of 2008 was when he had
9 his stroke, and was able to look through some of
10 the hospital records from that admission and some
11 of the imaging studies at that time as well. So
12 those are the main sources of information that I
13 have about him: the initial hospitalization and
14 then things that we've done just since I began
15 seeing him more recently.

16 Q More recently? Okay.

17 Can you -- can you tell me what -- what
18 information you learned from looking at the -- the
19 records -- at the imaging?

20 A Okay. So Mr. Creel's stroke was -- clearly
21 involved a hemorrhage. There was bleeding inside
22 the brain. It -- from its appearance, it most
23 likely was an ischemic stroke, meaning lost blood
24 flow to a portion of the brain which then bled --
25 he then bled into that portion, which basically

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1 means it's a more risky -- high risk, dangerous
2 stroke at the time of the event. And so, you know,
3 when it -- when it occurs, job number one means
4 survival when there's that much sort of blood in a
5 tight space. And it looks like, from the hospital
6 record, he was -- he was put into the intensive
7 care unit. Once he was stabilized after a few
8 days, he was then moved to a heart unit or some
9 regular floor bed and then, again, to embark on a
10 long period of recovery from the deficits that he
11 might've been left with.

12 It's interesting that, with hemorrhages, that
13 initial period of time is really when most of the
14 risk is and then, if you can survive the stroke
15 itself, oftentimes recovery eventually can be quite
16 good. And, if you can figure out what caused the
17 stroke, then the main job becomes preventing
18 additional stroke injuries.

19 Q Okay.

20 A So his stroke was, based on the imaging and what he
21 -- you know, what the notes indicated and what he
22 kind of described, his stroke was in the right side
23 of his brain posterior -- towards the back --
24 involving a lot of the occipital lobe, which is at
25 the very back of the cortex or the -- the top part

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1 of the brain, and then a portion of what we call
2 the "posterior parietal lobe." And that is an area
3 on the right side of his brain that would've
4 affected the left side of his world -- vision on
5 the left side of his world. So not the left eye,
6 but actually what the eye sees both -- out of both
7 eyes. And because it was forward enough to have
8 involved the parietal lobe, it is more than just
9 being able to see things on the left side; has a
10 lot to do with interpretation of the left side of
11 the world, attention to the left side of the world,
12 and one of the larger, long-term problems becomes
13 what we call "visual neglect." So that, even with
14 testing with a patient, you know, when you force
15 them to pay attention to things on their left side,
16 they can note them, they can see them, but in -- in
17 the real world context, they easily ignore things
18 on the left side. They even may ignore an entire
19 left side of the room, for example. And it takes
20 perhaps the longest period of recovery to re-learn
21 in the brain how to ensure that you're paying
22 enough attention to the left side of the world,
23 although it's always a lingering problem from that
24 point on because the stroke itself leaves permanent
25 damage. The area of the brain that has the stroke

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1 does not re-grow -- fix itself in any way. You
2 basically have to gradually learn how to utilize
3 other parts of the brain to do the same functions,
4 if you can, and the deficits are permanent.

5 Q Okay. And this -- this would've occurred when the
6 stroke occurred in the fall of 2008?

7 A Correct.

8 Q Do you know whether or not Mr. Creel received any
9 rehabilitation for this when he was rehabilitating
10 under the doctor's care?

11 A It would've been a part of what therapists focused
12 on, although the -- the primary focus, if there are
13 motor deficits -- weakness, you know, sensory
14 losses, difficulty walking -- those are typically
15 the -- the first problems addressed, and it's a lot
16 more difficult to -- to address things like neglect
17 in the same way that it's difficult to address
18 memory loss and cognitive deficits and things like
19 that. So I -- you know, it's -- it was -- I'm sure
20 they were aware of this problem. How much targeted
21 rehab he received at any point, I -- I don't know.

22 Q How long has he -- you been seeing him for how
23 long?

24 A I think six months.

25 Q Six months. Have you done any additional tests

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oftentimes, especially -- well, at all times. But in the in-patient setting, strokes would generally go to neurology or neurology would be involved unless there is enough swelling or bleeding to warrant being followed by neurosurgery just in case there needs to be a surgical intervention. And that seems to be for -- as best I can tell, the case in this situation is that neurosurgery was involved because there was immediately -- it was recognized there was bleeding. Cardiology was involved because they already knew the patient. Neurology wasn't really involved and so, you know, that -- because of the different responsibilities and focus of neurology versus neurosurgery of the acute, urgent, emergent situation versus the long-term follow-up of stroke deficits, there's not a lot of information that I've seen so far about how he -- how he was in the first few months after the stroke itself.

Q And, based on your, you know, knowledge of the research in neurology and the work of others, your own work, is there any way to -- to know if the deficits that he's -- well, he's still experiencing some deficit -- that the deficits he was experiencing six months after the stroke, is there

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1 reliable -- work?

2 A Well, the first few months are the most crucial
3 period of time for recovery from a stroke, and,
4 yet, we have certain end-points at which we like to
5 sort of step back and think about or assess
6 someone's recovery. And six months would be sort
7 of one end-point; one year we'd still be expecting
8 recovery. The year-point is an important one in a
9 lot of patients. There's not a lot of recovery
10 after the first year -- actual recovery of, say,
11 the visual field itself or strength on the weaker
12 side, that kind of recovery. And then, you know,
13 18 months and two years. After about two years, it
14 would be very -- it -- it would basically be not
15 expected for additional neurological recovery to
16 occur after a stroke. However, the stroke -- as I
17 said, the damage inside the brain is permanent.
18 There's a scar, there's a hole, and that part is
19 not going to grow back. So, when relying -- in a
20 situation like that -- you're relying on other
21 parts of the brain, that may have had other
22 responsibilities, to sort of take over and -- and
23 optimize someone's function, what that really
24 means, and we see this all the time -- it means
25 that someone really in order to show their optimum

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1 function and recovery, they have to be at their 100
2 percent. They have to be at their best. And
3 deficits will always be there when they are
4 fatigued, didn't sleep well, aren't feeling well,--
5 they have a cold, they're under additional stress.
6 And the -- the scenario that Mr. Creel described to
7 me involved he was having a lot of headaches, and
8 he had a terrible headache during the period of
9 time that he seems to be most concerned about, and
10 bad headaches is another one of those limitations
11 that can bring out deficits that might actually be
12 greater at -- at that moment in time than they
13 would be when the patient is feeling at their best.

14 And so, you know, I -- we have patients all
15 the time that come back in thinking they're having
16 another stroke because their deficits, which they
17 had recovered from nicely -- their deficits all of
18 a sudden show up as much worse again. And one of
19 the things we -- we often say is, "Well, you really
20 can't have the same stroke twice. You've already
21 injured that part of the brain." So if it's the
22 same thing that happened before but it's just
23 varying to -- in its degree or its intensity, it's
24 likely because of some underlying condition -- some
25 underlying problem, a new medication, you know, an

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1 infection that we haven't otherwise had symptoms
2 from yet. You didn't sleep well, so that -- that
3 sort of -- just what seems to be a mild factor for
4 most -- for most people will, you know, just being
5 tired is often a bigger deal for someone who's
6 suffered a significant stroke because everything
7 shows up again.

8 Q Okay. Mr. Seaton earlier on had mentioned non-
9 compos mentis or incompetency. This isn't an issue
10 where the stroke rendered Mr. Creel incompetent, is
11 it?

12 A No.

13 Q Okay. But the -- apart from the -- the physical --
14 he is not able to process things on the left side
15 as well?

16 A Well, I say rendered him, you know, not competent.
17 I think he's competent now today. Since I've known
18 him, he doesn't have a condition that -- that
19 renders him incompetent at all times, such as
20 Alzheimer's or dementia or, you know, a -- a
21 limiting cognitive condition such as that. Of
22 course, I wasn't there at the times that he's most
23 concerned about to examine him or see him, but it's
24 more -- as I said, it's more than just a -- the
25 vision problem on the left. It is the tendency to

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1 be -- to not pay enough attention to things on the
2 left side, for things to be missed as if unaware of
3 them on the left side. And I guess as he described
4 -- as the patient described his concerns and the
5 scenarios specifically, one of his questions was,
6 "Was I competent? Was -- was the stroke affecting
7 me in a way that" -- speaking for -- on behalf of
8 the patient, affecting him in a way that limited
9 him? And I do think that's a possibility because
10 of him having, at the moment, a terrible headache
11 that, you know, he could sort of barely concentrate
12 anyway, but then whatever was happening at that
13 moment on the left side of his world, he might've
14 missed.

15 Q And the -- the scenario -- this -- you mean, what
16 he -- has he discussed with you something about the
17 -- the transaction with his son?

18 A Yes. I mean, he's -- that -- I guess the details
19 of that transaction weren't what I was specifically
20 interested in as far as what the -- what the
21 business transaction itself was -- was meaning to
22 accomplish. But he -- in that discussion with me
23 -- in that description to me, he mentioned some
24 back and forth with papers and some changes to the
25 document itself that, later, when he was feeling

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1 better, he disagreed with. And, of course, I, at
2 the time, didn't even imagine being involved in the
3 legal aspects of this, but it is true that that is
4 exactly the kind of problem that can show up
5 intermittently when someone's not feeling -- not
6 feeling their best and they've had this type of
7 injury in their brain. And it would be, perhaps,
8 less likely as time went on, but in the first few
9 months after the stroke, it is to be expected that
10 in order to be -- to have an absolute limit -- an
11 absolute minimum of deficits present, then you've
12 got to be at your best: You've got to be well-
13 rested, stable medications, feeling well. And it
14 -- because he was so concerned about it -- about
15 the scenario, I think it -- it raised my awareness
16 that the stroke itself could've been playing a
17 factor that day.

18 Q And, for someone with -- who's had a stroke in the
19 same area, the same degree of -- of injury, it's
20 typical six months later still to -- to be
21 experiencing the -- the deficits?

22 A Yes, yes. So, like I said, the six-month mark is
23 kind of our first assessment, our first goal: How
24 much can we recover in the first six months? And
25 -- but it's not the end of the recovery, and, in

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1 fact, there would be many arguments back and forth
2 about when the recovery truly ends, but the one-
3 year mark is a -- is a better mark for saying
4 perhaps that's the -- the maximum recovery, and the
5 two-year mark is probably the most reasonable to go
6 for as far as, okay, we, you know, we are at our
7 best. This is as much as we're going to recover
8 strictly from the stroke. So, within those first
9 few months after the stroke, changes are still
10 occurring; recovery is still occurring.

11 Q And, in your opinion, if someone is at their best,
12 then entering into a -- a transaction of this
13 nature would be -- he -- he could do it on his own?

14 A Well, it's hard to speak to this specific case
15 without knowing him at that time or examining him
16 at that time. As a general opinion, it would be
17 best to have, I guess, an advocate -- someone --
18 not to -- to not be alone, to be -- have someone
19 that is truly on the patient's side and understands
20 their potential deficits. So, you know, being
21 unable to speak to what his examination showed that
22 day or the day before or the day after, I think the
23 best advice would be to not be by himself. But
24 that's not to say that he wouldn't be competent; it
25 would be -- having someone there -- even just a --

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1 a family member or friend that's aware of -- of his
2 best and then when he's not at his best and just to
3 make sure that, you know, he's -- he's
4 understanding what's happening. But his stroke was
5 not the type of stroke that would render him
6 cognitively impaired in the sense that his memory
7 would be less, his -- his IQ would be somehow less.
8 That is -- that's really not the effect of this
9 type of stroke. It's more about whether attention
10 is paid to all the correct details.

11 Q Okay. In other words, on one side of his brain,
12 then you say he's getting it -- he's getting the
13 information on one side. That's -- but because of
14 the -- but, on the left side of the brain, he might
15 not be processing or receiving all the information?

16 THE DEPONENT: Well, Mr. Creel, are you right-
17 handed? You're right-handed?

18 THE DEPONENT: Yeah.

19 A In a right-handed person in 99.9 percent of right-
20 handed people, the left side of their brain is
21 considered dominant, which means essentially that
22 the language function is in the left side of their
23 brain. This injury was on his right -- on the
24 right side of his brain affecting the left side of
25 the world so it's opposite. That's the way the

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1 brain works. But what that really points to is
2 that the deficits from an injury on the right side
3 of the brain, the nondominant side, are more
4 difficult to pick up on because if this injury had
5 been on the other side of his brain, he would, to
6 this day, still be unable to speak with the same
7 language skills that he always had before.

8 Language function is affected, and, in -- in fact,
9 perhaps we've all seen stroke victims that cannot
10 say what they want to say. They simply just -- it
11 comes out incorrectly, and it's much more obvious
12 in that case, in an interaction of -- of business
13 or -- or otherwise, that you're dealing with
14 someone who's been impaired. Still may not be
15 their IQ or their memory, but their ability to
16 communicate is affected. And -- so, in a stroke
17 like he had, on the other side of the brain, it's
18 less obvious. He walks, he talks, he moves, he
19 doesn't pay attention to certain details. And,
20 because of that, I think it's -- it's less easy to
21 -- to be immediately aware that someone's
22 neurologically impaired. Did that answer your
23 question?

24 Q Yes.

25 A Okay.

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1 Q -- to his abilities?

2 A No.

3 Q Do you know whether or not he conducts his own
4 business today?

5 A No.

6 Q Do you know whether or not he has an independent
7 checking account?

8 A No.

9 Q Do you know whether or not he maintains credit
10 cards?

11 A No.

12 Q So, in other words, in kind of wrapping things up,
13 you began seeing him approximately six months ago
14 from a referral, you looked at some medical
15 records, you looked at a MIR or MRI. Which is it?

16 A MRI.

17 Q MRI. And you determined that in the right
18 occipital and parietal lobes that he had had some
19 bleeding and that it affects the vision on the left
20 side of his world?

21 A It affects visual processing.

22 Q Okay. Wouldn't necessarily -- you have absolutely
23 no medical opinion beyond any reasonable doubt to
24 his cognitive abilities during any of these time
25 periods you're talking about, do you?

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1 A No. I didn't know him then.

2 Q So what you're telling counsel is kind of, as you
3 said, it's a general rule. That's not Mr. Creel
4 specifically and you giving a medical opinion
5 beyond any reasonable doubt, is it?

6 A I'm sorry. Rephrase the -- can you -- can you
7 repeat the question?

8 Q Yes, sir. Your answer was somewhat to the effect
9 that generally in these type of strokes or
10 bleeding, but, since you don't have records from
11 the time nor were you a present, attending
12 neurosurgeon, you really don't know what his
13 cognitive abilities or testing were at any time?

14 A I don't -- I don't have an assessment of his
15 neurologic function before I met him that is --
16 that was personally obtained. And the statements
17 about this type of stroke are based on neuroscience
18 and in -- and, thus, in general regarding this area
19 of the brain.

20 Q Yes, sir. But not specifically testing on Mr.
21 Creel?

22 A I have tested him more recently, and, in that
23 assessment, because of how well it fits with where
24 his stroke was, it, beyond any medical doubt,
25 would've been similar, if not worse, prior to my

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1 testing then because he's had additional recovery
2 time. So I understand his deficits presently and
3 can assume that those deficits were there to, at
4 least, the current degree then --

5 Q But as --

6 A -- in the past.

7 Q As we all say, anything's possible, isn't it?

8 A Is that a question?

9 Q Yes, sir.

10 A I don't know. I don't know.

11 Q Okay. Well, you -- you're -- you're going to take
12 us making an assumption on some partial records, a
13 referral, an examination six months ago, and you
14 want to go back four or five years and tell us,
15 with some type of opinion, about his cognitive
16 abilities, do you not?

17 A No.

18 Q Okay. Don't want to --

19 A What I want to do is highlight that I have seen the
20 same injury in -- in imaging studies from the time
21 of the stroke, so the injury that I see now is the
22 same injury that occurred then in 2008. That, as
23 far as being -- you know, you said "anything's
24 possible." It is not possible that that part of
25 the brain does some function that no one's ever

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1 seen before. I mean, I understand what that part
2 of his brain does.

3 Q Assume --

4 A It fits with his deficits now.

5 Q Assuming hypothetically that a third-party
6 professional attorney closed a loan transaction
7 between he and his son, you're not prepared to give
8 an opinion about his ability to understand what he
9 executed and signed that day, were you?

10 A What I'm prepared to do about that day is outline,
11 based on the injury and his brain, potential
12 deficits. I'm not prepared to confirm what his
13 exam showed that day.

14 Q Okay. Thank you. I don't have any further
15 questions.

16 MR. THUSS: Just a couple follow-ups.

17 REEXAMINATION

18 BY MR. THUSS:

19 Q But, you know, based on studies and based on
20 established science that -- concerning injuries to
21 -- to this area of the brain, these deficits, do
22 they always occur when this part of the brain --

23 MR. SEATON: Object to the form of the
24 question.

25 A Can I answer?

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1 Q Yes.

2 A Okay. Yes. In an adult patient, an injury to the
3 occipital lobe and the parietal lobes will always
4 -- an injury of this size will always render
5 neurologic deficit. It will be visual and visual
6 processing, meaning visual interpretation, visual
7 attention, visual understanding. So it is more
8 than just a -- a -- an appreciation that an object
9 is in this side of the world in the -- on the left
10 side of someone's visual field that there is
11 something there. It is then interpreting what that
12 is, what it means, and how it relates to anything
13 else that it might relate to, and that's where the
14 extent of the injury that I see in his brain is
15 relevant because it is more than just the visual
16 field itself and involves processing.

17 Q You said "visual understanding," so his visual
18 understanding, not just objects, what would've --
19 would've been --

20 MR. SEATON: Object to the form of the
21 question.

22 Q -- was affected --

23 MR. SEATON: Object to the form of the
24 question.

25 Q -- by the stroke?

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1 A Yes.

2 Q And, over time, the -- the person can learn to
3 compensate to some degree? That -- that's their
4 recovery?

5 A Correct.

6 Q Thank you.

7 FURTHER DEPONENT SAITH NOT.

8 Signing waived.

9 (Whereupon, there being no further
10 questions, the deposition was
11 concluded at 9:54 a.m.)

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Customer Copy

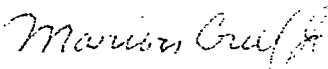
April 17, 2009

To: Douglas Creel
925 White Oak Dr.
Newnan, GA 30265

From: Marion Creel Jr.
PO Box 878
Summerville, SC 29484

Attached is a copy of a note that I sent to the attorney. You need to follow up with the attorney to correct the late payment fee in the Promissory Note. Also attached is a contract of how the contract should have read if the one for Pine Vista Mini Warehouses was used as an example.

Sincerely,


Marion Creel Jr.

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

INSTALLMENT SALE CONTRACT

WHEREAS, Marion Creel, Jr., hereinafter referred to as the Seller, is the owner of the real property with improvements thereon, known as Sangaree Center, described in "Schedule A: attached hereto; and,

WHEREAS, the Seller wishes to sell said real property and improvements situated thereon to Douglas Creel, hereinafter referred to as the Buyer; and,

WHEREAS, the Buyer wishes to buy said real property and improvements pursuant to the terms and conditions set forth below,

NOW THEREFORE, this Installment Sale Contract is made and entered into at Summerville, South Carolina, this 10th day of March, 2009 by and between the Seller and the Buyer. The Parties agree this transaction shall close on or before April 10, 2009.

Witnesseth that the Buyer agrees to pay to the Seller the total sum of **Five Hundred Fifty Thousand (\$550,000.00) Dollars** being the total purchase price of the real property and improvements, in the following manner:

1. Buyer will pay to the Seller at the execution of this Installment Sale Contract, the sum of **One Hundred and Fifty Thousand (\$150,000.00) Dollars**; and
2. The balance of the contract price, being: **Four Hundred Thousand Dollars (\$400,000.00)**, plus interest thereon at the rate of **Four percent (4%) per annum**, SHALL BE PAID BY Buyer in two hundred forty (240) consecutive installments, of _____ per month beginning on the _____ day of _____, and monthly thereafter on the _____ day of each month until paid in full. **WHILE THE PAYMENT SCHEDULE HEREIN CONTEMPLATES 240 CONSECUTIVE PAYMENTS, THERE SHALL BE NO PENALTY FOR PREPAYMENT OR EARLY PAYOFF OF THIS INDEBTNESS.**
3. Buyer agrees to execute a Note and Mortgage to Seller for the unpaid balance of the contract sales price to be recorded with the Berkeley County Register of Deeds encumbering said real property and improvements thereon.

4. The parties agree Buyer shall execute and Adjustable Rate Mortgage to the Seller and Seller shall have the right to increase the interest rate at the end of each Five (5) year period. The first adjustable period shall be April 30, 2014. Seller and Buyer agree the increase in the interest rate shall at no time ever exceed and additional two percent (2%) of the current interest rate as set forth hereinabove.

In consideration of the payments to be made by the Buyer to the Seller, the Seller agrees to the following:

1. Upon the execution of this contract, the Seller will execute and deliver to the Buyer, a General Warranty Deed conveying fee simple title, free and clear of all liens and encumbrances, with the exception of existing easements, to the real property described in "Schedule A" attached hereto.

IT IS FURTHER AGREED BETWEEN the Buyer and the Sellers that property taxes for the current year shall be prorated and adjusted by the parties hereto as of _____. The Buyer hereby agrees to pay all taxes and assessments which may become a lien and said real property and improvements, subsequent to the execution of this Contract.

IT IS FURTHER UNDERSTOOD AND AGREED that the Buyer shall maintain at all times while making the installment payments on this Contract, insurance coverage for the improvements for the value of the improvements in order to adequately protect the interest of the Seller and the unpaid balance due Seller. Buyer shall ensure Seller is made a loss payee on the insurance policy. Proceeds of such policy shall be first applied to the entire unpaid balance due Seller hereunder, without proration of indebtedness for land and improvements.

IT IS FURTHER UNDERSTOOD AND AGREED by the Buyer and the Seller that in case of the default of any of the payments of principal, interest, taxes or assessments and the failure of the Buyer to cure said default as specified herein above, that the Seller, after ten (10) days written notice to the Buyer that the default has been declared, may retake possession of said real property and improvements, and declare this Installment Sale Contract breached and terminated, and that said retaking shall not be considered a trespass.

IT IS FURTHER UNDERSTOOD AND AGREED that the Seller, at his option, upon declaring this Contract breached and terminated, shall retain all monies paid by the Buyer as liquidated damages and as payment by Buyer for the privilege of having occupied the premises through the date of last payment.

IT IS FURTHER UNDERSTOOD AND AGREED that all written notice required to be given to the Seller will be given by certified mail, return receipt requested, to Marion Creel, Jr., Post Office Box 878, Summerville, SC 29484, and that all written notice required to be given to the Buyer shall be given by certified mail, return receipt requested, at the following address: Douglas Creel, 925 White Oak Dr., Newnan, GA 30265.

IT IS FURTHER UNDERSTOOD AND AGREE that the Buyer and the Seller shall notify each other of any change in their mailing addresses, in writing, within ten (10) days of said change being made.

IT IS FURTHER UNDERSTOOD AND AGREED that should any checks or drafts made payable to the sellers be returned by the bank for any reason, including but not limited to non-sufficient funds or a closed account, that the time limits herein shall not be tolled and any grace period extended hereunder shall extend from the day that said payment was originally due and not from any other date.

IT IS EXPRESSLY UNDERSTOOD, ACKNOWLEDED, AND AGREED, THE PROPERTY (LAND AND IMPROVEMENTS) ARE TO BE SOLD AS IS, WHERE IS, IN THEIR CURRENT STATE, WITHOUT ANY WARRANTIES OR GUARANTIES BY SELLERS AND WITHOUT RECOURSE BY BUYER AGAINST SELLERS AS TO KNOWN AND UNKNOWN CONDITIONS OF THE LAND AND IMPROVEMENTS, INCLUDING, BUT LIMITED TO, HEATING, COOLING, LIGHTING, SIDING, ROOF, ELECTRICAL AND PLUMBING SYSTEMS, FIXTURES, FRAMING, MASONRY, PLASTER, SHEETROCK, FLOORING, INSULATION, AND FOUNDATION. BUYER EXPRESSLY ACKNOWLEDGES BUYER HAS HAD THE OPPORTUNITY AND CHOICE OF HAVING THE PROPERTY FULLY INSPECTED.

IT IS FURTHER UNDERSTOOD AND AGREED that the real property described in "Schedule A" attached hereto shall not be subdivided by the Buyer without the expressed written consent of the Seller: that the Buyer will not allow any junk, including but not limited to inoperable automobiles and appliances or any unsightly objects to remain on the premises or allow any nuisances to exist on said property; that the Buyer shall maintain the improvements in its current condition or better, and shall not allow it to fall into disrepair or to otherwise deteriorate; that said property is to be used for commercial purposes only and that no residential use will be conducted on or from said property during the term of this Contract; and, that the improvements shall remain on the real property described herein during the term of this Contract and shall not be moved therefrom without the express written agreement of the Seller.

Either party shall have all rights and remedies available to them in addition to the rights and remedies set forth above, pursuant to South Carolina law. The benefits and obligations of this contract shall extend to the Estate, beneficiaries and devisees and assigns of the Buyer and Seller.

WITNESSES:

Douglas Creel, BUYER

Marion Creel, Jr., SELLER

161

MANLEY LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 1105
MONCKS CORNER, SC 29461

J. TODD MANLEY*
EDWARD J. DENNIS, IV
MATTHEW C. HALVERSTADT

MONCKS CORNER OFFICE
400-B ALTMAN STREET
TELEPHONE (843) 761.7280
CHARLESTON (843) 553.6427
FACSIMILE: (843) 761.7233

MOUNT PLEASANT OFFICE
1051 CHUCK DAWLEY BLVD.
MOUNT PLEASANT, SC 29464
TELEPHONE: (843) 553.6427
FACSIMILE: (843) 761.7233

October 1, 2009

Mr. Douglas Creel
925 White Oak Drive
Newnan, GA 30265

Re: 1731 N. Main Street, Summerville

Dear Mr. Creel:

This office has been retained by Mr. Marion Creel, Jr. to provide legal advice and assistance in connection with issues of compliance by you with the contents set forth in the mortgage dated April 9, 2009, a copy of which is attached hereto.

You were notified in writing by letter dated September 2, 2009, that insurance coverage on the subject real property under mortgage, would cancel if payment of the premium(s) was not made by September 10, 2009. The mortgagee has/will pay the premium(s) past due and owing to avoid a lapse in coverage.

You are further notified that your failure(s) to comply with the covenant to maintain insurance upon the premises under mortgage constitutes actionable breach of the mortgage; and that you may/must cure the breach by reimbursing all insurance premiums cost to the mortgagee plus interest at the legal rate from the date of payment(s) by mortgagee; legal fees in the amount of \$750 on or before October 25, 2009, to this office; and that failure to cure such breach on or before the aforesaid date will result in acceleration of the sums secured by the mortgage, foreclosure by judicial proceeding and sale of the property.

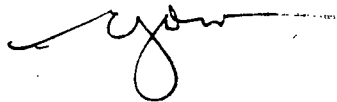
You are further informed of your right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Mortgagee at Mortgagee's option may declare all of the sums secured by this mortgage to

*Certified Family Court Mediator
*Member of the Academy of Certified Mediators

be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Mortgagee shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorney fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

Be guided accordingly.

Respectfully,

A handwritten signature in black ink, appearing to read 'E. J. Dennis, IV', with a stylized flourish at the end.

Edward J. Dennis, IV
Attorney at Law

Enclosure: Mortgage

Cc: client

/ljm

MANLEY LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 1105
MONCKS CORNER, SC 29461

163

J. TODD MANLEY*
EDWARD J. DENNIS, IV
MATTHEW C. HALVERSTADT

MONCKS CORNER OFFICE
400-B ALTMAN STREET
TELEPHONE (843) 761.7280
CHARLESTON (843) 553.6427
FACSIMILE: (843) 761.7233

MOUNT PLEASANT OFFICE
1051 CHUCK DAWLEY BLVD.
MOUNT PLEASANT, SC 29464
TELEPHONE: (843) 553.6427
FACSIMILE: (843) 761.7233

November 5, 2009

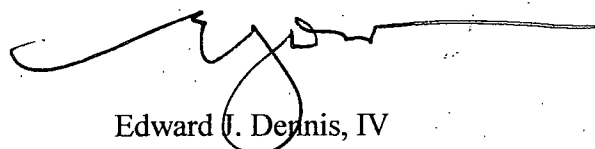
Mr. Douglas Creel
925 White Oak Drive
Newnan, GA 30265

Re: 1731 N. Main Street, Summerville

Dear Mr. Creel:

Your failure to fully comply with the mortgage document and pay all sums due and owing after notice in writing to you has prompted the mortgagee to declare all sums secured by the mortgage to be due and payable without further demand. I am instructed to proceed with foreclosure in the event that you do not inform me of new financing arranged by you.

Respectfully,



Edward J. Dennis, IV
Attorney at Law

EJDIV/ljm
Cc: client

164

05/05/13 12:52P FROM: CREEL CONST CO

7702522300

TO: 18438757934

P.3

FACSMILE

TO: WYCKOFFE & DEMOTT
1520 TROLLEY RD.
SUMMERVILLE, S.C.
ATT: KAREN
FROM:
DOUGLAS CREEL
925 WHITE OAK DR.
NEWNAN, GA. 30265
678-878-9508

*Mr Creel
to pick up*

Closing for: 1731 NORTH MAIN STREET
SUMMERVILLE (BERKELEY COUNTY) S.C
MARION CREEL JR.

*↑
cell - 870-4634*



MAR-19-2009 02:52P FROM: CREEL CONST CO

7702522300

TO: 18438757934

P.1

OFFER TO PURCHASE REAL ESTATE

BE IT KNOWN, the undersigned DOUGLAS CREEL of 925 WHITE OAK DRIVE NEWNAN GEORGIA 30265 (Buyer) offers to purchase from MARION CREEL of POST BOX 878 SUMMERVILLE SOUTH CAROLINA 29484 (Owner), real estate known as 1731 NORTH MAIN STREET, City/Town of SUMMERVILLE, County of BERKLEY, State of SOUTH CAROLINA said property more particularly described as:

DEED BOOK 1425 PAGE 031 DATED SEPTEMBER 3, 1998 IN MONKS CORNER, SOUTH CAROLINA
and containing PARCEL 16 AND 24 0.96 ACRES square feet of land, more or less.

The purchase price is	\$550,000.00
Deposit herewith paid	\$
Upon signing sales agreement	\$
Balance at closing	\$550,000.00
Total purchase price	\$550000

1. This offer is subject to Buyer obtaining a real estate mortgage for no less than \$OWNER TO HOLD MORTGAGE 400000.00 AT 4% INTEREST FOR 20 YEAR LOAN payable over 20 YEARS years with interest not to exceed 4% at customary terms within 30 days from date hereof.

2. The broker to this transaction is NONE, who shall be paid a commission of NONE by seller upon closing.

This offer is further subject to Buyer obtaining a satisfactory home inspection report and termite/pest report within NONE days from date hereof.

3. Said property is to be sold free and clear of all encumbrances, by good and marketable title, with full possession of said property available to Buyer.

4. The parties agree to execute a standard purchase and sales agreement * on the terms contained within 30 DAYS days.

4. The closing shall be on or before APRIL 10, 2009, at the deed recording office.

Signed this 10th day of March, 2009.

In the presence of:

Witness

Buyer

Witness

Buyer

PROMISSORY NOTE
South Carolina

166

\$400,000.00

April 9, 2009

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of **Marion Creel, Jr.**

at , in lawful money of the United States of America, the principal sum of **Four Hundred Thousand dollars & no cents (\$400,000.00)** payable as follows:

Together with interest at the rate of (4 %) percent per annum payable in equal monthly installments of \$2,423.92 commencing on **May 9, 2009** and continuing on that same day of each month thereafter until the principal sum of \$400,000.00 and the interest accrued thereon has been paid, and if not sooner paid, shall be due and payable on **April 9, 2029**. Said installment when so paid shall be applied first to the interest then accrued and the balance thereof to the reduction of the principal hereof.

There shall be a late fee of \$ 5 charged on any payment received more than 15 days after such payment is due. Privilege is reserved to prepay, at any time, all or any parts of indebtedness due hereunder without premium or fee.

This Debt is due on sale and not transferable.

If default be made in the performance of or compliance with any of the covenants and conditions of the mortgage or any other instrument securing this note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankruptcy courts, or under foreclosure proceedings under the mortgage securing this note, then all cost of collection, including the further and additional sum of fifteen (15%) per cent on the full amount due hereon, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

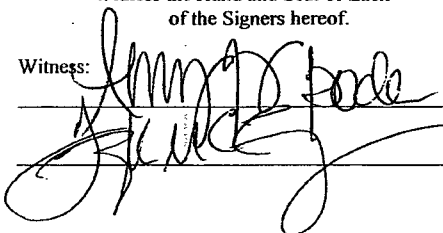
Presentment, protest, and notice are hereby waived.

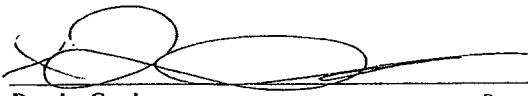
It is expressly agreed and declared that this note is given for an actual loan of **Four Hundred Thousand dollars & no cents**.

This note is secured by a mortgage of even date conveying property in **Berkeley County, South Carolina**.

Witness the Hand and Seal of Each
of the Signers hereof.

Witness:


- Witness
- Witness


Douglas Creel - Borrower
- Borrower



PROMISSORY NOTE
South Carolina

167

\$400,000.00

April 9, 2009

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of **Marion Creel, Jr.**

at , in lawful money of the United States of America, the principal sum of **Four Hundred Thousand dollars & no cents (\$400,000.00)** payable as follows:

Together with interest at the rate of (4 %) percent per annum payable in equal monthly installments of \$2,423.92 commencing on **May 9, 2009** and continuing on that same day of each month thereafter until the principal sum of **\$400,000.00** and the interest accrued thereon has been paid, and if not sooner paid, shall be due and payable on **April 9, 2029**. Said installment when so paid shall be applied first to the interest then accrued and the balance thereof to the reduction of the principal hereof.

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If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankruptcy courts, or under foreclosure proceedings under the mortgage securing this note, then all cost of collection, including the further and additional sum of fifteen (15%) per cent on the full amount due hereon, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

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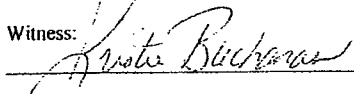
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of the Signers hereof.

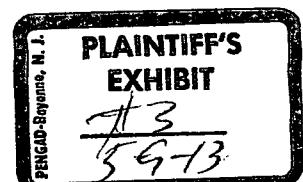
Witness:



- Witness


Douglas Creel

- Borrower



NOTICE REGARDING ATTORNEY-CLIENT RELATIONSHIP, CONSENT TO MULTI-PARTY REPRESENTATION, AND CONFLICT OF INTEREST WAIVER

168

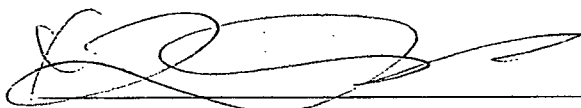
South Carolina law is unsettled as to what party or parties a closing attorney represents. Our position is that we have been selected by the borrower/buyer as required under the South Carolina Consumer Protection Code and are the borrower/buyer's attorney. See SC Code Ann. §37-10-102. It is also our position that even in cash closings, we represent the buyer.

It is customary in South Carolina for the contract to provide that the seller pay for the drafting of the deed. Accordingly, we may have drafted the deed in this file, and the seller may be paying us for doing so. The seller may also, as provided in the contract, be paying other closing costs. It is possible the seller may be paying our attorney fee, title search fee, and other fees because the seller agreed to do this in the contract. This does not alter the fact that we are the buyer's attorney.

As noted above, however, the law in South Carolina is unclear. To the extent we are deemed to have an attorney-client relationship with the seller and/or lender, you consent to us engaging in this multi-party representation. Also, under South Carolina Rule of Professional Conduct 1.7, you agree to waive any conflict of interest that has arisen by way of us acting as closing attorneys in this matter and certify that, by signing below, we have discussed this issue and any risks in us representing more than one party to this transaction.

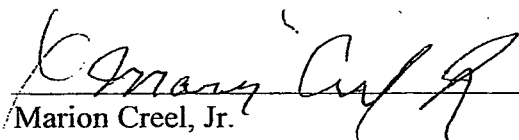
Because of our position under South Carolina law, we are required to disclose this dual-representation and may not continue with your transaction without your informed consent to do so. In the event of a dispute between any of the parties to this transaction, we are required to withdraw, or, if this happens after closing, decline to represent any party to the dispute. All parties must then obtain separate counsel to represent their respective interests as required by the South Carolina Supreme Court in *In re Anonymous Member of the South Carolina Bar*, 298 S.C. 163 (1989).

Date: 04/09/2009



Douglas Creel

- Buyer



Marion Creel, Jr.

- Seller



OFFER TO PURCHASE REAL ESTATE

BE IT KNOWN, the undersigned DOUGLAS CREEL of 925 WHITE OAK DRIVE NEWNAN GEORGIA 30265 (Buyer) offers to purchase from MARION CREEL of POST BOX 878 SUMMERVILLE SOUTH CAROLINA 29484 (Owner), real estate known as 1731 NORTH MAIN STREET , City/Town of SUMMERVILLE, County of BERKLEY, State of SOUTH CAROLINA said property more particularly described as:

DEED BOOK 1425 PAGE 031 DATED SEPTEMBER 3 ,1998 IN MONKS CORNER, SOUTH CAROLINA
and containing PARCEL 16 AND 24 0.96 ACRES square feet of land, more or less.

The purchase price is	\$550,000.00
Deposit herewith paid	\$
Upon signing sales agreement	\$
Balance at closing	\$550,000.00
Total purchase price	\$550000

1. This offer is subject to Buyer obtaining a real estate mortgage for no less than
\$OWNER TO HOLD MORTGAGE 400000.00 AT 4% INTEREST FOR 20 YEAR LOAN payable over 20 YEARS years with interest not to exceed 4% at customary terms within 30 days from date hereof.

2. The broker to this transaction is NONE, who shall be paid a commission of NONE by seller upon closing.

This offer is further subject to Buyer obtaining a satisfactory home inspection report and termite/pest report within NONE days from date hereof.

3. Said property is to be sold free and clear of all encumbrances, by good and marketable title, with full possession of said property available to Buyer.

4. The parties agree to execute a standard purchase and sales agreement * on the terms contained within 30 DAYS days.

4. The closing shall be on or before APRIL 10 , 2009, at the deed recording office.

Signed this 10th day of March, 2009.

In the presence of:

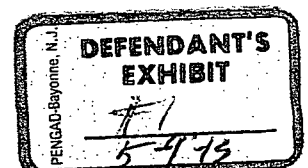
Witness

Buyer

Witness

Buyer

Owner



2nd Day

170

WALKER || REIBOLD
ATTORNEYS AT LAW

COLUMBIA OFFICE

3321 Forest Drive, Suite One
Post Office Box 61140 (29260)
Columbia, South Carolina 29204

Phone: (803) 454-0955
Fax: (803) 454-0956

Please reply to Columbia
email: rblankenship@walkerreibold.net

Mr. Douglas Creel
925 White Oak Drive
Newnan, GA 30265

UPSTATE OFFICE

106 Commons Blvd., Suite A
Post Office Box 51361 (29673)
Piedmont, South Carolina 29642

Phone: (864) 238-5203
Fax: (803) 454-0956

May 5, 2009

RECEIVED

OCT 06 2014

SC Court of Appeals

Re: April 9, 2009 Real Estate Transaction

Dear Mr. Creel:

Our firm represents Marion Creel, Jr. in connection with a real-estate transaction between you and him that closed on April 9, 2009. Please let this letter service as notice that Marion seeks to rescind or reform the contract based on his unilateral mistake, which was caused by your overreaching and deceit in inducing him into the transaction. *See, e.g., Sims v. Tyler*, 276 S.C. 640, 281 S.E.2d 229 (1981) (discussing reformation based on unilateral mistake); *Maw v. McAlister*, 252 S.C. 280, 166 S.E.2d 203 (1969) (same); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (S. C. App. 2003) (same).

The note needs to be reformed to reflect your actual agreement for an adjustable interest rate. The agreement was that after the first five years, Marion was to have the right to adjust the interest rate up as much as 2% on top of the initial 4% (that is, up to 6%). The current note provides for a flat 4% rate.

You know Marion trusted you, and you took advantage of the fact that he couldn't read the contract. Please contact us as soon as possible so that we may hopefully resolve this matter.

This letter is written in connection with settlement. Nothing herein may be construed as an admission of any kind.

Sincerely,

Reynolds H. Blankenship, Jr.

Also
Prom. - 5%
Note - 5%
vice

⑨

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master in Equity

Case No. 2010-CP-08-4140

Marion Creel,

Appellant,

v.

Douglas Creel,

Respondent.

PROOF OF SERVICE

I certify that I have served the Record On Appeal on Douglas Creel by depositing a copy of it in the United States Mail, postage prepaid, on August 27th, 2014, addressed to his attorneys of record, Grover Seaton, Esq, P.O. Box 38, Moncks Corner, SC 29461, and Michael M. Murphy, III, 105 Carolina Ave., Moncks Corner, SC 29461.

August 27, 2014



Robert R. Thuss, Esq.
Thuss Law Office LLC
P.O. Box 589
Swansea, SC 29160
(803) 640-1000

Attorney for the Appellant

RECEIVED

AUG 28 2014

SC Court of Appeals