

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Opinion No. 2019-UP-311 (S.C. Ct. App. Filed August 28, 2019)

Alfred and Mary Jenkins..... Petitioners

v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes Respondent

APPENDIX

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Attorneys for Respondents

Other Counsel of Record:

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S.C. SUPREME COURT

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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM YORK COUNTY
Court of Common Pleas**

Honorable S. Jackson Kimball, Master-in-Equity

**CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600**

Alfred Jenkins and Mary Jenkins, Respondents

v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, Appellant

RECORD ON APPEAL

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paul@ferraralawfirm.net
Attorney for Appellant**

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378 E. Main St.
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Attorney for Respondents**

Appendix-001

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
)
Plaintiffs,)
)
v.)
)
Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
)
Defendant.)
_____)

C/A No. 2016-CP-46-1001

ORDER

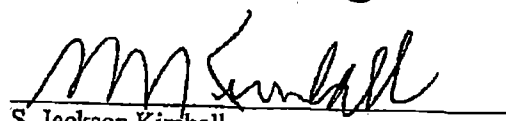
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DAVIDSON
C.C. CT & S.
YORK COUNTY, SC

This matter appeared before by way of Defendant's Motion for an Injunction. By its Motion, the Defendant sought an Order of the Court requiring the Plaintiff to remove a Lis Pendens filed by the Plaintiff on real property which is the subject of this action. The Court has now been informed that the Parties have agreed that the Lis Pendens will be released upon deposit by the Defendants with the Clerk of Court of the net proceeds of the sale of the Property in the amount of \$663,395.37. The Clerk of Court will hold the proceeds in trust pending an agreement by the Parties or further order of this Court.

NOW, THEREFORE, it is ordered that the Defendant will deposit with the Clerk of Court \$663,395.37 to be held in trust pending agreement by the Parties or further order of the Court. Upon confirmation of the trust deposit, the Release of the Lis Pendens will be filed.

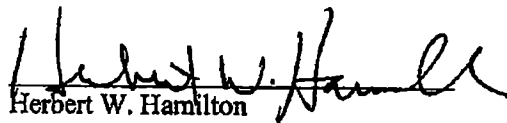
AND IT IS SO ORDERED.

July 22, 2016.


S. Jackson Kimball
Master-in-Equity, York County

Appendix-003

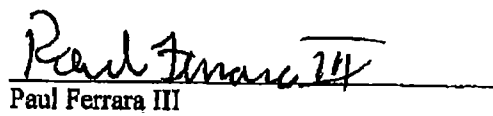
WE MOVE:
Hamilton Martens, LLC


Herbert W. Hamilton

Date: 7/15/16

Attorneys for the Plaintiffs

WE CONSENT:
Ferrara Law Firm


Paul Ferrara III

Date: 7/15/16



Herbert W. Hamilton
herb.hamilton@hamiltonmartens.com
(803) 329-7672

July 15, 2016

The Honorable S. Jackson Kimball
York County Master-in-Equity
P.O. Box 627
York, SC 29745

RE: *Alfred and Mary Jenkins vs. Ferrara Buist, LLC*
File No.: 2016-CP-46-1001
Our File No.: 11848-001

Dear Judge Kimball:

I am writing with authority from and at the request of Paul Ferrara, counsel for the Defendant in this case. You may recall that you, Paul Ferrara and I had a conference call concerning a Motion filed by Mr. Ferrara in this case. Mr. Ferrara's Motion sought a court order requiring Plaintiffs to release the Lis Pendens filed by the Plaintiffs on real property owned by the Defendant.

During the conference call, Mr. Ferrara and I advised the Court that we had reached an agreement concerning the issues involved in the Motion. The Parties agreed that the Lis Pendens would be released so that the property could be sold and that part of the proceeds of the sale which would be sufficient to cover Plaintiffs' claim would be held in trust.

Mr. Ferrara and I would like to have the funds held by the Clerk of Court. If you are amenable to this proposal, I enclose for your consideration a proposed Consent Order directing the Parties to deposit the funds with the Clerk of Court.

Please let us know if you need any additional information or if we should proceed in some other fashion.

Thank you for your consideration.

Yours Respectfully,

A handwritten signature in black ink, appearing to read 'Herbert W. Hamilton', written over a horizontal line.

Herbert W. Hamilton

HWH/dh
Enclosure (as noted)
cc: Paul Ferrara

Hamilton Martens, LLC

Appendix-005

130 East Main Street (29730) • Post Office Box 10940 (29731) • Rock Hill, South Carolina
Phone: 803.329.7672 • Facsimile: 803.329.7678 • www.hamiltonmartens.com

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
Plaintiffs,)

Case No. 2016-CP-46-1001

v.)

ORDER

Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
Defendant.)

FILED-RECEIVED
2016 NOV 20 PM 4:04
CLERK OF COURT
YORK COUNTY, SC

This matter came before the Court on November 17, 2016, upon Plaintiff's motion for partial summary judgment. Herbert W. Hamilton appeared for Plaintiffs. Paul B. Ferrara appeared for the Defendant. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

This action arises out of a contract between the parties for the construction of a house for Plaintiffs by Defendant, a builder. Title to the house and land during construction remained in Defendant. The house and lot were to be conveyed to Plaintiffs upon final completion. The original contract price was \$741,095.00. After all change orders, the final contract price was \$881,868.63, as indicated on Defendant's last pay application.

Although the contract does not specify a procedure for payment to Defendant, Defendant sent periodic pay applications to Plaintiffs. With the exception of the last pay application, Plaintiffs paid all pay applications in full in a timely manner. At the time the contract was terminated, Plaintiffs had paid \$643,760.70 to Defendant. Plaintiffs made all payments to Defendant from personal funds. There is no mortgage lien on the property.

The final pay application, dated November 11, 2016, and covering a period ending November 20, 2016, was submitted by Defendant to Plaintiffs. Following receipt of the pay application, the relationship between the parties deteriorated, and they were unable to reconcile their differences. Each side contends that the other breached the contract, and that, therefore, that party was entitled to terminate the contract.

Upon termination of the contract, Defendant put the house on the market for sale.

Appendix-006

[Handwritten signature]

Defendant secured a contract for the sale of the house, and the transaction was consummated. The sales price was \$850,000.00.

The Complaint in this action was filed on April 1, 2016. The Complaint contains several causes of action, one of which is an application for an equitable lien on the house by reason of the payments by Plaintiffs to Defendant. Plaintiffs filed a Lis Pendens to protect their interests. In order to allow the sale of the house to go forward, the parties agreed to place \$663,395.37 from the proceeds of the sale of the house in trust with the Clerk of Court for York County. This fund represents the payments made to Defendant by the Jenkins, plus the value of appliances and a ceiling fan purchased by Jenkins, which were installed in the house.

DISCUSSION

The case is before the Court upon Plaintiffs' motion for the release of the funds held by the Clerk of Court to Plaintiffs. Although Plaintiffs' motion is titled as a motion for partial summary judgment, it is in essence simply a motion seeking the exercise of the equitable powers of the Court to place the parties in the position they would have been in as a result of a sale of the house by Plaintiffs, without affecting any party's claim for breach of contract.

Defendant has effectively been paid in full for its work, except for the damages it claims for breach of contract. Defendant does not claim, and I find and conclude that it does not possess, any legal or equitable lien on the proceeds of the sale representing the money already paid to Defendant by Plaintiffs. Plaintiffs contend that Defendant has already been paid \$643,760.70, and that if Defendant is allowed to retain the entire proceeds of the sale of the house, it will constitute double payment.

After consideration of the arguments of counsel and the uncontested affidavits submitted by the parties, I find and conclude that, as a result of the sale of the house, Defendant has been paid in full the contract price based on the parties' contract, except for \$31,861.13.¹ Defendant argues that a substantial portion of the money held by the Clerk of Court should be retained to reimburse Defendant for consequential damages it claims to have incurred. However, I find and conclude that Defendant is not entitled to the establishment of a fund to secure collection of additional damages it may be awarded through a trial of the case. Defendant simply does not have a legal or equitable basis for the maintaining of such a fund.

¹ The last pay application submitted by Defendant shows a total contract price of \$881,868.13. The contract sale price was \$850,000.00, leaving a difference of \$31,868.13 that Defendant claims is due it. Further, Defendant has actually received \$160,588.96 in proceeds from the closing of the sale. This represents the sale price, less Defendant's share of the closing costs, and the funds on deposit with the Clerk of Court.

Appendix-007

JM
#2

Both Plaintiffs and Defendant claim damages for breach of contract. There is nothing in their contract that would give rise to, or support, a claim of a lien on any proceeds of the sale of the house. The funds deposited with the Court were the result of an agreement entered into in order that all parties would receive the benefit of a sale of the house. That agreement did not establish a legal or equitable lien on the deposited proceeds.

Thus, I find and conclude that Plaintiffs are entitled to be paid the entire sum on deposit with the Clerk of Court.²

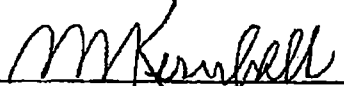
By ruling in the manner described, the Court is not ruling upon, or granting judgment of any kind, as to the claims of either party, and makes no determination as to any entitlement to damages due either party. This order simply recognizes and determines that, upon receipt of payment by Plaintiffs in the amount of \$643,760.70, and receiving the same amount at the closing of the sale of the house, Defendant has received payment in full under the parties' contract, except for \$31,861.13.³ Defendant has no claim that needs to be protected, and has no right at law or in equity for security for its claim for damages in this action.

CONCLUSION

Based on the findings and conclusions herein, it is ordered that the Clerk of Court for York County be authorized and directed to disburse to Plaintiffs the entirety of funds paid in to Court in this matter, namely \$663,395.37.

AND IT IS SO ORDERED.

November 23, 2016


S. Jackson Kimball
Special Circuit Court Judge
York County

² I recognize that my ruling at the hearing was that a portion of the proceeds on deposit representing the difference between the amount due for the house under the parties' contract and the sale price to the third party, namely, \$31,861.13, would be retained by the Clerk of Court. However, upon consideration of the record, and further review of the exhibits submitted by the parties, I conclude that there is no sustainable argument that Defendant should be entitled to be secured by those funds, and no sustainable argument that Plaintiffs should be deprived of them, pending a resolution of this dispute.

³ Defendant used, or had the use of, the money paid by Plaintiffs to pay the costs of construction as work on the house proceeded. It has no independent claim to the money on deposit with the Clerk of Court. Appendix-008

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP4601001

IN THE COURT OF COMMON PLEAS

FEB 20 AM 9:31

Alfred Jenkins

Mary Jenkins

Ferrara Buist Company

Custom Crafted Homes

DAVID HAMILTON
C.C.P. & GS

LLC

PLAINTIFF(S)

YORK COUNTY, SC

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on February 16, 2017, upon Defendant's motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed November 28, 2016. Representing the parties were: Herbert W. Hamilton for Plaintiffs; and, Paul B. Ferrara for Defendant.

The purpose of Rule 59(e), SCRPC, to alter or amend the judgment, is to request the trial judge to "... reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. See *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

Defendant argues that while Plaintiffs' motion was for partial summary judgment, the Court's ruling did not specify such relief. Notwithstanding this contention, all argument and the ruling on the motion was based on the precise grounds stated in the motion, and Defendant argued against those grounds fully. The Order granted Plaintiffs' relief as requested in the motion. Thus, Defendant's assertion has no merit.

Upon reviewing the record presented, and considering the arguments of counsel, I find no matter presented that was not addressed expressly, or by clear implication, in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

Therefore, it is ordered that Defendant's Motion pursuant to Rule 59(e), SCRPC, be denied.

AND IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

Appendix 009

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

 _____ Special Circuit Court Judge	3065 _____ Judge Code	2/16/2017 _____ Date
--	-----------------------------	----------------------------

For Clerk of Court Office Use Only

2/20/17 2/20/17

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Herbert W. Hamilton PO Box 10940 Rock Hill, SC 29731

Paul B. Ferrara III 2300 Otranto Rd. N. Charleston, SC 29406-9603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Shirley Broom

David Hamilton - Clerk of Court

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

/ #2 /

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
)
Plaintiff,)

C/A No. 2016-CP-46-1001

v.)

COMPLAINT
(Jury Trial Requested)

Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
)
Defendants.)

FILED - RECEIVED
2016 APR - 1 PM 12:30
DAVID H. JOHNSON
C.C.J. SECTION
YORK COUNTY, SC

Plaintiffs, Alfred and Mary Jenkins complaining of the Defendant herein allege:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are citizens of some state other than South Carolina who have the intent to permanently reside in South Carolina.
2. Defendant is an LLC formed under the laws of South Carolina with its principal place of business in York County, South Carolina.
3. Plaintiffs are informed and believe that jurisdiction and venue are proper in this Court.

FACTS

4. On or about August 22, 2014, the Plaintiffs and Defendant signed a contract ("Contract") whereby Defendant contracted to build a house for Plaintiffs. A copy of the Contract is attached hereto as Exhibit A and by reference is incorporated herein.
5. Plaintiffs paid an initial deposit of \$20,000, as required by the Contract and directed Defendant to proceed with construction.

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6. In December of 2014, Defendant requested a payment of \$78,000.00. Despite the fact that an additional payment was not required by the Contract, and Defendant had not broken ground for the house, Plaintiffs paid Defendant an additional \$78,000 ostensibly to pay for the lot.

7. The Plaintiffs' payment notwithstanding, the lot was not deeded to the Plaintiffs.

8. On February 19, 2015, before any work had been done, Plaintiffs submitted Invoice No. 1 in the amount of \$47,735.00. Even though the contract does not provide for partial payments, Plaintiffs paid Invoice No. 1 on February 26, 2015.

9. Defendant finally began construction in March of 2015.

10. Throughout the course of construction, Defendant sent applications for partial payment to the Plaintiffs which were promptly paid through October of 2015. Plaintiffs have paid Defendant a total of \$643,760.70.

11. Throughout the course of construction, Plaintiffs repeatedly notified Defendant of defects in construction and failure to follow the plans and specifications. Defendant assured Plaintiffs that all concerns would be properly addressed.

12. In November of 2014, Defendant notified Plaintiffs that he planned to complete construction including correction of all "punch list" items on December 1, 2015.

13. On November 23, 2015, Plaintiffs met with Defendant and again found many items incomplete or incorrect.

14. On November 27, 2015, Plaintiffs visited the house again and found numerous items still incorrect.

15. On December 4, 2015, Plaintiffs met with Defendant. Defendant asked Plaintiffs

to give him one more chance to correct the problems. Defendants reluctantly agreed. A walk through was scheduled for December 15, 2015.

16. On December 14, 2015, Plaintiffs went to the house to do a preliminary walk through with their house inspector. The house was locked.

17. Plaintiffs contacted Defendant and were told that he would not allow anyone in the house.

18. Defendant has failed and refused to complete the house, has failed and refused to correct all punch list items despite repeated assurances that he would do so and has failed and refused to close the transaction.

19. On information and belief, the Defendant has listed the house for sale, thus repudiating the Contract without justification.

FOR A FIRST CAUSE OF ACTION
(Equitable Lien)

20. The allegations of paragraph 1 through 19 are incorporated herein by reference as if fully set forth.

21. Plaintiffs are informed and believe that, by reason of their status as purchaser under an executory contract for the purchase and sale of real property, they have an equitable lien on the property described in the Contract in the amount paid on the purchase price and amounts paid to improve the real property.

22. Plaintiffs are informed and believe that they are entitled to an order declaring the existence of an equitable lien on real property in the amount of \$665,423.12; foreclosing the lien; selling the property at public auction; disbursing the proceeds of the sale to the Plaintiffs in an amount not to exceed \$665,423.12 plus costs and legal fees.

FOR A SECOND CAUSE OF ACTION
(Restitution)

23. The allegations of paragraph 1 through 22 are incorporated herein as if fully set forth.

24. Payments by the Plaintiffs to the Defendant for the improvement of the real property, were made as consideration for the transfer of the real property from Defendants to Plaintiffs.

25. The retention of the real property by the Defendant as well as the payments made by the Plaintiffs for the improvement of the real property in the amount of \$665,423.12 constitutes unjust enrichment.

26. Plaintiffs are informed and believe that they are entitled to restitution of the payments made to Defendant or for improvement of the real property in the amount of \$665,423.12 plus costs and attorneys' fees.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

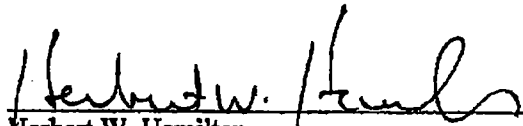
27. The allegations of paragraphs 1 through 26 are incorporated herein by reference as if fully set forth.

28. The failure and refusal of the Defendant to complete the house and transfer the house to the Plaintiffs constitute breach of contract.

29. By reason of Defendant's breach of contract, Plaintiffs have incurred direct, actual and consequential damages in an amount to be determined by the jury.

30. Plaintiffs are informed and believe that they are entitled to judgment against the Defendant for all actual and consequential damages plus costs and attorneys' fees.

WHEREFORE, Plaintiff prays for judgment against Defendant establishing the existence of an equitable lien on the real property which is the subject of the Contract in the amount of \$665,423.23; for an order foreclosing the lien; selling the property at public auction; paying the proceeds of the sale to the Plaintiffs in an amount not to exceed \$665,423.12 plus costs, expenses and legal fees and establishing any deficiency judgment; or, in the alternative, for judgment for direct and consequential damages for breach of contract plus costs and attorney's fees; and for such other relief as the Court deems appropriate.



Herbert W. Hamilton
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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Alfred and Mary Jenkins,

Plaintiffs,

vs.

Ferrara-Buist Company, LLC, d/b/a
Custom Crafted Homes,

Defendant.

COURT OF COMMON PLEAS

CASE NO. 2016-CP-46-1001

Answer and Counterclaim

FILED-RECEIVED
2016 APR 28 PM 2:30
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

NOW COMES, the Plaintiff, Ferrara Buist, LLC, by and through their attorney, Paul B. Ferrara, III, and answers the Plaintiff's complaint as follows:

FOR AND AS A FIRST DEFENSE

1. The Defendant denies each and every allegation of the complaint not hereinafter specifically admitted.

FOR AND AS A SECOND DEFENSE

2. Upon information and belief, Defendant admits Paragraph 1 of the complaint.
3. Defendant admits Paragraph 2 of the complaint.
4. Upon information and belief, Defendant admits Paragraph 3 of the complaint.
5. Defendant admits Paragraph 4 of the complaint.
6. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraphs 5 through 9 of the complaint.
7. Defendant admits Paragraph 10 of the complaint.
8. Defendant denies the allegations contained in Paragraphs 11 through 18 of the complaint. Plaintiffs discussed concerns and change orders with the Defendant and the Defendant provided solutions and customer service throughout the course of business dealings; however, specific dates and times are unknown to Defendant at this time.
9. Defendant admits the allegations contained in Paragraph 19 of the complaint.
10. Paragraph 20 does not require a response. To the extent a response is required, Paragraph 20 is denied.

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11. Defendant denies Paragraphs 21 and 22 of the complaint. Plaintiffs have failed to assert and/or prove the necessary elements to establish an equitable lien.
12. Paragraph 23 does not require a response. To the extent a response is required, Paragraph 23 is denied.
13. Defendant denies Paragraphs 24 through 26.
14. Paragraph 27 does not require a response. To the extent a response is required, Paragraph 27 is denied.
15. Defendant denies Paragraphs 28 through 30.

FOR AND AS A THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

16. Without admitting liability or that Plaintiffs have suffered damages, to the extent Plaintiffs have suffered damages, Plaintiffs failed to properly and timely mitigate their damages. The Defendants plead this failure to mitigate damages as a complete bar to this action, or in the alternative, a reduction in recovery in the claims of Plaintiffs.
17. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AND AS A FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

18. By and through their prior conduct to and after bringing this lawsuit, Plaintiffs should be estopped from asserting their claims against Defendants. Therefore, the Defendants plead estoppel as a complete bar to this action.
19. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AND AS A FIFTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

20. To the extent that Plaintiffs are relying on contracts other than those that are written, their claims are barred by the Statute of Frauds and should be dismissed.
21. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

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FOR AND AS A SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

22. The Plaintiffs do not have clean hands with regard to the allegations in the complaint. The Defendants plead the doctrine of unclean hands as a complete bar to this action.
23. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AND AS A SEVENTH AFFIRMATIVE DEFENSE

(Rule 12(b)(6))

24. The complaint fails to state a claim for which relief can be granted and therefore should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.
25. The complaint fails to state the necessary elements for an equitable lien.
26. Furthermore, "equity is generally only available when a party is without an adequate remedy at law." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 449 (Ct. App. 2011).
27. Without admitting liability, Defendants assert that Plaintiffs seek an available remedy by breach of contract, and therefore have adequate remedies at law and equitable remedies are unnecessary.
28. Therefore, Plaintiffs' claim for an equitable lien and foreclosure upon said lien should be dismissed.
29. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AND AS AN EIGHTH AFFIRMATIVE DEFENSE

(Consent and Approval)

30. Plaintiffs provided consent and approval for all actions taken by the Defendants.
31. All actions taken by the Defendants were approved by the Plaintiffs. Furthermore, all actions taken by Defendants were in furtherance of the contract between the parties. Therefore, Defendants did not breach the contract with Plaintiffs.
32. The Plaintiffs' breach of contract claim is without merit and should be dismissed.
33. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

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FOR AND AS A NINTH AFFIRMATIVE DEFENSE

(Frivolous Civil Proceedings)

34. The claims asserted in the complaint are not supported by law or fact and no reasonable attorney would believe, under the same facts, that the claim for equitable lien and filing of a lis pendens is warranted by existing law.
35. The complaint was intended merely to harass and injure the Defendants.
36. Therefore, the Plaintiffs are barred from asserting the claims under Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Sanctions Act.
37. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AND AS A TENTH AFFIRMATIVE DEFENSE

(Non-Waiver of Defenses)

38. Defendants reserve and do not waive any additional or further defenses, affirmative defenses, crossclaims or counterclaims as may be revealed by additional information that may be acquired in discovery or otherwise.
39. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

FOR AND AS AN ELEVENTH AFFIRMATIVE DEFENSE

BY WAY OF COUNTERCLAIM

(Declaratory Judgment/Breach of Contract)

40. The Defendant is a business licensed to do business in the State of South Carolina with its principal place of business in York County, South Carolina.
41. The Plaintiffs are residents of some other state with the intent to permanently reside in South Carolina.
42. The Plaintiffs contracted for business in York County, South Carolina with the Defendant for the construction of a new home.
43. The Defendants seek to obtain declaration pursuant to S.C. Code Ann. §15-53-130 (1976) that the Plaintiffs are in default and breached the contract between the Defendants and Plaintiff.

Appendix-019

44. The Plaintiffs and Defendant entered into an agreement on August 22, 2014, for the construction of a new home. The contract is attached hereto as Exhibit "A."
45. The Defendant performed under the contract.
46. The original contract sum was \$741,095.00. Change Orders agreed to by Plaintiffs increased the sum due under the contract to \$881,868.13.
47. Defendant has received payments from Plaintiffs totaling \$643,760.70.
48. Therefore, Defendants owe a balance of \$238,107.43.
49. The Defendant gave Plaintiffs adequate and reasonable time to pay the remaining balance due under the terms of the contract.
50. The breach of contract by the Plaintiffs have caused the Defendant to suffer damages including attorney fees and costs.

FOR AND AS A TWELFTH AFFIRMATIVE DEFENSE

BY WAY OF COUNTERCLAIM

(Slander of Title)

51. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.
52. Wrongfully recording an unfounded claim against the property of another is generally actionable as slander of title. *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886 (S.C. App., 1995).
53. Plaintiffs improperly and in violation of South Carolina law filed an invalid mechanic's lien.
54. Plaintiffs are not licensed contractors, and therefore have no legal right to file a mechanic's lien.
55. Thus, the mechanic's lien is invalid and Plaintiffs are liable to Defendant for slander of title.

FOR AND AS A THIRTEENTH AFFIRMATIVE DEFENSE

BY WAY OF COUNTERCLAIM

(Cloud on Title)

56. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

Appendix-020

57. A cloud on title is a claim which on its face appears to be valid, but resort to extrinsic evidence will show its invalidity.
58. Plaintiffs do not own or have an interest in the subject property.
59. Plaintiffs' cause of action for breach of contract does not give rise to a claim of right or interest in the subject property. Plaintiffs assert that Defendants breached the contract, making contract performance impossible.
60. Furthermore, upon information and belief Plaintiffs did not intend on completing the contract and purchasing the property, as such the lis pendens should not have been filed.
61. Defendant has all right, title and interest in the property. Defendant listed the property for sale.
62. The lis pendens filed by Plaintiffs improperly clouds title and any interference with the sale of the subject property gives rise to direct and consequential damages, plus attorney's fees and costs.

FOR AND AS A FOURTEENTH AFFIRMATIVE DEFENSE
BY WAY OF COUNTERCLAIM

(Notice of Motion and Motion for Injunctive Relief)

63. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.
64. Plaintiffs made payments toward the subject property totaling 643,760.70.
65. Defendant fully performed the contract and worked with Plaintiffs to make all changes and updates as Plaintiffs' requested.
66. Defendant emailed Plaintiffs a letter regarding their default in December 2015 attached hereto as Exhibit B.
67. Upon information and belief, Plaintiffs purchased another home in South Carolina and no longer wish to purchase the subject property.
68. Defendant placed the subject property for sale and the subject property is currently under contract (attached hereto as Exhibit C) and expected to close May 10, 2016.
69. Defendant would suffer irreparable harm if unable to proceed with the sale of the house as it would prove difficult and lengthy to find another buyer.

Appendix-021

70. Without admitting liability, Defendant asserts that Plaintiff has adequate remedies at law under breach of contract theory and would not be harmed or prejudiced by the sale of the property.

71. Therefore, Defendant seeks injunctive relief to release the lis pendens and mechanic's lien wrongfully filed by Plaintiffs and allow the sale of the subject property.

WHEREFORE, Defendant respectfully prays that this Honorable Court enter an Order finding that the Plaintiffs are in breach of contract and default, and owe Plaintiff the sum of \$238,107.43. Also, Defendant respectfully request this Court find Plaintiffs liable for improperly clouding title and slander of title causing Defendant direct and consequential damages. Moreover, Plaintiffs request this Court dismiss all actions by the Plaintiffs and to issue all other appropriate remedies including attorney fees and costs for this action.

FERRARA LAW FIRM, PLLC



Paul B. Ferrara, III
Attorney for Defendants
2300 Otranto Road
North Charleston, SC 29406
(843) 569-5511 / (843) 569-5411 fax
SC Bar No.: 70511
paul@ferraralawfirm.net

April 26, 2016

Appendix-022

Exhibit A

Appendix-023



CONSTRUCTION CONTRACT

BETWEEN CONTRACTOR ___ & Alfred & Mary Jenkins ___

THIS AGREEMENT is made and entered into this 22 day of August by and between Contractor SCGC License #G116160&NCGC 70698, a South Carolina limited liability company (Contractor) Alfred and Mary Jenkins whose signature appears below (Home Owner) in consideration of the sum of \$ 741,095 (the "Construction Cost"), the Design Drawings to be revised and noted as the "working drawings", (consisting of house, patio, garage, and landscape) and the mutual promises and covenants contained herein, and for other good and valuable consideration. Buyer agrees to place a 10% deposit for the new build of the home. The owner will seek and provide the builder with a letter of credit to secure the funding and purchase of the home and home-site above. Address Lot 18 Trinity Ridge 3022 Dreamcatcher circle Fort Mill SC 29715

1) The Home Owner and Contractor acknowledge receipt of this contract and agree to be bound by all the terms and conditions of the aforesaid, including Appendix I, and Appendix II, and by their signatures of this agreement agree to be legally bound.

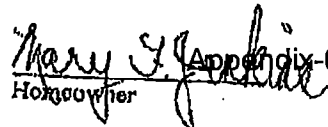
2) Contractor Obligations.

a) The Contractor represents and warrants to the Home Owner:

- i) It is a licensed builder in the business of constructing homes and is in good standing with the State of South Carolina and all licensing bodies, and holds all current licenses and approvals required to construct homes in York County, SC;
- ii) that it has in force a General Liability policy (limits of not less than \$1M per occurrence, \$2,000,000 in the aggregate) and Worker's Compensation Insurance covering all of its employees and contractors;
- iii) That it shall construct the New Home in a careful, diligent and workmanlike manner, in conformance with all applicable building codes.
- iv) That all materials used in the construction of the New Home shall be new or not re-used.
- v) that it shall comply with all manufacturer's specifications and provide accurate copies to Home Owner of all manufacturer's instructions and warranties; and


Ferrara Buist, LLC
Custom Crafted Homes

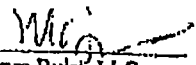

Homeowner


Homeowner

8/27/2014 G

FERRARA | BUIST COMPANIES

- b) The Contractor shall construct and finish the New Home in accordance with the floor plan & scope, this Contract and the attached specifications including all interior finishes, interior trim, door and closet hardware, all flooring, and paint, exterior coverings (collectively, the "Work"). The Plans are incorporated in this Agreement and made a part of this Agreement as Appendix 1 and will be signed and dated by the Home Owner and Contractor. The specifications are described in Appendix 2 and are incorporated in this Agreement along with the floor plans and structural designs. The Work shall include receipt of a Certificate of Occupancy.
- c) The Contractor shall ensure that all subcontractors who perform work on or services related to the New House shall maintain Workers' Compensation and General Liability Insurance coverage as required by law and with limits and terms customary for construction of similar homes in similar neighborhoods.
- 3) Home Owner obligations:
- a) The Home Owner will secure funding and will close on the above listed property in full no later than _____
- 4) Payment.
- a) Deposit. Upon the receipt of all required approvals from the York County and SCDHEC as well as AMS neighborhood Architectural Control Committee (ACC) the builder will start construction immediately.
- ~~b) Construction Draws. The Contractor will be financing the construction of the home listed above. If the homeowner does not close on the above listed property and defaults from his/her obligations, the builder will reserve the right to retain its 20% deposit and any additional deposits on change orders. These deposit will be retained to cover any realtor and construction related fees that will be incurred by the builder should the buyer decide not to close on the home. If the buyer decides to push the closing off beyond 12/30/13, the builder reserves the right to charge the buyer 1.5% per month or 18% annual interest. The builder reserves the right to market and sell the home to another party should the buyer decide not to close by 12/30/13.~~
- 5) Termination of Agreement.
- ~~a) Termination by Contractor. Contractor may terminate this Agreement in the event Home Owner fails to make any payment due under this Agreement within ten business days following notice from Contractor that such payment was due.~~


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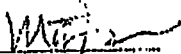
ALFRED P. JENKINS
Homeowner

MARY F. JENKINS
Homeowner

FERRARA | BUIST

COMPANIES

- 6) Change Orders. No change in the plans and specifications, the Construction Cost or any other provision of this contract shall be binding on the Contractor or the Home Owner unless agreed to in writing by both parties. Any change order is permitted provided there is time to make the change. A change order form will be administered by Contractor, reviewed and approved by the Home Owner with a 100% payment for that change. Any change order or dollars spent above the agreed upon sales price that are necessary expenses in order to receive the certificate of occupancy must be paid by the owner. These expenses will only be the cost of the work necessary to attain the Certificate of Occupancy.
- 7) Prevailing Party. In the event of any arbitration, any litigation or dispute of any kind, relating to the Work, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses, including mechanic's lien fees and costs if necessary. Arbitration is the first course of action to take when resolving conflicts.
- 8) Warranties
- a) Contractor Warranties
- i) Structural: Contractor shall warrant the structure of the New House for a period of ten (10) years following the date of certificate of occupancy. Contractor acknowledges that it has been provided with unfettered access to the property and that Home Owner is relying upon Contractor's knowledge and expertise to ensure proper evaluation of the soil. Contractor will arrange for a soil test (including borings) to be performed by a licensed professional engineer at the designated footing area. The parties agree that the soils testing may increase the cost of the construction if additional steel and concrete are required per the written recommendation of such licensed engineer.
- ii) Defects: Contractor warrants that the Work, including all HVAC, plumbing and electrical systems (including lighting) shall be free of all defects, latent and patent for a period of 12 months following the Completion Date. Defects include any moisture intrusion from any area caused by a defect in workmanship or product defect leading to the moisture intrusion.
- iii) Interior Finishes: Contractor warrants all interior finishes for one year after the Move In date.
- iv) Cabinets: Contractor warrants all cabinets for a period of 5 years following the Completion Date. This warranty includes the hinges, box construction, panel construction and finish of the cabinet. Interior trim MITRE details will sometimes crack during seasonal changes in exterior weather conditions. If a crack in the interior trim is more than 1/4", Contractor will correct this by applying epoxy filler to the MITRE joint and will sand and paint only the affected area. Interior accessories sometimes need seasonal or annual adjustment such as doors, door knobs, strike


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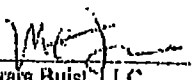
ALFRED P. JENKINS
 Homeowner

MARY F. JENKINS
 Homeowner

FERRARA | BUIST COMPANIES

plates, and door hardware. These adjustments are routine homeowner maintenance and will be the responsibility of the homeowner.

- v) *Exterior Siding and Stone:* Warranty for a period of one year from the Issuance of c/o
- vi) *Roofing:* Contractor will warrant the roof for a period of one year following the Completion Date. Any additional warranty will be pursued by the homeowner with the roofing manufacturer
- vii) *Interior and Exterior Doors:* Contractor warrants all doors for material workmanship and installation for a period of one year from the Completion Date.
- viii) *Drywall:* Home Owner will be entitled to a one-time courtesy drywall touch-up to repair any defective nail pops and seams as a result of normal settling. The sanding and painting after this touchup will be the responsibility of the Home Owner. Flat light colors will be touched up. Satin, eggshell and deep rich colors will not be covered.
- ix) *Plumbing:* In addition to the defect warranty above, Contractor warrants all hard piping for a period of 1 year to be free from defects with the product and the labor. If a leak is found behind a wall at a supply line, Contractor will repair this leak and the wallboard, and or tile for a period of one year following the Completion Date.
- x) *HVAC:* Contractor warrants all heating and air conditioning devices on the interior for a period of one year from the Completion Date. Contractor warrants the compressor, motor, heat exchanger, condenser coil (parts and labor) for a period of 1 year following the Completion Date.


Ferrara Buist, LLC
Custom Crafted Homes

ALFRED P JENKINS
Homeowner

MARY F JENKINS
Homeowner

FERRARA | BUIST

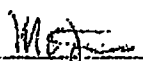
COMPANIES

- xi) **Sewer and Water:** Contractor will repair any sewer connection issues for one year from the Date of Completion. Contractor will also repair any defect from materials and workmanship associated with these connections for one year from the Date of Completion. Contractor will help enforce all warranties associated with the well and septic for the first 12 months after Issuance of the Certificate of occupancy. Any upgraded water and sewer cost above the allowance will be a direct cost to the buyer. Water \$4200, Sewer/Septic \$5,500. Any additional well depth beyond 200 feet will be billed at \$10 per foot to the owner.
- xii) **Execution of the warranty:** Home Owner agrees to contact Contractor and Contractor will respond within 48 hours via phone or e-mail. Contractor will provide warranty service within 10 business days unless there is an emergency. Emergencies will be responded to within 24 hours. Home Owner must allow Contractor access to the home to complete all warranty requests between the hours of 8am and 5pm Monday thru Friday.
- b) **Manufacturer Warranties.** Contractor shall ensure that all manufacturers' warranties are transferred to Home Owner in full force and effect upon the Date of Completion. Homeowner is required to fill out all necessary warranty information so that the issuing company will have a record of the transfer

9) Allowances

Allowances are for items that have not been selected or designed yet. All allowances are furnished and installed for the price shown below. The dollars included for the allowances are for an assumed style, fit, or finish. Final selections may raise or lower the final price for these items. Any decrease or increase in price will be passed directly to the Home Owner without mark-up. The description of these allowances is included in Appendix II. This Contract includes the following allowances:

SEE PRICING	
SHEET FOR NEW	
HOME	\$ _____
Tile	\$ _____
Hardwood Floors	\$ _____
Lighting	\$ _____
Granite	\$ _____
Landscaping	\$ _____
Carpet	\$ _____
Plumbing fixtures	\$ _____
Appliances	\$ _____


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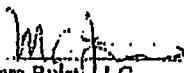
ALFRED P. JENKINS
 Homeowner

MARY F. JENKINS
 Homeowner



10) Miscellaneous.

- a) *Notices.* None at this time.
- b) *Time of the Essence.* Time is of the essence in this Agreement.
- c) *Conditions Precedent.* The aforementioned conditions precedent above are required by the Homeowner prior to commencement of the performance of this contract.
- d) Application and delivery of all job permits is included.
- e) The final construction certificate of occupancy will be delivered to the Home Owner at the end of the project.
- f) All new work will be warranted as set forth above.
- g) Standard working hours of Monday to Saturday, 7:30 to 5:00 PM only are included.
- h) This is a lump sum contract.
- i) Job closeout will consist of receipts of a Certificate of Occupancy, final approval by the lender and a final walk-thru with the Home Owner to generate a final agreed upon punch list, this punch list will be completed within 7 business days after the final walk thru.
- j) If Contractor is waiting on any back-ordered materials during the end of the project the Home Owner agrees to allow Contractor a maximum of 30 days to complete the installation of these items prior to occupying the home.
- k) 5 zones of irrigation are included and will be placed according to the sod and plant material locations.
- l) Utility connection charges to be paid by client upon completion of the home.
- m) Landscaping is shown on the design drawings and is included as an allowance per the Contractor's approval. An enhanced designed landscape plan will be included as a part of the work. Any additional landscaping above the allotted \$10,000 will be written as a change order to the client.
- n) Surveying is limited to the work required to perform the construction shown on the design drawings. Topographical surveys, boundary surveys, and legal surveys required by the building department or owner shall be provided by others.


Ferrara Buist, LLC
Custom Crafted Homes

ALFRED P. JENKINS
Homeowner

MARY F. JENKINS
Homeowner



APPENDIX I -- INSERT PLAN PAGES HERE:

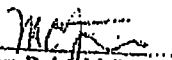
See Plans after they are ready

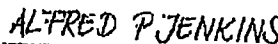
APPENDIX II -- INSERT SELECTIONS HERE: SELECTIONS TO BE FINALIZED WITH KAREN ORGANSKI AT OUR DESIGN CENTER

MISCELLANEOUS

General

- Important Buyer Note: Buyer acknowledges the importance and value of this document as an Exhibit to the Agreement of Sale. The House will be constructed in strict conformance with the descriptions and allowances contained within the Specifications. By Initialing below, the Buyer acknowledges that they have reviewed, approved, and understand the Specifications for the House.
- New water service shall be installed as schedule 40 PVC from well to house
- Building permits are included


Ferrara Buist LLC
Custom Crafted Homes


ALFRED P. JENKINS
Homeowner

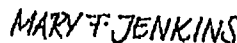

MARY F. JENKINS
Homeowner

Exhibit B

Appendix-031

FERRARA LAW FIRM, PLLC

2300 OTRANTO ROAD
NORTH CHARLESTON, SC 29406
(843) 569-5511 / FAX (843) 569-5411
FLP@FerraraLawFirm.net

*Paul B. Ferrara, III**
*Janel K. Ferrara**
Kassandra J. Garvin

*(*also licensed in NC)*

December 28, 2015

Dr. & Mrs. Alfred Jenkins
3022 Dreamcatcher Circle
Fort Mill, SC 29715

RE: Ferrara Buist, LLC
1201-101 Carolina Place
Fort Mill, SC 29708
(803) 792-4348

Dear Dr. & Mrs. Jenkins:

Please be advised that our office represents Ferrara Buist, LLC. Pursuant to a contract dated August 22, 2014, you promised to pay a sum of \$741,095.00 to Ferrara Buist, LLC, for Lot 18 of Trinity Ridge and the construction of a new home. Subsequently, you agreed to change orders that increased the amount due by \$140,773.13. Therefore, the total sum due and payable to Ferrara Buist, LLC is \$881,868.13. To date, you have paid \$643,760.70. The remaining balance due to Ferrara Buist, LLC is \$238,107.43.

Ferrara Buist, LLC has not received payment for the remaining balance. An Application and Certificate for Payment was sent to you on November 23, 2014, and e-mailed to you again on December 14, 2015. Since we have not received payment, you are in breach of contract. We have given you adequate time and opportunity to cure said default and breach of contract by paying the balance due. This letter serves to notify you that you are in default and Ferrara Buist, LLC will exercise its rights under the laws of the State of South Carolina.

With Regards, I remain

FERRARA LAW FIRM, PLLC

/s/ Paul B. Ferrara, III.

Paul B. Ferrara, III

Appendix-032

Exhibit C

Appendix-033

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

(Instructions on reverse side)

PAGE 1 of 2 PAGES

TO (OWNER):
Dr. Alfred and Mary Jenkins
Jenkins ResidencePROJECT:
Jenkins Residence

APPLICATION NO.:

Distribution to:
OWNER'S REPFROM (CONTRACTOR):
Ferraro Buati, LLC.

VIA (ARCHITECT):

ARCHITECT'S

CONTRACTOR

PROJECT NO.:

CONTRACT DATE:

August 22, 2014

CONTRACT FOR:

Custom Residential Home

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY

Change Orders approved in
previous months by Owner

TOTAL

ADDITIONS

\$ 144,014.87

DEDUCTIONS

\$ (10,000.00)

Approved This Month

Number

Date Approved

4

9/2/2015

\$ 248.25

5

10/9/2015

\$ 8,510.01

paid see page 2

TOTALS

\$ 8,758.26

Net change by Change Orders

\$ 140,772.13

Application is made for Payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	741,095.00
2. Net change by Change Orders	\$ 140,772.13
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$ 881,867.13
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$ 822,697.83

6. TOTAL EARNED LESS RETAINAGE	\$ 822,697.83
--------------------------------	---------------

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$ 843,750.70
8. CURRENT PAYMENT DUE	\$ 178,846.93
9. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 8)	\$ 68,250.50

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:
Ferraro Buati, LLC.

By: Michael Adam Ferraro Date: 11/11/2015

Ferrara Blvd. Jordan Residence

APPLICATION NUMBER 6
APPLICATION DATE 11/11/2015
PERIOD FROM 10/05/2015
TO 11/20/2015

ITEM NO	DESCRIPTION OF WORK	SCHEDULED VALUE	Previous Applications	WORK COMPLETED		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C-G)	Retentionage
				Work in Place	As per Contract ordered and Stored Materials (not in D or E)			
	Site and Land							
	concrete basecoat	\$ 118,000.00	\$ 118,000.00	\$ -	\$ -	\$ 118,000.00	100%	\$ -
	concrete finishcoat	29,000.00	29,000.00	\$ -	\$ -	29,000.00	100%	\$ -
	floor screeds	24,400.00	\$ 31,600.00	\$ -	\$ 7,200.00	34,800.00	100%	\$ -
	floor	4,000.00	\$ -	\$ -	\$ 2,800.00	2,800.00	50%	\$ 2,000.00
	metallic decking and panels	13,000.00	\$ 8,000.00	\$ -	\$ 5,000.00	13,000.00	50%	\$ 8,000.00
	acrylic paint/intercoat/finish	15,000.00	\$ 30,000.00	\$ -	\$ -	45,000.00	300%	\$ 3,000.00
	rough carpentry materials (frames, joinery)	79,000.00	\$ 79,000.00	\$ -	\$ -	79,000.00	100%	\$ 5,000.00
	rough carpentry labor	\$ 49,000.00	\$ 49,000.00	\$ -	\$ -	79,000.00	100%	\$ -
	flooring	13,500.00	\$ 12,000.00	\$ -	\$ -	43,500.00	100%	\$ -
	refurbishing steel doors	24,000.00	\$ 24,000.00	\$ -	\$ -	12,000.00	100%	\$ -
	bedroom ceiling	34,000.00	\$ 34,000.00	\$ -	\$ -	24,000.00	100%	\$ -
	laboratory starting grinding lat balance	13,500.00	\$ 12,500.00	\$ -	\$ -	34,000.00	100%	\$ -
	concrete drains and vents	\$ 6,500.00	\$ -	\$ 6,500.00	\$ -	12,000.00	100%	\$ -
	roof	\$ 4,200.00	\$ 4,200.00	\$ -	\$ -	4,200.00	100%	\$ -
	gutter	\$ 3,300.00	\$ -	\$ 4,800.00	\$ -	4,800.00	100%	\$ -
	culvert	\$ 30,200.00	\$ 28,000.00	\$ 2,100.00	\$ -	4,800.00	100%	\$ -
	tile	\$ 12,000.00	\$ 12,000.00	\$ -	\$ -	30,200.00	100%	\$ -
	corner	\$ 4,000.00	\$ 4,000.00	\$ -	\$ -	12,000.00	100%	\$ -
	handrailing	\$ 10,000.00	\$ 8,000.00	\$ 2,000.00	\$ -	4,000.00	100%	\$ -
	bedroom and bathroom bath tile	\$ 4,200.00	\$ 4,200.00	\$ -	\$ -	10,000.00	100%	\$ -
	interior trim doors and trim labor	\$ 13,500.00	\$ 12,000.00	\$ 1,500.00	\$ -	13,500.00	100%	\$ -
	interior trim material paint	\$ 12,000.00	\$ 12,000.00	\$ -	\$ -	13,500.00	100%	\$ -
	drywall and tape/joint	\$ 12,000.00	\$ 12,000.00	\$ -	\$ -	12,000.00	100%	\$ -
	plastering	\$ 12,000.00	\$ 12,000.00	\$ -	\$ -	12,000.00	100%	\$ -
	electrical and lighting	\$ 18,500.00	\$ 11,000.00	\$ 5,000.00	\$ -	17,500.00	100%	\$ -
	plumbing	\$ 12,000.00	\$ 11,000.00	\$ 5,000.00	\$ -	17,500.00	100%	\$ -
	low voltage and security	\$ 11,100.00	\$ 12,000.00	\$ 5,100.00	\$ -	17,500.00	100%	\$ 2,000.00
	appliances	\$ 3,000.00	\$ 1,000.00	\$ 500.00	\$ -	10,100.00	100%	\$ -
	stairs	\$ 10,000.00	\$ 40,000.00	\$ -	\$ -	10,000.00	100%	\$ -
	garage door (downer doors)/recessed	\$ 4,500.00	\$ 4,500.00	\$ -	\$ -	4,500.00	100%	\$ -
	handrails/trim/interior trim detail	\$ 5,500.00	\$ 3,000.00	\$ 2,500.00	\$ -	6,500.00	100%	\$ -
	chance order 2	\$ 6,000.00	\$ -	\$ 2,000.00	\$ -	6,000.00	100%	\$ -
	fire alarm	\$ 14,700.00	\$ 23,250.00	\$ 3,250.00	\$ -	6,200.00	100%	\$ -
	humble upgrade	\$ 18,770.00	\$ 15,000.00	\$ 18,270.00	\$ -	28,420.00	100%	\$ -
	transit	\$ 3,397.17	\$ 3,195.00	\$ 3,202.17	\$ -	28,420.00	100%	\$ -
	tile	\$ 2,000.00	\$ 2,000.00	\$ -	\$ -	3,397.17	100%	\$ -
	culvert upgrades	\$ 1,000.00	\$ 1,000.00	\$ -	\$ -	2,000.00	100%	\$ -
	appliances credit	\$ 1,000.00	\$ 1,000.00	\$ -	\$ -	1,000.00	100%	\$ -
	plumbing</							



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Michael Whipple and Olivia Whipple

Seller(s), Ferrara-Buist, LLC

("Buyer"), and

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
- (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
- (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
- (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.
- (E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
- (F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
- (G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. **PURCHASE PRICE:** \$825,000

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.
Verification of Cash available for Closing is ☐ attached ☐ not attached ☐ to be Delivered before _____
The sale of Buyer's real property ☒ is ☐ is not a contingency for Purchase and terms ☒ are ☐ are not attached.

3. **PROPERTY:** Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, and lease issues prior to signing Contract. Leasing issues and items see Adjustments (e.g. tenants, rents, deposits, documents, alarm systems, satellite equipment, roll carts).

Address 3022 Dreamcatcher Circle Unit # _____

City Fort Mill State of South Carolina

Zip 29715 County of York

Lot 18 Block _____ Section/Phase 1 Subdivision Trinity Ridge

Other LOT# 18 TRINITY RIDGE PH I Tax Map 7780101019

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before May 10, 2016 ("Closing Date") with an automatic extension of 10 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded

MDM BUYER ☒ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

Rinehart Realty Corp., 1339 Ebenezer Road Rock Hill, SC 29732
Phone: (803)329-3333

Fax: (803)329-2933

Michael O'Brien

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Appendix-b36

Mike & Olivia

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 7,500 (USD) Earnest Money is paid as follows: \$ 7,500 accompanies this offer and \$ 0 will be paid within 0 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) _____ to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Peterson Law Firm, PA as Escrow Agent to deposit and hold and disburse earnest money according to the terms of this Contract, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT OR AS AGREED UPON IN THIS CONTRACT. UNLESS OTHERWISE AGREED UPON IN WRITING, THE PARTIES AGREE THAT THE ESCROW AGENT SHALL DISBURSE THE EARNEST MONEY TO THE BUYER UNLESS THE SELLER'S ATTORNEY HAS FILED A LAWSUIT TO DETERMINE DISTRIBUTION OF THE EARNEST MONEY WITHIN 30 BUSINESS DAYS OF THE CLOSING DATE. FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SOUTH CAROLINA TREASURER AS UNCLAIMED PROPERTY. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR, NONPREVAILING PARTY AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 90.00 SHALL BE PAID TO THE ESCROW AGENT AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, flood, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 2,000 OR 1.0% of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (e.g. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☐ Seller's or ☒ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☒ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a minimum 80 % and maximum 100 % of the Purchase Price or Appraised Value whichever is lower ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing

BUYER [initials] BUYER [initials] SELLER [initials] SELLER HAVE READ THIS PAGE

Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize their Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within 3 Business Days from the Effective Date and shall deliver Notice to Seller of reasonable pre-final loan approval that contains no unreasonable credit, income, or asset conditions within 30 Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice and Earnest Money shall be returned to the Buyer.

Lender (may change): Sharonview Federal Credit Union ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other _____ An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms
☐ are ☐ are not attached.

8. REPAIR PROCEDURE:

Parties agree upon Repair Procedure unless a Due Diligence Addendum is agreed upon and part of this Contract.

(A) All Repair Procedure Inspections shall be completed by April 8, 2016. In the event repairs are necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Repair Procedure Inspection date mentioned above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances.

(B) No later than 5 Business Days after the date of the Delivered Notice of the Repair Requests, Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). If the Seller agrees to make all the Seller Paid Repairs, the Parties agree to proceed under Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Business Days choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice and receive their Earnest Money. IF BUYER FAILS TO ACCEPT, RENEGOTIATE, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 BUSINESS DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.

IF A DUE DILIGENCE ADDENDUM IS SIGNED, DATED AND TIMED BY ALL PARTIES; THE PARTIES AGREE THAT THE LANGUAGE IN THE DUE DILIGENCE ADDENDUM SHALL REPLACE THE REPAIR PROCEDURE LANGUAGE IN THIS SECTION AND THE PARTIES AGREE THAT THIS TRANSACTION SHALL BE CONDUCTED IN ACCORDANCE WITH THE DUE DILIGENCE ADDENDUM WHICH GRANTS THE BUYER A UNILATERAL RIGHT TO INSPECT THE PROPERTY AND TERMINATE FOR ANY REASON WITH WRITTEN NOTICE AND PAYMENT OF A FEE IN A PERIOD.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

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Miko & Davis

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☐ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other _____ ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and inspectors use insurance to manage risk.

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is contingent upon the ☐ Buyer ☒ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☒ Buyer ☐ Seller and Delivery to Closing of a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than 22 calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such Infestation report or any other improvement unless specifically stated in this Contract.

If the Infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with an infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 Issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands determined, and appropriate insurance (e.g. flood, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by See Hendrix with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and \$ _____ will be paid by _____ to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

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Mike & Olivia

16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

18. CRIME/MEGAN LAW: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web).

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-560 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available. This section survives Closing. Buyer is solely responsible for minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

(i) Deliver Notice of Default to Seller and terminate Contract; and

BUYER ☒ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

Mike & Olvin

- (ii) Pursue any remedies available to Buyer at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer prevails in any action against Seller.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
 - (i) Deliver Notice of Default to Buyer and terminate Contract; and
 - (ii) Pursue any remedies available to Seller at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller prevails in any action against Buyer.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: Mediation is an alternative dispute resolution system and may help avoid potentially expensive and lengthy litigation. The mediation participants voluntarily decide their settlement with the mediator facilitating their decisions and documentation of the settlement. Mediation is not binding arbitration. The mediator does not decide the outcome. The mediation participants make their own decisions include reaching or not reaching a settlement. Any dispute, claim, breach, or services issues relating to this Contract shall be submitted to mediation in accordance with the Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® (Info@SCREALTORS.org 1-800-233-6981). Disputes include representations made by any Party, Broker, person or entity in connection with the sale, purchase, financing, condition or any other aspect of the Property, including without limitation allegations of concealment, misrepresentation, negligence or fraud. Any agreement signed by the Parties pursuant to mediation is binding. This mediation clause shall survive the Closing. The following matters are excluded from mediation herein: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action or other action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. **NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.**

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda

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amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here: Appendum: Brille's warranty attached shall survive closing + recording of deed

* SELLER IS REPRESENTED BY THE FERRARA LAW FIRM

29. **NOTICE AND DELIVERY:** Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notices, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

30. **PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.**

Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the Agency Disclosure, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

31. **EXPIRATION OF OFFER:** When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 6:00 ☐ AM ☒ PM on March 16, 2016, unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline:

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within _____ Business Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: <u>Michael Whipple</u>	Date: <u>3/14/16</u>	Time: <u>6:00 PM</u>
BUYER: <u>Olivia Whipple</u>	Date: <u>3/14/16</u>	Time: <u>6:00 p.m.</u>
_____	Date: _____	Time: _____
_____	Date: _____	Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: <u>W Ferrara</u>	Date: <u>3/17/16</u>	Time: <u>5:00pm</u>
SELLER: <u>Ferrara-Bulet, LLC</u>	Date: _____	Time: _____
_____	Date: _____	Time: _____
_____	Date: _____	Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

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ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): John Peterson, PA

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): Law Firm

ESCROW AGENT CONTACT INFO: 803-548-2898

INVOLVED AS: ☐ BUYER AGENT ☒ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*

LICENSEE: _____ SC LICENSE # _____ EXPIRES _____

BROKER IN CHARGE: _____ SC LICENSE # _____ EXPIRES _____

BROKERAGE COMPANY NAME: _____

MEMBERS OF _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: _____

NOTICE EMAIL/FAX: _____

MOBILE PHONE: _____ OFFICE PHONE: _____

OTHER: _____

INVOLVED AS: ☒ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*

LICENSEE: Michael O'Brien SC LICENSE # 54191 EXPIRES 6/30/16

BROKER IN CHARGE: Helen StAngelo SC LICENSE # 251684 EXPIRES _____

BROKERAGE COMPANY NAME: Rinehart Realty

MEMBERS OF CRRA ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 264 Latitude Lane Suite 103, Lake Wylie, SC 29710

NOTICE EMAIL/FAX: michael.obrien@rinehartrealty.com

MOBILE PHONE: 803-524-5142 OFFICE PHONE: 803-831-7570

OTHER: _____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS.**

☒ BUYER ☒ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE Appendix-043

FORM 310 PAGE 8 of 8

Mike & Olivia

Builder Warranty Addendum (1/2)

- 1) Warranties
 - a) Contractor Warranties
 - i) **Structural:** Contractor shall warrant the structure of the New House for a period of ten (10) years following the date of certificate of occupancy. Contractor acknowledges that it has been provided with unfettered access to the property and that Home Owner is relying upon Contractor's knowledge and expertise to ensure proper evaluation of the soil. Contractor will arrange for a soil test (including borings) to be performed by a licensed professional engineer at the designated footing area. The parties agree that the soils testing may increase the cost of the construction if additional steel and concrete are required per the written recommendation of such licensed engineer.
 - ii) **Defects:** Contractor warrants that the Work, including all HVAC, plumbing and electrical systems (including lighting) shall be free of all defects, latent and patent for a period of 12 months following the Completion Date. Defects include any moisture intrusion from any area caused by a defect in workmanship or product defect leading to the moisture intrusion.
 - iii) **Cabinets:** Contractor warrants all cabinets for a period of 2 years following the Completion Date. This warranty includes the hinges, box construction, panel construction and finish of the cabinet. Interior trim MITRE details will sometimes crack during seasonal changes in exterior weather conditions. If a crack in the interior trim is more than 1/4", Contractor will correct this by applying epoxy filler to the MITRE joint and will sand and paint only the affected area. Interior accessories sometimes need seasonal or annual adjustment such as doors, door knobs, strike plates, and door hardware. These adjustments are routine homeowner maintenance and will be the responsibility of the homeowner.
 - iv) **Exterior Siding and Stone:** Warranty for a period of one year from the Issuance of c/o
 - v) **Roofing:** Contractor will warrant the roof for a period of one year following the Completion Date. Any additional warranty will be pursued by the homeowner with the roofing manufacturer
 - vi) **Interior and Exterior Doors:** Contractor warrants all doors for material workmanship and installation for a period of one year from the Completion Date.
 - vii) **Drywall:** Home Owner will be entitled to a one-time courtesy drywall touch-up to repair any defective nail pops and seams as a result of normal settling. The sanding and painting after this touchup will be the responsibility of the Home Owner. Flat light colors will be touched up. Satin, eggshell and deep rich colors will not be covered.
 - viii) **Plumbing:** In addition to the defect warranty above, Contractor warrants all hard piping for a period of 1 year to be free from defects with the product and the labor. If a leak is found behind a wall at a supply line, Contractor will repair this leak and the wallboard, and or tile for a period of one year following the Completion Date.
 - ix) **HVAC:** Contractor warrants all heating and air conditioning devices on the interior for a period of one year from the Completion Date. Contractor warrants the compressor, motor, heat exchanger, condenser coil (parts and labor) for a period of 1 year following the Completion Date.
 - x) **Sewer and Water:** Contractor will repair any sewer connection issues for one year from the Date of Completion. Contractor will also repair any defect from materials and workmanship associated with these connections for one year from the Date of Completion. Contractor will help enforce all warranties associated with the well and septic for the first 12 months after Issuance of the Certificate of occupancy.
 - xi) **Execution of the warranty:** Home Owner agrees to contact Contractor and Contractor will respond within 48 hours via phone or e-mail. Contractor will provide warranty service within 10 business days unless there is an emergency. Emergencies will be responded to within 24 hours. Home Owner must.

Appendix-044

Builder Warranty Addendum (2/2)

allow Contractor access to the home to complete all warranty requests between the hours of 8am and 5pm Monday thru Friday.

- b) *Manufacturer Warranties.* Homeowner shall ensure that all manufacturers' warranties are filed with each manufacturer to ensure proper action for each item that needs attention. Homeowner is required to fill out all necessary warranty information so that the issuing company will have a record of the transfer

IF A WARRANTY IS NOT LISTED ABOVE OR ITEMIZED THEN THERE IS NOT A WARRANTY IN PLACE FOR THE ITEM IN QUESTION.

Appendix-045

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
)
Plaintiffs,)

C/A No. 2016-CP-46-1001

v.)

REPLY TO COUNTERCLAIM

Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)

Defendant.)

FILED-RECEIVED
2016 JUN -7 AM 11:47
DAVID HAMILTON
C.C. & J.S.
YORK COUNTY, SC

The Plaintiffs through their undersigned attorney, file the following reply to the Defendant's Counterclaim:

FOR A FIRST DEFENSE

1. All allegations of the Defendant's Counterclaim not specifically admitted herein are denied.

FOR A SECOND DEFENSE

2. The allegations of Paragraph 40, 41, 42 of the Counterclaim are admitted.
3. The Plaintiff does not have sufficient information upon which to base a response to Paragraph 43 of the Counterclaim and, therefore, denies the same and demands strict proof thereof.
4. Plaintiffs admit that Exhibit A of the Counterclaim is an accurate copy of the original contract between the Parties but would allege that the contract was subsequently amended.
5. The allegations of Paragraphs 45, 46, 47, 48, 49 and 50 of the Contract are denied.

6. The allegations of Paragraph 52 allege a legal conclusion to which no response is required.

7. The allegations of Paragraphs 53, 54 and 55 are denied.

8. The allegations of Paragraph 57 through 62 allege legal conclusions which do not require a response. To the extent the allegations of Paragraphs 57 through 62 are deemed to contain factual allegations, they are denied.

9. Responding to the allegations of Paragraph 64, the Plaintiffs admit that they made payments as requested by the Defendant.

10. The allegations of Paragraph 65 are denied.

11. Responding to the allegations of Paragraph 66, Plaintiffs admit that the letter was sent but deny the contents.

12. Responding to the allegations of Paragraph 67, the Plaintiffs deny that they purchased another home.

13. Plaintiffs do not have sufficient information upon which to base a response to Paragraphs 68 and 69 and, therefore, deny the same and demand strict proof thereof.

14. The allegations of Paragraphs 70 and 71 allege legal conclusions to which no response is required.

FOR A THIRD DEFENSE

15. The factual allegations of the Defendant's Complaint are incorporated herein as if fully set forth.

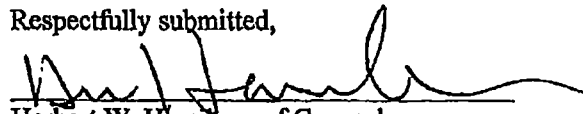
16. The Plaintiffs were prepared to close upon Defendant's proper completion of the house.

17. The Defendant failed to complete the house and asserted improper claims thereby failing to mitigate any damages to which it may be entitled, such entitlement being hereby denied.

Wherefore, having fully answered the Defendant's Counterclaim, the Plaintiffs pray for dismissal of the same and for judgment in Plaintiff's favor as asserted in the Complaint.

June 6, 2016

Respectfully submitted,



Herbert W. Hamilton of Counsel,
HAMILTON MARTENS
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
ATTORNEYS FOR PLAINTIFF

4826-2037-6626, v. 1

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
Plaintiffs,)

v.)

Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
Defendant.)

C/A No. 2016-CP-46-1001

NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT

FILED-RECEIVED
2016 SEP 29 PM 1:42
DAVID HAMILTON
C.C.P. & J.S.
YORK COUNTY, SC

YOU WILL PLEASE TAKE NOTICE that the undersigned, a counsel for the Plaintiffs will move on the 10th day after service hereof at 10:00 o'clock A.M., in the York County Court House, York, South Carolina or at such other time and place as directed by the Court for an order granting Partial Summary Judgment to the Plaintiffs in the following particulars:

1. On or about August 22, 2014, the Plaintiffs signed a contract with the Defendant whereby the Defendant agreed to build a house for the Plaintiffs.
2. Title to the lot was in Defendant's name.
3. There was no construction loan. Defendant submitted periodic pay requests, and Plaintiffs paid the pay requests from personal funds.
4. With the exception of the last pay request, Plaintiffs paid all pay requests submitted by Defendant in full and without any retainage.
5. Plaintiffs have paid Defendants \$643,760.70.

Appendix-049

6. In addition, Plaintiffs paid \$19,634.67 for appliances and a ceiling fan which were installed in the house and remain in the house.

7. Upon submittal of the last pay request, a dispute arose between the parties. The contract was terminated.

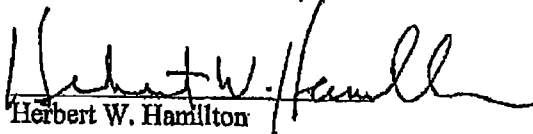
8. This action was filed by the Plaintiffs asserting, among other causes of action, an equitable lien on the real property by reason of the Plaintiffs' payments to Defendant. A Lis Pendens was filed giving notice of the Plaintiffs' claim.

9. Following the filing of this action and the Lis Pendens, the Defendant sold the house to a Third Party. The price paid for the house was \$850,000. The Plaintiffs agreed to release the Lis Pendens to allow the sale of the house in return for the Defendant's agreement to place \$663,395.37 of the sales proceeds in trust.

10. Plaintiffs are informed and believe that Defendant has been paid in full and that the funds held in trust should be released to the Plaintiffs.

This Motion will be based on the Verified Complaint; affidavits to be filed, and applicable statutory and common law authority.

HAMILTON MARTENS, LLC.



Herbert W. Hamilton
of Counsel
Attorney for Plaintiffs
130 E. Main Street
Rock Hill, SC 29731
(803) 329-7672
herb.hamilton@hamiltonmartens.com

September 27, 2016

4820-8365-3432, v. 1

Appendix-050

Closing Disclosure

Closing Information

Date Issued 07/15/16
 Closing Date 07/15/16
 Disbursement Date 07/15/16
 Settlement Agent Ferrara Law Firm, PLLC
 File # 16-035 (LAWRENCE)
 Property 3022 Dreamcatcher Circle
 Fort Mill, SC 29715
 Sale Price \$ 850,000

Transaction Information

Borrower Brian D. Lawrence
 Jennifer L. Lawrence
 3022 Dreamcatcher Circle
 Seller Ferrara-Bulst, LLC
 1201 Carolina Place Drive
 Ste. 1

Summaries of Transactions

SELLER'S TRANSACTION

M Due to Seller at Closing		\$ 850,000.00
01	Sale Price of Property	\$ 850,000.00
02	Sale Price of Any Personal Property Included in Sale	
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09	City/Town Taxes	
10	County Taxes	
11	Assessments 07/16/16 to 12/31/16	\$ 290.50
12		
13		
14		
15		
16		
N Due from Seller at Closing		\$ 51,941.24
01	Excess Deposit	
02	Closing Costs Paid at Closing (J)	\$ 51,108.50
03	Existing Loan(s) Assumed or Taken Subject to	
04	Payoff of First Mortgage Loan	
05	Payoff of Second Mortgage Loan	
06		
07		
08	Seller Credit	
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14	City/Town Taxes	
15	See Additional L.13/N.15 Items	\$ 832.74
16	Assessments	
17		
18		
19		
CALCULATION		
Total Due to Seller at Closing (M)		\$ 850,290.90
Total Due from Seller at Closing (N)		- \$ 51,941.24
Cash ☐ From ☒ To Seller		\$ 798,349.66

Contact Information

REAL ESTATE BROKER (B)	
Name	Keller Williams/Stephen Cooley Real Estate
Address	1560 Ebenezer Road Rock Hill, SC 29732
SC License ID	
Contact	Amie Gallagher
Contact SC License ID	
Email	Amie.StephenCooley.com
Phone	(704)499-9099
REAL ESTATE BROKER (S)	
Name	Rinehart Realty
Address	Fort Mill, SC 29708
SC License ID	
Contact	Michael O'Brien
Contact SC License ID	
Email	michael.obrien@rinehartrealty.com
Phone	(803)524-5142
SETTLEMENT AGENT	
Name	Ferrara Law Firm, PLLC
Address	2300 Otranto Road North Charleston, SC 29406
SC License ID	
Contact	Janel K. Ferrara
Contact SC License ID	
Email	janel@ferraralawfirm.net
Phone	(843)569-5511

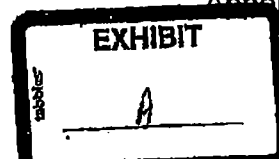
Confirm Receipt

Ferrara-Bulst, LLC

BY:

It's member

Appendix-051



Closing Cost Details

Loan Costs		Seller-Paid	
		At Closing	Before Closing
A. Origination Charges			
01 % of Loan Amount (Points)	See Additional A.01 Items		
02 Processing Fee	to Wells Fargo Bank, NA		
03			
04			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01 Appraisal Fee	to Wells Fargo Bank, NA		
02 Credit Report Fee	to Wells Fargo Bank, NA		
03 Tax Service	to Wells Fargo Bank, NA		
04 Title Closing Escrow			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01 Attorney's Fee	to Ferrara Law Firm, PLLC	\$ 375.00	
02 Courier/Wire fee	to Ferrara Law Firm, PLLC		
03 CPL	to Ferrara Law Firm, PLLC		
04 Title - ALTA Endorsement Form 8.1 (Environment)	to Ferrara Law Firm, PLLC		
05 Title - Lender's Title Insurance	to Ferrara Law Firm, PLLC		
06 Title Binder	to Ferrara Law Firm, PLLC		
07 Title Exam/Review	to Ferrara Law Firm, PLLC		
08 Title Search	to Ferrara Law Firm, PLLC		
09 Wire/Courier Fee (cellar)	to Ferrara Law Firm, PLLC	\$ 75.00	
10			
11			

Appendix-052

Other Costs			
E. Taxes and Other Government Fees			
01 Deed and Mortgage Recording Fee	to York County RMC Office	Deed: Mortgages	
02 Deed Stamps	to York County RMC Office		\$ 3,145.00
03 Mortgage Recording Fee	to York County RMC		
04 Release/Sat Recording Fee	to ROD/RMC		\$ 8.50
F. Prepaids			
01 Homeowner's Insurance Premium	to State Farm	(mo.)	
02 Mortgage Insurance Premium		(mo.)	
03 Prepaid Interest	\$14.25 per day from 04/19/16 to 05/01/16		
04 Property Taxes		(mo.)	
05 Home Owners Insurance-HO6			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance	See Additional G.01 Items		
02 Home Owners Insurance	per month for mo.		
03 Property Taxes	See Additional G.03 Items		
04			
05			
06			
07			
08 Aggregate Adjustment			
H. Other			
01 Commission	to Rinehart Realty		\$ 25,500.00
02 HOA Dues 2016	to TRPOA		\$ 630.00
03 HOA Transfer Fee	to TRPOA		\$ 125.00
04 Home Inspection Fee	to Carolina Home Pro Inspection		
05 Pool and Spa Inspection	to Carolina Pool Services		
06 See Additional H.06 Items	to Keller Williams Realty		\$ 21,250.00
07 Title Insurance Owners Policy	to Ferrara Law Firm, PLLC		
08			
J. TOTAL CLOSING COSTS			\$ 51,108.50

Appendix-053

Closing Disclosure Form Addendum

Borrower(s):

Brian D. Lawrence and Jennifer L. Lawrence
3022 Dreamcatcher Circle
Fort Mill, SC 29715

Seller(s):

Ferrara-Bulst, LLC
1201 Carolina Place Drive
Fort Mill, SC 29708

Lender: Wells Fargo Bank, NA
Settlement Agent: Ferrara Law Firm, PLLC
(843)569-5511
Settlement Date: July 15, 2016
Property Location: 3022 Dreamcatcher Circle
Fort Mill, SC 29715

Additional Disbursements
Payee/Description

Seller-Paid
At Closing Before Closing

Other Costs-Other

Keller Williams/Stephen Cooley Real
Estate Group
Commission

\$ 21,250.00

Line H.06 Total:

\$ 21,250.00

Due from Seller At Closing

County Taxes
01/01/16 to 07/15/16

\$ 832.74

Line N.15 Total:

\$ 832.74

Confirm Receipt

Ferrara-Bulst, LLC

BY: _____
It's member

Appendix-054

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information		Loan Information	
Date Issued	07/15/16	Borrower	Brian D. Lawrence Jennifer L. Lawrence 3022 Dreamcatcher Circle Fort Mill, SC 29715	Loan Term	30 years
Closing Date	07/15/16	Seller	Ferrara-Buist, LLC 1201 Carolina Place Drive Ste. 1 Fort Mill, SC 29708	Purpose	Purchase
Disbursement Date	07/15/16			Product	Fixed Rate
Settlement Agent	Ferrara Law Firm, PLLC			Loan Type	☒ Conventional ☐ FHA
File #	16-035 (LAWRENCE)			☐ VA ☐	
Property	3022 Dreamcatcher Circle Fort Mill, SC 29715	Lender	Wells Fargo Bank, NA	Loan ID #	0494480072-002
Sale Price	\$ 850,000			MIC #	

Loan Terms		Can this amount increase after closing?
Loan Amount	\$ 680,000	NO
Interest Rate	3.5%	YES . See AIR table on page 4 for details
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$ 3,053.51	NO
Does the loan have these features?		
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments		
Payment Calculation	Years 1-30	Years 2-30
Principal & Interest	\$ 3,053.51	\$ 0
Mortgage Insurance	+ 0	+ -
Estimated Escrow <i>Amount can increase over time</i>	+ 0	+ 0
Estimated Total Monthly Payment	\$ 3,053.51	\$ 0
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time See page 4 for details</i>	\$ 633.33 a month	This estimate includes ☒ Property Taxes ☐ Homeowner's Insurance ☐ Other: <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>
		In escrow? YES NO NO

Costs at Closing	
Closing Costs	\$ 4,745.45 Includes \$1,156.50 in Loan Costs + \$3,598.95 in Other Costs - \$10 in Lender Credits. See page 2 for details.
Cash to Close	\$ 165,556.61 Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

Appendix-055

Total number of lines has been exceeded. Please use the Individual 2a and 2b documents.

Appendix-056

CLOSING DISCLOSURE

PAGE 2 OF 5 - LOAN ID # 0494480072-002

Closing Cost Details

Loan Costs		Borrower-Paid		Paid by Others
		At Closing	Before Closing	
A. Origination Charges				
01 % of Loan Amount (Points)	See Additional A.01 Items			
02 Processing Fee	to Wells Fargo Bank, NA			\$ 495.00
03				
04				
05				
06				
07				
08				
B. Services Borrower Did Not Shop For		\$ 647.00		
01 Appraisal Fee	to Wells Fargo Bank, NA	\$ 625.00		\$ 10.00
02 Credit Report Fee	to Wells Fargo Bank, NA	\$ 22.00		
03 Tax Service	to Wells Fargo Bank, NA			\$ 70.00
04 Title-Closing Escrow				
05				
06				
07				
08				
09				
10				
C. Services Borrower Did Shop For		\$ 509.50		
01 Attorney's Fee	to Ferrara Law Firm, PLLC			\$ 375.00
02 Courier/wire fee	to Ferrara Law Firm, PLLC			\$ 75.00
03 CPL	to Ferrara Law Firm, PLLC			\$ 25.00
04 Title - ALTA Endorsement Form 8.1 (Environment)	to Ferrara Law Firm, PLLC			\$ 100.00
05 Title - Lender's Title Insurance	to Ferrara Law Firm, PLLC	\$ 509.50		\$ 1,650.50
06 Title Binder	to Ferrara Law Firm, PLLC			\$ 100.00
07 Title Exam/Review	to Ferrara Law Firm, PLLC			\$ 250.00
08 Title Search	to Ferrara Law Firm, PLLC			\$ 200.00
09 Wire/Courier Fee (seller)	to Ferrara Law Firm, PLLC			
10				
11				
D. TOTAL LOAN COSTS (Borrower-Paid)		\$ 1,156.50		
Loan Costs Subtotals (A + B + C)		\$ 1,156.50		

Appendix-057

Appendix-058

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

(Instructions on reverse side)

PAGE 1 of 2 PAGES

TO (OWNER):
Dr. Alfred and Mary Jenkins
Jenkins Residence

PROJECT:
Jenkins Residence

APPLICATION NO: 6
PERIOD TO: 11/20/15

Distribution to:
OWNER'S REP
CONTRACTOR

FROM (CONTRACTOR):
Ferrara Buist, LLC.

VIA (ARCHITECT):

ARCHITECT'S
PROJECT NO:
CONTRACT DATE: August 22, 2014

Application is made for Payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

CONTRACT FOR:

Custom Residential Home

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS	DESCR
Change Orders approved in previous months by Owner		\$ 144,014.87	\$ (10,000.00)	
TOTAL				
Approved this Month				
Number	Date Approved			
4	9/8/2015	\$ 248.25		
5	10/9/2015	\$ 6,510.01		
TOTALS		\$ 6,758.26	\$ -	
Net change by Change Orders		\$ 140,773.13		

paid see page 2

1. ORIGINAL CONTRACT SUM	741,095.00
2. Net change by Change Orders	\$ 140,773.13
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$ 881,868.13
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$ 822,607.63

6. TOTAL EARNED LESS RETAINAGE	\$ 822,607.63
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$ 643,780.70
8. CURRENT PAYMENT DUE	\$ 178,846.93
9. BALANCE TO FINISH, PLUS RETAINAGE (Line 8 less Line 6)	\$ 59,260.50

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:
Ferrara Buist, LLC.

By: Michael Adam Ferrara Date: 11/11/2015

Corrected 11/13/2015



AIA DOCUMENT G712, APPLICATION AND CERTIFICATE FOR PAYMENT
containing contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use column 1 on Contracts where variable retainage for final items may apply.

A ITEM NO	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D Previous Applications	E WORK COMPLETED This Application Work in Place	F ordered and Stored Materials (not in D or E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G/C)	I BALANCE TO FINISH (C-G)	J Retainage
	lots and land	\$ 118,000.00	\$ 118,000.00	\$ -		\$ 118,000.00	100%	-	\$ -
	concrete basement	\$ 29,000.00	\$ 29,000.00	\$ -		\$ 29,000.00	100%	-	\$ -
	general conditions	\$ 39,610.75	\$ 31,680.00	\$ 7,930.70		\$ 39,610.70	100%	-	\$ -
	9301	\$ 4,800.00	\$ -	\$ 2,800.00		\$ 2,800.00	58%	2,000.00	\$ -
	outside docking and porch	\$ 15,022.50	\$ 8,600.00	\$ 3,900.00		\$ 12,000.00	80%	3,022.50	\$ -
	pool/patio/terrace/landscape	\$ 77,000.00	\$ 30,000.00	\$ 40,000.00		\$ 70,000.00	88%	5,000.00	\$ -
	rough carpentry materials (firron lumber)	\$ 79,000.00	\$ 79,000.00	\$ -		\$ 79,000.00	100%	-	\$ -
	rough carpentry labor	\$ 49,000.00	\$ 49,000.00	\$ -		\$ 49,000.00	100%	-	\$ -
	roofing	\$ 12,500.00	\$ 12,500.00	\$ -		\$ 12,500.00	100%	-	\$ -
	windows and doors	\$ 24,000.00	\$ 24,000.00	\$ -		\$ 24,000.00	100%	-	\$ -
	birds stone siding	\$ 34,000.00	\$ 34,000.00	\$ -		\$ 34,000.00	100%	-	\$ -
	site-work clearing grading lot balance	\$ 12,500.00	\$ 12,500.00	\$ -		\$ 12,500.00	100%	-	\$ -
	concrete drives and walk	\$ 6,500.00	\$ -	\$ 6,500.00		\$ 6,500.00	100%	-	\$ -
	well	\$ 4,200.00	\$ 4,200.00	\$ -		\$ 4,200.00	100%	-	\$ -
	septic	\$ 4,500.00	\$ -	\$ 4,500.00		\$ 4,500.00	100%	-	\$ -
	cabinetry	\$ 90,200.00	\$ 28,065.00	\$ 2,135.00		\$ 30,200.00	100%	-	\$ -
	tile	\$ 12,000.00	\$ 12,000.00	\$ -		\$ 12,000.00	100%	-	\$ -
	carpet	\$ 4,000.00	\$ -	\$ 4,000.00		\$ 4,000.00	100%	-	\$ -
	hardwood	\$ 10,000.00	\$ 8,000.00	\$ 2,000.00		\$ 10,000.00	100%	-	\$ -
	built in and enclousure built in	\$ 4,200.00	\$ 4,200.00	\$ -		\$ 4,200.00	100%	-	\$ -
	interior trim doors and trim labor	\$ 13,500.00	\$ 12,000.00	\$ 1,500.00		\$ 13,500.00	100%	-	\$ -
	interior and exterior paint	\$ 12,850.00	\$ -	\$ 12,850.00		\$ 12,850.00	100%	-	\$ -
	drywall and insulation	\$ 18,500.00	\$ 18,500.00	\$ -		\$ 18,500.00	100%	-	\$ -
	plumbing	\$ 17,850.00	\$ 17,850.00	\$ -		\$ 17,850.00	100%	-	\$ -
	electrical and lighting	\$ 17,500.00	\$ 11,500.00	\$ 6,000.00		\$ 17,500.00	90%	2,000.00	\$ -
	HVAC	\$ 18,817.00	\$ 12,500.00	\$ 8,917.00		\$ 18,817.00	100%	-	\$ -
	low voltage and security	\$ 2,000.00	\$ 1,500.00	\$ 500.00		\$ 2,000.00	100%	-	\$ -
	appliances	\$ 10,000.00	\$ 10,000.00	\$ -		\$ 10,000.00	100%	-	\$ -
	stairs	\$ 4,500.00	\$ 4,500.00	\$ -		\$ 4,500.00	100%	-	\$ -
	garage doors/shower doors/accessories	\$ 5,500.00	\$ 3,000.00	\$ 2,500.00		\$ 5,500.00	100%	-	\$ -
	handrails/gutters/interior trim details	\$ 6,200.00	\$ -	\$ 6,200.00		\$ 6,200.00	100%	-	\$ -
	change order 2	\$ 25,470.50	\$ 23,285.00	\$ 3,285.00		\$ 28,470.00	100%	-	\$ -
	P & Fee	\$ 28,273.80	\$ 15,000.00	\$ 13,273.80		\$ 28,273.80	100%	-	\$ -
	plumbing upgrades	\$ 6,397.17	\$ 3,186.00	\$ 3,202.17		\$ 6,397.17	100%	-	\$ -
	granite	\$ (2.03)	\$ (2.03)	\$ -		\$ (2.03)	100%	-	\$ -
	tile	\$ 2,027.55	\$ 1,013.00	\$ 1,014.55		\$ 2,027.55	100%	-	\$ -
	cabinetry upgrades	\$ 1,597.45	\$ 800.00	\$ 797.45		\$ 1,597.45	100%	-	\$ -
	appliance credit	\$ (10,000.00)	\$ (10,000.00)	\$ -		\$ (10,000.00)	100%	-	\$ -
	lighting	\$ -	\$ -	\$ -		\$ -	0%	-	\$ -
	brokerage	\$ 44,060.00	\$ 6,000.00	\$ 16,238.00		\$ 22,238.00	50%	22,233.00	\$ -
	CO #3 Multiple Items	\$ 3,824.73	\$ 3,824.73	\$ -		\$ 3,824.73	100%	-	\$ -
	Rear yard pool w/tilers per design	\$ 75,000.00	\$ 25,000.00	\$ 25,000.00		\$ 50,000.00	67%	25,000.00	\$ -
	garage doors and carpet with some deductions	\$ 248.25	\$ -	\$ 248.25		\$ 248.25	100%	-	\$ -
	change order 5	\$ 6,510.01	\$ -	\$ 6,510.01		\$ 6,510.01	100%	-	\$ -
		\$ 681,668.15	\$ 643,760.70	\$ 178,848.53	\$ -	\$ 822,609.63	93%	\$ 9,260.50	\$ -

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
)
Plaintiffs,)

C/A No. 2016-CP-46-1001

v.)

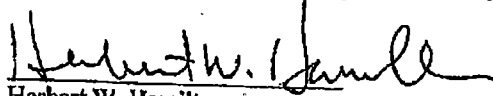
AFFIDAVIT

Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
)
Defendant.)

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

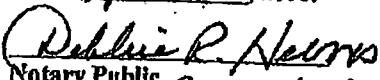
Personally appeared before me Herbert W. Hamilton, who being duly sworn, deposes and says:

1. I am over the age of 18 and competent to make this Affidavit.
2. I am counsel for the Plaintiffs in the captioned case.
3. Attached hereto as Exhibit A are copies of documents provided to me by counsel for the Defendant. I was informed by counsel for the Defendant that the attached documents are the closing statements for the sale of the house located at 3022 Dreamcatcher Circle, Fort Mill, S.C.
4. Attached hereto as Exhibit B is a copy of the last pay request submitted by the Defendant.


Herbert W. Hamilton

State of South Carolina
County of York

Subscribed and sworn to before me this 22
day of September, 2016.


Notary Public Exp 10/23/17

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Alfred and Mary Jenkins,

Plaintiffs,

vs.

Ferrara-Buist Company, LLC, d/b/a
Custom Crafted Homes,

Defendant.

To: Herbert Hamilton, Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-1001

Response to Plaintiffs' Notice of Motion
and Motion for Partial Summary
Judgment

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

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Plaintiffs filed a Motion pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This motion is without merit and should be denied as set forth for the following reasons:

Summary judgment is only appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. See. S.C.R.C.P 56(c). Moreover, summary judgment should only be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* For summary judgment purposes, a court must view the facts in the light most favorable to the nonmoving party. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Because summary judgment is such a drastic remedy, a court should cautiously invoke it so it will not improperly deprive a party of a trial of the disputed factual issues. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

When evaluating a summary judgment motion, "the evidence and all reasonable inferences must be viewed in a light most favorable to the non-moving party." *Fleming v. Rose*, Appendix-061

350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Moreover, the Supreme Court has held in the *Hancock* case that the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 803 (2009).

"The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Fuller v. E. Fire & Cas. Inc. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). "The purpose of an award for damages for breach of contract is to put the [non-breaching party] in as good a position as he would have been in if the contract had been performed." Minter v. GOCT, Inc., 322 S.C. 525, 528 473 S.E.2d 67, 70 (Ct. App. 1996).

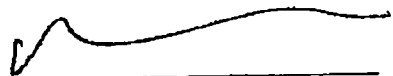
Plaintiffs assert in paragraph 10 of the Notice of Motion and Motion for Summary Judgment that Defendant has been paid in full and that funds held in trust should be released to the Plaintiffs. As detailed in the Affidavit of Michael Adam Ferrara, the Defendant asserts that it suffered damages of at least \$304,956.30. The Defendant has not been paid in full for all damages pursuant to the contract at issue, attached as Exhibit A to the Affidavit of Michael Adam Ferrara.

Therefore, there are still material issues of fact to be heard by a jury and the total sum held in trust of \$663,395.37 should not be distributed, as it is still in dispute. Furthermore, there are other causes of action and issues of material fact, including but not limited to breach of contract, alleged in the Plaintiffs' Complaint and Defendant's Counterclaim that must be heard by a jury before the funds in trust can be distributed. Moreover, Plaintiffs' Notice of Motion and Motion for Partial Summary Judgment does not specify or make clear which cause(s) of action Plaintiffs are seeking summary judgment.

Appendix-062

Based upon the aforementioned facts, pleadings, affidavits and applicable statutory and common law, Defendant, Ferrara Buist, LLC respectfully requests this court deny the summary judgment motion as there are disputes of material facts and allow the case to proceed to a jury trial.

FERRARA LAW FIRM, PLLC



PAUL B. FERRARA, III
Attorney for Defendant
2300 Otranto Road
North Charleston, SC 29406
(843) 569-5511 / (843) 569-5411
SC Bar No. 70511

November 14, 2016

Appendix-063

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Alfred and Mary Jenkins,

Plaintiffs,

vs.

Ferrara-Buist Company, LLC, d/b/a
Custom Crafted Homes,

Defendant.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-1001

Affidavit of Michael Adam Ferrara

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

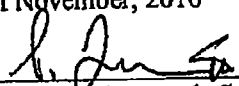
PERSONALLY appeared before me the undersigned who, being duly sworn, under oath
says:

1. I am Michael Adam Ferrara, and I am one of the owners of Ferrara-Buist, LLC.
2. Ferrara-Buist, LLC is a limited liability company under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.
3. The Plaintiffs and Defendant entered into an agreement on August 22, 2014, for the construction of a new home. The contract is attached hereto as Exhibit "A."
4. The Defendant fully performed all obligations under the contract.
5. Defendant sent Plaintiffs an Application and Certificate for Payment in November 2015, attached as Exhibit B to Plaintiffs' Notice of Motion and Motion for Partial Summary Judgment.
6. The original contract sum was \$741,095.00. Change Orders agreed to by Plaintiffs increased the sum due under the contract to \$881,868.13.
7. Defendant has received payments from Plaintiffs totaling \$643,760.70.
8. Defendant incurred incidental and consequential damages for property taxes (\$832.74), interest on the lot closing (\$6,078.10), HOA lot assessment fee (\$630.00), HOA transfer fee (\$125.00), interest on non-payment of balance due (\$5,952.71), commission fee to Rinehart Realty (\$25,500.00), commissions to Keller Williams (\$21,250.00) and additional drainage installation fees (\$1,800.00), for a total amount of \$62,168.55.

Appendix-064

9. The Closing Disclosure, attached hereto as Exhibit B, is the correct and accurate Closing Disclosure regarding the sale of the subject property, and not Exhibit A of Plaintiff's Notice of Motion and Partial Motion for Summary Judgment. This Closing Disclosure evidences some of the damages in paragraph 8 above.
10. The damages in paragraph 8 above would not have been incurred by Ferrara -Buist, LLC if the Plaintiffs would have performed their obligations under the contract at issue and closed on the subject property last year.
11. As a result of this litigation, Defendant has incurred \$4,680.32 in attorney's fees and costs.
12. Therefore, Plaintiffs owe a balance of \$300,275.98, plus attorney's fees and costs of \$4,680.32, for a total of \$304,956.30, less proceeds of \$140,954.29.
13. Ferrara-Buist, LLC is continuing to accrue attorney's fees and costs as a result of Plaintiffs' continued breach of contract.


Michael Adam Ferrara

SWORN to before me this 14th
day of November, 2016

(L.S.)
Notary Public for South Carolina
My Commission Expires: 12/26/2024

Appendix-065

Exhibit A

Appendix-066



CONSTRUCTION CONTRACT

BETWEEN CONTRACTOR _____ & Alfred & Mary Jenkins _____

THIS AGREEMENT is made and entered into this 22 day of August by and between Contractor SCGC License #G116160&NCGC 70698, a South Carolina limited liability company (Contractor) Alfred and Mary Jenkins whose signature appears below (Home Owner) in consideration of the sum of \$ 741,095 (the "Construction Cost"), the Design Drawings to be revised and noted as the "working drawings", (consisting of house, patio, garage, and landscape) and the mutual promises and covenants contained herein, and for other good and valuable consideration. Buyer agrees to place a 10% deposit for the new build of the home. The owner will seek and provide the builder with a letter of credit to secure the funding and purchase of the home and home-site above. Address Lot 18 Trinity Ridge 3022 Dreamcatcher circle Fort Mill SC 29715

1) The Home Owner and Contractor acknowledge receipt of this contract and agree to be bound by all the terms and conditions of the aforesaid, including Appendix I, and Appendix II, and by their signatures of this agreement agree to be legally bound.

2) Contractor Obligations.

a) The Contractor represents and warrants to the Home Owner:

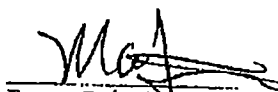
i) It is a licensed builder in the business of constructing homes and is in good standing with the State of South Carolina and all licensing bodies, and holds all current licenses and approvals required to construct homes in York County, SC;

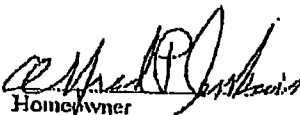
ii) that it has in force a General Liability policy (limits of not less than \$1M per occurrence, \$2,000,000 in the aggregate) and Worker's Compensation Insurance covering all of its employees and contractors;

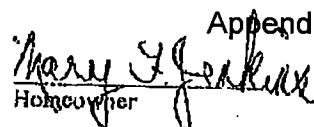
iii) That it shall construct the New Home in a careful, diligent and workmanlike manner, in conformance with all applicable building codes.

iv) That all materials used in the construction of the New Home shall be new or not re-used.

v) that it shall comply with all manufacturer's specifications and provide accurate copies to Home Owner of all manufacturer's instructions and warranties; and


Ferrara Buist, LLC
Custom Crafted Homes


Homeowner

Appendix-067

Homeowner

FERRARA | BUIST COMPANIES

- b) The Contractor shall construct and finish the New House in accordance with the floor plan & scope, this Contract and the attached specifications including all interior finishes, interior trim, door and closet hardware, all flooring, and paint, exterior coverings (collectively, the "Work"). The Plans are incorporated in this Agreement and made a part of this Agreement as Appendix 1 and will be signed and dated by the Home Owner and Contractor. The specifications are described in Appendix 2 and are incorporated in this Agreement along with the floor plans and structural designs. The Work shall include receipt of a Certificate of Occupancy.
- c) The Contractor shall ensure that all subcontractors who perform work on or services related to the New House shall maintain Workers' Compensation and General Liability Insurance coverage as required by law and with limits and terms customary for construction of similar homes in similar neighborhoods.
- 3) Home Owner obligations:
- a) The Home Owner will secure funding and will close on the above listed property in full no later than _____
- 4) Payment.
- a) Deposit. Upon the receipt of all required approvals from the York County and SCDHEC as well as AMS neighborhood Architectural Control Committee (ACC) the builder will start construction immediately.
- ~~b) Construction Draws. The Contractor will be financing the construction of the home listed above. If the homeowner does not close on the above listed property and defaults from his/her obligations, the builder will reserve the right to retain its 20% deposit and any additional deposits on change orders. This deposit will be retained to cover any realtor and construction related fees that will be incurred by the builder should the buyer decide not to close on the home. If the buyer decides to pull the closing off beyond 12/30/13, the builder reserves the right to charge the buyer 1.5% per month or 18% annual interest. The builder reserves the right to market and sell the home to another party should the buyer decide not to close by 12/30/13.~~
- 5) Termination of Agreement.
- ~~a) Termination by Contractor. Contractor may terminate this Agreement in the event Home Owner fails to make any payment due under this Agreement within ten business days following notice from Contractor that such payment was due.~~

W. Jenkins
Ferrara Buist, LLC
Custom Crafted Homes

ALFRED F. JENKINS
Homeowner

MARY F. JENKINS
Homeowner

Appendix-068

FERRARA | BUIST

COMPANIES

- 6) Change Orders. No change in the plans and specifications, the Construction Cost or any other provision of this contract shall be binding on the Contractor or the Home Owner unless agreed to in writing by both parties. Any change order is permitted provided there is time to make the change. A change order form will be administered by Contractor, reviewed and approved by the Home Owner with a 100% payment for that change. Any change order or dollars spent above the agreed upon sales price that are necessary expenses in order to receive the certificate of occupancy must be paid by the owner. Those expenses will only be the cost of the work necessary to attain the Certificate of Occupancy.
- 7) Prevailing Party. In the event of any arbitration, any litigation or dispute of any kind, relating to the Work, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses, including mechanic's lien fees and costs if necessary. Arbitration is the first course of action to take when resolving conflicts.
- 8) Warranties
- a) Contractor Warranties
- i) Structural: Contractor shall warrant the structure of the New House for a period of ten (10) years following the date of certificate of occupancy. Contractor acknowledges that it has been provided with unfettered access to the property and that Home Owner is relying upon Contractor's knowledge and expertise to ensure proper evaluation of the soil. Contractor will arrange for a soil test (including borings) to be performed by a licensed professional engineer at the designated footing area. The parties agree that the soils testing may increase the cost of the construction if additional steel and concrete are required per the written recommendation of such licensed engineer.
- ii) Defects: Contractor warrants that the Work, including all HVAC, plumbing and electrical systems (including lighting) shall be free of all defects, latent and patent for a period of 12 months following the Completion Date. Defects include any moisture intrusion from any area caused by a defect in workmanship or product defect leading to the moisture intrusion.
- iii) Interior Finishes: Contractor warrants all interior finishes for one year after the Move In date.
- iv) Cabinets: Contractor warrants all cabinets for a period of 5 years following the Completion Date. This warranty includes the hinges, box construction, panel construction and finish of the cabinet. Interior trim MITRE details will sometimes crack during seasonal changes in exterior weather conditions. If a crack in the interior trim is more than 1/4", Contractor will correct this by applying epoxy filler to the MITRE joint and will sand and paint only the affected area. Interior accessories sometimes need seasonal or annual adjustment such as doors, door knobs, strike

Miz
Ferrara Buist, LLC
Custom Crafted Homes

ALFRED P. JENKINS
Homeowner

MARY F. JENKINS
Homeowner

Appendix-069

FERRARA | BUIST



COMPANIES

plates, and door hardware. These adjustments are routine homeowner maintenance and will be the responsibility of the homeowner.

- v) *Exterior Siding and Stone:* Warranty for a period of one year from the Issuance of c/o
- vi) *Roofing:* Contractor will warrant the roof for a period of one year following the Completion Date. Any additional warranty will be pursued by the homeowner with the roofing manufacturer
- vii) *Interior and Exterior Doors:* Contractor warrants all doors for material workmanship and installation for a period of one year from the Completion Date.
- viii) *Drywall:* Home Owner will be entitled to a one-time courtesy drywall touch-up to repair any defective nail pops and seams as a result of normal settling. The sanding and painting after this touchup will be the responsibility of the Home Owner. Flat light colors will be touched up. Satin, eggshell and deep rich colors will not be covered.
- ix) *Plumbing:* In addition to the defect warranty above, Contractor warrants all hard piping for a period of 1 year to be free from defects with the product and the labor. If a leak is found behind a wall at a supply line, Contractor will repair this leak and the wallboard, and or tile for a period of one year following the Completion Date.
- x) *HVAC:* Contractor warrants all heating and air conditioning devices on the interior for a period of one year from the Completion Date. Contractor warrants the compressor, motor, heat exchanger, condenser coil (parts and labor) for a period of 1 year following the Completion Date.


Ferrara Buist, L.L.C.
Custom Crafted Homes

ALFRED P. JENKINS
Homeowner

MARY F. JENKINS
Homeowner



xi) *Sewer and Water:* Contractor will repair any sewer connection issues for one year from the Date of Completion. Contractor will also repair any defect from materials and workmanship associated with these connections for one year from the Date of Completion. Contractor will help enforce all warranties associated with the well and septic for the first 12 months after Issuance of the Certificate of occupancy. Any upgraded water and sewer cost above the allowance will be a direct cost to the buyer. Water \$4200, Sewer/Septic \$5,500. Any additional well depth beyond 200 feet will be billed at \$10 per foot to the owner.

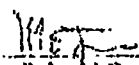
xii) *Execution of the warranty:* Home Owner agrees to contact Contractor and Contractor will respond within 48 hours via phone or e-mail. Contractor will provide warranty service within 10 business days unless there is an emergency. Emergencies will be responded to within 24 hours. Home Owner must allow Contractor access to the home to complete all warranty requests between the hours of 8am and 5pm Monday thru Friday.

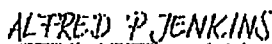
b) *Manufacturer Warranties.* Contractor shall ensure that all manufacturers' warranties are transferred to Home Owner in full force and effect upon the Date of Completion. Homeowner is required to fill out all necessary warranty information so that the Issuing company will have a record of the transfer

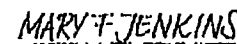
9) Allowances

Allowances are for items that have not been selected or designed yet. All allowances are furnished and installed for the price shown below. The dollars included for the allowances are for an assumed style, fit, or finish. Final selections may raise or lower the final price for these items. Any decrease or increase in price will be passed directly to the Home Owner without mark-up. The description of these allowances is included in Appendix II. This Contract includes the following allowances:

SEE PRICING	
SHEET FOR NEW	
HOME	\$ _____
Tile	\$ _____
Hardwood Floors	\$ _____
Lighting	\$ _____
Granite	\$ _____
Landscaping	\$ _____
Carpet	\$ _____
Plumbing Fixtures	\$ _____
Appliances	\$ _____


 Ferrara Buist, LLC
 Custom Crafted Homes

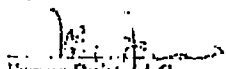

 Alfred P. Jenkins
 Homeowner

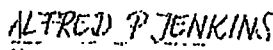

 Mary F. Jenkins
 Homeowner



10) Miscellaneous.

- a) *Notices.* None at this time.
- b) *Time of the Essence.* Time is of the essence in this Agreement.
- c) *Conditions Precedent.* The aforementioned conditions precedent above are required by the Homeowner prior to commencement of the performance of this contract.
- d) Application and delivery of all job permits is included.
- e) The final construction certificate of occupancy will be delivered to the Home Owner at the end of the project.
- f) All new work will be warranted as set forth above.
- g) Standard working hours of Monday to Saturday, 7:30 to 5:00 PM only are included.
- h) This is a lump sum contract.
- i) Job closeout will consist of receipt of a Certificate of Occupancy, final approval by the lender and a final walk-thru with the Home Owner to generate a final agreed upon punch list, this punch list will be completed within 7 business days after the final walk thru.
- j) If Contractor is waiting on any back ordered materials during the end of the project the Home Owner agrees to allow Contractor a maximum of 30 days to complete the installation of these items prior to occupying the home.
- k) 5 zones of irrigation are included and will be placed according to the sod and plant material locations.
- l) Utility connection charges to be paid by client upon completion of the home.
- m) Landscaping is shown on the design drawings and is included as an allowance per the Contractor's approval. An enhanced designed landscape plan will be included as a part of the work. Any additional landscaping above the allotted \$10,000 will be written as a change order to the client.
- n) Surveying is limited to the work required to perform the construction shown on the design drawings. Topographical surveys, boundary surveys, and legal surveys required by the building department or owner shall be provided by others.


Ferrara Buist, LLC
Custom Crafted Homes


ALFRED P. JENKINS
Homeowner

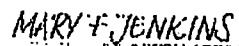

MARY F. JENKINS
Homeowner

Exhibit B

Appendix-073

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing information		Transaction Information		Loan information	
Date Issued	07/16/2018	Borrower	Brian D Lawrence Jennifer L Lawrence 16804 CIRCLEGREEN DR CHARLOTTE, NC 28273-6886	Loan Term	30 years
Closing Date	07/16/2018			Purpose	Purchase
Disbursement Date	07/16/2018			Product	Fixed Rate
Settlement Agent	Ferrara Law Firm, PLLC	Seller	Ferrara Buil LLC 1201 Carolina Pl Fort Mill, SC 29708	Loan Type	☒ Conventional ☐ FHA ☐ VA ☐
File #	18035			Loan ID#	XXXXXX0072-008
Property	3022 Dream Catcher CIR FORT MILL, SC 29716	Lender	Wells Fargo Bank, N.A.	MIC #	
Sale Price	\$850,000.00				

Loan Terms		Can this amount increase after closing?
Loan Amount	\$680,000	NO
Interest Rate	3.5%	NO
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$3,053.51	NO
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments			
Payment Calculation		Years 1-30	
Principal & Interest		\$3,053.51	
Mortgage Insurance		+	0
Estimated Escrow <i>Amount can increase over time</i>		+	0
Estimated Total Monthly Payment		\$3,053.51	
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time</i> <i>See page 4 for details</i>	\$633.33 a month	This estimate includes ☒ Property Taxes ☒ Homeowner's Insurance ☒ Other: Homeowners Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>	In escrow? NO NO NO

Costs at Closing		
Closing Costs	\$4,745.45	Includes \$1,158.50 in Loan Costs + \$3,586.95 in Other Costs - \$10.00 in Lender Credits. See page 2 for details.
Cash to Close	\$165,556.61	Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

Closing Cost Details

Loan Costs		Borrower-Paid		Seller-Paid		Paid by
		At Closing	Before Closing	At Closing	Before Closing	Others
A. Origination Charges						
01	% of Loan Amount (Points)					
02	Processing to Wells Fargo Bank, N.A.					(L)\$486.00
03						
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For						
		\$847.00				
01	Appraisal to CoreLogic Valuation Solutions		\$828.00			(L)\$10.00
02	Credit Report to CoreLogic Credit, LLO		\$22.00			
03	Tax Service to Wells Fargo Real Estate Tax Svcs, LLO					(L)\$70.00
04						
05						
06						
07						
08						
09						
C. Services Borrower Did Shop For						
		\$808.60				
01	Title-All Endorsements to Ferrara Law Firm					(L)\$100.00
02	Title-Attorney Fee to Ferrara Law Firm					(L)\$378.00
03	Title-Clear Protect Letter to Ferrara Law Firm					(L)\$25.00
04	Title-Coupler to Ferrara Law Firm					(L)\$78.00
05	Title-Exam/Title Opinion to Ferrara Law Firm					(L)\$280.00
06	Title-Insurance Binder to Ferrara Law Firm					(L)\$100.00
07	Title-Lender's Policy to Ferrara Law Firm	\$808.60				(L)\$1,800.00
08	Title-Title Search to Ferrara Law Firm					(L)\$200.00
D. TOTAL LOAN COSTS (Borrower-Paid)		\$1,888.60				
Loan Costs Subtotal (A + B + C)		\$808.60	\$847.00			

Other Costs						
E. Taxes and Other Government Fees						
01	Recording Fees	Deed: \$14.00	Mortgage: \$36.00			(L)\$49.00
02	NTY Tax Stamp Deed	to York		\$936.00		
03	State Tax Stamp Deed	to South Carolina		\$2,210.00		
F. Prepaids						
			\$2,073.67			
01	Homeowner's Insurance Premium (12 mo.) to State Farm		\$985.00			
02	Mortgage Insurance Premium (mo.)					
03	Prepaid Interest (\$68.31 per day from 07/16/18 to 07/31/18)		\$1,108.67			
04	Property Taxes (mo.)					
05						
G. Initial Escrow Payment at Closing						
01	Homeowner's Insurance	per month	for mo.			
02	Mortgage Insurance	per month	for mo.			
03	Property Taxes	per month	for mo.			
04						
05						
06						
07						
08						
H. Aggregate Adjustment						
I. Other						
			\$1,628.38			
01	Inspection - Home	to CAROLINA HOME PRO INSPECT	\$1,050.00			
02	Pool and Spa Inspection	to Carolina Pool Services	\$978.38			
03	Title-Owner Pol	to Ferrara Law Firm	\$100.00			
04						
05						
06						
07						
08						
J. TOTAL OTHER COSTS (Borrower-Paid)		\$3,688.88				
Other Costs Subtotal (E + F + G + H)		\$3,688.88				
K. TOTAL CLOSING COSTS (Borrower-Paid)						
Closing Costs Subtotal (D + J)		\$4,108.48	\$847.00	\$9,146.00		
Lender Credit (includes \$10.00 credit for increase in Closing Costs above legal limit)		-\$10.00				

Appendix 5

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$6,088.00	\$4,746.45	YES • See Total Loan Costs (D) and Total Other Costs (I) • Increase exceeds legal limits by \$10.00. • See Lender Credits on page 2 for credit of excess amount.
Closing Costs Paid Before Closing	\$0	-\$847.00	YES • You paid these Closing Costs before closing
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	NO
Down Payment/Funds from Borrower	\$170,000.00	\$170,000.00	NO
Deposit	-\$9,000.00	-\$9,000.00	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	-\$3,145.00	\$0	YES • See Seller Credits in Section L
Adjustments and Other Credits	\$0	-\$541.84	YES • See details in Sections K and L
Cash to Close	\$164,841.00	\$165,558.61	

Summary of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
K. Due from Borrower at Closing	\$884,389.35	M. Due to Seller at Closing	
01 Sale Price of Property	\$880,000.00	01 Sale Price of Property	
02 Sale Price of Any Personal Property Included in Sale		02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	\$4,088.45	03	
04		04	
Adjustments		05	
05		06	
06		07	
Adjustments for Items Paid by Seller in Advance		08	
03 City/Town Taxes to		09 Adjustments for Items Paid by Seller in Advance	
05 County Taxes to		03 City/Town Taxes	
10 Assessments 07/16/16 to 12/31/16	\$280.00	10 County Taxes	
11		11 Assessments	
12		12	
13		13	
14		14	
15		15	
L. Paid Already by or on Behalf of Borrower at Closing	\$886,632.74	N. Due from Seller at Closing	
01 Deposit	\$6,000.00	01 Excess Deposit	
02 Loan Amount	\$880,000.00	02 Closing Costs Paid at Closing (J)	
03 Existing Loan(s) Assumed or Taken Subject to		03 Existing Loan(s) Assumed or Taken Subject to	
04		04 Payoff of First Mortgage Loan	
05 Seller Credit		05 Payoff of Second Mortgage Loan	
06 Other Credits		06	
07		07	
Adjustments		08 Seller Credit	
08		09	
09		10	
10		11	
11		12	
Adjustments for Items Unpaid by Seller		13	
12 City/Town Taxes to		14 Adjustments for Items Unpaid by Seller	
13 County Taxes 01/01/16 to 07/15/16	\$632.74	12 City/Town Taxes	
14 Assessments to		13 County Taxes	
15		14 Assessments	
16		15	
17		16	
18		17	
CALCULATION		CALCULATION	
Total Due from Borrower at Closing (K)	\$884,389.35	Total Due to Seller at Closing (M)	
Total Paid Already by or on Behalf of Borrower at Closing (L)	\$886,632.74	Total Due from Seller at Closing (N)	
Cash to Close ☒ From ☐ To Borrower	\$165,558.61	Cash ☐ From ☐ To Seller	

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Additional Information About This Loan

Loan Disclosures

Assumption

If you sell or transfer this property to another person, your lender

- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
- ☒ will not allow assumption of this loan on the original terms.

Demand Feature

Your loan

- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- ☒ does not have a demand feature.

Late Payment

If your payment is more than 15 days late, a charge of 5% of the overdue payment of principal and interest will be assessed.

Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☒ do not have a negative amortization feature.

Partial Payments

Your lender

- ☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- ☒ does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

Security Interest

You are granting a security interest in
3022 Dream Catcher CIR, FORT MILL, SC 29715

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account

For now, your loan

- ☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs:
Initial Escrow Payment		You may have other property costs. A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

- ☒ will not have an escrow account because ☒ you declined it ☐ your lender does not require or offer one. You must directly pay your property costs, such as taxes and homeowners' insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1	\$3,112.12	Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

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Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$1,101,524.80
Finance Charge. The dollar amount the loan will cost you.	\$420,366.30
Amount Financed. The loan amount available after paying your upfront finance charge.	\$678,891.43
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	3.500%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	61.819%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Other Disclosures

Appraisal

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details

See your note and security instrument for information about:

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- ☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- ☐ state law does not protect you from liability for the unpaid balance.

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions

If you borrow more than the property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

Name	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
	Wells Fargo Bank, N.A.		Keller Williams Realty	Rinehart Realty	Ferrara Law Firm, PLLC
Address	2701 Wells Fargo Way Minneapolis, MN 55467-8000		1560 Ebenezer Road Rock Hill, SC 29732	1339 Ebenezer Rd Rock Hill, SC 29732	2300 Orlanto Rd, Charleston, SC 29408
NMLS ID	398801				
SC License ID			13839	9931	70511
Contact	RAYMOND C PATTERSON		Stephen Cooley	Michael O'Brien	Paul B Ferrara
Contact NMLS ID	182020				
Contact SC License ID			6801	64191	70511
Email	ray.c.patterson@wellsfargo.com		amle@stephencolley.com	michael.obrien@rinehartrealty.com	paul@ferreralawfirm.net
Phone	704-987-7629		704-661-8834	803-648-8787	843-569-6311

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Brian Lawrence
CLOSING DISCLOSURE
Wells Fargo Financial Services

Date

2018071416,9,2,3608-J20180120Y

Jennifer L. Lawrence

Appendix-078

Date

1920560216212

PAGE 5 OF 5

• LOAN ID # XXXXXX0072-0007
Borrower Only - 02/16

Closing Disclosure

Closing Information

Date Issued 07/15/16
 Closing Date 07/15/16
 Disbursement Date 07/15/16
 Settlement Agent Ferrara Law Firm, PLLC
 File # 16-035 (LAWRENCE)
 Property 3022 Dreamcatcher Circle
 Fort Mill, SC 29715
 Sale Price \$ 850,000

Transaction Information

Borrower Brian D. Lawrence
 Jennifer L. Lawrence
 3022 Dreamcatcher Circle
 Seller Ferrara-Bulst, LLC
 1201 Carolina Place Drive
 Ste. 1

Summaries of Transactions

SELLER'S TRANSACTION

01	Sale Price of Property	\$ 850,000.00
02	Sale Price of Any Personal Property Included in Sale	
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09	City/Town Taxes	
10	County Taxes	
11	Assessments 07/16/16 to 12/31/16	\$ 290.90
12		
13		
14		
15		
16		
Adjustments for Items Unpaid by Seller		
01	Excess Deposit	
02	Closing Costs Paid at Closing (3)	\$ 45,108.50
03	Existing Loan(s) Assumed or Taken Subject to	
04	Payoff of First Mortgage Loan	
05	Payoff of Second Mortgage Loan	
06		
07		
08	Seller Credit	
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14	City/Town Taxes	
15	See Additional L.13/N.15 Items	\$ 832.74
16	Assessments	
17		
18		
19		
TOTAL DUE TO SELLER		
	Total Due to Seller at Closing (M)	\$ 850,290.90
	Total Due from Seller at Closing (N)	\$ 45,941.24
	Cash ☐ From ☒ To Seller	\$ 804,349.66

Contact Information

REAL ESTATE BROKER	
Name	Keller Williams/Stephen Cooley Real Estate
Address	1560 Ebenezer Road Rock Hill, SC 29732
SC License ID	
Contact	Amie Gallagher
Contact SC License ID	
Email	Amie.StephenCooley.com
Phone	(704)499-9099
REAL ESTATE BROKER	
Name	Rinehart Realty
Address	Fort Mill, SC 29708
SC License ID	
Contact	Michael O'Brien
Contact SC License ID	
Email	michael.obrien@rinehartrealty.com
Phone	(803)524-5142
SETTLEMENT AGENT	
Name	Ferrara Law Firm, PLLC
Address	2300 Otranto Road North Charleston, SC 29406
SC License ID	
Contact	Janel K. Ferrara
Contact SC License ID	
Email	janel@ferreralawfirm.net
Phone	(843)569-5511

Confirm Receipt

Ferrara-Bulst, LLC

BY: *Ma*
It's member

Appendix-079

Closing Cost Details

Loan Costs		Seller-Paid	
		At Closing	Before Closing
A. Origination Charges			
01 % of Loan Amount (Points)	See Additional A.01 Items		
02 Processing Fee	to Wells Fargo Bank, NA		
03			
04			
05			
06			
07			
08			
B. Services Borrower Did Not Shop For			
01 Appraisal Fee			
02 Credit Report Fee	to Wells Fargo Bank, NA		
03 Tax Service	to Wells Fargo Bank, NA		
04 Title-Closing Escrow			
05			
06			
07			
08			
09			
10			
C. Services Borrower Did Shop For			
01 Attorney's Fee	to Ferrara Law Firm, PLLC	\$ 375.00	
02 Courier/wire fee	to Ferrara Law Firm, PLLC		
03 CPL	to Ferrara Law Firm, PLLC		
04 Title - ALTA Endorsement Form 8.1 (Environment)	to Ferrara Law Firm, PLLC		
05 Title - Lender's Title Insurance	to Ferrara Law Firm, PLLC		
06 Title Binder	to Ferrara Law Firm, PLLC		
07 Title Exam/Review	to Ferrara Law Firm, PLLC		
08 Title Search	to Ferrara Law Firm, PLLC		
09 Wire/Courier Fee (seller)	to Ferrara Law Firm, PLLC	\$ 75.00	
10			
11			

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Other Costs**E. Taxes and Other Government Fees**

01 Deed and Mortgage Recording Fee	to York County RMC Office	Deed:	Mortgage:		
02 Deed Stamps	to York County RMC Office			\$ 3,145.00	
03 Mortgage Recording Fee	to York County RMC				
04 Release/Sat Recording Fee	to ROD/RMC			\$ 8.50	

F. Prepaids

01 Homeowner's Insurance Premium	to State Farm	(mo.)			
02 Mortgage Insurance Premium		(mo.)			
03 Prepaid Interest	\$14.25 per day from 04/19/16 to 05/01/16				
04 Property Taxes		(mo.)			
05 Home Owners Insurance-HO6					

G. Initial Escrow Payment at Closing

01 Homeowner's Insurance	See Additional G.01 Items				
02 Home Owners Insurance	per month for	mo.			
03 Property Taxes	See Additional G.03 Items				
04					
05					
06					
07					
08 Aggregate Adjustment					

H. Other

01 Commission	to Rhinehart Realty			\$ 19,500.00	
02 HOA Dues 2016	to TRPOA			\$ 630.00	
03 HOA Transfer Fee	to TRPOA			\$ 125.00	
04 Home Inspection Fee	to Carolina Home Pro Inspection				
05 Pool and Spa Inspection	to Carolina Pool Services				
06 See Additional H.06 Items	to Keller Williams Realty			\$ 21,250.00	
07 Title Insurance Owners Policy	to Ferrara Law Firm, PLLC				
08					

J. TOTAL CLOSING COSTS**\$ 45,108.50**

Appendix-081

Closing Disclosure Form Addendum

Borrower(s):

Brian D. Lawrence and Jennifer L. Lawrence
3022 Dreamcatcher Circle
Fort Mill, SC 29715

Seller(s):

Ferrara-Bulst, LLC
1201 Carolina Place Drive
Fort Mill, SC 29708

Lender: Wells Fargo Bank, NA
Settlement Agent: Ferrara Law Firm, PLLC
(843)569-5511
Settlement Date: July 15, 2016
Property Location: 3022 Dreamcatcher Circle
Fort Mill, SC 29715

Additional Disbursements
Payee/Description**Seller-Paid**
At Closing Before Closing**Other Costs-Other**

Keller Williams/Stephen Cooley Real
Estate Group
Commission

\$ 21,250.00

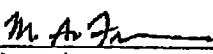
Line H.06 Total:**\$ 21,250.00****Due from Seller At Closing**

County Taxes
01/01/16 to 07/15/16

\$ 832.74

Line N.15 Total:**\$ 832.74****Confirm Receipt**

Ferrara-Bulst, LLC

BY: 

it's member

Appendix-082

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Alfred and Mary Jenkins,

Plaintiffs,

vs.

Ferrara-Buist Company, LLC, d/b/a
Custom Crafted Homes,

Defendant.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-1001

Notice of Motion & Motion for
Reconsideration

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2016 DEC -8 PM 12:16

FILED-RECEIVED

TO: Judge S. Jackson Kimball

PLEASE TAKE NOTICE that on the Tenth (10th) day following service hereof, or as soon thereafter as they may be heard, the Defendant, Ferrara-Buist, LLC, by and through its undersigned attorney, will move before the presiding judge of the Court of Common Pleas of York County for an Order pursuant to Rule 59 of the South Carolina Rules of Civil Procedure granting the Defendants' Motion to Reconsider the order entered by this Honorable Court on November 28, 2016, in the above captioned case.

PLEASE BE PRESENT TO DEFEND IF SO MINDED!

FERRARA LAW FIRM, PLLC


Paul B. Ferrara, III
Attorney for Defendant Ferrara-Buist, LLC
2300 Otranto Road
North Charleston, SC 29406
S.C. Bar No.: 70511
(843) 569-5511 / (843) 569-5411 fax

December 1, 2016

Appendix-083

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Alfred and Mary Jenkins,)
)
Plaintiffs,)
vs.)
)
Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-46-1001

Memorandum in Support of
Defendant's Motion for Reconsideration

FILED - RECEIVED
2016 DEC - 8 PM 12:16
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Defendant, Ferrara Buist, LLC, by and through undersigned counsel, submits the following in support of its Motion for Reconsideration under Rule 59 on the South Carolina Rules of Civil Procedure:

I. Procedural History

Plaintiffs filed this action April 1, 2016, for an equitable lien, restitution, and breach of contract. Defendant filed its Answer and Counterclaim on April 28, 2016, asserting breach of contract, slander of title, and cloud on title, and moving for injunctive relief. The motion for injunctive relief sought to remove a lis pendens filed on the subject property to allow the sale of the property to proceed forward without delay or a lien on title.

This Honorable Court entered an order on July 25, 2016, ordering the proceeds of the sale be deposited with the Clerk of Court pending further agreement of the parties or order of the court. Plaintiffs filed a Motion for Partial Summary Judgment on September 29, 2016, to which Defendant filed a response with an Affidavit of Michael Adam Ferrara.

On November 28, 2016, the Court entered an order releasing Ferrara Buist, LLC's proceeds from the sale of the subject property at the Clerk of Court, to the Plaintiffs, which is the subject of this motion.

Appendix-084

II. Factual Background

Plaintiffs' and Defendant entered into a contract dated August 22, 2014, for the contract of a new home. The original contract sum was \$741,095.00, and change orders signed by the Plaintiffs increased the sum due under the contract to \$881,868.13. Defendant received payments from Plaintiffs totaling \$643,760.70. However, the Plaintiffs breached the contract and refused to move forward under the agreed upon terms. As a result, Defendant suffered damages, as detailed in the Affidavit of Michael Adam Ferrara on file with this Honorable Court.

III. Argument

A. Rule 67

Rule 67 of the South Carolina Rules of Civil Procedure states in full:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution authorized to receive public funds, and shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.

Pursuant to Rule 67, the parties agreed to, and your honor ordered, that the proceeds of \$663,395.37 from the sale of the property from Ferrara-Buist, LLC to a third-party be held by the clerk of court. Defendant agreed to deposit the proceeds in its possession to the clerk of court.

However, Defendant did not and would not have agreed to release such proceeds to the Plaintiffs. Defendant intended for the money to be held in trust until the resolution of the case, but did not intend for the money to be released to Plaintiffs because Defendant has suffered damages as a result of Plaintiffs' breach, and therefore Defendant argues that Plaintiffs are not entitled to the full amount of funds deposited with the court. This material fact is clearly established by the Affidavit of Michael Adam Ferrara of Ferrara-Buist, LLC. Thus, Ferrara-

Appendix-085

Buist, LLC respectfully requests the Court to hold that there are material questions of fact; specifically, that whether Plaintiffs or Defendant breached the contract at issue and the damages resulting from said breach.

However, if the money should be released from the clerk of court, Defendant asserts that the money should have been released back to the originating party, Ferrara-Buist, LLC. In order to release the funds to any party besides the originating party, would be to make findings of fact and legal conclusions with regard to breach of contract and damages in this case. Furthermore, by ordering money be paid to Plaintiffs and release of the funds on deposit, the judge has granted summary judgment and ruled on this case. This issues of breach and damages are questions of material fact for trial and should not have been determined at this juncture.

B. Sufficient Notice

"Procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008).

Plaintiffs filed a Partial Motion for Summary Judgment and a hearing was set on said motion. Defendant filed a response to Plaintiffs' motion as well as an Affidavit of Michael Adam Ferrara. In said response, Defendant stated "[m]oreover, Plaintiffs' Notice of Motion and Motion for Partial Summary Judgment does not specify or make clear which cause(s) of action Plaintiffs are seeking summary judgment." Despite the ambiguity, Defendant prepared for the hearing on summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, arguing that no such motion should be granted on the basis that issues of material fact existed to be tried by a jury.

Defendant essentially disguised its motion to release the proceeds held by the court as a motion for summary judgment, and the court moved forward on said grounds, despite Defendant's lack of notice. As a result, the judge's order violates Defendant's due process rights.

IV. Conclusion

Defendant respectfully requests that this Honorable Court reconsider its order entered November 28, 2016. Defendant asserts that the proceeds should either be released back to the originating party, Ferrara-Buist, LLC, or re-deposited with the clerk of court pending a trial on the merits.

FERRARA LAW FIRM, PLLC



Paul B. Ferrara, III
Attorney for Defendant
2300 Otranto Road
North Charleston, SC 29406
S.C. Bar No.: 70511
(843) 569-5511 / (843) 569-5411 fax

December 1, 2016

Appendix-087

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
2016-CP-46-01001

ALFRED JENKINS AND MARY)
JENKINS)

vs.)

TRANSCRIPT OF RECORD

FERRARA BUIST COMPANY,)
LLC, D/B/A CUSTOM CRAFTED)
HOMES)

FEBRUARY 16, 2017
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE S. JACKSON KIMBALL

APPEARANCES:

HERBERT W. HAMILTON, ESQUIRE
CHESTER, SOUTH CAROLINA

ATTORNEY FOR THE PLAINTIFF

PAUL B. FERRARA, III, ESQUIRE
NORTH CHARLESTON, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

Appendix-088

I-N-D-E-X

WITNESSES:

(NO TESTIMONY TAKEN)

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
NO EXHIBITS			

Appendix-090

1 THE COURT - All right, this is case number 2016-
2 1001, Alfred and Mary Jenkins against Ferrara Buist
3 Company, LLC. Present on behalf of plaintiff is Mr. Herb
4 Hamilton, and present on behalf of the defendant is Mr.
5 Paul Ferrara. This is the defendant's motion to alter or
6 amend my prior Order. So Mr. Ferrara?

7 MR. FERRARA - Yes, Your Honor. May it please the
8 Court. I appreciate Your Honor allowing me to address
9 this, and I don't want to waste the Court's time; I
10 understand the Court's Order ruling before, but just for
11 the record, Your Honor, I -- I wanted to just bring up the
12 procedural portion of this -- this motion that Your Honor
13 ruled upon and issued an Order on, and that Mr. Hamilton,
14 as you recall, Your Honor, filed a motion for partial
15 summary judgment in this case, ---

16 THE COURT - Yes.

17 MR. FERRARA - --- and I was prepared for that,
18 Your Honor, and, you know, filed and served a counter-
19 affidavit, which I think Your Honor even admitted created a
20 question of fact, but then Your Honor went on to rule in
21 this particular case to return the money that was held by
22 the clerk, and with all due respect, Your Honor, I just --
23 I felt as though -- I was surprised by the motion and the
24 Court's Order. I understand that Your Honor, you know, has
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1 the inherent authority to make rulings on matters that are
2 before you, but I wasn't aware at the last hearing that
3 really, essentially, what I needed to be prepared for was
4 not a summary judgment argument, Your Honor, but really an
5 equitable argument and address Your Honor about whether my
6 client should be -- should be entitled to return of the
7 proceeds that were held by the clerk at that time or not,
8 and that it really was not a summary judgment motion. And
9 so ---

10 THE COURT - But the subject matter of what was
11 heard was always what -- was always their claim that the
12 money being held by the clerk should be paid out to them.
13 That was always the same subject matter.

14 MR. FERRARA - That was the same subject ---

15 THE COURT - I'm just the one who quibbled over
16 what is it called, what should we call this motion, I
17 guess, if you want to say it that way. Go ahead.

18 MR. FERRARA - And I could be wrong, Your Honor,
19 but I -- as I understand it and think about it
20 procedurally, you're -- the posture of the case is that
21 Your Honor had already signed a Consent Order by the
22 parties that the proceeds that were undisputed were to be
23 held by the clerk ---

24 THE COURT - That's right.

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1 MR. FERRARA - --- pending the outcome of the
2 case, and what Your Honor did was when you issued your
3 ruling in your Order, you determined the plaintiff's
4 outcome and that the money that was being held by the
5 clerk, the plaintiff now has and the plaintiff has no claim
6 --- the plaintiff's claims are no more. The plaintiff has
7 no claim now as a result of Your Honor's Order, and what
8 I'm asking your Court, respectfully, to do is to change
9 that, because I -- I believe, Your Honor, that the rules
10 would allow Your Honor either to tell the parties that you
11 do not want the clerk to hold the money and return the
12 money to where it originated or allow the clerk to hold the
13 money in trust until the matter is determined, and those
14 are the only two options. I think for Your Honor to rule
15 that the money goes to a party who did not deposit the
16 money with the Court was overstepping your bounds at that
17 point.

18 THE COURT - All the parties agreed to deposit the
19 money to the Court.

20 MR. FERRARA - And that was by agreement, but the
21 parties did not agree to return the money to some other
22 location than where it originated.

23 THE COURT - I agree with that.

24 MR. FERRARA - And that's -- that's where Your
25 Honor effectively -- as I understand that if Your Honor

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1 makes a ruling that effectively ends in a summary judgment
2 for plaintiff or defendant, then that is granting that,
3 where, you know, granting a motion for summary judgment,
4 basically, ending the plaintiff's case in this case. And
5 so the plaintiff has no claim and now the defendant has a
6 claim for a breach of contract.

7 THE COURT - Yeah, and I -- that's acknowledged in
8 the Order. I'm not sure the plaintiffs don't have a claim.
9 I didn't -- I didn't refresh my memory about the -- what's
10 left in their complaint, so I just don't recall that right
11 now, but, clearly, it eliminated any claim the plaintiffs
12 had to the money that was by consent deposited with the
13 clerk of court. And the -- that was always the basis of
14 the plaintiff's motion, that the money -- called a motion
15 for partial summary judgment, that the money was to be
16 returned -- should -- should be paid out by the clerk to
17 them and then, you know, there was, obviously, as we know,
18 there was a lot of argument about why, and that's where I
19 ruled.

20

21 MR. FERRARA - It - and, Your Honor, just um --
22 and I understand the Court's ruling. What I was saying was
23 that, in effect, Your Honor, if you have a case where
24 plaintiff is suing the defendant for money in general and
25 that -- and the money is identified through whatever

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1 vehicle, that money is deposited with the Court and then
2 the Court rules that the money that the plaintiff is suing
3 the defendant for be returned to plaintiff when it did not
4 originate by deposit from the Court from the plaintiff,
5 then effectively the Court has issued judgment in favor of
6 the plaintiff on those claims.

7 THE COURT - I granted -- if you want to say it
8 that way, I granted the plaintiff's motion for partial
9 summary judgment that -- that they had an undeniable claim
10 to the money as a matter of law. I further ruled that --
11 that to -- to hold the money or to -- there was no basis
12 upon which to pay the money to the defendant, because the
13 defendant will have then been paid the same money twice.

14 MR. FERRARA - Okay. Well, and I -- if that's the
15 Court's ruling, that's the Court's ruling, but I -- I just
16 am asking Your Honor to -- you know, this motion is to
17 reconsider because there's an affidavit disputing that
18 point, that the money -- that the plaintiffs asked Your
19 Honor to return to them, that you did Order, there's a
20 dispute about that as established in the affidavits that
21 are filed with the Court. There's a dispute about the
22 money ---

23 THE COURT - All right, well, let me hear Mr.
24 Hamilton.

25 MR. FERRARA - Okay.

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1 MR. HAMILTON - Well, Your Honor, I'm -- there is
2 -- there is not a dispute in my view about the fact that
3 the plaintiffs paid the contractor through the course of
4 this construction project -- forgive me not knowing the
5 exact numbers -- but six hundred some thousand dollars ---

6 THE COURT - Six forty-one, I think, was the
7 number, something like that.

8 MR. HAMILTON - And that fact, I think, is
9 undisputed, and that's the point of the motion here. The
10 contractor, if allowed to have retained the money from the
11 sale of the house after he had already paid six hundred and
12 sixty -- been paid six hundred and sixty thousand dollars,
13 they terminated the contract, had a breach of -- had a
14 dispute, terminated the contract, he turns around and sells
15 the house for -- in my -- in our view ---

16 THE COURT - A profit.

17 MR. HAMILTON - --- arguably more than he would've
18 gotten had he continued the contract with my clients, but
19 at any rate, fully the amount that they had paid, so he has
20 that money in his possession twice. And if we are put on -
21 - once that closing started to occur, if we had not filed
22 the lis pendens that we filed, he would have it in his
23 hands and we have to go chase a judgment for that money.

24 THE COURT - Because he owned the property the
25 whole time.

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1 MR. HAMILTON - Because he owns the property, he -
2 - there is no lien on behalf of the -- our clients, the
3 complaint in the case asserts an equitable lien for payment
4 in there (sic), so as we stand here today and as we stood
5 here when we argued this motion before, the contractor has
6 in his possession, even after the money is deposited in the
7 Court, still has that first six hundred and sixty thousand
8 dollars that Dr. and Mrs. Jenkins paid him. The six
9 hundred and thousand dollars (sic) that was put into the
10 clerk of court's office came from the closing the second
11 time the house sold. If -- I think -- I think the one
12 sentence that struck me, I think, strongly about this is
13 that the plaintiff does not have the right to a security
14 for his claim. If he's saying here today that he has no
15 more damages, then the case is over, because he's been paid
16 all the money he was entitled to under our contract, but
17 that's not true. I don't ---

18 THE COURT - I think - I think he's saying that
19 your client has no more damages.

20 MR. HAMILTON - No, I ---

21 THE COURT - But the -- I think that does not
22 comport with the allega - other allegations in the
23 complaint.

1 MR. HAMILTON - Exactly. There are consequential
2 damages, I think, alleged by both parties that go beyond
3 the contract balance itself.

4 THE COURT - Right.

5 MR. HAMILTON - But the contract balance itself is
6 undisputed. They've gotten their money back; Ferrara Buist
7 has gotten the money they were paid for the house. They're
8 all back where they started, and we're arguing now about
9 who caused what because of the breach of contract, but -
10 but I don't think there is a dispute about the fact that he
11 was paid, that the reasons the funds were placed with the
12 clerk of court is it had already been paid once for that
13 work. And to hold the Jenkins' money for that purpose
14 twice was completely inequitable in this circumstance.

15 THE COURT - Okay. I'm going to deny -- deny the
16 motion. I did not -- I did not recite in the Order that I
17 was granting the plaintiff's motion for summary judgment,
18 partial summary judgment, but that's effectively what I did
19 based on the balance -- of the -- of the rights and
20 equities of the parties. I can issue a Form 4 that says I
21 granted partial summary judgment but everybody knew what
22 the arguments were about. Everybody knew what was at
23 issue. The motion dealt, if I remember right, entirely and
24 only with these funds on deposit with the clerk, and I
25 stand by my findings and rulings in the Order with respect

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1 to that money, and I, specifically, say that the Court is
2 not ruling upon or granting judgment of any kind as to the
3 claims of either party and makes no determination as to any
4 entitlement to damages due either party. I just -- I say
5 that -- if the money had been paid to the defendant from
6 the proceeds of that sale, it would've been paid twice to
7 that extent, because the loan balance was -- I don't have
8 the numbers in front of me, but the loan balance was six
9 hundred and ---

10 MR. HAMILTON - There was no loan. The Jenkins --
11 -

12 THE COURT - I mean the disbursements is what I'm
13 trying to say. The disbursements were six hundred and
14 forty-three thousand seven hundred and sixty dollars and
15 eighty cents, so I -- I deny your motion, and I'll do an
16 Order.

17 MR. FERRARA - Thank you, Your Honor.

18 MR. HAMILTON - Thank you, Judge.

19 (END OF TRANSCRIPT)
20
21
22
23
24
25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 12 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Alfred Jenkins and Mary Jenkins vs. Ferrara Buist Company, LLC, d/b/a Custom Crafted Homes, as taken by me in The Court of Common Pleas for the Sixteenth Judicial Circuit on February 16, 2017, and provided by me this the 15th day of April, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK CASE NO. 2016-CP-46-1001

ALFRED JENKINS and
MARY JENKINS,

Plaintiffs,

-vs-

FERRARA BUIST COMPANY, LLC,
d/b/a CUSTOM CRAFTED HOMES,

Defendant.

TRANSCRIPT OF RECORD

November 17, 2016
York, South Carolina

B E F O R E:

Honorable S. Jackson Kimball, III, Judge.

A P P E A R A N C E S:

Mr. Herbert W. Hamilton
Attorney at Law
Attorney for the Plaintiffs
Fort Mill, South Carolina

Mr. Paul B. Ferrara, III
Attorney at Law
Attorney for the Defendants
North Charleston, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: All right. This is case number 2016-1001,
2 Alfred and Mary Jenkins against Ferrara Buist Construction,
3 LLC -- Company, rather, LLC. Plaintiffs' motion for partial
4 summary judgment. Mr. Hamilton?

5 MR. HAMILTON: May it please the Court. We're here
6 today on what I have called a partial summary judgment,
7 because what I'm asking the Court to deal with is a deposit,
8 a trust deposit, that is in the amount of \$663,395.37 and
9 based on the history of this that I'm going to relay to you
10 that is reflected by the affidavits that counsel and I both
11 have filed, we contend that there is no question of fact
12 about what should be done with that trust deposit.

13 THE COURT: This is related to the sale of the house;
14 right?

15 MR. HAMILTON: Yes, sir. Yes, sir.

16 THE COURT: Okay.

17 MR. HAMILTON: I represent Dr. and Mrs. Jenkins, who
18 signed a contract with Ferrara Buist Construction Company to
19 build a house for them and then sell them the house once it
20 was completed. The title to the property was in Ferrara
21 Buist and stays -- stayed in Ferrara Buist until the house
22 was recently sold.

23 Your Honor, the -- with the addition of change orders,
24 the final contract price for the house for Dr. and Mrs.
25 Jenkins was \$881,868.13. There was no mortgage. Dr. and

1 Mrs. Jenkins paid cash out of other funds they had arranged.
2 So that from the time the contract was signed until the
3 issues began to arise between the two parties and the
4 contract was terminated, they paid every pay request that
5 was made on time until the last one that came without equity
6 when the parties ended up in a dispute.

7 They have paid -- the Jenkins have paid \$643,760.70.
8 The difference between that number and the amount of the
9 deposit was that they provided some fixtures that they
10 bought and installed in the house, some fixtures and ceiling
11 fans, which would have stayed with the house, so those were
12 improvements to the home that they paid for. In addition,
13 --

14 THE COURT: Outside of what they paid?

15 MR. HAMILTON: Outside of the amount they paid for the
16 construction itself.

17 THE COURT: Right.

18 MR. HAMILTON: Although the contract did not have in it
19 any provision for interim partial payments, in fact, that's
20 the way it was handled. They -- the contractor submitted to
21 the Jenkins partial pay requests and the Jenkins paid those
22 on a regular basis without any retention or question up
23 until the end. So when the contract was -- when the dispute
24 arose, --

25 THE COURT: Can I stop you a second?

1 MR. HAMILTON: Yes, sir.

2 THE COURT: I read through this yesterday and we've
3 already got -- we already have money on deposit with the
4 Clerk of Court?

5 MR. HAMILTON: Yes, sir.

6 THE COURT: Right?

7 MR. HAMILTON: Right.

8 THE COURT: 663,395.37?

9 MR. HAMILTON: Right. Correct.

10 MR. FERRARA: Yes, Sir.

11 THE COURT: And that was for the release of the -- and
12 the Jenkins paid that in -- no.

13 MR. HAMILTON: No.

14 THE COURT: Yeah. Right. Buist paid that in--

15 MR. HAMILTON: Right.

16 THE COURT: ---to release the lis pendens. Is that
17 right, Mr. Ferrara?

18 MR. HAMILTON: That's correct.

19 MR. FERRARA: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. HAMILTON: We -- when I got involved in the case, I
22 found out that they had paid over \$600,000--

23 THE COURT: Right.

24 MR. HAMILTON: ---into this matter. The title was
25 still in the contractor's name. They didn't have a mortgage

1 or a lien. They had no security and were not protected at
2 all. I filed an action at that time to assert an equitable
3 lien on the property by reason of the payments for this
4 construction and filed a lis pendens.

5 THE COURT: Right.

6 MR. HAMILTON: As a result of that, both parties took
7 the position that the other one breached, as is---

8 THE COURT: Right.

9 MR. HAMILTON: ---fairly common in these things, and
10 both agreed that the contract was terminated and Ferrara
11 Buist -- am I saying that right?

12 MR. FERRARA: Buist.

13 MR. HAMILTON: Buist. I should know that.

14 THE COURT: There was a Forrest Buist and it was
15 spelled the same way, once upon a time.

16 MR. HAMILTON: Well, I know -- I know Forrest Buist and
17 --

18 THE COURT: And he was a contractor.

19 MR. FERRARA: He's from Florida, so --

20 MR. HAMILTON: I know a Buist from -- never mind --
21 through my church, but -- where was I?

22 THE COURT: I'm sorry.

23 MR. HAMILTON: When -- oh. Yeah. The contractor,
24 after the contract was terminated, put the house on the
25 market.

1 THE COURT: Right.

2 MR. HAMILTON: To their credit and to everybody's
3 advantage, the house sold-

4 THE COURT: Right, for 850,000.

5 MR. HAMILTON: ---for \$850,000. So at that point in
6 time where we stood was the eight hundred -- the Jenkins had
7 a contract for \$881,868.13. They had paid \$643,760.70. As
8 of November of 2015, which was the last date of the last pay
9 application, the contractor indicated that there was
10 \$59,260.50 left -- of work left to be done on the original
11 contract. So --

12 THE COURT: All right. Where is that in all this?

13 MR. HAMILTON: That's -- where is that number?

14 THE COURT: Yeah; uh-huh.

15 MR. HAMILTON: It should be -- it's on the pay request
16 that both parties have submitted, the application for the
17 final pay request, which I think was number 12 or something
18 like that. I can put my hand on it if -- it might take me a
19 minute.

20 THE COURT: Is it one of the exhibits attached to your
21 Answer and Counterclaim, Mr. Ferrara?

22 MR. FERRARA: I'm not sure if it is, Your Honor, but I
23 think it's attached to Herb's motion.

24 MR. HAMILTON: I think it's attached to my affidavit.

25 MR. FERRARA: It's attached to his affidavit that was

1 filed with the Court.

2 THE COURT: Bear with me.

3 MR. HAMILTON: It's not in what you just filed?

4 MR. FERRARA: Oh, no.

5 MR. HAMILTON: I'll find it.

6 THE COURT: Herb, I don't believe I have the affidavit.

7 MR. FERRARA: Your Honor, if I may, --

8 THE COURT: I do think it's -- there's a sheet attached
9 to your Answer and Counterclaim that looks like what we
10 might be talking about.

11 (WHEREUPON, discussion was conducted off the record
12 between Mr. Hamilton and Mr. Ferrara.)

13 THE COURT: \$59,260.50?

14 MR. FERRARA: Yes. Your Honor, may I approach?

15 THE COURT: Yes, sir.

16 MR. FERRARA: Okay. I think this is what Mr. Hamilton
17 was referring to.

18 MR. HAMILTON: That's correct.

19 THE COURT: Oh, that? Okay. I'm sorry.

20 MR. FERRARA: There's a --

21 THE COURT: That's the pay request. It's not --

22 MR. HAMILTON: That's the last pay request that they
23 submitted and what they chose is the state of -- and there's
24 no disagreement about that -- the state of progress at that
25 point in time was they had completed almost --

1 THE COURT: And that was submitted by the contractor?

2 MR. HAMILTON: Contractor. Yes, sir.

3 THE COURT: Right.

4 MR. HAMILTON: So there was \$59,000, plus or minus,
5 left to be done to complete the contract, the original
6 contract for \$881,000, at that point in time.

7 THE COURT: Well, let me stop you a second. I'm
8 looking at the pay request. Numbers confuse me. They had
9 -- at the time of this pay request, they had paid
10 643,760.70?

11 MR. FERRARA: Correct.

12 THE COURT: At that time there was -- the contractor
13 claimed an amount due of 178,846.93?

14 MR. FERRARA: Correct.

15 THE COURT: Was that -- that wasn't paid, though;
16 right?

17 MR. HAMILTON: That wasn't paid by--

18 THE COURT: But you're saying--

19 MR. HAMILTON: ---my clients.

20 THE COURT: ---it was covered by the --

21 MR. HAMILTON: Yes, sir.

22 THE COURT: -- the sale?

23 MR. HAMILTON: The sale -- the sale of the house, after
24 the termination of the Jenkins' contract, was for \$850,000.

25 THE COURT: Right.

1 MR. HAMILTON: The difference -- obviously, the
2 difference in that and the original contract price was
3 \$30,000, thereabouts.

4 THE COURT: Uh-huh. So the --

5 MR. HAMILTON: In order to allow the sale to go through
6 and release the lis pendens, we agreed to place the entire
7 amount of payments that had been made by my clients into
8 trust with the Clerk of Court and we did that and the sale
9 went through.

10 THE COURT: Uh-huh.

11 MR. HAMILTON: So it is my position now that the amount
12 of the funds -- where we stood at that time was that the
13 Jenkins had paid everything they were asked up until the
14 point of termination, until that last pay request was filed.

15 THE COURT: Right.

16 MR. HAMILTON: They -- that covered all the pay
17 requests up until the termination of the contract when there
18 was only \$59,000 left to be done, work that was required.

19 THE COURT: But a hundred and -- roughly 179,000 due?

20 MR. HAMILTON: Correct.

21 THE COURT: Claimed at least?

22 MR. HAMILTON: Correct. But that -- those funds, then,
23 were collected when they sold the house, so that the
24 contractor both -- had both the full payment of the amount,
25 of the \$850,000, plus the amount that the Jenkins had paid

1 him for the same work. So it's our position that -- the
2 affidavit that counsel filed in opposition to this motion
3 asserts several consequential damage claims and it was just
4 filed recently, but --

5 THE COURT: I don't have either one of your affidavits.
6 Did you email me one? Did you email me one?

7 MR. HAMILTON: We filed these some time ago, ours.

8 THE COURT: I'm sorry. It doesn't matter. Go ahead.
9 I'm following you.

10 MR. HAMILTON: There are consequential damages that
11 both sides have claimed and that's why I called--

12 THE COURT: Right.

13 MR. HAMILTON: ---this partial summary judgment. It's
14 our position that he has been paid for everything he was
15 entitled to be paid, had the contract been originally
16 performed, except for the difference between the two
17 contracts, but --

18 THE COURT: What do you mean by the difference between
19 the two contracts?

20 MR. HAMILTON: \$881,000 versus 850.

21 THE COURT: The 881 and 850. Okay. All right.

22 MR. HAMILTON: But to get to the 881 - \$881,000, they
23 would have to do the additional \$59,000 worth of work that
24 was still outstanding that was left to be done.

25 THE COURT: Well, hold on. Let me stop you there. I'm

1 sorry. It looks like that the work done, based on the pay
2 requests, was roughly \$822,000.

3 MR. HAMILTON: Correct.

4 THE COURT: So from 850, that'd leave 28.

5 MR. HAMILTON: That's right.

6 THE COURT: But that pre- -- that only assumes that --
7 that's good only if this \$59,000 worth of work was not done,
8 'cause that would be added on onto the 822, roughly. Mr.
9 Ferrara, is that right?

10 MR. FERRARA: I --

11 MR. HAMILTON: You lost me.

12 MR. FERRARA: Your Honor, if I may, and I didn't want
13 to cut off Mr. Hamilton, but the -- this pay request, just
14 to help clarify, was done back in November of 2015.

15 THE COURT: Right.

16 MR. FERRARA: And I agree, generally, with what Mr.
17 Hamilton said, however, after this submittal was requested,
18 the 822,607, there were some change orders, as I understand,
19 from my client and I can present this affidavit, Your Honor,
20 for the Court, if you don't have one in the file, that
21 basically made the contract go up to 881 and that's what
22 Herb was referring to.

23 THE COURT: Yeah. Don't confuse me now right yet. Go
24 ahead and let him finish.

25 MR. HAMILTON: I have -- I've talked myself around in

1 circles trying to deal with this math myself and I've tried
2 to simplify it for myself the best I could and I probably
3 just complicated it for everybody else, but it is my
4 position, based on the assertions that counsel has made in
5 the affidavits that were served is that what they are asking
6 the Court to do is to take the money that our -- that was
7 placed in escrow and the reason it was placed in escrow was
8 because they were -- they had already paid that amount of
9 money in to the contractor and those funds have now been
10 recovered by reason of the sale. So they have asserted in
11 their affidavits that there are consequential damages, just
12 like property taxes and various other things that are
13 independent of the completion of the contract itself,---

14 THE COURT: Uh-huh.

15 MR. HAMILTON: ---which we deny, but even assuming
16 that's true, we're not here asking about judgment on those
17 things. What we are saying is they don't have the right to
18 have that money held in trust to secure their claim going
19 forward. They have been paid in full for everything that --
20 for all the work that Dr. and Mrs. Jenkins paid for as it
21 was done and they don't get to recover those things twice.
22 That's what we contend is happening.

23 THE COURT: So what you want is to receive that money
24 that's been paid in?

25 MR. HAMILTON: Yes, sir, I do and that will not end the

1 case. We both have counterclaims.

2 THE COURT: And then leave the rest of it hanging?

3 MR. HAMILTON: As with any judgment with any case like
4 this that there is.

5 THE COURT: Okay. All right. Go ahead. Is that it?

6 MR. HAMILTON: I'll stop there before I confuse it any
7 further.

8 THE COURT: Okay. All right. Paul?

9 MR. FERRARA: Yes, sir. May it please the Court. With
10 all due respect, Your Honor, summary judgment should be
11 denied on a breach of contract action and that the question
12 of the intent of the parties and who breached first and
13 that's what we're talking about, that plaintiff claims that
14 my client's breached, my client's claimed the plaintiff
15 breached is a question of fact.

16 THE COURT: I don't -- I don't have any dispute with
17 that.

18 MR. FERRARA: And in that regard, Your Honor, summary
19 judgment should be denied.

20 THE COURT: Well, I don't think that's what he's asking
21 for. I think -- I understand---

22 MR. FERRARA: Oh.

23 THE COURT: ---him to be asking for the release of the
24 money that was deposited with the Clerk to his clients.

25 MR. FERRARA: Right, but in order to do that, Your

1 Honor, respectfully, would require you to grant summary
2 judgment on his clients' claim, because from his clients'
3 perspective, he's saying that we -- we're owed the 643. My
4 client is saying you owe us some more money beside -- out of
5 that 643.

6 I agree with Mr. Hamilton that his clients paid the
7 643, but -- but there's -- associated with the breach of
8 contract is the question of fact about how much does the
9 plaintiff owe the defendant. If the plaintiff breached, how
10 much do they owe? That's a question of fact.

11 THE COURT: Correct. Correct.

12 MR. FERRARA: And that's why I, respectfully, think
13 that Your Honor should deny the motion.

14 THE COURT: Well, how much do you claim?

15 MR. FERRARA: That -- Your Honor, if I may just submit
16 the affidavit of Mr. Ferrara.

17 THE COURT: Yeah. I'm sorry.

18 MR. FERRARA: Yes, sir. Yes, sir.

19 THE COURT: I don't know why -- if I've misplaced it, I
20 apologize. I don't know why I don't have it.

21 MR. FERRARA: This is what he sent me (showing a
22 document to Mr. Hamilton).

23 MR. FERRARA: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 MR. FERRARA: Just in a nutshell, if I could boil it

1 down, I think -- and I spoke -- and I'm speaking candidly,
2 Your Honor. I spoke to Mr. Hamilton to try to see if we
3 could come to an agreement on what the amount of money in
4 dispute is and I think to answer your question directly,
5 Your Honor, it's about \$165,000, plus ongoing attorney's
6 fees if my client prevails, but -- and so what I proposed,
7 in order to resolve this, was that Mr. Hamilton and I come
8 up to some number that allows his client to get return of
9 some of those proceeds, even though I think summary judgment
10 should be denied, but just in the interest of justice, to
11 try to move the case along so that his clients can recover
12 some of that money.

13 THE COURT: Well, here -- what I'm thinking is that he
14 may have used -- that the term summary judgment isn't the
15 appropriate thing to apply to all this. You're not --
16 'cause you're telling me everybody's preserving their
17 claims; right?

18 MR. HAMILTON: Correct.

19 THE COURT: You're not getting judgment on -- as to
20 liability?

21 MR. HAMILTON: No, sir. I'm not asking for that. I
22 mean, that's why I called it partial summary judgment and
23 maybe summary judgment was the--

24 THE COURT: I'm not sure it is.

25 MR. HAMILTON: ---inappropriate term. I don't know

1 what else it would be, but it would be an order of the Court
2 releasing those funds, because it's our position that they
3 have, in fact, been paid for those things which those funds
4 represent, for the work represented by that deposit.

5 THE COURT: And the difference between what has been
6 paid and the 850 is roughly \$200,000? You sold the house at
7 850?

8 MR. FERRARA: Yes, sir. Yes, sir. Yes, sir.

9 THE COURT: You claim --

10 MR. FERRARA: My client netted -- I did the closing,
11 Your Honor. My client -- I looked back at it today. My
12 client, I think, netted a hundred and forty -- forty-some --
13 a little over \$140,000 and the remaining money went to the
14 Clerk of Court to be in trust and just, if I may, Your
15 Honor, -- sorry, Herb.

16 MR. HAMILTON: Go ahead.

17 MR. FERRARA: In order to accomplish a sale, you know,
18 I called Mr. Hamilton and I proposed the amount of money
19 that his client was claiming to be deposited in trust,
20 because that would be the damages that I thought they would
21 be happy with, you know, in the event that they prevail,
22 they get the 643. Obviously, my client has damages
23 associated with the same breach of contract and they're less
24 than that and so I took the position that it would be less
25 and just for today's purposes, Your Honor, I'll represent to

1 you that my client would be amenable to -- and I need to
2 double-check the math, but I believe around \$210,000 -- all
3 but \$210,000 my client would be amenable to. The difference
4 between the six -- the money in -- with the Court and two --
5 \$210,000 could be returned to -- because that would give my
6 client -- my client's seeking about \$160,000 of damages
7 associated with the breach, plus, I thought, the \$50,000
8 buffer is more than enough for attorney's fees and there --
9 I agree with Mr. Hamilton, there's not a dispute about
10 anything over and above that, but I do think that,
11 obviously, with the consent, the Court can do it, but I
12 think without consent the issue is effectively granting
13 summary judgment for one party or another in one way, shape
14 or form and I, respectfully, think that that would be
15 inappropriate.

16 THE COURT: I think that -- have a seat.

17 MR. FERRARA: Okay.

18 THE COURT: I think that, if I understand what Mr.
19 Hamilton's asking for, the term summary judgment is not
20 appropriate. It's more to me -- it sounds more to me like a
21 request that in -- and this sounds like Charleston -- in
22 equity. It's no longer appropriate that the 643,000 be held
23 in escrow, because in a typical case, -- in a typical case,
24 you folks would be here and neither of you would have a fund
25 set aside from which to collect and I don't know that it --

1 given the way this developed and given that Mr. -- that the
2 defendant has realized a significant portion of the
3 difference between what they've paid in and what the
4 property was sold for, as being roughly \$200,000, 208,000 --
5 no -- \$207,000, I guess. It doesn't seem to me like it is
6 equitable for -- to sustain a fund from which somebody could
7 collect. I do not think he's entitled to summary judgment.
8 That's not what we're talking about.

9 MR. FERRARA: Yes, sir.

10 THE COURT: We got a fund that, by agreement, was set
11 aside in order that the property could be sold. There isn't
12 any dispute that the plaintiffs paid in this money that's in
13 escrow in order -- and it seems to me that, certainly, if
14 they are -- if that money is released to them, that doesn't
15 impair -- it doesn't impair the defendant's ability to
16 collect a judgment against them and there is -- and the
17 plaintiffs -- I don't remember the rest of your claim. I
18 don't know what else is -- I haven't read the contract.
19 Does the contract provide attorney's fees to the winner?

20 MR. FERRARA: Yes, sir.

21 MR. HAMILTON: Well, and that, of course, is a matter
22 of contention, too, whether they get attorney's fees or we
23 get them, but--

24 THE COURT: That's right. That's right. Sure.

25 MR. HAMILTON: ---our position about the return of this

1 fund of money is based -- I can make the argument -- based
2 on the assumption that they get all their consequential
3 damages. They still have to prove their damages--

4 THE COURT: Sure.

5 MR. HAMILTON: ---and I'm going to -- if you include
6 the \$643,000 that we paid in with the sale proceeds, they've
7 collected over a million dollars worth of money for a
8 \$881,000 contract.

9 THE COURT: Now, that math I don't understand.

10 MR. HAMILTON: \$881,000 plus--

11 MR. FERRARA: The 643?

12 MR. HAMILTON: ---643, which we paid.

13 MR. FERRARA: Your Honor, if I might --

14 THE COURT: Which he doesn't have, though. They hadn't
15 collected it. It's set aside.

16 MR. HAMILTON: No. They -- no. They had --

17 THE COURT: Well, they had it and put it back.

18 MR. HAMILTON: They had it and that's why it was set
19 aside, because they already had it.

20 THE COURT: And coughed it up. Yeah. Okay. Yes, sir?

21 MR. FERRARA: Your Honor, I do have the settlement
22 statement from the closing. It has the net number, which is
23 different.

24 THE COURT: That is attached to -- it is attached.

25 MR. FERRARA: Oh, it is? Okay.

1 THE COURT: Yeah. Well, at least part of it. The
2 front page -- yeah, it is. The whole thing is.

3 MR. FERRARA: Your Honor, as a testament to your age
4 and wisdom, the settlement -- the Real Estate Settlement
5 Procedure Act changed and now the settlement statement's
6 even more confusing than when you were, you know, assisting
7 with transactions, but this Exhibit A, I think, Your Honor,
8 the Seller Transaction--

9 THE COURT: Yeah.

10 MR. FERRARA: ---shows Ferrara Buist gets 798.

11 THE COURT: Seven hundred --

12 MR. FERRARA: Right.

13 THE COURT: Uh-huh. Uh-huh.

14 MR. FERRARA: And so, Your Honor, the affidavit that's
15 filed and we haven't fully conducted discovery and my client
16 has filed an affidavit with the Court claiming \$881,000 of
17 damage or, excuse me, contract damages, plus those
18 additional damages and I haven't done the math, but I just
19 wanted to be clear that Ferrara Buist did not receive the
20 full amount of -- Ferrara Buist still today, this day, has
21 not received all proceeds that would be due and owing under
22 the contract, because the amounts of money that were
23 disbursed, as I represented to you, Your Honor, after
24 closing costs were a hundred -- a little over \$140,000 to
25 Ferrara Buist and so Ferrara Buist, just to be clear,

1 received 140,000 out of this 800.

2 THE COURT: Uh-huh.

3 MR. FERRARA: The Clerk of Court received the
4 remainder.

5 THE COURT: I understand.

6 MR. FERRARA: Okay. And then so Ferrara Buist, if
7 we're adding those numbers, Your Honor, has received 140
8 plus the 643. Is that right? Yeah. That's close.

9 THE COURT: The payouts,---

10 MR. FERRARA: Yes, sir.

11 THE COURT: ---the one I'm looking -- the last one was
12 payout number 6, looks like, each of those, I assume, based
13 on the contract, included an amount of profit. Does the
14 contract say what the payouts include?

15 MR. FERRARA: No, sir.

16 THE COURT: So what are the payouts based on?

17 MR. FERRARA: It shows -- well, I --

18 THE COURT: Would this have had documents attached to
19 it or not?

20 MR. FERRARA: Yes, sir, and I apologize. I wasn't
21 trying to mislead the Court. I was just saying I don't
22 know--

23 THE COURT: You're not.

24 MR. FERRARA: ---that the profit is delineated, but the
25 line items, yes, are delineated in the contract on all those

1 different -- and I have it, Your Honor, it's real hard to
2 read, but all of the different -- in fact, Your Honor, I
3 think this is a page that would be attached that details the
4 881.

5 THE COURT: I know I'm thinking too hard,---

6 MR. FERRARA: It's hard to read.

7 THE COURT: ---but numbers confuse me.

8 MR. FERRARA: Oh, yeah. Very briefly, --

9 THE COURT: It's based on scheduled value?

10 MR. FERRARA: Yes, sir. Just, if I might, very
11 quickly, Your Honor, speak to fairness. If we're -- if Mr.
12 Hamilton's motion is in the interest of equity or fairness
13 or justice, maybe ex parte Dibble, I think that the amount
14 of money, if the Court's so inclined to grant that relief,
15 the calculation should be the 881,868 minus the monies
16 received, because I don't believe, Your Honor, that -- I
17 believe what these two amounts -- the 178 and the 59, Your
18 Honor, I think that would be, like a total of two hundred
19 and --

20 THE COURT: Well, --

21 MR. FERRARA: -- two hundred and some odd thousand that
22 Ferrara Buist was expecting to get through -- and they only
23 received 140 out of the closing and the remaining went to
24 the Clerk.

25 THE COURT: That -- the problem is that the defendant,

1 up to the point of these folks parting ways, up to the point
2 of payout number 6, had presumably recouped everything they
3 had paid to build this house to that point, except for the
4 178,000 that was the pay request.

5 MR. FERRARA: And, additionally, Your Honor, there was
6 ten percent retainage at the end, which is that 59,000 on
7 Exhibit B that is standard in the industry that the
8 contractor --

9 THE COURT: Oh. That says balance to finish, plus
10 retainage.

11 MR. FERRARA: Yes, sir.

12 THE COURT: So that is entirely retainage?

13 MR. FERRARA: Yes, sir. That -- no, that's the amount
14 of money that the Jenkins would owe. So to be clear, Your
15 Honor, in this situation when the Jenkins said we don't want
16 you to finish or we're done, they actually had two hundred
17 and thirty-some odd thousand dollars left under that
18 contract.

19 THE COURT: To pay?

20 MR. FERRARA: Yes, sir.

21 THE COURT: Of which the defendant has, in terms of
22 just the contract, of which the defendant has recouped all
23 but \$31,868?

24 MR. FERRARA: Your Honor, I haven't done the math, but
25 I think that it's a little more than that, because I know

1 that the defendant received, and I can get the exact
2 numbers, Your Honor, around \$140,000.

3 THE COURT: No. That's not what I'm saying.

4 MR. FERRARA: No? Okay. I apologize.

5 THE COURT: What I'm saying is from the -- just based
6 on the construction contract, the --

7 MR. FERRARA: Oh. Yes, sir. Yes, sir. Yes, sir.

8 THE COURT: -- the defendant recouped all but
9 \$31,868.13 of what it claimed it had in the house.

10 MR. FERRARA: It did, Your Honor, but I --

11 THE COURT: Now, I understand -- I understand the real
12 estate commission now and all that kind of stuff as lying
13 out there, but the defendant recouped all but \$31,686.13.

14 Now, if the defendant's entitled to some more -- some
15 consequential damages, that may or may not ultimately be
16 added to that, but they recouped all but roughly \$32,000.

17 MR. FERRARA: Your Honor, respectfully, if my client
18 wanted me to file -- asked me to file a motion to recover
19 the 643, because now the Jenkins -- because it's not fair
20 that the Jenkins hold the money, I don't think that would be
21 fair and in the interest of justice, just like I don't think
22 -- I think, in all due -- with all due respect, it's better
23 that the Clerk hold the money unless we can agree to some
24 amount of money that's not in dispute. Otherwise, any
25 ruling by Your Honor is effective -- I know that it's

1 subject to change, but in the short -- in the short run,
2 Your Honor, it appears to be a judgment.

3 THE COURT: I'm not going to grant a judgment. What
4 I'm going to do is, the contract as recouped, contract --
5 comparing the contracts, all but 31,868.13 of the money the
6 contractor claims, Ferrara Buist -- how did you say it?

7 MR. FERRARA: Buist.

8 MR. HAMILTON: Buist.

9 THE COURT: Buist.

10 MR. FERRARA: Yes, sir.

11 THE COURT: Okay. They recovered all but that. I'm
12 going to order the Clerk of Court to release to the
13 plaintiffs 643,760.70 minus 31,868.13 and that 31,000 can
14 remain in escrow, pending the outcome of the rest of the
15 case. The contractors have been paid.

16 It isn't summary judgment, because I'm not deciding the
17 liability issues that both of you still have, but the
18 contractor has been paid, except for \$31,868.

19 MR. FERRARA: Your Honor, with all due respect, may I
20 respond to that?

21 THE COURT: Well, you can, but that's going to be my
22 order.

23 MR. FERRARA: Sure. I understand, but in order to make
24 that order, Your Honor, you're presupposing that the damage
25 -- that the contract terms that say that if one party

1 breaches or another party breaches, there's damages that
2 flow from that,---

3 THE COURT: Yeah.

4 MR. FERRARA: ---you're presupposing those damages.

5 THE COURT: No.

6 MR. FERRARA: You're leaving those open to be decided?

7 THE COURT: Your client has been paid all but \$32,000.
8 The rest of it is -- while there may be some -- while the
9 claim may be based on contract law, it's got nothing to do
10 with what these people -- your guy's been paid everything
11 he's due except \$32,000, subject to your claims and his
12 claims, their claims. That's my order.

13 MR. FERRARA: Okay. Thank you, Your Honor.

14 THE COURT: So you need to do me an order in Word
15 format and email it with a copy to Mr. Ferrara and we'll go
16 from there.

17 Now, you need this back, Paul?

18 MR. FERRARA: I may, Sir.

19 THE COURT: And, well, let's -- back on. Don't couch
20 it in terms -- I'm not granting anybody summary judgment,
21 but --

22 MR. HAMILTON: Right.

23 THE COURT: Literally, it's based upon the equities of
24 the parties.

25 MR. HAMILTON: I know, Sir.

1 THE COURT: It isn't fair to -- yeah, the equities of
2 the parties. I don't know how to express that. When you
3 send an order, I'll figure it out.

4 MR. HAMILTON: Well, they've had the use of this money
5 since our people paid it and we have not had the use of any
6 of it.

7 THE COURT: Well, I understand, but you do the order
8 and I'll tweak it, as I always do, like I need -- when I
9 think I need to.

10 MR. HAMILTON: Okay. Thank you.

11 THE COURT: Thank you.

12 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)

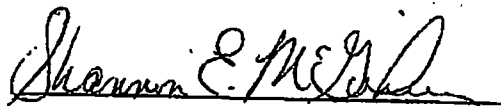
) C E R T I F I C A T E

COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 17th day of November, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 25th day of May, 2017.



Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027



Herbert W. Hamilton
Of Counsel
herb.hamilton@hamiltonmartens.com
Dial: 803-329-7607

December 8, 2016

Via U.S. Mail and Email [paul@ferraralawfirm.net]
Paul Ferrara, III
FERRARA LAW FIRM, PLLC
2300 Otranto Road
North Charleston, South Carolina 29406

RE: Alfred and Mary Jenkins
Our File No.: 11848-001

Dear Paul:

Now that the house has been sold, we need to consider whether it makes sense for either party to continue this litigation. Both parties contend that the contract was breached by the other party. From my review of the file material, including emails and other communication from the contractor, I believe we will be able to show that Dr. and Mrs. Jenkins did everything that was required of them and that the contractor failed to build the home as required by the plans and specifications, building codes and accepted industry practice.

Now that Dr. and Mrs. Jenkins have received reimbursement of the payments to the contractor, they will be able to show consequential damages exceeding \$30,000, not including attorneys' fees. The successful party is entitled to recover attorneys' fees which will surely exceed \$50,000 if the litigation continues.

While Dr. and Mrs. Jenkins are confident in their legal position, they understand the time and effort involved in pursuing their claim. In order to put this behind them and in the spirit of cooperation and compromise, they are prepared to drop their claim against Ferrara Buist if Ferrara Buist will drop any claim they may have against them.

Please let me know as soon as possible if Ferrara Buist is willing to drop their claim. While we are considering this proposal, I would like to request a 30-day extension of time to respond to discovery.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'H. Hamilton', written over a horizontal line.

Herbert W. Hamilton

HWH/dh

Hamilton Martens, LLC

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CERTIFICATION BY COUNSEL

I, the undersigned counsel, does hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted this 6 day of November, 2017.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable S. Jackson Kimball, Master-in-Equity

CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600

Alfred Jenkins and Mary Jenkins, Respondents

v.

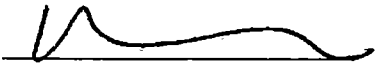
Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, Appellant

PROOF OF SERVICE

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I, the undersigned counsel, hereby certify that I have served the Record on Appeal upon the Respondents, Alfred Jenkins and Mary Jenkins, by depositing a copy of the same in the United States Mail, postage prepaid, on November 6, 2017, addressed to their attorney of record, Brian S. McCoy, 378 E. Main St., Rock Hill, SC 29730.

Respectfully submitted this 6 day of November, 2017.



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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT BY ORDERING THE RELEASE OF FUNDS THAT WERE DEPOSITED WITH THE COURT DESPITE THE EXISTENCE OF MATERIAL QUESTIONS OF FACT?
2. DID THE TRIAL COURT ERR IN GRANTING EQUITABLE RELIEF DESPITE AN ADEQUATE REMEDY AT LAW BEING AVAILABLE?

STATEMENT OF CASE

This case involves a breach of contract associated with a contract for the construction of a home and sale of land with a final contract price, after change orders, of \$881,868.13. The Respondents paid a total of \$643,760.70 to Appellant.

Respondents filed a complaint in the Court of Common Pleas of York County, South Carolina, alleging causes of action under both theories of equity and law for: 1) equitable lien, 2) restitution, and 3) breach of contract. Respondents claimed damages in the amount of \$665,423.23, plus attorney's fees and costs. Respondents also filed a lis pendens and mechanics lien on the subject property. Respondents requested a jury trial. The Clerk of Court transferred the case to the Master-in Equity sitting as Circuit Judge for York County.

Appellant filed an answer and counterclaim for: 1) breach of contract, 2) slander of title, and 3) cloud on title. The answer and counterclaim also included a motion for injunctive relief, seeking the release of the lis pendens to allow Appellant to sell the subject property in order to mitigate damages. Appellant sold the property for \$850,000.00 in order to mitigate its damages and received \$804,349.66 in proceeds after closing costs. Respondent and Appellant agreed, by consent, to resolve the injunctive relief/lis pendens claims by depositing \$663,395.37 of the proceeds, representing the maximum amount in dispute by either party, with the Clerk of Court pending a trial on the above claims. Opposing Counsel, Herbert Hamilton, sent Judge Kimball a letter, attached to the July 25, 2016 order, stating that the parties "agreed that the Lis Pendens would be released so that the property could be sold and that part of the proceeds of the sale which would be sufficient to cover Respondents' claim would be held in trust." See, July 25, 2016 Order. (R. p. 2). Judge Kimball entered the consent order on July 25, 2016, and Appellant

deposited \$663,395.37 of the sale proceeds with the court. See, July 25, 2016 Order. (R. p. 2).

Thereafter, Respondents filed a motion for partial summary judgment entered September 9, 2016. An affidavit of counsel, Herbert Hamilton, Esq., was filed in support of Respondents' motion for partial summary judgment. Appellant filed a response to the motion for partial summary judgment with a counter affidavit that established material questions of fact regarding the above causes. Upon hearing Respondents' motion for partial summary judgment, the master-in-equity ordered the release of funds to Respondents for the full amount of \$663,395.37 that Appellant deposited with the court. See, November 28, 2016 Order. (R. pp. 5-7). Appellant timely filed a motion to reconsider the order granting partial summary judgment and releasing funds, which was denied, and, as a result, this appeal followed.

STANDARD OF REVIEW

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). However, "[a]n appellate court may decide questions of law with no particular deference to the trial court." In re Campbell, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008). If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005). Moreover, summary judgment should not be granted "where further inquiry into the facts of the case is desirable to clarify the application of the law." Middleborough Horizontal Prop. Regime Council of Co-Owners v. Motedison S.P.A., 1320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995)(citing Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991)).

This Honorable Court reviews questions of law de novo. N. Am. Rescue Prods., Inc. Richardson, 396 S.C.124, 720 S.E.2d 53, 58 (S.C. Ct. App. 2011). Furthermore, appellate courts owe trial courts no particular deference when reviewing legal rulings over questions of law. Moriarity v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

ARGUMENT

I. The trial court erred in granting summary judgment by ordering the release of funds that were deposited with the court despite the existence of disputed material questions of fact.

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). Moreover, the Supreme Court has held in the Hancock case that the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 803 (2009).

Here, the trial court stated that it rested on its equitable powers to issue the order to release the funds held by the court. The order effectively granted summary judgment on Respondents' claims under the guise of an order granting equitable relief. All of the Respondents' claims were resolved by the order being appealed and provided Respondents with all the relief sought by their complaint. Although there was confusion about the Order and whether the Court granted summary judgment at all, Judge Kimball, at the February 16, 2017, hearing on Appellant's motion to reconsider, stated, "I granted – if you want to say it that way, I

granted the Respondents' motion for partial summary judgment that – that they had an undeniable claim to the money as a matter of law.” See “Transcript of February 16, 2017 Hearing,” Alfred and Mary Jenkins v. Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, 2016-CP-46-1001, 8:7-10. (R. p. 94, lines 7-10). At the same hearing the trial Judge also states, “I did not recite in the Order that I was granting the Respondents' motion for summary judgment, partial summary judgment, but that’s effectively what I did based on the balance – of the – of the rights and equities of the parties.” Id., at 11:16-20. (R. p. 97, lines 16-20).

However, the trial court was incorrect in granting summary judgment as there were disputed issues of material fact. The supporting affidavit of opposing counsel submitted with his motion for summary judgment alleged, in paragraph 10, that Appellant had been paid in full. See, Respondents' Notice and Motion for Partial Summary Judgment. (R. p. 49). Appellant filed a response, entered on November 21, 2016, as established by filed affidavit of Michael Adam Ferrara, stating that Appellant had not been paid in full and that Appellant suffered damages of at least \$304,956.30. See, Appellant's Response to Respondents' Notice and Motion for Partial Summary Judgment. (R. pp. 60-81). Additionally, there existed additional questions of material fact as to the damages claimed by each party as established by the affidavit of Michael Adam Ferrara. The record further establishes that Appellant's counsel identified that “[s]ummary judgment should be denied on a breach of contract action and that the question of the intent of the parties and who breached first . . . is a question of fact” See “Transcript of November 17, 2016 Hearing,” Alfred and Mary Jenkins v. Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, 2016-CP-46-1001, 13:10-15. (R. p. 112, lines 10-15). The Court agreed and Judge Kimball, in response to the first statement, replied “I don’t – I don’t have any dispute with

that.” Id., at 13:16-17. (R. p. 112, lines 16-17).

Notwithstanding the above, the trial court asserted that it did not grant summary judgment; however, it is impossible to issue an Order on these facts without deciding material questions of fact. By making the ruling that Respondents were entitled to \$663,395.37, the trial court improperly resolved material questions of fact concerning breach and damages. Further, the trial court ruled that Respondents were entitled to the entirety of the funds on deposit with the court, thereby determining that Appellant was not entitled to the money held by the Clerk of Court. These factual determinations are for the jury to decide only after a trial on the merits.

Despite the existence of numerous material factual questions for the jury, as established by the pleadings and supporting affidavit of Michael Adam Ferrara, the trial court improperly granted Respondents’ motion for partial summary judgment. The Appellant has submitted more than a mere scintilla of evidence to withstand the granting of Respondents’ motion for summary judgment and the Order at issue must be reversed.

II. The trial court improperly granted an equitable remedy when a legal remedy at law was available.

Equitable relief is generally only available when a party is without an adequate remedy at law. EllisDon Constr., Inc. v. Clemson Univ., 391 S.C. 552, 555, 707 S.E.2d 399, 401 (2011). In this case, the equitable relief of restitution is unavailable to Respondents as a matter of law as Respondents have an adequate breach of contract remedy at law. See Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co., 272 S.C. 127, 128-29, 249 S.E.2d 744, 745 (1978) (holding that equity will not intervene if appellant has an adequate remedy at law.)

The Respondents’ pleadings and motion for partial summary judgment establish an adequate remedy at law. Respondents’ affidavit in support of summary judgment acknowledges

this case involves the contract as referenced in paragraph 1 of motion for partial summary judgment and its termination as discussed in paragraph 7 of the motion. See, Appellant's Response to Respondents' Notice and Motion for Partial Summary Judgment. (R. pp. 48-49). The terms of the contract at issue are not in dispute and neither are its obligations. There has been no claimed defense to deny the existence of the contract or otherwise claim the contract at issue is invalid. The parties agree there is a valid contract.

The trial court's order also acknowledges Respondents' adequate remedy at law. The Order finally determined the majority of the claims of the Respondents and in doing so acknowledged Respondents' adequate remedy at law. The Judge in the Order stated: "I find and conclude that, as a result of the sale of the house, Appellant has been paid in full the contract price based on the parties' contract, except for \$31,861.13." (footnote omitted). See November 28, 2016 Order. (R. p. 6). The language of the order not only establishes a valid contract between the parties but also evidences a remedy upon which the trial Court made its determination.

All of the above was improper considering that the Respondents' had an adequate breach of contract claim. The Order, if allowed to stand, will deny Appellant its right to litigate the breach of contract legal claim before a jury. Moreover, it is well settled that "A party failing to fulfill the requirements of its legal remedy cannot later come to the courts complaining of hardship, seeking an equitable remedy." Ellis Don Constr., Inc. at 401.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse the circuit court's order dated November 28, 2016.

November 6, 2017



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable S. Jackson Kimball, Master-in-Equity

CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600

Alfred Jenkins and Mary Jenkins, Respondents

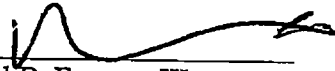
v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, Appellant

CERTIFICATION BY COUNSEL

I, the undersigned counsel, do hereby certify that the Appellant's Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted this 6th day of November, 2017.


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable S. Jackson Kimball, Master-in-Equity

CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600

Alfred Jenkins and Mary Jenkins, Respondents

v.

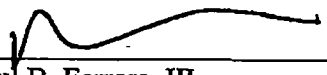
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I, the undersigned counsel, hereby certify that I have served the Appellant's Final Brief upon the Respondents, Alfred Jenkins and Mary Jenkins, by depositing a copy of the same in the United States Mail, postage prepaid, on November 6, 2017, addressed to their attorney of record, Brian S. McCoy, 378 E. Main St., Rock Hill, SC 29730.

Respectfully submitted this 6 day of November, 2017.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2017-CP-46-1001
Appellate Case No.: 2017-000600

Alfred and Mary Jenkins Respondents

v.

Ferrara-Buist Company, LLC, d/b/a Custom Crafted Homes.....Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. SHOULD THE APPEAL BE DISMISSED AS INTERLOCUTORY BECAUSE THE ORDER APPEALED DID NOT ADDRESS THE MERITS OF THE CASE, WHICH WILL BE LITIGATED?**
- II. DID THE TRIAL COURT PROPERLY RULE THAT FB WAS NOT ENTITLED TO HAVE JENKINS' MONEY HELD AS SECURITY FOR A POSSIBLE RECOVERY?**

STATEMENT OF THE CASE

Respondents Alfred Jenkins and Mary Jenkins ("Jenkins" or "Respondents") filed a Lis Pendens on March 21, 2016, and filed their Complaint on April 1, 2016, asserting claims for equitable lien, restitution and breach of contract. Appellant Ferrara Buist Company, LLC ("FB" or "Appellant") answered on April 28, 2016 and asserted counterclaims for breach of contract, slander of title, cloud on title, and injunction. An order was entered on July 25, 2016, consented to by the parties, requiring FB to deposit funds with the Clerk of Court "pending agreement by the Parties or further order of the court." The funds deposited were equal to the payments made by Jenkins to FB over the course of the construction, and the agreement and removal of the lis pendens allowed a sale to a third party to be closed. On September 29, 2016, Jenkins filed a motion seeking the release of the funds held in trust by the clerk. A hearing was held on November 17, 2016.

On November 28, 2016, the Honorable S. Jackson Kimball issued an Order releasing to Jenkins the total amount of the funds held by the clerk. As stated in the Order, all other issues, including the underlying claims and counterclaims, were reserved for trial.

On December 2, 2016, FB filed a motion to reconsider. A hearing was held on February 16, 2017. The motion to reconsider was denied by Order dated February 20, 2017.

On March 8, 2017, FB filed a Notice of Appeal of Judge Kimball's November 28, 2016 Order. On April 3, 2017, Jenkins filed a motion to dismiss the appeal on the ground that Judge Kimball's Order is interlocutory in nature and did not finally decide any issue

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raised by the pleadings. On May 4, 2017, the Court of Appeals denied the motion to dismiss the appeal, but added “[n]othing precludes the parties from raising appealability in their briefs.”

STATEMENT OF FACTS

On August 22, 2015, Jenkins signed a contract with FB whereby FB agreed to build a house on property owned by FB and to sell the lot and completed house to Jenkins. [R. pp.10-14; 23-29] The original contract price was \$741,095.00. [Id.] Jenkins did not secure a construction loan, and intended to pay for the completed house with funds from an unsecured line of credit.

Thereafter, FB began construction of the house. Despite the fact that the contract does not provide for interim partial payments to FB, FB began submitting periodic interim partial payment requests to Jenkins. With the exception of the last (sixth) pay request, every pay request was paid in full. The total amount paid from Jenkins to FB was \$643,760.70. [R. p.11 ¶¶ 10-11]

Throughout the course of construction, Jenkins raised concerns about FB’s compliance with the plans and specifications and the quality of construction. Following submittal of the last pay request, the contract was terminated for failure of FB to correct deficiencies in the construction, and by FB’s repudiation of the contract. [R. pp.11-12 ¶¶11-18] Jenkins demanded return of all funds paid to FB, but FB failed to refund the money paid.

At the time the contract was terminated, the total amended contract price was \$881,868.63 as a result of several changes upon which the parties agreed. When the contract was terminated, Jenkins had paid FB \$643,760.70 and FB held title to the

property. [R. p.11 ¶ 10] There was no mortgage on the property securing payments made by Jenkins.

Following termination of the contract, Jenkins filed the lis pendens and the complaint against FB. After the contract was terminated, FB had put the house for sale on the market. To everyone's benefit, a second contract for the sale of the house to a third party was quickly secured. The second contract price was \$850,000.00 [R. pp.75, 78] In order to allow the second contract to close, Jenkins and FB agreed that Jenkins would lift the Lis Pendens in return for an agreement that the total amount that Jenkins had paid toward the property would be held in trust by the clerk until the parties reached an agreement or upon further order of the Court. The parties' agreement was entered as a consent Order dated July 25, 2016 [R. pp.2-3]. Pursuant to the Order, \$663,395.37¹ of the closing proceeds was deposited in trust with the York County Clerk of Court. The balance of the closing proceeds, \$160,588.96, was paid to FB at closing [R. pp.2, 6 at FN1].

A snapshot of the scenario at closing of the sale to the third party is as follows. Jenkins had paid to FB \$643,760.70 and had received nothing in return, either by way of deed, mortgage or other security. FB had been paid \$643,760.70 by Jenkins and was to receive an additional \$850,000.00 for a total of \$1,493,760.70. Because Jenkins had filed a lis pendens, the parties agreed that the funds paid by Jenkins would be deposited with the clerk, and the lis pendens was lifted so the transaction could close. After the deposit with the clerk and the proceeds paid to FB from the closing, FB retained \$804,349.66

¹ The amount increased by about \$19,000 from the amounts paid by Jenkins based on the value of appliances and a ceiling fan paid by Jenkins and installed in the house. [R. p.6] 54

relating to the house and property that Jenkins contracted for, but which was sold to the third party.

Subsequent to the Order depositing funds with the clerk of court, Jenkins filed a motion titled "Motion for Partial Summary Judgment" that sought a release of the funds on deposit with the clerk to Jenkins [R. pp.48-49]. The obvious basis for the Motion was that FB had been paid nearly the entire balance of the contract price not counting the funds deposited with the clerk, and it was simply inequitable for Jenkins' payments to be held as a security in case FB were to recover some amount on the underlying contract claims *Id.* On those underlying claims, either party, like all litigants, can collect on any judgment through the normal procedures.

At the hearing, the Court and the parties discussed whether the motion was actually for partial summary judgment. The Court clearly determined that the motion did not actually seek a judgment of any sort.

THE COURT: Well, here – what I'm thinking is that he may have used – that the term summary judgment isn't the appropriate thing to apply to all this. You're not – 'cause you're telling me everybody's preserving their claims; right?

MR. HAMILTON [counsel for Jenkins]: Correct.

[R. p.114, l.13-18]

* * *

THE COURT: I think that, if I understand what Mr. Hamilton's asking for, the term summary judgment is not appropriate... It doesn't seem to me like it is equitable for – to sustain a fund from which somebody could collect. I do not think he's entitled to summary judgment. That's not what we're talking about.

MR. FERRARA [counsel for FB]: Yes, sir.

[R. p.116, l.18-20, p.117, l.5-9]

* * *

THE COURT: It isn't summary judgment, because I'm not deciding the liability issue that both of you still have...

[R. p.124, l.16-17]

In its Order, the Court also made it clear that it was not granting a judgment or deciding any of the underlying claims:

By ruling in the manner described, the Court is not ruling upon or granting judgment of any kind as to the claims of either party and makes no determination as to any entitlement to damages due either party. . . Defendant has no claim that needs to be protected and has no right at law or in equity for security for its claim for damages in this action.

[R. p.7].

STANDARD OF REVIEW

On appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence. *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). While this standard permits a broad scope of review, an appellate court will not disregard the findings of the trial court. *Id.*

ARGUMENT

The Appeal should be dismissed because it is interlocutory. The Order appealed from merely resolved a preliminary issue regarding funds held by the clerk of court, and did not reach the merits of the underlying case at all. Those remain to be litigated.

In any event, the trial court's ruling regarding the release of funds was correct, and Appellant makes no arguments against the actual decision below. Therefore, if not dismissed, the decision should be affirmed.

- I. THE APPEAL SHOULD BE DISMISSED AS INTERLOCUTORY BECAUSE THE ORDER APPEALED DID NOT ADDRESS THE MERITS OF THE CASE, WHICH WILL BE LITIGATED.**

An appeal ordinarily may be pursued only after a party has obtained a final judgment. *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (2014). “An order usually will be deemed interlocutory and not immediately appealable when there is some other act that must be done by the trial court prior to a determination of the parties’ rights.” *Id.* In *Stone v. Thompson*, 418 S.C. 599, 605, 795 S.E.2d 49, 52 (Ct. App. 2016), the family court filed an order holding that the parties were common law married, but had not addressed the issues of divorce and equitable distribution. An appeal was filed, but was held to be interlocutory. “[B]ecause the order in this case does not bring the litigants to ‘the end of the road’ and requires further action by the court, [we find] the order is not immediately appealable.” *Id.* See also. *Baldwin Construction Co., Inc. v. Graham*, 357 S.C.227, 593 S.E.2d 146 (2004) (appeal from the denial of a motion to amend an answer is interlocutory); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777, 780 (1993) (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory”); *Tillman v. Tillman*, case no. 2015-001291, opinion no. 5493, p.2 (Ct. App. 2017) (“A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution”).

Here, the Order appealed did not reach the merits of the underlying case, and every aspect of the case after the pleadings remains to be determined. In the Order appealed, the court below held: “By ruling in the manner described, the Court is not ruling upon or granting judgment of any kind as to the claims of either party and makes no determination as to any entitlement to damages due either party.” [R. p.7] Plainly, the Order appealed is interlocutory because the parties’ rights remain to be determined.

II. THE TRIAL COURT PROPERLY RULED THAT FB WAS NOT ENTITLED TO HAVE JENKINS' MONEY HELD AS SECURITY FOR A POSSIBLE RECOVERY

FB's arguments on appeal confuse two very different aspects of the case: (1) the pre-trial Order relating to disposition of the funds deposited with the clerk of court, and (2) the underlying merits of the case involving which party breached the contract regarding construction of the house. The appeal addresses only the latter, but the Order addresses only the former.

The two issues on appeal asserted by FB are (1) that disputed issues of fact exist, and (2) that an equitable remedy was inappropriate because a legal remedy is available. Both of these issues misconstrue the order appealed from, which did not grant summary judgment or address the merits of the underlying case.

FB's entire premise – that the court below granted summary judgment – is incorrect. Although the motion was styled a motion for partial summary judgment², the issue before the Court was whether FB was entitled to have the funds on deposit with the clerk held as security in the event that it were to be awarded a judgment later in the case on the underlying contract claims. In fact, the Order expressly states that it is not granting summary judgment: “Although Plaintiffs’ motion is titled as a motion for partial summary judgment, it is in essence simply a motion seeking the exercise of the equitable powers of the Court to place the parties in the position they would have been in as a result of a sale of the house by Plaintiffs, without affecting any party’s claim for breach of

² “To avoid circuitous litigation and needless appeals, we construe section § 14-3-330 narrowly, eyeing the nature and effect of the order, not merely its label.” *Tillman v. Tillman*, case no. 2015-001291, opinion no. 5493, p.4 (Ct. App. 2017); see *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 302-04, 705 S.E.2d 475, 478-79 (Ct. App. 2011).

contract.” [R. p.6] Further, the Order clearly states that it is not ruling on the merits of the case: “By ruling in the manner described, the Court is not ruling upon, or granting judgment of any kind, as to the claims of either party, and makes no determination as to any entitlement to damages due either party.” [R. p.7]

This decision by the lower court that Jenkins’ funds were not to be held as security³ for a possible recovery in the underlying case is clearly correct, and logically followed the consent Order of July 25, 2016. That Order, which was consented to by all parties (and was not appealed), required the exact amount of funds and improvements paid by Jenkins to be deposited with the clerk. [R. pp.2-3]. It also expressly ordered the clerk to hold the proceeds pending agreement by the parties “*or further order of this court.*” [Id.] (emphasis added). The subsequent Order that was appealed simply addressed the disposition of the funds without the necessity of reaching the underlying breach of contract and other claims. Those remain to be litigated.

In its brief, Appellant contends that disputed issues of fact exist, but it merely references an affidavit that alleges facts relating to the underlying breach of contract claim and counterclaim. [App. Br. p.6]. Appellant does not and cannot reference *any* disputed fact regarding the disposition of the funds on deposit with the clerk. There are no disputed facts regarding the issue actually decided below.

Similarly, Appellant’s contention that an equitable remedy was inappropriate because a legal remedy exists misses the mark. Again, in its brief Appellant references the underlying breach of contract claims to support its argument. [App. Br. p.7-8] The breach of contract and other claims may have legal remedies, and will be litigated and

³ The unfairness and hardship to Jenkins of withholding \$663,395.37 of their money, and the possible impact on their ability to pay for their legal representation, likely entered into the equitable calculation, as it should.

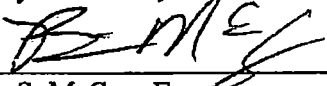
decided later in this case, but those remedies have nothing to do with issue that actually was addressed.

CONCLUSION

For the reasons set forth above, the appeal should be dismissed as interlocutory, or the lower court's decision affirmed.

Respectfully submitted,

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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM YORK COUNTY
Court of Common Pleas**

Honorable S. Jackson Kimball, Master-in-Equity

**CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600**

Alfred Jenkins and Mary Jenkins, ... Respondents

v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, ... Appellant

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT IN REPLY

The Respondents' initial brief argues that this matter is interlocutory, and therefore not immediately appealable. It further states that the Order on appeal to this Court does not involve the underlying merits of the case and that "every aspect of the case after the pleadings remains to be determined." Respondents' Initial Brief, p. 7.

Without restating the issues or making redundant arguments which have been thoroughly set forth in Appellant's Response to Respondent's Motion to Dismiss and Appellant's Initial Brief, the Appellant offers the following points of clarification and rebuttal to the arguments raise by Respondents.

I. **S.C. Code §14-3-330(1) allows Appellant to have this Court review the Order of Judge Kimball as the Order finally determined Respondents' claims.**

"The right of appeal arises from and is controlled by statutory law." Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." Id. (citing S.C. Code Ann. § 14-3-330(1) (1977); Rule 72, SCRCF; Rule 201(a), SCACR). "The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code (1977 & Supp.2013)]." Id. "Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." Id. "An order 'involves the merits,' as that term is used in [s]ection 14-3-330(1)[,] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." Id. at 7, 630 S.E.2d at 467(footnote omitted, emphasis added).

Here, the trial court, in its order, finally determined all the claims of the Respondents. The

Judge in the Order stated: "I find and conclude that, as a result of the sale of the house, Defendant has been paid in full the contract price based on the parties' contract, except for \$31,861.13." (footnote omitted). See November 28, 2016 Order. (R. p. 6). The release of said money was "in essence" a ruling on Respondents' claims for equitable relief in their complaint and/or a ruling on damages, and therefore the order affects a substantial right and is immediately appealable. By making the ruling that Respondents were entitled to \$663,395.37, the trial court granted Respondents' equitable lien on the property and provided Respondents with all relief sought in their complaint. Further, the trial court ruled that Respondents were entitled to the entirety of the funds on deposit with the court, thereby determining that Appellant was not entitled to the money held by the Clerk of Court.

The trial court finally determined the "substantial matter" of the claims by the Respondents in its Order. In this action, the substance of the Order appealed granted Respondents' claims for breach of contract and denied Appellant the right to litigate its breach of contract claim. The order entered by the court releasing the funds to Respondents "in essence" provided Respondents with the relief sought in their complaint. The parties were before the court on a motion for summary judgment filed by Respondents; however, said motion was treated as a motion for release of funds whereby the trial court made findings of fact and conclusions of law determining the parties' rights and damages, resulting in the release of funds to Respondents. The above actions were a final determination of Respondents' claims, albeit allowing Respondents a second chance for consequential damages at a later date.

To further demonstrate that the trial court's order "in effect" determined a cause of action in this matter, Appellant refers this Court to a letter from Respondents' attorney dated December 8,

2016. This letter demonstrates that following the receipt of the \$663,395.37 the Respondents' claims were essentially resolved, except for attorney's fees and costs. See Letter dated December 8, 2016. (R. p. 128).

Respondents, in their initial brief, state that the Order of the trial judge did not reach the merits of the case, but that is simply false. As stated previously, the Order being appealed in this matter effectively granted Respondents all relief sought in their complaint. The Order found that as a matter of equity, Respondents were entitled to the funds on deposit with the court, these funds were the exact damages sought in the Complaint. This effectively finds that Respondents are owed the money from Appellant and that Appellant breached the contract, and therefore, has not legal or equitable right to the money on deposit. There is little to no reason that Respondents would continue with the action, as they have already recovered all the damages sought in their action.

Additionally, this appeal is not interlocutory as the order being appealed affects the mode of trial. S.C. Code §14-3-330 (2) allows Appellant to have this Court review the Order of Judge Kimball as it affects the mode of Appellant's right to a jury trial. Furthermore, "[a]n order affects a substantial right and is immediately appealable when it '(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action'

"1." Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005)(brackets omitted) (quoting § 14-3-330(2)). It is clear that the mode of trial is a substantial right that falls within S.C. Code 14-3-330(2). See Bateman v. Rouse, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to trial by jury which would otherwise be lost.)

In this appeal, Judge Kimball effectively denied the Appellant the right to a trial by jury on

Appellant's breach of contract claim. The Judge determined the questions of fact and damages on behalf of Respondents himself without a jury. If the Order being appealed remains as is, Appellant will be estopped from asserting that Respondents breached the sale of home contract, as the lower court has already ruled that Respondents are entitled to damages from the Appellant. There is no logical way that a jury can find that Respondents breached the contract if the trial court has already ruled that the Appellant must pay Respondents \$663,395.37. The Circuit Court ruled that the Appellants breached the contract and/or Appellants must return all proceeds under the contract plus the value of the appliances. Although the Circuit Court asserts in its November 28, 2016 Order that it did not grant summary judgment on the breach of contract, the Order does end the Respondents' case and makes it impossible to reconcile how the Appellant can now claim Respondents breached a contract considering the Circuit Court has already ruled in favor of Respondents on all of the their claims.

Therefore, Respondents assertion that this Order is not appealable at this time is incorrect, because the November 28, 2016 Order entered by the lower court has made it impossible for Appellant to litigate and defend this action.

II. The trial court's order improperly grant summary judgment by ordering the release of funds that were deposited with the court despite the existence of disputed material questions of fact.

Respondents' initial brief cites Judge Kimball's Order: "By ruling in the manner described, the Court is not ruling upon or granting judgment of any kind as to the claims of either party and makes no determination as to any entitlement to damages due either party." See November 28, 2016 Order. (R. p. 7). However, by making the ruling that Respondents were entitled to \$663,395.37, the trial court improperly resolved disputed material questions of fact concerning

breach and damages. Respondents attempt to persuade the Court that the order was proper because the trial court has equitable power is incorrect. Moreover, the trial court ruled that Respondents were entitled to the entirety of the funds on deposit with the court, thereby determining that Appellant was not entitled to the money held by the Clerk of Court. These factual determinations are for the tier of fact to decide only after a trial on the merits, not as a result of being ambushed at an alleged partial motion for summary judgment.

CONCLUSION

For the foregoing reasons, Appellants respectfully request this Court reverse the circuit court's order dated November 28, 2016.

November 6, 2017



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable S. Jackson Kimball, Master-in-Equity

CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600

Alfred Jenkins and Mary Jenkins, Respondents

v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, Appellant

CERTIFICATION BY COUNSEL

I, the undersigned counsel, do hereby certify that the Appellant's Final Reply Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted this 6 day of November, 2017.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable S. Jackson Kimball, Master-in-Equity

CASE NO. 2016-CP-46-1001
APPELLATE CASE NO. 2017-000600

Alfred Jenkins and Mary Jenkins, ... Respondents

v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes, ... Appellant

PROOF OF SERVICE

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Attorney for Appellant

I, the undersigned counsel, hereby certify that I have served the Appellant's Final Reply Brief upon the Respondents, Alfred Jenkins and Mary Jenkins, by depositing a copy of the same in the United States Mail, postage prepaid, on November 10, 2017, addressed to their attorney of record, Brian S. McCoy, 378 E. Main St., Rock Hill, SC 29730.

Respectfully submitted this 10 day of November, 2017.



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Alfred Jenkins and Mary Jenkins, Respondents,

v.

Ferrara Buist Company, LLC d/b/a Custom Crafted
Homes, Appellant.

Appellate Case No. 2017-000600

Appeal From York County
S. Jackson Kimball, III, Master-in-Equity

Unpublished Opinion No. 2019-UP-311
Heard June 5, 2019 – Filed August 28, 2019

**AFFIRMED AS MODIFIED IN PART, REVERSED
IN PART, AND VACATED IN PART**

Paul B. Ferrara, III, of Ferrara Law Firm, PLLC, of North
Charleston, for Appellant.

Brian Scott McCoy, of McCoy Law Firm, LLC, of Rock
Hill, for Respondents.

PER CURIAM: Ferrara Buist Company, LLC (Builder) appeals the master-in-equity's order releasing funds held by the York County Clerk of Court to Alfred

Jenkins and Mary Jenkins (Buyers). We affirm in part as modified, reverse in part, and vacate in part.

The parties in this case entered into a contract for the construction of a home. The original contract price was \$741,095.00.¹ The parties' working relationship deteriorated, and Buyers ultimately did not purchase the home, which was still titled in Builder's name. At the time the parties ended their association, Buyers had paid a total of \$643,760.70 to Builder. Buyers filed a lis pendens on the property and filed a complaint against Builder alleging an equitable lien, unjust enrichment, and breach of contract. Builder filed an answer and counterclaimed for breach of contract.

Meanwhile, Builder found a third-party buyer for the home willing to pay \$850,000.00. In an effort to bring that sale to fruition, Builder agreed to deposit \$663,395.37 with the York County Clerk of Court, and Buyers agreed to release the lis pendens on the property.²

Approximately two months later, Buyers filed a motion entitled "Notice of Motion and Motion for Partial Summary Judgment" wherein Buyers sought the release of the funds held by the Clerk of Court. In response, Builder filed a motion in opposition including an affidavit of Michael Adam Ferrara, one of Builder's members. Ferrara attested Buyers owed Builder \$164,002.01 in damages.³ The master granted Buyers' motion in full and released all the deposited funds to Buyers. The master's order stated "[Builder] is not entitled to the establishment of a fund to secure collection of additional damages it may be awarded through a trial of the case. [Builder] simply does not have a legal or equitable basis for the maintaining of such a fund." Furthermore, the master indicated its order was based in equity and the parties could still pursue their breach of contract claims against one another for contract-based damages. Builder appealed.

¹ Change orders to the contract made the final price \$881,868.63.

² This amount represented the sum of the payments made by Buyers to Builder plus some additional costs incurred by Buyers for fixtures in the home.

³ Builder's alleged damages include additional property taxes, interest on the lot closing cost, a lot assessment fee, a homeowner's association transfer fee, interest on non-payment of the balance due, realty commission fees, additional drainage installation fees, attorney's fees, and the unpaid balance of the contract minus the amount of profit earned from the third-party contract.

At oral argument before this court, Builder conceded the master could have, in its equitable powers, disbursed any *undisputed* funds to Buyers, provided the order did not make findings of fact that would limit Builder's ability to pursue its contractual remedies. Consequently, we affirm the master's order to the extent it released the undisputed sum of \$499,393.36 to Buyers.⁴ This amount equals the amount held by the Clerk of Court minus the amount of contractual damages alleged by Builder.

Turning now to the disbursement of the remaining *disputed* funds, the master's order indicates it exercised its equitable powers to return the entirety of the held funds to Buyers. The master concluded the Builder was paid in full under the contract by virtue of the third-party sale, except for \$31,861.13, and Builder was not entitled to a fund to secure its contractual claims against Buyers. However, this rationale contains two flaws. First, this conclusion discounts the possibility Builder suffered consequential damages if in fact it can prove Buyers breached the contract. Second, the parties *agreed* to deposit the funds with the Clerk of Court in exchange for Buyers releasing their lis pendens on the property. Buyers are the parties whose claims were secured by the deposit of the funds with the Clerk of Court. Otherwise, Builder, legally in possession of the disputed funds at the time of the hearing, could have spent the monies, leaving Buyers to collect any judgment they obtained.

Because Builder alleged Buyers breached the contract and vice versa, genuine issues of material fact existed regarding both the amount of the total debt Builder owed to Buyers and whether it was inequitable for Builder to "retain" the disputed sum.⁵ See *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995) ("Summary judgment should be granted only when there is no genuine issue as to

⁴ See *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 159 n.3, 711 S.E.2d 895, 898 n.3 (2011) (indicating a concession allows the court to end the matter); *Bowaters Carolina Corp. v. Carolina Pipeline Co.*, 259 S.C. 500, 505, 193 S.E.2d 129, 132 (1972) (holding an appellate court need not pursue an issue conceded during oral arguments).

⁵ We note Builder did not actually retain the funds as they were on deposit with the Clerk of Court.

any material fact and the moving party is entitled to judgment as a matter of law.").⁶

The master's attempt to mix and match the legal and equitable remedies in this case demonstrates the often difficult task of sorting through such claims. *See McMahan v. McMahon*, 122 S.C. 336, 342, 115 S.E. 293, 295 (1922) ("When a certain state of facts under the law entitles a party to alternative remedies, both founded upon the identical state of facts, these remedies are not considered inconsistent remedies, though they may not be able to 'stand together' [—] the enforcement of the one remedy being a satisfaction of the party's claim."). The unique circumstances of this case, involving the cash purchase of a home, further complicates the issue. Nevertheless, based on Builder's concession, Buyers are entitled to the release of \$499,393.36 from the total sum deposited with the York County Clerk of Court. The master's order is reversed insofar as it released any additional funds above and beyond that amount.⁷ Any factual or legal findings underpinning the master's original order are vacated.

Therefore, the master's order is

**AFFIRMED IN PART AS MODIFIED, REVERSED IN PART, and
VACATED IN PART.**

HUFF, THOMAS, and KONDUROS, JJ., concur.

⁶ We recognize the master's order denies it is rendering summary judgment to any party. However, the finding Builder has no claim to the funds belies that position even if it was unintended.

⁷ Buyers should deposit these funds back with the York County Clerk of Court pending trial or resolution of the parties' claims. The master shall conduct a hearing if necessary to facilitate this mandate. The trial of this matter should be conducted expeditiously so the damages assessed to either party can be finally determined and subject to the normal rules governing the collection of final judgments.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity for York County

RECEIVED

SEP 12 2019

Appellate Case No. 2017-000600

SC Court of Appeals

Alfred Jenkins and Mary Jenkins,

Respondents,

v.

Ferrara-Buist Company, LLC, d/b/a Custom Crafted Homes,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR. Respondents Alfred and Mary Jenkins ("Jenkins" or "Respondents") hereby petition for rehearing of this Court's August 28, 2019 Unpublished Opinion No. 2019-UP-311 ("the Opinion") in the above-captioned appeal to the extent it reversed and vacated in part. The Court should grant rehearing and issue a revised opinion dismissing the appeal for lack of jurisdiction because the appeal is interlocutory and does not fall into any exception of S.C. Code §14-3-330. Moreover, in the alternative, the opinion should be revised to affirm in whole the trial court's order regarding the funds on deposit with the clerk of court.

Introduction

In the Opinion, this Court did not address the decisive jurisdictional issue of whether the order appealed from is an appealable interlocutory order. Here, the order appealed addresses only
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the non-merits issue of the disposition of funds on deposit with the clerk of court. *See*, Order filed November 28, 2016 [R.pp. 5-7] (the “Order”). The Order did not in any way address the merits of the underlying breach of contract case, which remains pending and waiting to be litigated. The Order appealed certainly does not fall into one of the exceptions listed in S.C. Code §14-3-330 relating to interlocutory appeals, and therefore the appeal must be dismissed. Moreover, although the merits of the appeal should not be reached, this Court erred in its analysis of the Order relating to the disposition of funds on deposit. If the merits of the interlocutory appeal were to be reached, the decision below should be affirmed in whole.

Law/Analysis

I. The appeal is interlocutory and not immediately appealable, Respondents raised the issue, but the Opinion does not address the issue in any way.

A. The Respondents Argued for Dismissal Because the Appeal is Interlocutory.

The Respondents filed a Motion to Dismiss Appeal on April 3, 2017 with this Court (“Motion to Dismiss”). The Motion to Dismiss sought to dismiss the appeal “on the grounds that the Order from which this appeal is taken is interlocutory and does not finally determine any substantial matter forming the whole or part of a cause of action.” [Motion to Dismiss p. 1]. It set forth the underlying facts, and cited *Watson v. Underwood*, 407 S.C. 443, 756 S.E. 2d 155 (2014) as follows: “An order usually will be deemed interlocutory and not immediately appealable when there is some other act that must be done by the trial court prior to a determination of the parties’ rights.” *Id.* at 163. [Motion to Dismiss at pp. 1-3]. The Motion to Dismiss further explained that the underlying case is a breach of contract case with both sides asserting a breach by the opposing side and each side claiming entitlement to direct and consequential damages, and that the order appealed does not affect any of the underlying claims or determine any substantial matter. [Motion to Dismiss at p. 3]. By Order filed May 4, 2017, this Court denied

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the motion, but expressly stated “Nothing precludes the parties from raising appealability in their briefs.”

Respondents also argued appealability in their brief. Statement of Issues on Appeal I in Respondents’ Final Brief states: “Should the appeal be dismissed as interlocutory because the order appealed did not address the merits of the case, which will be litigated?” [Respondents Br. at 1]. The brief includes legal argument and numerous citations to authority as well. [Respondents Br. at 6-7]. Further, at oral argument of this appeal, counsel for Respondents argued for dismissal on the basis that the appeal is interlocutory and not immediately appealable.

B. This Court Lacks Jurisdiction Over This Appeal.

Although the appealability issue was repeatedly argued by Respondents, the Opinion does not address it in any way. However, the appeal is interlocutory, does not fall into any exception of S.C. Code §14-3-330, and therefore this Court lacks jurisdiction and the appeal must be dismissed. *See, Stone v. Thompson*, 418 S.C. 599, 605, 795 S.E.2d 49, 52 (Ct. App. 2016) (“because the order in this case does not bring the litigants to ‘the end of the road’ and requires further action by the court. [we find] the order is not immediately appealable”); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777, 780 (1993) (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory”); *Tillman v. Tillman*, case no. 2015-001291, opinion no. 5493, p.2 (Ct. App. 2017) (“A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution”).

If, as here, an appealed order is not final, an immediate appeal is available *only* if the order falls into one of the exceptions of §14-3-330, and this case plainly does not. *See, e.g., Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (the

order must finally determine some substantial matter forming the whole or a part of some cause of action or defense"). Accordingly, a rehearing should be granted because this Court lacks jurisdiction over the appeal.

II. If the merits of the appeals were to be reached, the decision below should be affirmed in whole.

If the merits of the appeal were to be reached, the Opinion incorrectly addressed the issues, and the Opinion should be revised to affirm the decision below in whole. The Opinion states on page 3 that the rationale of the master's holding that "Builder was not entitled to a fund to secure its contractual claims against Buyers" suffers from two flaws, addressed in more detail below. However, the arguments for the two flaws were not made to the court below (or on this appeal), and were not ruled on by the lower court. Therefore they are not preserved for appellate review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review")

First, the Opinion states that the conclusion of the master "discounts the possibility Builder suffered consequential damages if in fact it can prove the Buyers breached the contract." However, this statement misses the point, which is *why* would the Appellant be entitled to security for its unproven claim any more than Respondents would be entitled to security for their unproven claim? Each party is seeking additional damages in the underlying lawsuit. [see Complaint, R. p. 10-14; *see also*, letter of counsel, R. p. 128 (stating that Respondents "will be able to show consequential damages exceeding \$30,000, not including attorneys' fees . . . which will surely exceed \$50,000 in the litigation continues")]. The Opinion also inappropriately gets into the underlying merits of the breach of contract claims. Those underlying merits

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issue in any way in the motion that resulted in the appealed interlocutory order. The Opinion of this Court should not have delved into the underlying breach of contract case wherein Respondents seek additional damages from Appellant, and Appellant seeks additional damages from Respondents.

Second, the Opinion correctly states that “the parties agreed to deposit the funds with the Clerk of Court.” [Opinion p.3]. However, the Opinion adds “Buyers are the parties whose claims were secured by the deposit of the funds with the Clerk of Court.” [Id.]. This is not accurate. The funds were deposited with the Clerk of Court pursuant to an Order consented to by *both* parties. [Order filed July 25, 2016, R. pp. 2-3]. That Order, which was not appealed and is law of the case, expressly held that funds were “to be held in trust pending agreement by the Parties or *further order of the Court.*” [Id. R. p. 2 (emphasis added)]. Thus, the parties fully expected that a further order of the Court would address the disposition of the funds on deposit. The funds were not held for the benefit of either party, but were to be dealt with by further order, which is what occurred.

The fundamental question set forth in the Order appealed – why would the Appellant be entitled to a fund to secure its counterclaims against Respondents? – is not addressed by the Opinion, and in fact can only be answered that it is not entitled to such a fund. Accordingly, the Order appealed should be affirmed in whole.

The Opinion also errs in applying the summary judgment standard of “genuine issues of material fact” to the appealed Order [Opinion at p. 3-4]. The Order appealed states: “Although Plaintiffs’ motion is titled as a motion for partial summary judgment, it is in essence simply a motion seeking the exercise of the equitable powers of the Court to place the parties in the position they would have been in as a result of a sale of the house by Plaintiffs, without affecting any party’s claim for breach of contract.” [Order, R.p. 5]. Later in the Order, the ~~respondent~~ ^{appellant} stated

"By ruling in the manner described, the Court is not ruling upon, or granting judgment of any kind, as to the claims of either party, and makes no determination as to any entitlement to damages due either party." [Order, R. p. 7]. Even during oral argument of the motion below, the master repeatedly stated that he was not deciding summary judgment. [R. pp. 114, 116-117, 124].

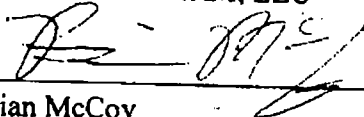
Thus, the Order appealed was not based on summary judgment, and the application of the summary judgment standard in the Opinion should be corrected. An application of the appropriate standard would result in the appealed Order being affirmed in whole.

Conclusion

Rehearing is required in this matter. The jurisdiction of this Court to review interlocutory orders is limited by statute. This appeal did not satisfy the statute to make the interlocutory order immediately appealable, so this Court lacks jurisdiction. In addition, if the merits were to be reached, the appealed order should be affirmed in whole as set forth above.

Respectfully submitted.

McCOY LAW FIRM, LLC



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803-366-2280

Attorney for Respondents

September 11, 2019

Appendix-181

The South Carolina Court of Appeals

Alfred Jenkins and Mary Jenkins, Respondents,

v.

Ferrara Buist Company, LLC d/b/a Custom Crafted
Homes, Appellant.

Appellate Case No. 2017-000600

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff

J.

Paul B. Ferrara

J.

CKO

J.

Columbia, South Carolina

cc:

Paul B. Ferrara, III, Esquire

Brian Scott McCoy, Esquire

The Honorable S. Jackson Kimball, III

FILED

October 24, 2019

Appendix-182

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2016-CP-46-1001
Appellate Case No.: 2017-000600

RECEIVED

APR 03 2017

SC Court of Appeals

Alfred and Mary Jenkins Respondent,

v.

Ferrara-Buist Company, LLC, d/b/a Custom Crafted
Homes Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondents, Alfred and Mary Jenkins ("Jenkins") move to dismiss this Appeal on the grounds that the Order from which this appeal is taken is interlocutory and does not finally determine any substantial matter forming the whole or part of a cause of action.

FACTS

On August 22, 2014, Jenkins signed a contract with Ferrara Buist ("FB") whereby FB agreed to build a house and, upon completion, sell the house and lot to Jenkins. FB started construction of the house. As construction of the house approached completion, a dispute arose between the parties. When the Parties could not reach a resolution of the dispute, the contract was terminated. Both Parties contend that the other Party breached the Contract.

During construction, FB submitted partial pay requests to Jenkins. All FB pay requests were timely paid with the exception of the last pay request.

After the contract between the parties was terminated, FB placed the home on the market, eventually selling the house for \$850,000.00. Before FB's sale of the house was closed, Jenkins filed this action.

Jenkins' Complaint contains several causes of action, one of which is a claim for an equitable lien on the real property by reason of payments made by Jenkins in the amount of \$643,760.00. The title to the property was in FB and there was no mortgage. Upon closing of the sale of the property to a third party, FB would have had the \$643,760.00 paid by Jenkins and \$850,000.00 paid by the third party purchaser. In order to allow the sale of the house to close, Jenkins and FB agreed to place \$643,760.00, the amount paid to FB by Jenkins, in trust to be held by the Clerk of Court pending further order of the Court.

Jenkins filed a motion for an order releasing the funds held by the Clerk of Court. Jenkins argued that upon sale of the house and receipt of the full purchase price, FB was not entitled to hold the funds paid by Jenkins as security for a possible damage claim by Jenkins. The Special Circuit Court Judge found that the funds held in trust should be released to Jenkins. This appeal followed.

ARGUMENT

An appeal ordinarily may be pursued only after a party has obtained a final judgment. Watson v. Underwood 407 S.C. 443, 756 S.E.2d 155 (2014). An order is immediately appealable when it finally determines some substantial matter forming the whole or part of a cause of action. Id. at 163. "An order usually will be deemed

interlocutory and not immediately appealable when there is some other act that must be done by the trial court prior to a determination of the parties' rights".

This case is basically a breach of contract case. Each party claims the other breached the contract. Upon determination by the trier of fact as to which party breached the contract, the non-breaching party will be entitled to direct and consequential damages. The amount of damages to which the non-breaching party is entitled will be determined by the trier of fact.

The Trial Court's order does not affect any claim the appellant may have. Appellant may pursue a judgment against the Jenkins' in the same manner and the same amount as if the Trial Court's order had not been issued. The Trial Court's Order does not determine any substantial matter forming the whole or part of any cause of action.

The Trial Court made it clear that this order is interlocutory and does not finally decide any issue raised by the parties. For that reason, Jenkins submits that this appeal should be dismissed.

March 31, 2017

Respectfully Submitted,



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ATTORNEYS FOR RESPONDENTS

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 03 2017

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
S. Jackson Kimball, III, Special Circuit Court Judge

Case No. 2016-CP-46-1001
Appellate Case No.: 2017-000600

Alfred and Mary Jenkins Respondent,

v.

Ferrara-Buist Company, LLC, d/b/a Custom Crafted
Homes.....Appellant.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens, LLC certifies that
Respondents' Motion to Dismiss Appeal was served upon the Appellant by depositing
same in the United States Mail, with sufficient postage affixed and addressed as follows:

Paul B. Ferrara, III
Ferrara Law Firm, PLLC
2300 Otranto Road
North Charleston, SC 29406

This the 31st day of March, 2017.


L. Melia Sweatt

The South Carolina Court of Appeals

Alfred Jenkins and Mary Jenkins, Respondents,

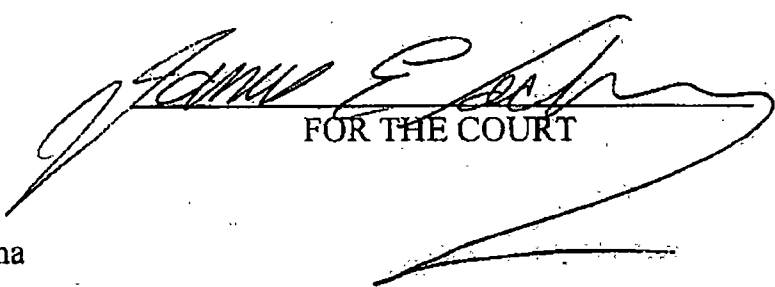
v.

Ferrara Buist Company, LLC d/b/a Custom Crafted
Homes, Appellant.

Appellate Case No. 2017-000600

ORDER

Respondents have filed a motion to dismiss this appeal, arguing the orders on appeal are not immediately appealable. After careful consideration of the parties' filings, the motion is denied. Nothing precludes the parties from raising appealability in their briefs.



FOR THE COURT

Columbia, South Carolina

cc: Paul B. Ferrara, III, Esquire
Herbert W. Hamilton, Esquire
Walter Keith Martens, Esquire

FILED

May 4, 2017