

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
The Honorable Marvin H. Dukes, III, Master in Equity

Case No. 2014-CP-07-0052  
Appellate Case No. 2019-001270

Lady Beaufort, LLC & Tideland Realty, Inc.,.....Appellants,

v.

Hird Island Investments, Inc., Sherwood N. Fender, Addison D. Fender, Martha B. Fender,  
William B. Bowen, Lady Kemmerlin, LLC, Brickyard Holdings, Inc., and A&K Holding Co.,  
LLC, Defendants,

AND

William M. Bowen, Third-Party Plaintiff,

v.

James S. Kerr and Matt Trumps, Third-Party Defendants,

*Of Which Hird Island Investments, Inc. and Sherwood N. Fender are the Respondents.*

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SC Court of Appeals

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LADY BEAUFORT, LLC &  
TIDELANDREALTY, INC.,

Plaintiffs,

vs.

HIRD ISLAND INVESTMENTS, INC.,  
SHERWOOD N. FENDER, ADDISON D.  
FENDER, MARTHA B. FENDER,  
WILLIAM B. BOWEN, LADY  
KEMMERLIN, LLC, BRICKYARD  
HOLDINGS, INC. and A&K HOLDING  
CO., LLC,

Defendants.

AND

WILLIAM M. BOWEN,

Third Party Plaintiff,

vs.

JAMES S. KERR and MATT TRUMPS,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-07-0052

ORDER GRANTING MOTION TO POST BOND

This matter came to be heard before me in the Beaufort County Court of Common Pleas on July 9, 2019 for the purpose of hearing the Motion to Post Bond filed on behalf of the Defendant Sherwood N. Fender filed June 20, 2019. Present and appearing on behalf of the Defendant Fender was his attorney, H. Fred Kuhn, Jr., Esquire. Present telephonically and appearing on behalf of the Plaintiffs was their attorney, Jaan G. Rannik, Esquire.

After giving due consideration to the arguments of counsel, and reviewing the record in

this action, I find and conclude that the Motion of the Defendant Fender should be granted, subject to the terms and conditions as are hereinafter set forth.

On May 11, 2017 this Court entered a judgment in favor of the Plaintiff Tideland Realty, Inc. ("Tideland") against the Defendants Hird Island Investments, Inc. ("Hird Island") and Sherwood Fender ("Fender") in the amount of \$17,500.17. On October 26, 2018 this Court entered judgment in favor of the Plaintiff Lady Beaufort, LLC ("Lady Beaufort") against the Defendants Hird Island and Fender in the amount of \$51,511.15.

On October 29, 2018 Hird Island and Fender filed their Notice of Appeal of the above referenced judgments, and Tideland and Lady Beaufort cross-appealed. These appeals are currently pending before the South Carolina Court of Appeals.

The South Carolina Supreme Court, pursuant to § 34-31-20(B) of the South Carolina Code of Laws set the legal rate of interest on money, decrees and judgments at the rate of 8.5% for the period beginning January 15, 2018, and at the rate of 9.5% for the period commencing January 14, 2019.

The total amount of the current judgment outstanding against Hird Island and Fender in favor of Tideland, including post-judgment interest, is \$20,871.87, with post-judgment interest calculated through July 1, 2019. The per diem accumulation of interest after that date (through December 31, 2019) is \$5.21.

The total amount of the judgment outstanding against Hird Island and Fender in favor of Lady Beaufort, including post-judgment interest, is \$61,435.65, with post-judgment interest calculated through July 1, 2019. The per diem post-judgment rate of interest thereafter (through December 31, 2019) is \$15.32.

I find and conclude that it is in the best interest of justice, and without prejudice to the

rights of the Plaintiffs, to allow the Defendant Fender to post a bond with the Beaufort County Clerk of Court, with said bond to serve as security for the payment of the current judgment amount against him in the event it, or any part of it, is upheld on appeal, and thereby obtaining the release of the judgment lien against any other properties of Fender. Any increase in the judgment amount following the appeal of the judgment shall not be covered by the bond but shall be enforceable as a lien on Mr. Fender's assets. I find and conclude that this bond should be cash or its equivalent, and the amount of the bond should be 1-½ times the amount of the outstanding judgments. As of July 1, 2019 this would have been the sum of \$31,307.81 to be posted on the judgment in favor of Tideland, and \$92,153.47 on the outstanding judgment in favor of Lady Beaufort, for a total bond of \$123,461.28.

**IT IS, THEREFORE, ORDERED:**

- a. Upon the posting by the Defendant Fender of cash or its equivalent with the Clerk of Court for Beaufort County in an amount equal to 1-½ times the amount of the judgment entered in this action in favor of the Plaintiff Tideland Realty against the Defendant Fender the judgment lien against any assets of the Defendant Fender shall be released and the judgment lien upon said assets shall be discharged, and the bond deposited with the Clerk of Court shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event that the judgment against the Defendant Fender in favor of the Plaintiff Tideland Realty, or any portion thereof, shall be sustained, then said judgment, or any portion thereof, shall be paid out of the cash so deposited; Defendant Fender is on notice of the possibility of an increase to the judgment and he and his assets remain subject to the requirements of the Statute of Elizabeth.

b. Upon the posting by the Defendant Fender of cash or its equivalent with the Clerk of Court for Beaufort County in an amount equal to 1-½ times the amount of the judgment entered in this action in favor of the Plaintiff Lady Beaufort against the Defendant Fender the judgment lien against any assets of the Defendant Fender shall be released and any judgment lien upon said assets shall be discharged, and the bond deposited with the Clerk of Court shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event that the judgment against the Defendant Fender in favor of the Plaintiff Lady Beaufort, or any portion thereof, shall be sustained, then said judgment, or any portion thereof, shall be paid out of the cash so deposited; Defendant Fender is on notice of the possibility of an increase to the judgment and he and his assets remain subject to the requirements of the Statute of Elizabeth.

c. Upon the posting of said bond or bonds post-judgment interest shall cease to accrue and the Beaufort County Clerk of Court shall deposit said funds in an interest-bearing account, with any interest thereby earned being added to the bond and subject to the judgment lien.

d. The granting of this order does not affect the judgments and orders of this Court, which remain in force, except that the current judgment lien shall be removed from Defendant Fender's assets and transferred to the bond.

**AND IT IS SO ORDERED.**

Beaufort, South Carolina

---

Honorable Marvin H. Dukes, III  
Master In Equity and Special Circuit Court  
Judge for Beaufort County



Beaufort Common Pleas

**Case Caption:** Lady Beaufort Llc , plaintiff, et al VS Inverness Llc , defendant, et al

**Case Number:** 2014CP0700052

**Type:** Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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**STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT**

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

HIRD ISLAND INVESTMENTS, INC.,  
SHERWOOD N. FENDER, ADDISON D.  
FENDER, MARTHA B. FENDER, WILLIAM  
M. BOWEN, LADY KEMMERLIN, LLC,  
BRICKYARD HOLDINGS, INC., and A & K  
HOLDING CO., LLC,

Defendants,

and

WILLIAM M. BOWEN

Third-Party Plaintiff,

v.

JAMES S. KERR and MATT TRUMPS,

Third-Party Defendants,

and

MARTHA FENDER,

Third-Party Plaintiff,

v.

JAMES S. KERR and MATT TRUMPS,

Third-Party Defendants.

**IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT**

**Case No. 2014-CP-07-0052**

**CONSENT ORDER REGARDING  
EXTENSION OF RESTRICTION ON  
TRANSFERS OF ASSETS BY  
DEFENDANTS HIRD ISLAND  
INVESTMENTS, INC. AND SHERWOOD  
N. FENDER**

This Court, by Orders of February 14, 2018, May 7, 2018 and August 3, 2018, prohibited Defendants Hird Island Investments, Inc. and Mr. Sherwood N. Fender from transferring, encumbering, or disposing of assets by without notice to Plaintiffs and an opportunity for Plaintiffs to be heard in this Court. The restriction was put in place to ensure that Defendants' assets would be preserved pending reconsideration and potential appeal of the judgment entered by this Court in favor of Plaintiffs on May 11, 2017. Mr. Fender has now appealed the judgment of this Court,

as well as the subsequent reduction of the attorneys' fees awarded against him. Plaintiffs cross-appealed the reduction in the attorneys' fees.

It appearing that Plaintiffs and Defendants Hird Island and Mr. Sherwood Fender consent to an extension of this restriction until such time as this case—including all appeals—is finally resolved, neither Mr. Fender nor any entity in which he has an interest shall transfer, encumber, or dispose of any asset, including proceeds from any transfer occurring since this lawsuit was filed, without giving 30-days' notice in writing to Plaintiffs' counsel and allowing Plaintiff the opportunity to be heard in this Court prior to the transfer, encumbrance, or disposal.

IT IS SO ORDERED.

This \_\_\_\_ day of March, 2019

\_\_\_\_\_  
The Honorable Marvin H Duke, III

WE SO MOVE AND CONSENT:

**ANDREW K. EPTING, JR., LLC**

/s/Jaan G. Rannik

Andrew K. Epting, Jr.

Jaan G. Rannik

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& MATT TRUMPS

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ATTORNEY FOR DEFENDANTS HIRD ISLAND

INVESTMENTS, INC., & SHERWOOD N. FENDER



**Beaufort Common Pleas**

**Case Caption:** Lady Beaufort Llc , plaintiff, et al VS Inverness Llc , defendant, et al

**Case Number:** 2014CP0700052

**Type:** Order/Consent Order

**So Ordered:**

s/Marvin H. Dukes III #3069

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|                               |   |                              |
|-------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS |
|                               | ) | FOURTEENTH JUDICIAL CIRCUIT  |
| COUNTY OF BEAUFORT            | ) | CASE NO.: 2014-CP-07-0052    |
| LADY BEAUFORT, LLC & TIDELAND | ) |                              |
| REALTY, INC.,                 | ) |                              |
|                               | ) |                              |
| Plaintiff,                    | ) |                              |
|                               | ) | ORDER GRANTING IN PART AND   |
| vs:                           | ) | DENYING IN PART DEFENDANTS'  |
|                               | ) | MOTION TO RECONSIDER         |
| HIRD ISLAND INVESTMENTS, INC. | ) |                              |
| AND SHERWOOD N. FENDER,       | ) |                              |
|                               | ) |                              |
| Defendants.                   | ) |                              |
|                               | ) |                              |

This matter came to be heard before me in the Beaufort County Court of Common Pleas on November 13 and December 14, 2017 for the purpose of hearing the Defendant's Motion to Reconsider filed pursuant to Rule 59, SCRCF, on May 19, 2017. In their Motion to Reconsider, the Defendants request that I reconsider or amend certain portions of my Order filed May 11, 2017, entering judgment in favor of Plaintiffs Lady Beaufort, LLC and Tideland Realty, Inc. After giving careful consideration to the arguments and authorities submitted by the parties, I find and conclude that the Motion to Reconsider should be granted in part and denied in part, as hereinafter set forth.

A. "PROFIT"

In my Order dated May 11, 2017 I made the following finding of fact:

As part of the transaction with Inverness, Mr. Fender required Inverness to purchase a second parcel of property owned by Fender personally. (Testimony of Fender). As a result of the sale of this second parcel, Mr. Fender obtained a \$60,000.00 profit in addition to what he made on the sale of the 9 Sams Point parcel. (Testimony of Fender). Mr. Fender needed the income from both parcels to satisfy his financial obligations. (Testimony of Fender). The profit from the sale of the 9 Sams Point parcel alone was not sufficient to do so. (Testimony of Fender, Fender Deposition Designation Pages 35:5 to 36:7, Pages 51:22 to 52:8).

Order, Finding of Fact No. 22.

In their Motion to Reconsider, the Defendants allege the following ground in support of their motion:

Defendant Fender did not make a \$60,000 "profit" from the sale of a second parcel to Inverness. (Order ¶ 22). Rather, that is an amount he received in exchange for conveying property. It was not a profit.

Motion to Reconsider, Ground No. 6.

Upon reconsideration, I find and conclude that the Defendant Fender did not make a \$60,000.00 "profit" from the sale of the second parcel to Inverness, and Finding of Fact No. 22 should be amended as is hereinafter set forth.

#### B. ATTORNEY'S FEES

In my Order filed May 17, 2017 I made the following finding with respect to attorney's fees and costs:

Lady Beaufort has also expended \$53,924.41 in attorney's fees and cost in order to obtain the property it lost because of the defendants' conduct. (See Plaintiffs' Exhibit 2). Attorneys' fees are provided for in the Contract. (See Plaintiffs' Exhibit 1).

Order, pg. 8. I included this figure in the judgment against the Defendants in favor of the Plaintiff Lady Beaufort in the total amount of \$87,578.56.

In their Motion to Reconsider, the Defendants request that I reconsider the award of attorney's fees on the following ground:

In the event the Court does not alter or amend its findings of Defendants' liability, Defendants contest the finding of damages. (Order pp. 8-9). Attorney's fees and costs should not be recoverable because the Court should not find in Lady Beaufort's favor. Alternatively, the amount is excessive and the Court did not make any findings of fact as to the factors in determining an award of attorney's fees. *See Blumberg v. Nealco*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 ("There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained.").

Motion to Reconsider, Ground No. 16. Upon reconsideration, I find and conclude that the foregoing ground has merit with respect to the contention that the Court did not make any findings of fact as to the factors in determining an award of attorney's fees as required by *Blumberg v. Nealco*, supra. I find and conclude that the appropriate remedy is to reopen the record so as to allow the parties to submit evidence in support of, or in opposition to, the claimed attorney's fees and costs of \$53,924.41 and the foregoing factors.

### C. REMAINING GROUNDS

I have given due and careful consideration to the remaining grounds set forth in the Defendant's Motion to Reconsider and I am declining to reconsider or amend my Order as to those grounds.

#### **IT IS, THEREFORE, ORDERED:**

a. My Order of May 17, 2017 shall be and is hereby amended by deleting Finding of Fact No. 22 set forth therein and substituting in its place and stead the following Finding of Fact:

"22. As part of the transaction with Inverness, Mr. Fender required Inverness to purchase a second parcel of property owned by Fender personally. (Testimony of

Fender). As a result of the sale of the second parcel, Mr. Fender obtained \$60,000.00 in addition to what he made on the sale of the 9 Sams Point Parcel. (Testimony of Fender). Mr. Fender needed the income from both parcels to satisfy his financial obligations. (Testimony of Fender). The proceeds from the sale of the 9 Sams Point

Parcel alone was not sufficient to do so. (Testimony of Fender, Fender Deposition Designation Pages 35:5 to 36:7, Pages 51:22 to 52:8).

b. My Order of May 17, 2017 is reconsidered and amended so as to change the final sentence of the second paragraph of the section entitled "III. Damages," found on page 8 of the aforesaid Order to read as follows:

In addition to the foregoing, Lady Beaufort also claims damages in the amount of \$53,924.41 in attorney's fees and costs which it claims it expended on account of

Defendants' default (See Plaintiff's Exhibit 2). Attorney's fees are provided for in the Contract. (See Plaintiff's Exhibit 1). In order to award attorney's fees and costs I must consider the six (6) factors enumerated in *Blumberg v. Nealco*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). There is currently an insufficient evidentiary basis upon which I can consider the *Blumberg v. Nealco* factors. It is accordingly ordered that the record in this case should be reopened and the hearing reconvened, limited to the issue of that element of damages claimed by the Plaintiff Lady Beaufort consisting of attorney's fees and costs in the amount of \$53,924.41.

c. The remaining grounds of the Defendants' Motion to Reconsider is denied.

**AND IT IS SO ORDERED.**

Beaufort, South Carolina

\_\_\_\_\_, 2018

\_\_\_\_\_  
Honorable Marvin H. Dukes, III  
Master in Equity and Special  
Circuit Court Judge for Beaufort County



Beaufort Common Pleas

**Case Caption:** Lady Beaufort Llc , plaintiff, et al VS Inverness Llc , defendant, et al

**Case Number:** 2014CP0700052

**Type:** Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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Investments, Inc. and Sherwood N. Fender was their attorney, H. Fred Kuhn, Jr., Esquire. The Defendant Sherwood N. Fender was also present. Testimony was taken from Andrew K. Epting, Jr., Esquire, and various documents were placed into evidence. For the reasons set forth herein, I find and conclude that the attorney's fees and costs awarded to the Plaintiff Lady Beaufort, LLC in my Order filed May 11, 2017 should be reduced from \$53,924.41 to \$17,857.00, and my judgment amended accordingly.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On August 19, 2013, Lady Beaufort, LLC ("Lady Beaufort") and Hird Island Investments, Inc. ("Hird Island") entered into a Contract whereby Hird Island was to sell to Lady Beaufort a 2.99 acre parcel of real estate located in Beaufort County at 9 Sams Point Road ("the Property").

2. The Contract provided that the closing was to occur seven (7) days after the expiration of the Due Diligence Period, with a provision allowing for an automatic extension of five (5) business days in the event of unsatisfied contingencies. Accordingly, the final closing date of the Contract was October 15, 2013.

3. Hird Island sold the Property to a third party, Inverness, LLC on October 10, 2013, while its Contract with Lady Beaufort was still in full force and effect.

4. On October 15, 2013 Lady Beaufort filed a lis pendens on the Property and on January 7, 2014 it filed this lawsuit, initially against Hird Island only, but subsequently adding its principal Sherwood Fender, alleging causes of action for breach of contract, negligent misrepresentation, and breach of contract accompanied by a fraudulent act.

5. Lady Beaufort resolved its dispute with Inverness by way of a settlement agreement that authorized Lady Beaufort to purchase the property from Inverness for \$25,000.00

more than Lady Beaufort's contract with Hird Island.

6. As a result of a trial held before me on March 1, 2017 I filed an Order on May 11, 2017 entering judgment in favor of Lady Beaufort against both Hird Island and Sherwood Fender in the amount of \$87,578.56.<sup>1</sup>

7. I calculated the amount of the judgment entered in favor of Lady Beaufort by adding together the increase in the purchase price that Lady Beaufort had to pay to Inverness in order to obtain the Property and the attorney's fees and costs spent by Lady Beaufort to obtain the Property. More specifically:

"As a result of the Defendant's conduct, Lady Beaufort had to file suit in order to obtain the property that it was entitled to pursuant to its contract with Hird Island. Lady Beaufort filed suit against Hird Island and its principal Sherwood Fender as well as the third party that purchased the property from Hird Island, Inverness. Lady Beaufort was able to reach a settlement with Inverness. Pursuant to the settlement, Lady Beaufort paid Inverness \$285,000.00 to obtain the property. This represents a \$25,000.00 increase from Lady Beaufort's contract with Hird Island. **Lady Beaufort has also expended \$53,924.41 in attorney's fees and costs in order to obtain the property it lost because of the Defendants' conduct.** Attorney's fees are provided for in the contract."

Order of May 11, 2017, pg. 8 (citations omitted and emphasis added).

8. I added prejudgment interest to the \$25,000.00 increase in the purchase price to arrive at the total judgment of \$87,578.56.

9. On May 19, 2017 the Defendants filed a Motion to Reconsider the May 11, 2017 Order. Among other things, the Defendants contended that the amount of attorney's fees and costs awarded to Lady Beaufort was excessive and the Court did not make any findings of fact as to the factors mandated in determining an award of attorney's fees, citing *Blumberg v. Nealco*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) ("There are six (6) factors to consider in

<sup>1</sup> I also awarded judgment in favor of the Plaintiff Tideland Realty, Inc. against Hird Island and Sherwood Fender in the amount of \$17,500.17, representing actual damages and prejudgment interest on the real estate commission due on the Contract. This judgment in favor of Tideland Realty, Inc. is neither affected by, nor the subject of, this Order.

determining an award of attorney's fees: (1) Nature, extent, and difficulty of the legal services rendered; (2) Time and labor devoted to the case; (3) Professional standing of counsel; (4) Contingency of compensation; (5) Fee customarily charged in the locality for similar services; and (6) Beneficial results obtained.").

10. On February 14, 2018 I issued my Order granting in part and denying in part the Defendant's Motion to Reconsider. In this Order, I found that the foregoing ground had merit and concluded "that the appropriate remedy is to reopen the record so as to allow the parties to submit evidence in support of, or in opposition to, the claimed attorney's fees and costs of \$53,924.41 and the foregoing factors." Order of February 14, 2018, pg. 3. Accordingly, I ordered as follows:

"My Order of May 17, 2017 (sic, May 11, 2017) is reconsidered and amended so as to change the final sentence of the second paragraph of the section entitled "III. Damages," found on page 8 of the aforesaid Order to read as follows:

"In addition to the foregoing, Lady Beaufort also claims damages in the amount of \$53,924.41 in attorney's fees and costs which it claims it expended on account of Defendant's default. Attorney's fees are provided for in the contract. In order to award attorney's fees and costs I must consider the six (6) factors enumerated in *Blumberg v. Nealco*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). There is currently an insufficient evidentiary basis upon which I can consider the *Blumberg v. Nealco* factors. It is accordingly ordered that the record in this case should be reopened and the hearing reconvened, limited to the issue of that element of damages claimed by the Plaintiff Lady Beaufort consisting of attorney's fees and costs in the amount of \$53,942.41."

Order of February 14, 2018, pg. 4.

In accordance with my Order, the hearing was reconvened on July 23, 2018.

11. My finding in my May 17, 2017 Order that Lady Beaufort had expended \$53,924.41 in attorney's fees and costs in order to obtain the property it lost because of the Defendants' conduct was based upon the testimony of James J. Kerr, Sr., the sole owner of Lady

Beaufort. Mr. Kerr testified that he had actually paid this amount in attorney's fees and costs. Tr., pg. 31, lines 21 – 24. Of this sum, Mr. Kerr testified that he paid \$7,857.00 to D. Carlyle Rogers, Jr., P.C. (the "Rogers Firm") and \$46,067.41 to Andrew K. Epting, Jr., LLC (the "Epting Firm").

12. At the re-convened hearing held on July 23, 2018 the only witness to testify was Andrew K. Epting, Jr., Esquire, the principal attorney of the Epting Law Firm. Mr. Epting testified that Lady Beaufort had not paid a total of \$53,924.41 in attorney's fees and costs in order to obtain the property it lost because of the Defendants' conduct. His testimony on this point was corroborated by his firm's itemized billings, which were introduced into evidence. I find and conclude that Mr. Epting's testimony on this issue is credible.

13. Lady Beaufort obtained the subject property from Inverness pursuant to a closing which took place on May 30, 2014. I find and conclude that the attorney's fees and costs charged by the Epting Firm to Lady Beaufort up through that point in time were reasonably necessary in order to obtain the property Lady Beaufort lost because of the Defendants' conduct. The attorney's fees totaled \$15,560.00, while the costs totaled \$1,065.00, resulting in total attorney's fees and costs of \$16,625.00. I reviewed the itemized invoice for these attorney's fees and costs and I find them to be reasonable. The attorney's fees were earned by Attorney Michelle Nicole Endemann and Andrew K. Epting of the Epting Firm. Ms. Endemann spent 27.5 hours and charged a rate of \$250.00 per hour. She was a new attorney and I find her rate to be reasonable and consistent with that charged by attorneys of similar experience in the area. Mr. Epting spent 19.3 hours on the case charging a rate of \$450.00. Mr. Epting is a highly experienced and highly regarded attorney. I find his rate to be reasonable considering his experience and standing in the legal community.

14. Mr. Epting testified that Mr. Kerr and his various business entities were good clients of his firm and he voluntarily reduced his firm's bill by \$6,625.00, thereby charging Mr. Kerr only the balance of \$10,000.00, which Mr. Kerr paid on June 6, 2014.

15. Accordingly, with respect to the Epting Law Firm, Lady Beaufort incurred \$10,000.00 in attorney's fees and costs in order to obtain the Property it lost because of the Defendants' conduct.

16. In addition to the Epting Firm, Lady Beaufort also incurred attorney's fees and costs with the Rogers Firm. No witness testified with respect to the Rogers Firm nor were any of the firm's billings placed into evidence. At the original hearing, however, an Affidavit from D. Carlyle Rogers, Jr., Esquire the principal attorney of the firm, was introduced into evidence. From this Affidavit it appears that Mr. Rogers represented Lady Beaufort in the attempted closing with Hird Island, as well as the successful closing of the transaction between Lady Beaufort and Inverness. He also assisted Lady Beaufort with the filing of a Lis Pendens on the property, as well as with putting the Defendant on notice of its default under its contract with Lady Beaufort. The total attorney's fees and costs associated with the aforementioned legal services was \$7,857.00.

17. There are six factors to consider in determining an award of attorney's fees: (1) Nature, extent and difficulty of the legal services rendered; (2) Time and labor devoted to the case; (3) Professional standing of counsel; (4) Contingency of compensation; (5) Fee customarily charged in the locality for similar services; and (6) Beneficial results obtained. *Blumberg v. Nealco*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

18. With respect to the nature, extent, and difficulty of the legal services rendered, these services included preparing for the attempted closing with Hird Island, the successful

closing with Inverness, the filing of a lis pendens, putting the Defendant on notice of its default, and filing and pursuing litigation in order to obtain to the Property which is the subject of this litigation.

19. With respect to the time and labor devoted to the case, I find that the 19.3 hours spent by Mr. Epting and the 27.5 spent by Mrs. Endemann were reasonably necessary in order to obtain the subject property. While I do not know precisely the amount of time spent by Mr. Rogers, nor his hourly billing rate, considering the nature of the services he performed I find that the total attorney's fees and costs billed by him was reasonably necessary.

20. As previously noted, Mr. Epting is highly experienced and highly regarded in the legal community. Ms. Endemann was a new attorney. She was the principal trial attorney for the Plaintiff during the trial of this action and I found her to be professional and competent. With respect to Mr. Rogers, Mr. Epting testified that he is a highly competent and experienced real estate attorney, and I so find.

21. There is no contingency of compensation in this case.

22. These charges by the attorneys involved in this case on behalf of the Plaintiff are in line with the fees customarily charged in this locale for similar services.

23. The Plaintiff's attorneys have obtained a beneficial result for their client, having obtained the Property which is the subject of this action for their client.

24. I find and conclude that Lady Beaufort is entitled to recover from the Defendant the \$10,000.00 in costs and attorney's fees which it paid to the Epting Firm in order to obtain the Property which is the subject of this action.

25. Although there is no testimony that Lady Beaufort actually paid any part of the \$7,857.00 in attorney's fees and costs claimed by the Rogers Firm, there is no reason to believe

that it is not due and owing, or that any portion was forgiven. I accordingly find and conclude that Lady Beaufort is entitled to recover from the Defendant \$7,857.00 in attorney's fees and costs either paid or owed to the Rogers Firm.

26. I find and conclude that the Plaintiff has expended or incurred \$17,857.00 in attorney's fees and costs in order to obtain the property it lost because of the Defendants' conduct, and the Order filed on May 11, 2017 should be amended accordingly.

IT IS, THEREFORE, ORDERED:

a. Page 8 of the Order filed on May 11, 2017 shall be and is hereby amended so as to delete the sentence "Lady Beaufort has also expended \$53,924.41 in attorney's fees and costs in order to obtain the property it lost because of the Defendant's conduct." which shall be replaced with the sentence "Lady Beaufort has also expended or incurred \$17,857.00 in attorney's fees and costs in order to obtain the property it lost because of the Defendant's conduct."

b. Page 9 of the Order filed on May 11, 2017 shall be and is hereby amended so as to delete the sentence "I further award judgment against Hird Island and Sherwood Fender in the amount of \$87,578.56, representing actual damages and prejudgment interest as described above in favor of Lady of Beaufort." which shall be replaced with the sentence "I further award judgment against Hird Island and Sherwood Fender in the amount of \$51,511.15, representing actual damages and prejudgment interest as described above in favor of Lady Beaufort."

AND IT IS SO ORDERED.

Honorable Marvin H. Dukes, III  
Master in Equity and Special Circuit Court  
Judge for the Beaufort County Court of  
Common Pleas

\_\_\_\_\_, 2018  
Beaufort, South Carolina

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-0052

Lady Beaufort, LLC &amp;

Hird Island Investments, Inc.

Tideland Realty, Inc.

Sherwood Fender, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: H. Fred Kühn, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

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

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

This Order amends the Judgment amount against Hird Island and Sherwood Fender that was issued in the order filed May 11<sup>th</sup>, 2017.

## 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Lady Beaufort                                | Hird Island and Sherwood Fender          | \$51,511.15                                              |
|                                              |                                          |                                                          |
|                                              |                                          | \$                                                       |

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.

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Jaan G. Rannik, Esquire

H. Fred Kuhn, Jr., Esquire

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

**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-Filers 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.

\_\_\_\_\_  
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**Beaufort Common Pleas**

**Case Caption:** Lady Beaufort Llc , plaintiff, et al VS Inverness Llc , defendant, et al

**Case Number:** 2014CP0700052

**Type:** Order/Other

**So Ordered:**

**s/Marvin H. Dukes III #3069**

Electronically signed on 2018-10-26 11:32:46 page 12 of 12

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-0052

Lady Beaufort, LLC and Tideland Realty, Inc.,

Hird Island, Investments Inc., and

PLAINTIFF(S)

Sherwood Fender

DEFENDANT(S)

Submitted by: Michelle N. Endemann, Andrew K. Epting,  
Jr., LLC, 46A State St., Charleston, SC, 29401, P: 843-  
377-1871

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

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

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

## INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below)             | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------------------|-------------------------------------------------------------|
| Tideland Realty, Inc.                        | Hird Island Investments, Inc. and<br>Sherwood Fender | \$17,500.17                                                 |
| Lady Beaufort, LLC                           | Hird Island Investments, Inc. and<br>Sherwood Fender | \$87,578.56                                                 |
|                                              |                                                      | \$                                                          |

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.**

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

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-Filers 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.



**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
**(Instructions for Information Only-Not to be filed with Form 4C)**

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Case No. 2014-CP-07-0052

Plaintiffs,

v.

HIRD ISLAND INVESTMENTS, INC. AND  
SHERWOOD FENDER,

ORDER

Defendants.

This matter came before me on March 1, 2017 for a non-jury trial. After hearing testimony and reviewing the evidence presented by the parties, I find in favor of the Plaintiffs against the Defendants as follows.

**I. FINDINGS OF FACT**

1. On August 19, 2013, Lady Beaufort, LLC ("Lady Beaufort") and Hird Island Investments, Inc. ("Hird Island") entered into a contract whereby Hird Island was to sell to Lady Beaufort a 2.99-acre parcel of property located in Beaufort county at 9 Sams Point Rd. (Plaintiffs' Exhibit 1, Contract).
2. Tideland Realty, Inc. ("Tideland") was the realtor representing the buyer in the transaction and was entitled to a 5% commission on the \$260,000.00 purchase price. (Plaintiffs' Exhibit 1, Contract, ¶ 33).
3. Sherwood Fender of Hird Island asked Mr. Trumps of Tideland to approach Mr. Kerr of Lady Beaufort about purchasing the parcel. Mr. Kerr had previously purchased a piece of property from Mr. Fender and he believed Mr. Kerr would have an interest in buying the property. (Testimony of Kerr, Fender, Trumps, and Fender Deposition Designations Pages 16:23 to 18:11).
4. The contract provided for a due diligence period of 30 "Business Days" to begin the day after the "Effective Date" of the Contract. (Plaintiffs' Exhibit 1, Contract ¶ 1.E and ¶ 12). The "Effective Date" as defined by the contract is the day the last signature appeared on the contract, August 19, 2013. (Plaintiffs' Exhibit 1, Contract ¶ 1.D) The due diligence period ended on October 1, 2013.
5. The contract provided the closing was to occur 7 days after the expiration of the Due Diligence Period (Plaintiffs' Exhibit 1, Contract ¶ 33) with a provision allowing an automatic extension of 5 Business Days for unsatisfied contingencies. (Plaintiffs' Exhibit 1, Contract ¶ 4). Accordingly, the "drop dead" date of the contract was October 15, 2013.
6. The buyer began its due diligence and its attorney, D. Carlyle Rogers, began his work to close the transaction and obtain the title insurance policy for the buyer. (Testimony of Rogers).

7. Lady Beaufort secured financing through Palmetto State Bank, which was approved several weeks before the scheduled closing. Further, Mr. Kerr and Mr. Roger's testified that the transaction could have been funded by Mr. Kerr without the loan. (Testimony of Rogers and Kerr).
8. Mr. Rogers soon discovered that the seller entity, Hird Island, had been administratively dissolved in its state of incorporation, Georgia. (Plaintiffs' Exhibit 3, GA Sec. of State). Further, the company had not been domesticated in South Carolina, but was simply authorized to do business in South Carolina. (Plaintiffs' Exhibit 3, SC Sec. of State). The title insurance company was unwilling to write the policy unless this issue was remedied. (Testimony of Rogers).
9. The dissolution of the Seller entity and resulting refusal of the title insurance company to issue the title insurance policy constitute "unsatisfied contingencies" under ¶ 4 of the Contract.
10. Mr. Rogers contacted the Georgia Secretary of State to determine how this issue could be remedied and brought it to the attention of the Seller's principal, Sherwood Fender, several days before the closing. (Testimony of Rogers, Plaintiffs' Exhibit 3, Georgia Sec. of State notes).
11. Pursuant to S.C. Code Section 12-54-124, if a piece of property constitutes more than a majority of the assets of a company, a certificate of tax compliance must be obtained by the seller from the South Carolina Department of Revenue. Hird Island refused to provide the certificate, despite its attorney Derek Gilbert's assertion that the provision of the certificate is customary (See Gilbert Designations Page 12 lines 1-10) and despite the fact that the Section 22 of the contract required the parties to "comply with all local, state, federal laws, and any rules." (Plaintiffs' Exhibit 1).
12. Unbeknownst to Lady Beaufort or its attorney, the Seller's acquiring of the certificate of tax compliance was further complicated by the fact that a tax lien was filed on the property by the state of South Carolina on September 27, 2013. The lien was filed after the initial title search done by Mr. Rogers, and the lien was never disclosed by Hird Island or its lawyer. (See Exhibit 18, Testimony of Rogers, Testimony of Fender).
13. The unsatisfied requirement of the provision of a certificate of tax compliance and the unsatisfied tax lien constitute "unsatisfied contingencies" under ¶ 4 of the Contract.
14. These issues were raised with Hird Island and its attorney at least a week before the closing was scheduled. Hird Island set the closing for October 7, 2013 despite the outstanding issues. (See Plaintiffs' Exhibit 4, email, Testimony of Rogers).
15. In an effort to resolve the issues, Mr. Roger's provided several alternatives to the Seller, Hird Island: (1) the corporation could be reinstated; (2) Hird Island could sign a unanimous written consent that included language inserted by the title insurance company that Hird Island was selling the piece of property as a part of the winding up process (Plaintiffs' Exhibit 5); (3) that Mr. Fender of Hird Island sign an indemnity agreement in favor of Lady Beaufort; or (4) that the seller's attorney obtain the title insurance from his title insurance company, if it was willing to write the policy (Plaintiffs' Exhibits 10, 11). The seller was

unwilling to take any of these actions, so the buyer did not fund the transaction on October 7, 2013. (Testimony of Fender, Kerr, Rogers).

16. Palmetto State Bank and a loan officer named Jan Malinowski had a mortgage on the property at issue, and it was in arrears. In his own words, Mr. Fender was "paranoid" that Lady Beaufort's principal, James Kerr, was in league with Mr. Malinowski to put him in financial ruin as Mr. Kerr and Mr. Malinowski were "citadel boys." (Testimony of Fender, Fender Deposition Designations Pages 11:10 to 12:25).
17. Mr. Kerr had never met Mr. Malinowski, had never done any business with him before, and did not know he attended the citadel. (Testimony of Kerr).
18. Negotiations between the buyer's attorney, Mr. Rogers, and the seller's attorney, Mr. Gilbert continued after October 7 through October 11, 2013 in an attempt to close the transaction. (Testimony of Rogers and Kerr, Plaintiffs' Exhibits 10, 11, 12).
19. Negotiations ended abruptly when the buyer was alerted by Mr. Trumps that Hird Island had sold the property to a third-party, Inverness, LLC on October 10, 2013. Hird Island hired a different attorney, Ms. Eversole, to close the transaction with Inverness. (Plaintiffs' Exhibit 13, Testimony of Trumps, Fender, and Rogers).
20. The sale of the property to Inverness on October 10, 2013 occurred while the contract between Lady Beaufort and Hird Island was still in full force and effect as the Lady Beaufort/Hird Island contract expired on October 15, 2013.
21. The Seller never called a default under the contract or expressed that the contract was terminated. Mr. Rogers and Mr. Gilbert continued trying to resolve the issues even after, unbeknownst to them, the property had been sold to Inverness. (Plaintiff's Exhibit 12, Testimony of Fender and Rogers).
22. As part of the transaction with Inverness, Mr. Fender required Inverness to purchase a second parcel of property owned by Fender personally. (Testimony of Fender). As a result of the sale of this second parcel, Mr. Fender obtained a \$60,000.00 profit in addition to what he made on the sale of the 9 Sams Point parcel. (Testimony of Fender). Mr. Fender needed the income from both parcels to satisfy his financial obligations. (Testimony of Fender). The profit from the sale of the 9 Sams Point parcel alone was not sufficient to do so. (Testimony of Fender, Fender Deposition Designation Pages 35:5 to 36:7, Pages 51:22 to 52:8).
23. Weighing the evidence and considering the testimony of the witnesses, I find that the Lady Beaufort/Hird Island Contract failed to close because the Mr. Fender became in his own words "paranoid" about the Lady Beaufort's motives and because Mr. Fender was in financial trouble and saw a more lucrative deal with another buyer who would purchase a second parcel, the sale of which provided another \$60,000.00 to Mr. Fender. (Testimony of Fender).
24. Mr. Rogers wrote a default letter to Inverness and its principal Robert Sample and Hird Island and filed a *lis pendens* on the property. Soon thereafter, this lawsuit was filed by Lady Beaufort to recover the property. (Plaintiffs' Exhibit 14).

25. Lady Beaufort resolved its dispute with Inverness by way of a settlement agreement that authorized Lady Beaufort to purchase the property from Inverness for \$25,000.00 more than Lady Beaufort's contract with Hird Island. (Plaintiffs' Exhibit 15, 16).

26. Plaintiffs sued Hird Island and its principal Sherwood Fender for breach of contract, negligent misrepresentation, and breach of contract accompanied by a fraudulent act. Hird Island counterclaimed for breach of contract.

## II. CONCLUSIONS OF LAW

### A. The Competing Claims for Breach of Contract

Plaintiffs sued Hird Island for breach of contract. In turn, Hird Island filed a counterclaim against Lady Beaufort for breach of contract. To establish a breach of contract, a party must establish three elements: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage as a direct and proximate result of the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962).

Mr. Fender claimed that the "drop dead" date of the contract was October 7, 2013 as he claimed that a Federal Holiday, specifically Labor Day, is a "Business Day" and defined by the Contract. Further, Mr. Fender alleged that there were no written contingencies specified in the Contract, so the Contract provision allowing for an automatic extension of five Business Days is not applicable. However, "contingency" is not a defined term in the Contract. I find that the contract between Hird Island and Lady Beaufort expired on October 15, 2013, pursuant to the plain language of the agreement as: (1) contrary to Mr. Fender's assertion, the contract definition of "Business Days" does not include Federal Holidays; and (2) the automatic extension of five Business Days is applicable as there were unsatisfied contingencies, including resolution of the tax lien, provision of a certificate of tax compliance, resolution of the legal status of Hird Island, and resolution of the objections to the provision of title insurance raised by the title insurer. Therefore, Lady Beaufort was not obligated to close on October 7, 2013, especially considering the unresolved issues with the transaction that were raised by Mr. Rogers and the title insurance company.

Mr. Fender further testified that Hird Island was not required to provide a certificate of tax compliance or remedy the issue raised by the title insurance company with regard to the Seller entity's dissolution in its state of incorporation, Georgia. However, I find that the contract requires the passage of marketable title, (which necessitates a valid seller entity), as well compliance "with all local, state, federal laws, and any rules." (Plaintiffs' Exhibit 1). Pursuant to S.C. Code Section 12-54-124, if a piece of property constitutes more than a majority of the assets of a company, a certificate of tax compliance must be obtained by the seller from the South Carolina Department of Revenue. Hird Island refused to provide the certificate, despite its attorney Derek Gilbert's assertion that the provision of the certificate is customary (See Gilbert Designations Page 12 lines 1-10).

As Hird Island refused to take the steps necessary to close and instead sold the property to a third party on October 10, 2015, before the Hird Island Lady Beaufort Contract expired on October 15, 2015, I find that it was Hird Island and not Lady Beaufort that breached the contract. Further, I find that any reasonable seller acting in good faith would have agreed to one of the five different alternatives to remedy the issues with the transaction that were provided by Lady Beaufort's attorney, Carl Rogers, and that Lady Beaufort was ready, willing and able to close. Finally, I find that Plaintiffs have been damaged by Hird Island's breach of the Contract, as will be discussed further *infra*.

**B. Plaintiffs' Tort Claims**

Plaintiffs sued Hird Island and its principal Sherwood Fender for negligent misrepresentation and breach of contract accompanied by a fraudulent act.

To establish liability for negligent misrepresentation, the plaintiff must show by a preponderance of the evidence: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation;

and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation. *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010); *McLaughlin v. Williams*, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct.App.2008) (noting the elements of negligent misrepresentation must be established by a preponderance of the evidence). *Turner v. Milliman*, 708 S.E.2d 766, 769 (S.C. 2011).

Here, Mr. Fender represented to Plaintiffs that he was a willing seller and scheduled the closing to occur on October 7, 2013, with full knowledge of the dissolution of Hird Island and the issue it presented for the title insurance company. (Testimony of Rogers, Fender). The defendants had a pecuniary interest in making these representations to Plaintiffs, and had a duty to communicate truthful information. "So long as the defendant 'has a pecuniary interest in the transaction,' he has a 'duty to exercise reasonable care in giving information....'" 18 S.C. Jur. Negligence § 57 citing *Winburn v. Insurance Co. of North America*, 287 S. C. 435, 444, 339 S. E. 2d 142, 146 (Ct. App. 1985); see Restatement Second, Torts § 552 (1977); *Gilliland v. Elmwood Properties*, 301 S. C. 295, 302, 391 S. E. 2d 577, 580 (1990); *Lawlor v. Schepper*, 232 S. C. 94, 101 S. E. 2d 269 (1957); *First Federal Sav. Bank v. Knauss*, 296 S. C. 136, 370 S. E. 2d 906 (Ct. App. 1988).

As Mr. Fender's lawyer, Derek Gilbert, was negotiating with Mr. Roger's to resolve the issues raised by the title insurance company, and while Mr. Fender's lawyer was making representations about trying to getting the deal done, Mr. Fender was negotiating another deal with another buyer, Inverness. (Testimony of Fender, Rogers, Kerr, Plaintiffs' Exhibits 4, 10, 11, 12, 20). "Clients are bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority." *Koutsogiannis v. BB & T*, 616 S.E.2d 425, 428 (S.C. 2005). These false representations continued even after the deed transferred to the second buyer. (Testimony of Fender, Rogers, Kerr, Plaintiffs' Exhibits 4, 10, 11, 12, 20). Mr. Fender went to another lawyer to close the Inverness transaction, while Mr. Gilbert was still emailing and making calls to Lady Beaufort's counsel in an effort to resolve the issues and close. *Id.* See also Plaintiffs' Exhibit 13.

Plaintiffs relied to their detriment on these actions and representations, because had they known that Mr. Fender was in the process of selling the property to another buyer, they would have taken steps to protect their rights and filed a *lis pendens* to prevent the sale to Inverness – as Plaintiffs did once the sale was discovered. (Lis Pendens, Testimony of Rogers and Kerr, Plaintiffs' Exhibit 14). It is of no consequence that Mr. Fender was acting in a representative capacity as South Carolina courts have consistently held, “An agent's liability for his own tortious acts is unaffected by the fact that he acted in his representative capacity.” *Gilbert v. Mid-South Mach. Co.*, 267 S.C. 211, 221–22, 227 S.E.2d 189, 193 (1976) (quoting *Lawlor v. Scheper*, 232 S.C. 94, 98–99, 101 S.E.2d 269, 271 (1957)). Finally, I find that Plaintiffs have been damaged by defendants' conduct, as will be discussed further, *infra*.

An action for breach of contract accompanied by a fraudulent act is not based on the same elements as the action in tort for fraud and deceit. *McCullough v. The American Workmen*, 200 S.C. 84, 20 S.E.2d 640 (1942). In order to state a claim for breach of contract accompanied by a fraudulent act, the plaintiff must plead facts establishing three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 336 S.E.2d 502 (Ct.App.1985). It is not necessary to allege the elements of common law fraud and deceit. See *Welborn v. Dixon*, 70 S.C. 108, 49 S.E. 232 (1904); *Sullivan v. Calhoun*, 117 S.C. 137, 108 S.E. 189 (1921). The fraudulent act is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design. *Sullivan v. Calhoun*, 117 S.C. 137, 108 S.E. 189 (1921). As the Court observed in *Sullivan v. Calhoun*, “fraud,” in this sense,

assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.

*Harper v. Ethridge*, 348 S.E.2d 374, 378 (S.C. App. 1986) citing *Sullivan*. As is discussed more fully above, Hird Island was in breach of the Contract when it failed to remedy the issues raised by Plaintiffs concerning dissolution of the corporation and tax compliance. While Mr.

Fender represented he would close and while his lawyer negotiated with Mr. Roger's to ensure the closing occurred, Mr. Fender saw a more lucrative deal with another buyer who would purchase not only the parcel at issue in this case, but a second parcel, netting him an additional \$60,000.00, per the testimony of Mr. Fender. The sale of the property to Inverness while the Contract was still pending and while the lawyers were still negotiating to close the transaction, constitutes dishonesty in fact and unfair dealing. Further, these actions relate directly to the breach of the Contract, and not merely to its making. *See Edens v. Goodyear Tire & Rubber Co.*, 858 F.2d 198, 203 (4th Cir. 1988) (Proof that Goodyear granted an extension and intentionally concealed that information while claiming North Strand's failure to meet the initial completion date as justification for cancellation, would be a separate and distinct, but closely connected, dishonest act). Finally, I find that Plaintiffs have been damaged by the defendants' conduct.

### III. DAMAGES

As a result of the defendants' conduct, Tideland was not paid the real estate commission that it earned and which was provided for in the contract. Accordingly, Tideland has suffered damages in the amount of \$13,000.00. (See Plaintiffs' Exhibit 1).

As a result of the defendants' conduct, Lady Beaufort had to file suit in order to obtain the property that it was entitled to pursuant to its Contract with Hird Island. Lady Beaufort filed suit against Hird Island and its principal Sherwood Fender as well as the third-party that purchased the property from Hird Island, Inverness. Lady Beaufort was able to reach a settlement with Inverness.

Pursuant to the settlement, Lady Beaufort paid Inverness \$285,00.00 to obtain the property. This represents a \$25,000.00 increase from Lady Beaufort's Contract with Hird Island. (See Plaintiffs' Exhibits 15 and 16). Lady Beaufort has also expended \$53,924.41 in attorney's fees and cost in order to obtain the property it lost because of the defendants' conduct. (See Plaintiffs' Exhibit 2). Attorneys' fees are provided for in the Contract. (See Plaintiffs' Exhibit 1).

I find Plaintiffs are entitled to prejudgment interest; however, Lady Beaufort is entitled to prejudgment interest only as to the \$25,000.00 increase in purchase price and not its attorneys' fees as the amount of attorneys' fees was not certain or capable of being reduced to certainty by

conditions existing at the time the claim arose. The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty. *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789 (1993). The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest. *Id.* The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose: *Smith-Hunter Const. Co., Inc. v. Hopson*, 616 S.E.2d 419, 421 (S.C. 2005).

Accordingly, I award judgment against Hird Island and Sherwood Fender in the amount of \$17,500.17, representing actual damages and prejudgment interest in favor of Tideland Realty. I further award judgment against Hird Island and Sherwood Fender in the amount of \$87,578.56, representing actual damages and prejudgment interest as described above in favor of Lady Beaufort.

It is so ordered.

---

The Honorable Marvin H. Dukes, III  
Master in Equity

On this \_\_\_\_ day of \_\_\_\_\_ 2017  
Beaufort, SC



Beaufort Common Pleas

**Case Caption:** Lady Beaufort Llc , plaintiff, et al VS Hird Island Investments Inc ,  
defendant, et al

**Case Number:** 2014CP0700052

**Type:** Order/Judgment and Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-05-10 14:18:46 , page 15 of 15

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-07-0052

Lady Beaufort, LLC & Tideland  
Realty, Inc., )  
Plaintiffs, )

DEFENDANTS' MOTION TO RECONSIDER  
ORDER DATED MAY 11, 2017

vs. )

Hird Island Investments, Inc. and  
Sherwood N. Fender, )  
Defendants. )

TO: MICHELLE ENDEMANN, ATTORNEY FOR THE PLAINTIFFS:

You will please take notice that William M. Bowen, attorney for Hird Island Investments, Inc. and Sherwood N. Fender ("Defendants"), will move before the Honorable Marvin H. Dukes III, Master-in-Equity, Special Circuit Court Judge for Beaufort County, at the Beaufort County Courthouse, Beaufort, South Carolina, at 10:00 AM on the tenth day after service hereof or as soon thereafter as this matter may be set, for a reconsideration or amendment of the Order of May 11, 2017 (the "Order"), a copy of which is attached. The Order was first received by Defendants or their attorney on May 11, 2017 through a Notice of Electronic Filing email from sccourts.org dated May 11, 2017.

Defendants move this Court pursuant to Rule 59(e), SCRCp, to reconsider, alter, or amend its Order, filed May 11, 2017, entering judgment in favor of Plaintiffs Lady Beaufort, LLC, & Tideland Realty, Inc. (collectively "Plaintiffs"). This Motion is timely filed. This

Motion is based on the memorandum of law below and any exhibits filed along with this Motion, the pleadings, and applicable law, as well as any other memorandum of law that Defendants may submit to the Court at or prior to a hearing on this Motion. For the reasons stated below, Defendants request the Court reconsider its Order and find in favor of Defendants.

The Court should reconsider, alter, or amend the following findings of fact:

1. The dissolution of Hird Island and refusal of Lady Beaufort's chosen title insurance company to issue title insurance are not unsatisfied contingencies. (Order ¶ 9). The contract was not contingent upon Lady Beaufort being able to obtain title insurance. There is no requirement in the contract that Buyer obtain title insurance as a precondition to closing. The Contract states only that "Brokers *recommend* Buyer have . . . appropriate insurance (including owner's title) effective at Closing." (Def. Exh. 1 ¶ 10). Therefore, the alleged inability of Lady Beaufort to obtain title insurance cannot form the basis of a ruling in Plaintiffs' favor. To the extent the Court relied on a supposed requirement for title insurance, it should reconsider its decision.
2. S.C. Code Ann. § 12-54-124<sup>1</sup> does not require a seller to obtain a certificate of tax compliance from the South Carolina Department of Revenue if a piece of property constitutes more than a majority of the assets of a company. (Order ¶ 11). It states that when a business transfers property that constitutes a majority of its assets, any tax due "constitutes a lien against the assets in the hands of a purchaser, or any other transferee, until the taxes are paid." § 12-54-124. However, no lien applies "*if the purchaser* receives a certificate of compliance from the department stating that all tax returns have been filed and all taxes generated by the business have been paid." *Id.* (emphasis added). There is no requirement for Hird Island to provide a certificate of tax compliance under § 12-54-124 or any term of the contract. To the extent the Court relied on this incorrect finding, it should reconsider its decision.
3. For the same reasons stated in paragraph 2, the Court erred in finding the absence of a certificate tax compliance constituted an unsatisfied contingency. (Order ¶ 4).

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<sup>1</sup> Section 12-54-124 states in its entirety:

In the case of the transfer of a majority of the assets of a business, other than cash, whether through sale, gift, devise, inheritance, liquidation, distribution, merger, consolidation, corporate reorganization, lease or otherwise, any tax generated by the business which was due on or before the date of any part of the transfer constitutes a lien against the assets in the hands of a purchaser, or any other transferee, until the taxes are paid. Whether a majority of the assets have been transferred is determined by the fair market value of the assets transferred, and not by the number of assets transferred. The department may not issue a license to continue the business to the transferee until all taxes due the State have been settled and paid and may revoke a license issued to the business in violation of this section.

This section does not apply if the purchaser receives a certificate of compliance from the department stating that all tax returns have been filed and all taxes generated by the business have been paid. The certificate of compliance is valid if it is obtained no more than thirty days before the sale or transfer.

4. The contract at issue was not in full force and effect on October 10, 2013 when Hird Island sold the Property to Inverness. (Order ¶ 20).
5. Defendants did express that Lady Beaufort defaulted and the contract was terminated. (Order ¶ 21). On October 7, 2013, Defendants, through their closing attorney's office, indicated that Lady Beaufort failed to send the purchase funds and the closing should have occurred by 5pm that day. (Def. Exh. 3).
6. Defendant Fender did not make a \$60,000 "profit" from the sale of a second parcel to Inverness. (Order ¶ 22). Rather, that is an amount he received in exchange for conveying property. It was not a profit.
7. The contract did not fail to close due to any alleged paranoia of Mr. Fender or for the pursuit of a more lucrative deal. (Order ¶23). Rather, the contract did not close because Lady Beaufort attempted to add terms and requirements to the contract, such as a tax compliance certificate, that did not exist. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376.S.C. 399, 410, 656 S.E.2d 775, 781 (Ct. App. 2007) ("Courts only have the authority to specifically enforce contracts that the parties themselves have made; they do not have the authority to alter contracts or to make new contracts for the parties.").

The Court should reconsider, alter, or amend the following conclusions of law:

8. The contract expired prior to October 15, 2013 because there were no "unsatisfied contingencies" that provided for a five-day extension. (Order p. 4). As noted above, there is no legal or contractual requirement for a certificate of tax compliance, for Lady Beaufort to obtain title insurance, or for Hird Island to obtain a certain legal status. None of those items are required by law or stated in the contract. If those items were so important to Lady Beaufort, it should have included them in the contract. The tax lien could have been satisfied at the closing. Accordingly, Lady Beaufort was obligated to close by October 7, 2013, and its failure to do so is a default and breach under the contract. The Court should reconsider its order on this issue and find in Defendants' favor that Lady Beaufort was obligated to close on October 7 and breached the contract by failing to do so. *See* (Def. Exh. 1 ¶1(G) (stating in contract, "Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods." (emphasis in original)); *Cotter v. James L. Tapp Co.*, 267 S.C. 647, 653, 230 S.E.2d 715, 717-18 (1976) ("It is also well settled in this state that if the option requires performance in a certain manner, time is of the essence and *exact compliance* with the terms of the option are required." (emphasis added)).
9. Neither South Carolina law nor the contract require a certificate of tax compliance to pass marketable title. (Order p. 5). As explained above, S.C. Code Ann. § 12-54-124 states only that there may be a tax lien on the property and no lien would apply if the purchaser obtains a certificate of tax compliance. It does not require such a certificate from the seller. This is demonstrated by Mr. Gilbert's testimony that a certificate is merely "customary" but not a legal obligation or a contract term. If Lady Beaufort wanted to

include that as a contract term, it could have but chose not to and cannot now complain about it.

10. There is no factual or legal basis for the statement that "any reasonable seller acting in good faith would have agreed to" the alternatives presented by Lady Beaufort to resolve the alleged "issues with the transaction." (Order p. 5). The "issues" were those of Lady Beaufort and did not involve any legal or contractual requirement. Therefore, a reasonable seller acting in good faith would not be required to agree to take any action that is not legally or contractually required.
11. Lady Beaufort was not ready, willing, and able to close on October 7 because it did not provide the purchase funds. (Order p. 5).
12. There is no basis to find for Lady Beaufort as to its negligent misrepresentation claim because there was no alleged misrepresentation. (Order pp. 5-6). The Court found Defendants misrepresented they were willing to sell the property on October 7 "with full knowledge of the dissolution of Hird Island and the issue it presented for the title insurance company." (Order p. 6). The administrative dissolution of Hird Island in Georgia did not prevent it from selling the property, and Plaintiffs make no such allegation. Therefore, it is not misrepresentation. That Lady Beaufort allegedly could not obtain title insurance from its chosen insurer is not a misrepresentation by Hird Island because it did not prevent Hird Island from transferring the property and there was no legal or contractual requirement that it be able to obtain title insurance to purchase the property. Indeed, Lady Beaufort purchased the property from Inverness, who purchased it from Hird Island. Presumably, if Lady Beaufort perceived an inability to transfer property based on the dissolution then it could not have gotten clear title or title insurance as to the purchase from Inverness. "[I]f the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact." *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 241, 692 S.E.2d 499, 508 (2010) (internal quotation marks omitted). Lady Beaufort knew that neither the contract nor South Carolina law required resolution of the "issues." Defendants representation that they were ready to sell under the terms of the Contract on October 7, 2013 was not a misrepresentation. Rather, Lady Beaufort breached the contract by failing to timely close due to alleged extra-contractual and nonlegal "issues."
13. There is no basis to find Lady Beaufort relied on any representations made after October 7, as the contract expired when the closing did not occur on time and there was no basis for an extension of the closing date. (Order pp. 6-7). See *Harrington v. Mikell*, 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Ct. App. 1996) ("Reliance can be justified only if the relationship of the parties is such that the defendant occupies a superior position to the plaintiff with respect to knowledge of the truth of the statement made."). Lady Beaufort had the same knowledge as Defendants with respect to the contract terms and the passage of the closing date. There is no basis for finding the reliance element of negligent misrepresentation satisfied under the circumstances of this case.

14. The finding of breach of contract accompanied by fraudulent act is not supported by the facts or the law. As an initial matter, there is no breach of contract by Defendants, to this cause of action necessarily fails. *See Rotec Servs. v. Encompass Servs.*, 359 S.C. 467, 470, 597 S.E.2d 881, 883 (Ct. App. 2004) ("To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: (1) a **breach of contract**; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." (emphasis added) (internal quotation marks omitted)). The Court found Hird Island "was in breach of the Contract when it failed to remedy the issues raised by Plaintiffs concerning dissolution of the corporation and tax compliance." There is no fraudulent intent in not remedying issues that are not legally or contractually required. Therefore, there is no fraudulent intent relating to that breach and it cannot be the basis for imposing liability under this cause of action. Further, any actions taken after October 7 are irrelevant as the contract already expired and was breached by Lady Beaufort for its failure to timely close. (Order pp. 7-8). There is nothing fraudulent about selling a piece of property that is not under contract and when both parties to a previous contract know it did not timely close.
15. In the event the Court does not alter or amend its findings of Defendants' liability, Defendants contest the finding of damages. (Order pp. 8-9). Attorney's fees and costs should not be recoverable because the Court should not find in Lady Beaufort's favor. Alternatively, the amount is excessive and the Court did not make any findings of fact as to the factors in determining an award of attorney's fees. *See Blumberg v. Nealco*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 ("There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained.").
16. Tideland Realty is not entitled to a commission because the sale did not occur due to the fault of Lady Beaufort.

The undersigned hereby certifies that he, prior to filing the above motion, has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, or that such consultation would serve no useful purpose, or could not be timely held.

WILLIAM M. BOWEN, P.A.

By: S/ William M. Bowen

William M. Bowen  
Attorney for the Defendants  
Hird Island Investments, Inc.  
and Sherwood N. Fender  
P. O. Drawer 6128  
Hilton Head, SC 29938  
(843) 842-5000

May 19, 2017  
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-07-0052

LADY BEAUFORT, LLC &  
TIDELAND REALTY, INC.,

Plaintiffs,

vs.

NOTICE OF MOTION AND MOTION TO POST  
BOND IN SATISFACTION OF JUDGMENTS

HIRD ISLAND INVESTMENTS, INC.,  
SHERWOOD N. FENDER, ADDISON D.  
FENDER, MARTHA B. FENDER,  
WILLIAM B. BOWEN, LADY  
KEMMERLIN, LLC, BRICKYARD  
HOLDINGS, INC. AND A&K HOLDING  
CO., LLC,

Defendants.

AND

WILLIAM M. BOWEN,

Third Party Plaintiff,

vs.

JAMES S. KERR and MATT TRUMPS,

Third Party Defendants.

TO: JAAN G. RANNIK, ESQUIRE AND ANDREW K. EPTING, JR., ESQUIRE,  
ATTORNEYS FOR THE PLAINTIFFS LADY BEAUFORT, LLC AND TIDELAND  
REALTY, INC.;

PLEASE TAKE NOTICE that the Defendants, Hird Island, Inc. and Sherwood N.  
Fender, will move before the Honorable Marvin H. Dukes, III, Master In Equity and Special  
Circuit Court Judge for Beaufort County, 102 Ribaut Road, 2<sup>nd</sup> Floor, Beaufort, South Carolina,  
at 10:00 a.m. on the tenth (10<sup>th</sup>) day after service hereof or as soon thereafter as this matter may

be set for an order allowing these Defendants to post bond in satisfaction of the judgments rendered against them in favor of the Plaintiffs in this action.

On May 11, 2017 this Court entered a judgment in favor of the Plaintiff Tideland Realty, Inc. ("Tideland") against the Defendants Hird Island Investments, Inc. ("Hird Island") and Sherwood Fender ("Fender") in the amount of \$17,500.17. On October 26, 2018 this Court entered judgment in favor of the Plaintiff Lady Beaufort, LLC ("Lady Beaufort") against the Defendants Hird Island and Fender in the amount of \$51,511.15.

On October 29, 2018 Hird Island and Fender filed their Notice of Appeal of the above-referenced judgments and this appeal is currently pending before the South Carolina Court of Appeals.

The South Carolina Supreme Court, pursuant to § 34-31-20(B) of the South Carolina Code of Laws set the legal rate of interest on money decrees and judgment at the rate of 8.5% for the period beginning January 15, 2018, and at the rate of 9.5% for the period commencing January 14, 2019.

The Defendants are informed and believe that the total amount of the current judgment outstanding against them in favor of Tideland, including interest, is 19,257.37, with interest calculated through July 1, 2019.

The Defendants are informed and believe that the total amount of the judgment outstanding against them in favor of Lady Beaufort, including interest, is \$54,904.13, with interest calculated through July 1, 2019.

The Defendants are informed and believe that they should be allowed to post bond in satisfaction of the foregoing judgments, with said bond being equal to 1 ½ times the amount outstanding judgments, which would be the sum of \$28,886.65 to be posted on the judgment in

favor of Tideland and \$82,056.20 on the outstanding judgment in favor of Lady Beaufort, or a total bond of \$110,942.85.

These Defendants accordingly hereby move before the Beaufort County Master In Equity for an order allowing these Defendants to post a cash bond or its equivalent with the Beaufort County Clerk of Court in the foregoing amounts, or in such amount as this Court may deem to be just and proper, and upon said posting, directing that the outstanding judgments entered against these Defendants in this action be marked paid and satisfied in full, with said bonds to be held by the Beaufort County Clerk of Court as security for the payment of any amount which may be found due and owing by these Defendants to the Plaintiffs at the conclusion of this action and to be held by the Clerk of Court pending further order of this Court, or upon such terms and conditions as this Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: /s/ H. Fred Kuhn, Jr.

H. Fred Kuhn, Jr.  
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Email: fred@mossandkuhn.com

Beaufort, South Carolina  
June 19, 2019

Attorneys for the Defendants  
Hird Island Investments and  
Sherwood N. Fender

**STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT**

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

HIRD ISLAND INVESTMENTS, INC.,  
SHERWOOD N. FENDER, ADDISON D.  
FENDER, MARTHA B. FENDER, WILLIAM  
M. BOWEN, LADY KEMMERLIN, LLC,  
BRICKYARD HOLDINGS, INC., and A & K  
HOLDING CO., LLC,

Defendants.

and

WILLIAM M. BOWEN

Third-Party Plaintiff,

v.

JAMES S. KERR & MATT TRUMPS,

Third-Party Defendants,

and

MARTHA FENDER,

Third-Party Plaintiff,

v.

JAMES S. KERR & MATT TRUMPS,

Third-Party Defendants.

**IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT**

**Case No. 2014-CP-07-0052**

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION TO POST  
BOND IN SATISFACTION OF  
JUDGMENT**

Defendants Hird Island Investments, Inc. and Sherwood Fender ("Defendants") seek to post a bond in order to satisfy and discharge the judgment, presumably because the outstanding judgment creates challenges for Defendants' business undertakings. Plaintiffs Lady Beaufort, LLC and Tidelands Realty, Inc. ("Plaintiffs") understand Defendants' concern and could be amenable to the posting of an appropriate bond. However, the bond amount proposed by Defendants is substantially too low.

A satisfaction of judgment indicates that a judgment has been paid in full, including all fees, costs, and interest. However, the judgment in question is the subject of an appeal (Appellate Case No. 2018-001969). Accordingly, to be sure that the judgment is in fact satisfied *in full*, the bond must be sufficient to satisfy any increase in the judgment that the appellate court may order. Indeed, the purpose of a bond is primarily to protect the obligee's interest. *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 414, 556 S.E.2d 371, 376 (2001) ("The bond is designed to protect the obligee not the principal."). Here, Plaintiffs are the obligees whose interests must be protected.

Defendants' proposed bond amount is too low to protect Plaintiffs' interests in this matter.<sup>1</sup> Rather, the appropriate amount of the bond is 1.5 times the amount claimed by Plaintiffs as owing. On appeal,<sup>2</sup> Plaintiffs have a meritorious legal argument that their reasonable attorneys' fees are recoverable under the contract. This alone would increase the judgment by approximately \$140,000. The calculation of the appropriate bond is therefore as follows:

- \$38,000.00 in actual damages;
- \$13,154.32 in prejudgment interest;
- \$20,219.67 in post-judgment interest through July 1, 2019 (using the original award of attorneys' fees in Judge Dukes' May 11, 2017 Order);
- \$53,924.41 in reasonable attorneys' fees through the date of trial;
- \$107,420.59 in reasonable attorneys' fees incurred since the date of trial;
- \$15,000 in additional anticipated attorneys' fees relating to the appeal.

This yields a total judgment of \$232,718.99. Multiplied by 1.5, the appropriate amount of the bond is \$349,078.49.

Plaintiffs seek only to protect their interests. Defendants must not be permitted to satisfy and forever discharge a judgment by posting a bond for less than the appeals court may hold the

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<sup>1</sup> Protecting Lady Beaufort's interest is of heightened importance in this matter, where fraudulent post-judgment transfers have been alleged.

<sup>2</sup> In addition to arguments about lack of preservation of Defendants' arguments.

judgment to be.<sup>3</sup> Accordingly, should the Court allow Defendants to post a bond to satisfy the judgment, the Court should require a bond of \$349,078.49. Any lesser bond should be recorded only as a partial satisfaction of the judgment pending the appellate courts' determination.

Respectfully Submitted:

**ANDREW K. EPTING, JR., LLC**

This 24th day of June, 2019  
Charleston, South Carolina

/s/Jaan G. Rannik  
Andrew K. Epting, Jr.  
Jaan G. Rannik  
46A State Street  
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*ATTORNEYS FOR LADY BEAUFORT, LLC, TIDELAND  
REALTY INC., JAMES KERR, AND MATT TRUMPS*

<sup>3</sup> Were this to occur, it would be necessary to reinstate the judgment and engage in further proceedings in aid of execution thereon, including proceedings to undo transfers of property that were able to proceed during the pendency of the appeal because of the judgment being "satisfied."

90435

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

JUL 31 2019

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas for the Ninth Circuit

Marvin H. Dukes, Master in Equity and Special Circuit Court  
Judge

Case No.: 2014-CP-07-0052

LADY BEAUFORT, LLC & TIDELAND REALTY, INC.,.....Plaintiffs/ Appellants,

v.

HIRD ISLAND INVESTMENTS, INC. SHERWOOD N. FENDER, ADDISON D. FENDER,  
MARTHA B. FENDER, WILLIAM B. BOWEN, LADY KEMMERLIN, LLC, BRICKYARD  
HOLDINGS, INC, AND A&K HOLDING CO., LLC, Defendants.

OF WHOM HIRD ISLAND INVESTMENTS and SHERWOOD N. FENDER are  
the.....Defendants/Respondents.

AND

WILLIAM M. BOWEN.....Third Party Plaintiff,

AND

JAMES S. KERR and MATT TRUMPS.....Defendants,

NOTICE OF APPEAL

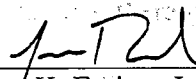
Plaintiffs/Appellants Lady Beaufort, LLC & Tideland Realty, Inc. appeal the order of the  
Honorable Marvin H. Dukes, III, dated July 31 July 30 2019 (Exhibit A).  
Plaintiffs/Appellants received written notice of entry of Judge Dukes' order on  
July 30, 2019.

AK

July 31, 2019  
Charleston, South Carolina

ANDREW K. EPTING, JR., LLC

By



Andrew K. Epting, Jr.

Jaen G. Rannik

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*Attorneys for Plaintiffs/Appellants*

**Counsel of Record for Respondents:**

William M. Bowen, Esquire

H. Fred Kuhn, Jr., Esquire

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

JUL 31 2019

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Court of Common Pleas for the Ninth Circuit

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Judge

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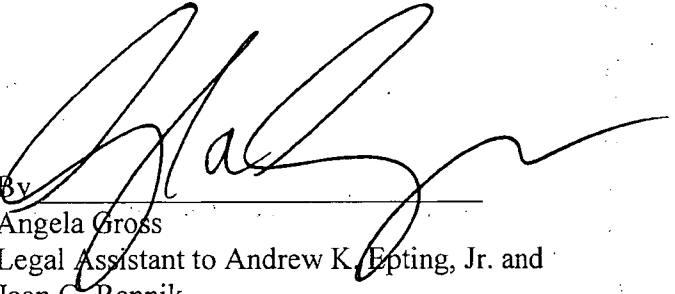
PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy in the United States  
Mail, Postage prepaid, on July 30, 2019, addressed to Respondents' attorneys of record  
as follows:

H. Fred Kuhn, Jr., Esquire  
P.O. Drawer 507  
Beaufort, SC 29901

and

William M. Bowen, Esquire  
WILLIAM M. BOWEN, P. A.  
P.O. Drawer 6128  
Hilton Head Island, SC 29938



By \_\_\_\_\_  
Angela Gross  
Legal Assistant to Andrew K. Epting, Jr. and  
Jaan G. Rannik

46A State Street, Charleston, SC 29401  
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# ANDREW K. EPTING, JR., LLC

ATTORNEYS AT LAW

ANDREW K. EPTING, JR. • AKE@EPTING-LAW.COM

JAAN G. RANNIK • JGR@EPTING-LAW.COM

**RECEIVED**

JUL 31 2019

SC Court of Appeals

July 31, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: *Lady Beaufort, LLC & Tidelands Realty, Inc. v. Hird Island Investments, Inc. and  
Sherwood Fender*

Case No.: 2014-CP-07-0052

Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of the Notice of Appeal together with the Proof of Service of the Notice of Appeal on Respondents together with the \$250.00 filing fee.

Please be advised that counsel for Appellants are in receipt of the transcript of the proceedings.

With kind regards,

ANDREW K. EPTING, JR., LLC

Angela Gross  
Legal Assistant to Andrew K. Epting, Jr.  
And Jaan G. Rannik  
/agg

Enclosures — as stated

cc: William M. Bowen, Esquire  
Fred H. Kuhn, Jr., Esquire  
The Honorable Jerri Ann Roseneau

# EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LADY BEAUFORT, LLC &  
TIDELANDREALTY, INC.,

Plaintiffs,

vs.

HIRD ISLAND INVESTMENTS, INC.,  
SHERWOOD N. FENDER, ADDISON D.  
FENDER, MARTHA B. FENDER,  
WILLIAM B. BOWEN, LADY  
KEMMERLIN, LLC, BRICKYARD  
HOLDINGS, INC. and A&K HOLDING  
CO., LLC,

Defendants.

AND

WILLIAM M. BOWEN,

Third Party Plaintiff,

vs.

JAMES S. KERR and MATT TRUMPS,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-07-0052

ORDER GRANTING MOTION TO POST BOND

**RECEIVED**

JUL 31 2019

SC Court of Appeals

This matter came to be heard before me in the Beaufort County Court of Common Pleas on July 9, 2019 for the purpose of hearing the Motion to Post Bond filed on behalf of the Defendant Sherwood N. Fender filed June 20, 2019. Present and appearing on behalf of the Defendant Fender was his attorney, H. Fred Kuhn, Jr., Esquire. Present telephonically and appearing on behalf of the Plaintiffs was their attorney, Jaan G. Rannik, Esquire.

After giving due consideration to the arguments of counsel, and reviewing the record in

this action, I find and conclude that the Motion of the Defendant Fender should be granted, subject to the terms and conditions as are hereinafter set forth.

On May 11, 2017 this Court entered a judgment in favor of the Plaintiff Tideland Realty, Inc. ("Tideland") against the Defendants Hird Island Investments, Inc. ("Hird Island") and Sherwood Fender ("Fender") in the amount of \$17,500.17. On October 26, 2018 this Court entered judgment in favor of the Plaintiff Lady Beaufort, LLC ("Lady Beaufort") against the Defendants Hird Island and Fender in the amount of \$51,511.15.

On October 29, 2018 Hird Island and Fender filed their Notice of Appeal of the above referenced judgments, and Tideland and Lady Beaufort cross-appealed. These appeals are currently pending before the South Carolina Court of Appeals.

The South Carolina Supreme Court, pursuant to § 34-31-20(B) of the South Carolina Code of Laws set the legal rate of interest on money, decrees and judgments at the rate of 8.5% for the period beginning January 15, 2018, and at the rate of 9.5% for the period commencing January 14, 2019.

The total amount of the current judgment outstanding against Hird Island and Fender in favor of Tideland, including post-judgment interest, is \$20,871.87, with post-judgment interest calculated through July 1, 2019. The per diem accumulation of interest after that date (through December 31, 2019) is \$5.21.

The total amount of the judgment outstanding against Hird Island and Fender in favor of Lady Beaufort, including post-judgment interest, is \$61,435.65, with post-judgment interest calculated through July 1, 2019. The per diem post-judgment rate of interest thereafter (through December 31, 2019) is \$15.32.

I find and conclude that it is in the best interest of justice, and without prejudice to the

rights of the Plaintiffs, to allow the Defendant Fender to post a bond with the Beaufort County Clerk of Court, with said bond to serve as security for the payment of the current judgment amount against him in the event it, or any part of it, is upheld on appeal, and thereby obtaining the release of the judgment lien against any other properties of Fender. Any increase in the judgment amount following the appeal of the judgment shall not be covered by the bond but shall be enforceable as a lien on Mr. Fender's assets. I find and conclude that this bond should be cash or its equivalent, and the amount of the bond should be 1-½ times the amount of the outstanding judgments. As of July 1, 2019 this would have been the sum of \$31,307.81 to be posted on the judgment in favor of Tideland, and \$92,153.47 on the outstanding judgment in favor of Lady Beaufort, for a total bond of \$123,461.28.

**IT IS, THEREFORE, ORDERED:**

- a. Upon the posting by the Defendant Fender of cash or its equivalent with the Clerk of Court for Beaufort County in an amount equal to 1-½ times the amount of the judgment entered in this action in favor of the Plaintiff Tideland Realty against the Defendant Fender the judgment lien against any assets of the Defendant Fender shall be released and the judgment lien upon said assets shall be discharged, and the bond deposited with the Clerk of Court shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event that the judgment against the Defendant Fender in favor of the Plaintiff Tideland Realty, or any portion thereof, shall be sustained, then said judgment, or any portion thereof, shall be paid out of the cash so deposited; Defendant Fender is on notice of the possibility of an increase to the judgment and he and his assets remain subject to the requirements of the Statute of Elizabeth.

b. Upon the posting by the Defendant Fender of cash or its equivalent with the Clerk of Court for Beaufort County in an amount equal to 1-½ times the amount of the judgment entered in this action in favor of the Plaintiff Lady Beaufort against the Defendant Fender the judgment lien against any assets of the Defendant Fender shall be released and any judgment lien upon said assets shall be discharged, and the bond deposited with the Clerk of Court shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event that the judgment against the Defendant Fender in favor of the Plaintiff Lady Beaufort, or any portion thereof, shall be sustained, then said judgment, or any portion thereof, shall be paid out of the cash so deposited; Defendant Fender is on notice of the possibility of an increase to the judgment and he and his assets remain subject to the requirements of the Statute of Elizabeth.

c. Upon the posting of said bond or bonds post-judgment interest shall cease to accrue and the Beaufort County Clerk of Court shall deposit said funds in an interest-bearing account, with any interest thereby earned being added to the bond and subject to the judgment lien.

d. The granting of this order does not affect the judgments and orders of this Court, which remain in force, except that the current judgment lien shall be removed from Defendant Fender's assets and transferred to the bond.

**AND IT IS SO ORDERED.**

Beaufort, South Carolina

---

Honorable Marvin H. Dukes, III  
Master In Equity and Special Circuit Court  
Judge for Beaufort County



Beaufort Common Pleas

**Case Caption:** Lady Beaufort Llc , plaintiff, et al VS Inverness Llc , defendant, et al

**Case Number:** 2014CP0700052

**Type:** Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-07-30 15:47:04 page 5 of 5

State of South Carolina ) Court of Common Pleas  
 ) 14th Judicial Circuit  
 County of Beaufort ) Case 2014-CP-07-0052

Lady Beaufort, LLC & )  
 Tideland Realty, Inc., )  
 Plaintiffs, )

) HEARING  
 vs. )

) July 9, 2019

Hird Island Investments, )  
 Inc., Sherwood N. Fender, )  
 Addison D. Fender, Martha )  
 B. Fender, William B. )  
 Bowen, Lady Kemmerlin, )  
 LLC, Brickyard Holdings, )  
 Inc., and A&K Holding Co.,)

LLC. )  
 Defendants. )

)  
 and )

)  
 William M. Bowen, )  
 Third Party Plaintiff )

)  
 vs. )

)  
 James S. Kerr and Matt )  
 Trumps, )  
 Third Party Defendants.)

Hearing reported by Deborah S. Thomas,  
 Certified Verbatim Reporter and Notary Public in and  
 for the State of South Carolina; said hearing held  
 before the Honorable Marvin H. Dukes, III, Beaufort  
 County Master in Equity and Special Circuit Court  
 Judge in accordance with the South Carolina Rules of  
 Civil Procedure, at the Beaufort County Courthouse,  
 102 Ribaut Road, Room 212, Beaufort, South Carolina,  
 on July 9, 2019, at the hour of 9:30 a.m.

DEBORAH S. THOMAS, CVRM  
 156 Argent Way  
 Bluffton, South Carolina 29909  
 (803) 206-7390

1           Appearances

2   Representing the Plaintiff:

3       JAAN G. RANNIK, ESQUIRE  
4       Andrew K. Epting, Jr., LLC  
5       46 A State Street  
6       Charleston, South Carolina 29401  
7       mne@epting-law.com

8   Representing the Defendant Sherwood N. Fender:

9       H. FRED KUHN, JR.  
10       Moss Kuhn & Fleming, PA  
11       Post Office Drawer 507  
12       Beaufort, South Carolina 29901  
13       fred@mossandkuhn.com

1 **CONTENTS**2 **Hearing**3 **Page**4 **Exhibit Index**5 **Certificate of Reporter** 256 **Word Index**

8 \* \* \* \* \*

10 **EXHIBIT INDEX**12 **Exhibits** **Marked at Page**14 **(Exhibits retained by Clerk of Court.)**15 **NONE PROFFERED**

17 \* \* \* \* \*

24

25

4

1           This hearing is taken in accordance  
2   with the South Carolina Rules of Civil Procedure.

3           JUDGE DUKES: Good morning. We're  
4   here in 2014-CP-07-00052. This is Lady Beaufort,  
5   LLC and Tideland Realty versus Hird Island  
6   Investments, et al. Mr. Rannik is on the telephone  
7   for -- are you for all defendants at this point or  
8   just the primary defendant? I'm sorry.  
9   Plaintiffs. I mean, plaintiffs. I apologize. Are  
10   you here for Lady --

11          MR. RANNIK: Yes, sir, and --

12          JUDGE DUKES: -- Beaufort and  
13   Tideland? Okay.

14          MR. RANNIK: Yes, sir.

15          JUDGE DUKES: Okay. Great. Thank  
16   you so much. And Mr. Kuhn is here for Mr. Fender  
17   who is also in attendance. So -- and this is your  
18   motion, Mr. Kuhn. I'm happy to here from you, sir.

19          MR. KUHN: Please the court, Your  
20   Honor, Fred Kuhn. I'm here on behalf Sherwood  
21   Fender and Hird Island Investments, Inc. This is my

0067

22 motion to post a bond in satisfaction of judgment.

23 There are two judgments that Your Honor

24 issued. One in favor of Tideland for about \$17,500.

25 And the other in favor of Lady Beaufort in the

5

1 amount of approximately 15,000 -- \$51,500. Those

2 are currently on appeal. Both parties have

3 appealed.

4 As you may recall, you issued an initial

5 order that awarded damages and attorneys fees, and

6 we filed a motion to reconsider. And as a result of

7 that, you reconvened the hearing to take testimony

8 regarding attorneys fees and you reduced the initial

9 award of attorneys fees from one amount to the

10 current amount.

11 Both parties have appealed that order, and

12 it's now on appeal. It's probably going to be on

13 appeal for a while. I have a copy of my motion and

14 the response that Jaan has filed in response to

15 that. I don't know if you have those.

16 JUDGE DUKES: I do. Hold on a

17 second. Let me open e-file in here and do it the

18 way I'm supposed to do it, electronically. I had

19 printed out copies of the orders, but the printer

20 stopped before it finished. So, let me pull this up

0068

21 real quick.

22 MR. KUHN: I have extra copies if

23 that's easier.

24 JUDGE DUKES: Hold on. Let me make

25 -- let me see if I can make this happen. It's just

6

1 taking forever. All right. I've got the file open.

2 So go ahead, please, sir.

3 MR. KUHN: What we would like to do

4 is to post a bond with sufficient surety in Your

5 Honor's discretion with the clerk of court and bond

6 off those judgments, so-to-speak.

7 That way the plaintiffs' who have -- will

8 have cash or its equivalent. If I lose the appeal

9 and the judgment stand, they can go against us and

10 have them go against Mr. Fender.

11 And we've offered to post bond in the

12 amount of one and a half times the amount of the

13 judgments plus interest which I calculate to be

14 \$110,942.85. I believe the (inaudible). I don't

15 want to speak too much for the plaintiffs that

16 they're agreeable to a bond one and a half times the

17 amount being posted, but they dispute that amount.

18 They believe the amount should be higher because

0069

19 they believe they are owed more than just what the  
20 current judgments account for.  
21 I believe, Your Honor, can only set the  
22 bond based on what the judgments are now, not on  
23 what might happen down the road. So we request  
24 permission to post those bonds and have the judgment  
25 satisfied and they can go against the bonds.

7

1 JUDGE DUKES: Okay. Let me make sure  
2 I understand, at least, if we have consensus on  
3 this. So, rather than be rereading these orders,  
4 the final total judgment amount from this court, not  
5 the amount sought, was how -- the two defendants.  
6 It was how much against -- or how much in favor of  
7 Tideland?

8 MR. KUHN: \$17,500.17.

9 JUDGE DUKES: Okay. And then how  
10 much was the -- again, after the reconsideration and  
11 all that, what was the -- what is the amount in the  
12 clerk's office right now owed to Lady Beaufort?

13 MR. KUHN: \$51,511.15.

14 JUDGE DUKES: Now, that was before  
15 post-judgment interest after the final seven be --  
16 plus whatever seven -- I don't even know what it is  
17 now, 7.25?

0070

18 MR. KUHN: It was 8.5 percent --

19 JUDGE DUKES: 8.5.

20 MR. KUHN: -- for last year. And it

21 was started in January 14th of this year,

22 9.5 percent. And I have those figures as to what

23 that is.

24 JUDGE DUKES: Okay. I mean, is your

25 calculation the 17 plus the 51 plus the

8

1 post-judgment interest times 1.5? Is that where you

2 get the --

3 MR. KUHN: Yes, sir, Your Honor.

4 JUDGE DUKES: Okay.

5 MR. KUHN: Of the -- Tideland's

6 judgment is now 19,257.37 with interest.

7 JUDGE DUKES: Okay.

8 MR. KUHN: And lady Beaufort is

9 \$54,904.13.

10 JUDGE DUKES: Got it. Okay. All

11 right.

12 MR. RANNIK: Judge, I don't want to

13 -- I don't want to interrupt the court's thinking

14 and Mr. Kuhn's line of argument, but I'm not

15 actually sure that this is the -- an appropriate

16 action. And so, I wonder if maybe I might be heard  
17 about whether the bond is appropriate at all before  
18 we get to much in the weeds with the number.

19 JUDGE DUKES: Yeah. Please, go  
20 ahead. I wasn't going -- I was going to let you  
21 tell me whatever you wanted to tell me. I was just  
22 curious about what the numbers were because I've got  
23 these two thick orders and it was easier to ask the  
24 question than try to dig through it myself. But --

25 MR. RANNIK: No. Understood. I'm

9

1 just -- and, Fred, that's only if you're done. I  
2 don't -- I really don't want to interrupt. I was  
3 just thinking if we're going to get deep into the  
4 numbers now, maybe it would be better to argue  
5 first.

6 MR. KUHN: Well, that's pretty much  
7 my position is you've got a judgment. We'd like to  
8 bond it off. So if you've got cash at the  
9 courthouse and -- we can all move on with the  
10 appeal.

11 JUDGE DUKES: Okay. All right.  
12 Thank you so much, Mr. Kuhn. Mr. Rannik, happy to  
13 hear from you, sir.

14 MR. RANNIK: Thank you, Judge, and

0072

15 may it please the court. Several things. First,  
16 thank you to the court for allowing me to appear by  
17 telephone today. My schedule is pretty tight, so  
18 this helps a lot.

19 I'm not sure how Mr. Fender's proposal  
20 works, procedurally, or whether it's even something  
21 the court has authority to do. And incidentally,  
22 the court may not even have jurisdiction to hear  
23 this motion given that appeals are pending.

24 But, Judge, I'm still pretty new at this,  
25 but I haven't seen any statute or any rule or even a

10

1 case that discusses posting a bond to discharge a  
2 judgment while an appeal is pending. And no  
3 authority is cited in Mr. Fender's motion either.

4 And it's not clear what impact, if any,  
5 discharging the judgment would have on the appeals.

6 And I'd like to hear Mr. Kuhn's thoughts on that.

7 But before we get there, it seems to me that

8 Mr. Fender is suggesting that he be allowed to post  
9 a bond, calculate the amount of the bond in the same  
10 way that a supersedeas bond is calculated, 1.5 times  
11 the judgment.

12 But instead of having it merely stay

0073

13 execution of the judgment, he wants this to satisfy  
14 and discharge the judgment. And this is to say  
15 nothing of the fact that the request is made before  
16 we know what the judgment will ultimately be.

17 And of course, we don't know what the  
18 Court of Appeals will to. But if there's any chance  
19 that the judgment will increase, and it's our  
20 position and we believe that there is, then that's  
21 another reason that the bond proposed by Mr. Fender  
22 is inadequate because even if you mean no  
23 procedurally issues like the ones I have alluded to,  
24 the very purpose of this bond would be, as Mr. Kuhn  
25 noted, to ensure that there's a sufficient pot of

1 money from which plaintiffs can collect when the  
2 judgment is finalized.

3 What we don't want is to end up in a  
4 position where a bond gets posted, the judgment is  
5 discharged, the case is over and the Court of

6 Appeals rules that we're entitled to our attorney  
7 fees but Mr. Fender will then argue, well, that's  
8 too bad. The judgment's been discharged and all you  
9 can collect is the amount of this bond.

10 Procedurally, I don't know what would  
11 happen at that point. I guess the satisfaction of

12 judgment would have to be rescinded and we'd be  
13 right back where we started.

14 Now, our opposition to Mr. Fender's motion  
15 lays out a bond amount that we would consent to that  
16 would adequately protect plaintiff's interests but  
17 only if the courts and we were satisfied that it  
18 would not have the effect of ending the case and  
19 ending the appeal.

20 But, might I offer a practical solution.

21 If Mr. Fender's motion is made because he wants to  
22 sell a particular piece of property and take it  
23 outside of what can be recovered as part of the  
24 judgment in this case, we'll be happy to work with  
25 him to determine the appropriate amount of the bond

12

1 to do that. But it can't include a satisfaction of  
2 the judgment.

3 Now, with the courts permission, I'd be  
4 curious to hear Mr. Kuhn's position on what impacts  
5 satisfying the judgment would have on the appeal.  
6 It seems to me that if the judgment is being  
7 satisfied, that ends the case which would also end  
8 the appeal.

9 JUDGE DUKES: It seems like I've done

0075

10 this before in other cases that were on appeal.  
11 Maybe you're right, Mr. Rannik. I don't know. I've  
12 never thought about the jurisdictional part. I was  
13 thinking that -- but I think I've been through this  
14 before, so somewhere I think it's allowed. And I  
15 don't think it would end the appeal because the pot  
16 of money that the plaintiff would receive, assuming  
17 success -- and I understand your argument that you  
18 all seek more than that pot of money which is what I  
19 always thought the 1.5 was for. But I understand  
20 you seek much more than that.

21 But the money wouldn't be lost because  
22 you're talking about posting it with the clerk of  
23 court, Mr. Kuhn. Is that the --

24 MR. KUHN: That's correct. I may  
25 have misspoke when I say satisfy the judgment. The

13  
1 judgment still exists. The judgment is just,  
2 however; a lien on the bond that's posted as opposed

3 to being a universal lien on everything Mr. Fender  
4 may own.

5 JUDGE DUKES: Right. I mean, it was  
6 -- you're not seeking --

7 MR. KUHN: So, I'm not seeking --

8 JUDGE DUKES: -- to end the appeal.

9 MR. KUHN: -- satisfaction of the

10 judgment ending the case.

11 JUDGE DUKES: You're seeking --

12 MR. KUHN: Ending the appeal.

13 JUDGE DUKES: -- to transfer the lien

14 --

15 MR. KUHN: -- merits.

16 JUDGE DUKES: -- to the money that --

17 to be posted at the clerk's office.

18 MR. KUHN: That's correct.

19 JUDGE DUKES: Okay. Mr. Rannik,

20 other than the amount, does that -- does that

21 satisfy your concern about that.

22 MR. RANNIK: It does, Judge. It

23 does. And again, my concern came from a line in --

24 toward the end of Mr. Kuhn's motion where he said,

25 you know, that he would want the -- all outstanding

14

1 judgments be marked paid and satisfied in full and

2 that's the part we objected to. And then, of

3 course, as the court noted as well, yes, the amount.

4 JUDGE DUKES: Yeah. Okay. Yeah, so

5 the paid and satisfied in full is probably -- yeah,

6 that would not be accurate. What would happen would

0077

7 be -- I'm sure there's some good stock language  
8 there somewhere having to do with release of liens  
9 on property owned by the plaintiff in favor of the  
10 imposition of a lien on the posted bond money.

11 I'm sure there's a better way to say it,  
12 but, I mean, that -- I think you all are saying the  
13 same thing.

14 MR. RANNIK: Okay.

15 JUDGE DUKES: So, we're -- so, we're  
16 down to whether or not the appropriate amount is the  
17 amount that I ordered times 1.5 or the amount the  
18 plaintiff seeks. Is that -- is that kind of what  
19 the issue is about?

20 MR. KUHN: It sounds like --

21 MR. RANNIK: I believe so, Your  
22 Honor.

23 JUDGE DUKES: Okay. And what's the  
24 spread on that? Let's see. So, Fred, you believe  
25 that -- what was your number, 140-ish or something?

1 MR. KUHN: \$110,942.85.

2 JUDGE DUKES: Okay. And what is the  
3 plaintiff's calculation; their best case scenario  
4 on -- and I think that's in your response.

5 MR. RANNIK: It is. It's on Page 2

6 of our response. Rather than me state a bunch of  
7 number --

8 JUDGE DUKES: Oh, I see it right  
9 here. Okay. Oh, it's --

10 MR. RANNIK: -- look there and I'll  
11 go through it.

12 JUDGE DUKES: So it's a significant  
13 spread. I see it.

14 MR. RANNIK: Yes. So, we've got --

15 it is. It is. The actual damages that have been

16 entered judgment interest, post-judgment

17 interest, the attorneys fees through the date of

18 trial and after trial and what we think is likely to

19 occur in the future. That brings the total judgment

20 up to about \$230,000. And then if you multiply that

21 times by 1.5, we get up to around 350.

22 JUDGE DUKES: Okay. Of course, would

23 you need to multiply that times 1.5 because you

24 would have everything you had asked for including

25 additional anticipated attorneys fees related to the

16

1 appeal in the 232, right? So --

2 MR. RANNIK: Yes, Judge. I think

3 that's -- I think that's true. And I think if we --

0079

4 if a bond were posted in the total amount of the  
5 judgment not multiplied by 1.5, the 232,718.99 that  
6 we referred to on Page 2 of our opposition, I think  
7 that would probably protect plaintiffs' interests  
8 adequately.

9 JUDGE DUKES: So the question, is  
10 there a case law on these whether or not -- well,  
11 it's in your response here, some of it. And I'm  
12 sure in Fred's there's other case law.

13 But, of course, the obligee's interest at  
14 this point is the judgment amount. I would assume  
15 that would be the definition of obligee's interest.  
16 The legal interest at this point not what the  
17 obligee hopes to recover but the actual legal  
18 interest to be protected would be the current  
19 judgment amount. Is that -- would that not be  
20 right?

21 MR. KUHN: That's our position. This  
22 is basically a wish list. This is if we prevail, if  
23 we win, if we get a judgment then this is what it  
24 would be if we get everything we want. They can --  
25 \$170,000 in attorneys fees since the trial? That

17  
1 could be any figure.

2 JUDGE DUKES: Well, I --

0080

3 MR. KUHN: What we're seeking to do  
4 is transfer the judgment lien that currently exists  
5 from --

6 JUDGE DUKES: Oh, no. I get that.

7 MR. KUHN: -- other assets to a bond.

8 And this is saying we'll transfer the judgment lien  
9 that exists and tell us what else you hope to get  
10 down the road. And we'll just throw that in. So,  
11 it's a transfer of lien that doesn't even exist,  
12 yet --

13 JUDGE DUKES: Well, I --

14 MR. KUHN: -- under this theory.

15 JUDGE DUKES: Yeah. I guess what I'm

16 trying to imagine is a case with -- it always helps

17 me to go to extremes when I try to visualize a

18 situation. I can imagine a situation where a

19 plaintiff hoped to receive an enormous punitive

20 damage recovery. Got actual damages. Appealed the

21 punitives at ten times the actuals. And then, you

22 know, that would be the amount, in theory, that --

23 what the plaintiff had hoped to get that they would

24 -- that would have to be posted. And that would

25 seem improper.

1 I -- you know, this -- obviously, the  
2 spread isn't as large as my fictitious scenario, but  
3 the principles would seem the same. At some point,  
4 you have to rely on the obligation when one talks  
5 about the obligor and obligee. And at this point,  
6 the obligation is the judgment amount.  
7 I mean, in theory, I would suppose that  
8 the -- would there be anything that would prevent --  
9 maybe so. I -- prevent the -- well, anyway. Go  
10 ahead, Mr. Rannik. You had -- you had something you  
11 wanted to say.

12 MR. RANNIK: Please, Judge. You  
13 know, again, I think the case that we cited, the  
14 Mastery/Clean case has a very clean quote that sums  
15 up our argument pretty nicely that the bond is  
16 designed to protect the obligee, not to protect the  
17 principal.

18 Now, what is the obligee's interest? I  
19 think it would be what we are entitled to in this  
20 case, not necessarily what has been ordered at this  
21 point, but whatever the final judgment would be. If  
22 the goal of a bond is, in fact, to protect our  
23 interests, then the bond must do that in the amount  
24 that we seek and are likely to recover.  
25 I guess that's a wooly thing. But to say

1 the judgment amount is this right now, we're going  
2 to bond it off and that's going to be the extent of  
3 the protection, I don't know that that really does  
4 protect the obligee's interest.

5 I'm not sure I have too much more to add  
6 to that, but I haven't seen case law that says that  
7 Mr. Fender's position is correct. The case law that  
8 I've seen says that it's about the obligee's  
9 interest if a bond is being posted, not the  
10 obligor's, not the principal's.

11 The judgment, at the moment -- I suppose,  
12 the one thing I can say. To the extent that the  
13 nature of this bond is not to end the judgment, not  
14 to end the case, to satisfy the judgment but simply  
15 to put a place-marker here and say, right now, this  
16 is the interest. This is the amount of the lien,  
17 and we're redirecting the funds towards that without  
18 prejudice to a judgment being increased and new  
19 liens springing from the increased judgment amount  
20 that haven't been bonded off.

21 Perhaps that -- perhaps that (inaudible)  
22 was there. But again, given the nature of this  
23 case, given the nature of some of the post-trial  
24 proceedings and conduct, it -- I don't believe our  
25 interests will be protected unless a bond is posted

1 in the full amount that we can recover on appeal.

2 JUDGE DUKES: You know, before you

3 said it, Mr. Rannik, I was actually thinking that

4 would be the effect away, but it would probably need

5 to be stated as you just said. And I think --

6 Mr. Kuhn, I don't know if you were following what he

7 said, but let us assume for the moment --

8 MR. KUHN: I agree with that.

9 JUDGE DUKES: -- that you post --

10 okay. Well, you -- okay.

11 MR. KUHN: I follow that argument,

12 Your Honor.

13 JUDGE DUKES: So the order would

14 essentially say that the liens would be shifted --

15 it would be more legalese than this -- but shifted

16 to the posted bond amount. In the event that the

17 ultimate judgment post-appeal is not satisfied by

18 the posted bond amount then the parties agree,

19 acknowledge and stipulate that further judgments in

20 whatever total amount would be entered against the

21 defendants as appropriate.

22 MR. KUHN: I think that would be

23 automatically the result, but --

24 JUDGE DUKES: I would think so, too.

25: But I -- but I'm --

21

1 MR. KUHN: -- order just to make sure

2 would be fine.

3 JUDGE DUKES: Yeah. I --

4 MR. KUHN: If we go and we end up  
5 with a billion-dollar judgment against us on appeal  
6 then we've got a billion-dollar judgment against us  
7 and have to deal with it.

8 JUDGE DUKES: Right.

9 MR. KUHN: We win the appeal, and  
10 then we get our bond back.

11 MR. RANNIK: I suppose our concern,  
12 Judge, is supposing that is exactly what happens and  
13 the bond is in place, judgment comes back and it's  
14 more, but in the meantime, the liens have dissipated  
15 so Mr. Fender's been able to sell a bunch of  
16 property. He now has no assets. There's nothing to  
17 recover our increased judgment amount from and our  
18 interests have not been protected by the posting of  
19 the bond.

20 JUDGE DUKES: Oh, no, no. I get the  
21 concern. I always try to wear hats for both sides  
22 when I'm thinking about this. I know exactly what  
23 you mean and your concern. I guess I'm trying to

0085

24 decide whether or not the obligation, as it  
25 currently exists, is the controlling factor, not the

22

1 hopes or wants of the -- of the obligee. I don't

2 know.

3 MR. KUHN: I submit it is. I mean,

4 the judgment is the judgment.

5 JUDGE DUKES: Well, that's what I

6 keep thinking.

7 MR. KUHN: What --

8 JUDGE DUKES: The judgment is the

9 judgment.

10 MR. FENDER: Speculation.

11 JUDGE DUKES: Well, hold on a second,

12 Mr. Fender. So, let me do this. Let me read these,

13 again, think about it and try to shoot you all an

14 email before the end of the day. I've got some

15 hearings at 10:00 and some more at 11:00, but I'll

16 let you know something by e-mail if that would suit

17 you all.

18 Mr. Rannik, you said you were in court

19 today. Are you going to be around later?

20 MR. RANNIK: Yes, Judge. I should be

21 available sort of late afternoon, probably around --

0086

22 after around 4:00, I should be available.

23 JUDGE DUKES: Okay. And I don't even

24 know if I would need you. Just to -- in case I had

25 a question or something, I would want to, obviously,

23

1 get both of you back on the phone. But that might

2 not even be necessary. I just didn't want to try

3 to -- you know, I didn't want to bother you in the

4 middle of a deposition or something.

5 MR. RANNIK: Thank you, Judge.

6 JUDGE DUKES: All right. Well, let

7 me give it some thought.

8 MR. RANNIK: If I could say one last

9 thing.

10 JUDGE DUKES: Yeah. Please, go

11 ahead. Sorry.

12 MR. RANNIK: Sorry. And I'm sure I am

13 saying exactly what you would hear from any party in

14 any case and will give it the weight accordingly.

15 But we do feel this is not just a hopes and dreams

16 and, you know, what we want on appeal. But we think

17 and are quite confident that our legal argument is

18 very strong. And in all likelihood, in about two

19 years, we'll be back down with an increased

20 judgment amount. And the hopes would be that our

0087

21 interests are protected in the meantime and then we  
22 have something to recover from for that increased  
23 amount.

24 JUDGE DUKES: Okay. No. No. I  
25 appreciate that. I understand from -- that you

24

1 probably wouldn't have filed an appeal if you didn't  
2 have some belief that it might be successful. But  
3 -- all right. Well, here's what I'm going to do  
4 then: Is there anything else for this record? If  
5 not, all I can do is encourage you all to continue  
6 to work towards trying to do something because even  
7 if this thing takes two years, two years is a long  
8 time. Maybe you all can come up with some  
9 resolution in the interim.

10 And anything else then for this record?

11 MR. KUHN: Not from the defendants,  
12 Your Honor.

13 JUDGE DUKES: All right. I'll try to  
14 let you all know something --

15 MR. RANNIK: Not for the plaintiffs,  
16 Your Honor.

17 JUDGE DUKES: -- by the end of the  
18 day then. All right. That will conclude the

0088

record. Thank you so much.

(Whereupon, the hearing was concluded

at 9:54 a.m.)

25

# Certificate of Reporter

2

3

I, Deborah S. Thomas, Certified Verbatim  
Reporter and Notary Public in and for the State of  
South Carolina, do hereby certify that I reported  
the hearing of Lady Beaufort, et al vs. Hird Island,  
et al; on the 9th day of July, 2019; and that the  
foregoing pages constitute a true and correct  
transcription of the said hearing.

7

8

I further certify that I am neither  
attorney nor counsel for, nor related to or employed  
by, any of the parties connected with this action,  
nor am I financially interested in said cause.

10

11

I further certify that the original of  
said transcript shall be hereafter delivered to  
Jaan G. Rannik, Esquire, Andrew K. Epting, Jr., LLC,  
46-A State Street, Charleston, South Carolina 29401.

13

14

In witness whereof I set my hand and seal  
this 18th day of July, 2019.

15

16

17

0089

Deborah S. Thomas, CVRM

18 My Commission and Notary Public for the  
expires 1/4/18 State of South Carolina

19

20

21

22

23

24

25

Notary Public for the State of South Carolina  
My Commission Expires 1/4/18  
Deborah S. Thomas, CVRM

I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

In testimony whereof, I have hereunto set my hand and the seal of the Court at the City of Charleston, South Carolina, this 12th day of June, 2019.

Deborah S. Thomas, CVRM, Notary Public for the State of South Carolina

I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

In testimony whereof, I have hereunto set my hand and the seal of the Court at the City of Charleston, South Carolina, this 12th day of June, 2019.

Deborah S. Thomas, CVRM, Notary Public for the State of South Carolina

I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

In testimony whereof, I have hereunto set my hand and the seal of the Court at the City of Charleston, South Carolina, this 12th day of June, 2019.

Deborah S. Thomas, CVRM, Notary Public for the State of South Carolina

I, the undersigned,

## STATE OF SOUTH CAROLINA

## COUNTY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC

Plaintiff(s)

vs.

INVERNESS, LLC and HIRD ISLAND INVESTMENTS,  
INC

Defendant(s)

Submitted By: Michelle N. Endemann

Address: 46A State St  
Charleston, SC 29401

## IN THE COURT OF COMMON PLEAS

## CIVIL ACTION COVER SHEET

2014-CP - 07-

0052

14-M-7 PM 2:46  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

SC Bar #: 79894

Telephone #: 843-377-1871

Fax #: 843-377-1310

Other:

E-mail: mne@epting-law.com

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

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

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

## NATURE OF ACTION (Check One Box Below)

## Contracts

- ☐ Constructions (100)  
☐ Debt Collection (110)  
☐ Employment (120)  
☐ General (130)  
☒ Breach of Contract (140)  
☐ Other (199)

## Torts - Professional Malpractice

- ☐ Dental Malpractice (200)  
☐ Legal Malpractice (210)  
☐ Medical Malpractice (220)  
 Previous Notice of Intent Case #  
 20\_\_\_\_-CP-\_\_\_\_\_  
☐ Notice/ File Med Mal (230)  
☐ Other (299)

## Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)  
☐ Conversion (310)  
☐ Motor Vehicle Accident (320)  
☐ Premises Liability (330)  
☐ Products Liability (340)  
☐ Personal Injury (350)  
☐ Wrongful Death (360)  
☐ Other (399)

## Real Property

- ☐ Claim & Delivery (400)  
☐ Condemnation (410)  
☐ Foreclosure (420)  
☐ Mechanic's Lien (430)  
☐ Partition (440)  
☐ Possession (450)  
☐ Building Code Violation (460)  
☐ Other (499)

## Inmate Petitions

- ☐ PCR (500)  
☐ Mandamus (520)  
☐ Habeas Corpus (530)  
☐ Other (599)

## Administrative Law/Relief

- ☐ Reinstate Drv. License (800)  
☐ Judicial Review (810)  
☐ Relief (820)  
☐ Permanent Injunction (830)  
☐ Forfeiture-Petition (840)  
☐ Forfeiture-Consent Order (850)  
☐ Other (899)

## Judgments/Settlements

- ☐ Death Settlement (700)  
☐ Foreign Judgment (710)  
☐ Magistrate's Judgment (720)  
☐ Minor Settlement (730)  
☐ Transcript Judgment (740)  
☒ Lis Pendens (750)  
☐ Transfer of Structured Settlement Payment Rights Application (760)  
☐ Confession of Judgment (770)  
☐ Petition for Workers Compensation Settlement Approval (780)  
☐ Other (799)

## Appeals

- ☐ Arbitration (900)  
☐ Magistrate-Civil (910)  
☐ Magistrate-Criminal (920)  
☐ Municipal (930)  
☐ Probate Court (940)  
☐ SCDOT (950)  
☐ Worker's Comp (960)  
☐ Zoning Board (970)  
☐ Public Service Comm. (990)  
☐ Employment Security Comm (991)  
☐ Other (999)

## Special/Complex /Other

- ☐ Environmental (600)  
☐ Automobile Arb. (610)  
☐ Medical (620)  
☐ Other (699)  
☐ Pharmaceuticals (630)  
☐ Unfair Trade Practices (640)  
☐ Out-of State Depositions (650)  
☐ Motion to Quash Subpoena in an Out-of-County Action (660)  
☐ Sexual Predator (510)

Submitting Party Signature: \_\_\_\_\_

Date: 1/6/14

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

0091

## FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

CASE NO. 2014-CP-07- 0052

**SUMMONS**

14 JAN -7 PM 2:47  
JEROME ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

**TO THE DEFENDANTS NAMED ABOVE:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address show below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC

  
\_\_\_\_\_  
Andrew K. Epting, Jr.  
Michelle N. Endemann  
46A State Street  
Charleston, SC 29401  
Telephone: 843.377.1871  
Facsimile: 843.377.1310  
ake@epting-law.com  
mne@epting-law.com

ATTORNEYS FOR THE PLAINTIFFS

January 6, 2014  
Charleston, SC

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

CASE NO. 2014-CP-07-

0052

COMPLAINT

14 JAN -7, PM 2:47  
JEROME A. ROSEHEAD  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

Plaintiffs Lady Beaufort, LLC ("Lady Beaufort") and Tideland Realty, Inc. ("Tideland") file this action against Defendants Inverness, LLC ("Inverness") and Hird Island Investments, Inc. ("Hird Island"). In support of this action, Plaintiffs would show the Court the following:

1. This action arises out of the Agreement to Buy and Sell Real Estate ("Agreement") dated August 19, 2013 wherein Lady Beaufort contracted to buy and Hird Island contracted to sell 2.9 acres of real property located in Beaufort, SC, with an address of 9 Sams Point Road (TMS # 123 015 000 0605 0000) (the "Property").
2. Plaintiff Lady Beaufort is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina.
3. Plaintiff Tideland is a licensed real estate agency, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina. Matt Trumps of Tidelands is the Buyer's agent in the transaction at issue and is entitled to a 5% commission from Defendant Hird Island pursuant to the Agreement.
4. Defendant Hird Island is a corporation organized and existing under the laws of the state of Georgia, doing business in Beaufort County, South Carolina.

5. Defendant Inverness is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina. Inverness is the subsequent purchaser of the Property.

6. This Court has jurisdiction over the parties to this action and over the subject matter alleged herein.

7. Venue is proper in the Beaufort County.

**FOR A FIRST CAUSE OF ACTION  
AS TO HIRD INVESTMENTS  
(Breach of Contract)**

8. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

9. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

10. The Agreement is and was at all relevant times valid and enforceable.

11. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

12. In breach of the Agreement, Hird Island failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness.

13. In breach of the Agreement, Hird Island failed and refused to pay Tideland's the real estate commission of 5% as set forth in the Agreement.

14. As a result of Hird Island's breaches, Plaintiffs have been damaged.

15. Plaintiffs are entitled actual damages, interest, and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION  
AS TO INVERNESS  
(Intentional Interference with a Contract)**

16. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

17. The Agreement under which Hird Investments agreed to sell and Lady Beauport agreed to buy the Property is and was at all relevant times valid and enforceable.

18. Defendant Inverness had knowledge, both actual and constructive, of the Agreement and tortiously interfered with the Seller, causing Hird Island to refuse to convey the Property to Lady Beauport and instead to convey the Property to Inverness.

19. As a proximate result of Inverness' unjustified interference, Plaintiffs have been damaged.

20. Plaintiffs are entitled to actual and punitive damages, together with interest and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION  
AS TO INVERNESS & HIRD INVESTMENTS  
(Action to Set Aside the Deed)**

21. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

22. Lady Beauport entered into an Agreement with Defendant Hird Island whereby Lady Beauport would purchase the Property for the sum of \$260,000.00.

23. The Agreement is and was at all relevant times valid and enforceable.

24. Lady Beauport is and was at all relevant times ready willing and able to purchase the Property.

25. In breach of the Agreement, Hird Island failed and refused to sell and convey the Property to Lady Beauport and instead conveyed the property to a third-party, Inverness.

26. Defendant Inverness had knowledge, both actual and constructive, of the Agreement but purchased the Property from Hird Investments regardless of the Agreement and with complete disregard for the rights of Lady Beaufort.

27. The sale and conveyance of the Property from Hird Investments to Inverness was in bad faith and should be voided.

**FOR A SECOND CAUSE OF ACTION  
AS TO INVERNESS & HIRD INVESTMENTS  
(Specific Performance)**

28. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

29. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

30. The Agreement is and was at all relevant times valid and enforceable.

31. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

32. Defendant Hird Island has failed and refused to sell and convey the Property to Lady Beaufort.

33. The Property is unique in character and in nature.

34. Lady Beaufort lacks an adequate remedy at law.

35. As a direct and proximate result of Defendant Hird Island's failure and refusal to sell and convey the subject property to Lady Beaufort, Lady Beaufort is entitled to a Court Order requiring Hird Island to perform under the Agreement and convey the property to Lady Beaufort.

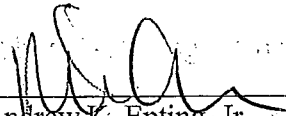
36. As a direct and proximate result of Defendant Hird Island's failure and refusal to sell and convey the subject property to Lady Beaufort, Lady Beaufort is entitled to recover attorneys' fees and costs.

WHEREFORE, Plaintiffs respectfully request the Court grant the following relief:

- a. Void the sale and set aside the deed to Inverness;
- b. Award Plaintiffs' their actual damages plus interest, attorneys' fees, and punitive damages;
- c. Order Hird Investments to specifically perform the Agreement; and
- d. For such other and further relief as this Court deems appropriate.

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC

  
Andrew K. Epting, Jr.

Michelle N. Endemann

46A State Street

Charleston, SC 29401

Telephone: 843.377.1871

Facsimile: 843.377.1310

[ake@epting-law.com](mailto:ake@epting-law.com)

[mne@epting-law.com](mailto:mne@epting-law.com)

ATTORNEYS FOR THE PLAINTIFFS

January 10, 2014

Charleston, SC

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC.,

Plaintiff,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

CASE NO. 2014-LP-07-

0014

LIS PENDENS

DMP/TMS#: R123-015-000-0605-0000

14 JAN -7 PM 2:47  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

NOTICE IS HEREBY GIVEN that an action has been or will be commenced in this Court upon complaint of the above-named Plaintiffs against the above-named Defendants, and that the object of such action is the Contract between the Plaintiffs and the Defendant, Hird Island Investments, Inc. dated August 19, 2013.

That the real estate covered and affected by the aforesaid Contract and by such action is now and was at the time of filing of this notice, situate in the County of Beaufort, State of South Carolina, and the following is a description thereof:

ALL that certain piece, parcel or lot of land, situate, lying and being on Lady's Island, Beaufort County, South Carolina, containing 2.99 acres, more or less, being shown and designated as PARCEL "B" on a plat entitled "LOT LINE REVISION AND RECONFIGURATION OF PARCEL R123-014-123 & R123-015-0605 PREPARED FOR HIRD ISLAND INVESTMENTS LADY'S ISLAND BEAUFORT COUNTY-----SOUTH CAROLINA" prepared by David E. Gasque, RLS of Gasque & Associates, Inc. dated November 28, 2007 and recorded on January 14, 2008 in Plat Book 123, at Page 111. For a more accurate description of said property as to metes, bounds, courses, and distances, reference may be had to the aforementioned plat of record.

The foregoing property is the same property conveyed by deed of Hird Island Investments, Inc. to Inverness, LLC dated October 10, 2013 and recorded on October 10, 2013 in Record Book 03278 at Page 3262 in the office of the Register of Deeds for Beaufort County, South Carolina. The foregoing property is also a portion of the same property conveyed to Hird Island Investments, Inc. by deed from Yemassee Investments, LLC, Mellon-Anderson Group, LLC, Ausper Construction, Inc., Shammy Creek, LLC, Wallace Creek, LLC, Kevin Clardy, Martha B. Fender and Arthur Mills Joy, dated December 15, 2000, and recorded in Record Book 1477 at Page 813 and by deed from Tommy Granger, Jr., Addison D. Fender, Christina E. Wester, Shane Granger, Donna Thibault, Sherwood N. Fender, Sherwood N. Fender, Jr., and Veronica Clardy dated December 15, 2000

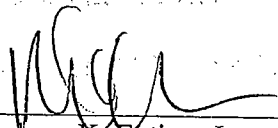
and recorded in Record Book 1477 at Page 821 in the office of the Register of Deeds for Beaufort County, South Carolina.

Property Address: 9 Sams Point Road, Beaufort, SC 29907

DMP/TMS#: R123-015-000-0605-0000

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr.  
Michelle N. Endemann  
46A State Street  
Charleston, SC 29401  
Telephone: 843.377.1871  
Facsimile: 843.377.1310  
[ake@epting-law.com](mailto:ake@epting-law.com)  
[mne@epting-law.com](mailto:mne@epting-law.com)

ATTORNEYS FOR THE PLAINTIFFS

January 10, 2014  
Charleston, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
(Case No. 2014-CP-07-00052)

LADY BEAUFORT, LLC, and )  
TIDELAND REALTY, INC., )

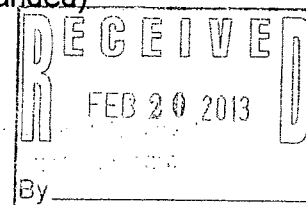
Plaintiffs, )

v. )

ANSWER AND COUNTERCLAIM  
(Jury Trial Demanded)

INVERNESS, LLC, and HIRD )  
ISLAND INVESTMENTS, INC., )

Defendants. )



The Defendant, Inverness, LLC (herein "the Defendant" or "Inverness"),  
reserving all rights under its own Summons and Complaint in Case No. 2014-CP-  
07-00061, as well as under its Motions in this case dated February 18, 2014,  
answers the Complaint herein by respectfully alleging the following:

FOR A FIRST DEFENSE  
(Denial)

1. Each and every allegation of the Complaint not herein after  
expressly admitted is denied.
2. The Defendant admits so much of paragraph 1 of the Complaint as  
alleges the date of the contract and the description of the property, but the  
Defendant denies the remaining allegations of paragraph 1.
3. The allegations of paragraph 2 of the Complaint are admitted.
4. The Defendant admits so much of paragraph 3 of the Complaint as  
alleges the organization and existence of Tideland Realty, Inc., but the

Defendant lacks information sufficient to form a belief with respect to the remaining allegations of paragraph 3 of the Complaint, therefore denies them and demands strict proof thereof.

5. The allegations of paragraphs 4 and 5 of the Complaint are admitted.

6. The allegations of paragraphs 6 and 7 of the Complaint state only conclusions of law, which are therefore denied.

7. The allegations of paragraph 8 of the Complaint are denied in the same manner and to the same extent as has been set forth in paragraphs 1 through 6 above.

8. The allegations of paragraph 9 of the Complaint are admitted.

9. The allegations of paragraphs 10, 11, 12, 13 14 and 15 of the Complaint are denied.

10. The allegations of paragraph 16 of the Complaint are denied in the same manner and to the same extent as has been set forth in paragraphs 1 through 9 above.

11. The allegations of paragraph 17 of the Complaint are denied.

12. The Defendant admits so much of paragraph 18 of the Complaint as imports or implies that the Defendant knew of the existence of the contract, though, not having seen it at the time, the Defendant did not know the exact content thereof, and the Defendant emphatically denies the remaining allegations of paragraph 18.

13. The allegations of paragraphs 19 and 20 of the Complaint are denied.

14. The allegations of paragraph 21 of the Complaint are denied in the same manner and to the same extent as has been set forth in paragraphs 1 through 13 above.

15. The allegations of paragraph 22 of the Complaint are admitted.

16. The allegations of paragraphs 23 and 24 of the Complaint are denied.

17. The Defendant admits so much of paragraph 25 of the Complaint as imports or implies that, for a good and valuable consideration, "Hird Island . . . conveyed the property to . . . Inverness," but the Defendant denies the remaining allegations of paragraph 25.

18. The Defendant admits so much of paragraph 26 of the Complaint as imports or implies that the Defendant knew of the existence of the contract before it purchased the property, though, not having seen it at the time, the Defendant did not know the exact content thereof, and the Defendant admits that it purchased the property, but the Defendant denies the remaining allegations of paragraph 26.

19. The allegations of paragraph 27 of the Complaint are denied.

20. The allegations of paragraph 28 of the Complaint are denied in the same manner and to the same extent as has been set forth in paragraphs 1 through 19 above.

21. The allegations of paragraph 29 of the Complaint are admitted.

22. The allegations of paragraphs 30 and 31 of the Complaint are denied.

23. The allegations of paragraph 32 of the Complaint are admitted upon information and belief, and the Defendant would show that a condition precedent to any obligation by Hird Island to convey to Lady Beaufort failed to occur, either as a consequence of Lady Beaufort's material breach of its contract or otherwise.

24. The allegations of paragraphs 33, 34, 35 and 36 of the Complaint are denied.

FOR A SECOND DEFENSE  
(Failure of Condition Precedent)

25. If Inverness is determined to be properly subject to an action or suit on a contract to which it was not a party—an allegation that is expressly denied—the contract between Lady Beaufort and Hird Island provides that Lady Beaufort was required to: (a) pay cash for the property, with no financing contingency or delay due to financing; and (b) pay for the property by a day certain under the contract, time being of the essence.

26. The provisions described in paragraph 25 above were both covenants and conditions precedent to any duty by Hird Island to convey the property to Lady Beaufort.

27. Implied in every contract are the following covenants:

- (a) The covenant of good faith and fair dealing; and
- (b) The covenant that neither party shall prevent, delay, hinder impair or impede the performance of the other party.

29. The performance of covenants described in paragraph 27 by Lady Beaufort were also conditions precedent to any duty on the behalf of Hird Island to convey the property to Lady Beaufort.

30. Hird Island performed all conditions of the contract that were not excused or waived.

31. Each of the conditions precedent described in paragraphs 25 through 29 above failed to occur, thereby discharging Hird Island from any duty to perform.

FOR A THIRD DEFENSE  
(Prior Material Breach of Covenant)

32. The allegations of paragraphs 25 through 31 above are hereby adopted and by express reference made a part of this Third Defense.

33. Lady Beaufort breached each of the covenants described in paragraphs 25 through 29 above in myriad particulars, including, without limitation, the failure to pay for the property on time and in accordance with the contract.

34. The breach of covenants by Lady Beaufort was total, willful and material.

35. The material breach of covenants by Lady Beaufort occurred prior to any default alleged by Lady Beaufort in its Complaint.

36. As a direct and proximate result of the material breach by Lady Beaufort, any duty to perform by Hird Island (and, necessarily, by this Defendant) has been absolutely discharged.

**FOR A FOURTH DEFENSE**

**(Failure to Tender)**

37.. The allegations of paragraphs 25 through 36 above are hereby adopted and by express reference made a part of this Fourth Defense.

38. Lady Beaufort never tendered performance to Hird Island on or before the deadline specified by the parties for closing the transaction.

39. Upon information and belief, Lady Beaufort lacked the funds required to purchase the property on the closing date.

40. Lady Beaufort is not entitled to enforce the contract by specific performance or otherwise

**FOR AN FIFTH DEFENSE**

**(Waiver)**

41. The allegations of paragraphs 25 through 39 above are hereby adopted and by express referenced made a part of this Fifth Defense.

42. As a consequence of Lady Beaufort's conduct, it has voluntarily relinquished known rights.

43. The Plaintiff herein is barred from a recovery on the contract by the doctrine of waiver.

**FOR A SIXTH DEFENSE**  
**AND BY WAY OF COUNTERCLAIM**  
**(Declaratory Judgment)**

44. The allegations of paragraphs 1 through 11, as well as paragraphs (a) and (b) of the prayer, of the Complaint brought by Inverness, LLC, dated

January 9, 2014, in Case No. 2014-CP-07-00061, are hereby incorporated into and by express reference made a part of this Sixth Defense and Counterclaim, in the event that this action should survive or outlive Case No. 2014-CP-07-00061.

**FOR A SEVENTH DEFENSE**  
**AND BY WAY OF COUNTERCLAIM**  
(Abuse of Process)

45. The allegations of paragraphs 1 through 20, as well as paragraph (c) of the prayer, of the Complaint brought by Inverness, LLC, dated January 9, 2014, in case No. 2014-CP-07-00061, are hereby incorporated into and by express reference made a part of this Seventh Defense and Counterclaim, in the event that this action should survive or outlive Case No. 2014-CP-07-00061.

**FOR AN EIGHTH DEFENSE**  
(No Specific Performance – Matter of Law)

46. The allegations of paragraphs 25 through 40 above are hereby adopted and by express reference made a part of this Eighth Defense.

47. One seeking specific performance is required to demonstrate exact compliance with the covenants and conditions of the contract.

48. Lady Beaufort is barred from the remedy of specific performance as a matter of law.

**FOR A NINTH DEFENSE**  
(No Specific Performance – Matter of Discretion)

49. The allegations of paragraphs 25 through 40 and 46 through 48

above are hereby adopted and by express reference made a part of this Ninth Defense.

50. Specific performance is not a matter of right, but, instead, it rests in the sound judicial discretion of the Court.

51. One seeking specific performance must show performance, or the ability, readiness and willingness to perform, all of the covenants and conditions of the contract.

52. Lady Beaufort, upon information and belief, is barred from the remedy of specific performance as a matter of judicial discretion.

FOR AN TENTH DEFENSE  
(Statute of Frauds)

53. If all or any portion of the contract sought to be enforced by the Plaintiff is oral and not evidenced by a good and sufficient signed writing, its enforcement is barred by the Statute of Frauds.

FOR A ELEVENTH DEFENSE  
(Unclean Hands)

54. The allegations of paragraphs 1 through 53 are hereby adopted and by express reference made a part of this Eleventh Defense.

55. The Plaintiff has engaged in unlawful, inequitable and/or unconscionable conduct, and, accordingly, any and all claims in equity are barred by the Clean Hands Doctrine.

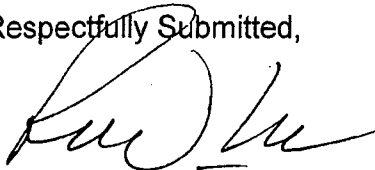
WHEREFORE, the Defendant, Inverness, LLC, having fully answered the Complaint, prays that the Court inquire into the facts and matters alleged herein;

and

- (a) Dismiss the Complaint; or
- (b) Enter judgment in favor of Inverness and against the Plaintiff herein with respect to each cause of action, if any, set forth in the Complaint; and
- (c) Enter a declaratory judgment in favor of Inverness with respect to the initial counterclaim set forth above, all in accordance with paragraphs 8 through 11 of the Complaint in Case No. 2014-CP-07-00061 dated January 9, 2014, as well as in paragraphs (a) and (b) of the prayer concluding that complaint;
- (d) Enter judgment in favor of Inverness and against the Plaintiff herein with respect to the second counterclaim set forth above, all in accordance with paragraphs 12 through 20 of the Complaint in Case No. 2014-CP-07-00061 dated January 9, 2014, as well as in paragraph (c) of the prayer concluding that complaint;
- (e) Award to Inverness its reasonable attorney's fees; and
- (f) Tax all costs of this action against the Plaintiff.

Respectfully Submitted,

By:



Robert V. Mathison, Jr.  
Attorney for the Defendant  
Inverness, LLC

February 18, 2014

Hilton Head Island, South Carolina.

MATHISON & MATHISON  
Post Office Box 5271  
Hilton Head Island, SC 29938  
Telephone: (843) 785-6503  
Facsimile: (843) 785-6170  
Email: [rmathlaw@aol.com](mailto:rmathlaw@aol.com)

**WILLIAM M. BOWEN, P. A.**

**ATTORNEY AT LAW**

**POST OFFICE DRAWER 6128**

**HILTON HEAD ISLAND, SOUTH CAROLINA 29938**

**E-MAIL: WILBOW@HARGRAY.COM**

**(NOT FOR CONFIDENTIAL COMMUNICATIONS)**

**PHYSICAL LOCATION:**

**52 New Orleans Road, Suite 202  
Hilton Head Island, SC 29928**

**Telephone 843/842-5000**

**Facsimile 843/686-5990**

**June 10, 2014**

**File No.: 13-315**

**Hon. Jerri A. Roseneau**

**Clerk of Court**

**P. O. Drawer 1128**

**Beaufort, SC 29901**

**Re: Lady Beaufort, LLC, et al. v. Inverness, LLC and  
Hird Island Investments, Inc., etc., et al.  
Case No. 2014-CP-07-0052**

**Dear Jerri:**

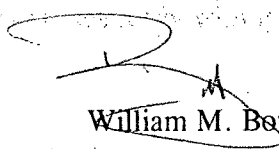
With regard to the above-styled action, enclosed for filing are an original and one copy of the Answer and Counterclaim of Defendant Hird Island Investments, Inc.

Please return one clocked copy to our office by placing it in our courier box (labeled "The Title Company").

By copy of this letter with enclosures to counsel for the Plaintiffs and Defendant, we hereby serve same upon them.

Many thanks and with kind regards, I remain

Yours truly,

  
**William M. Bowen**

**WMB:mjp**

**Enclosures**

**cc: (w/enclosure)**

**Andrew K. Epting, Jr., LLC**

**Robert V. Mathison, Jr., Esquire**

**Hird Island Investments**

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

Lady Beaufort, LLC & Tideland )

Realty, Inc., )

Plaintiffs, )

vs. )

Inverness, LLC and Hird Island )

Investments, Inc., )

Defendants. )

Inverness, LLC )

Plaintiff )

v. )

Lady Beaufort, LLC, )

Defendant )

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-07-0052

Answer and Counterclaim of Defendant

Hird Island Investments, Inc. to Amended

Complaint of Plaintiffs

Defendant, Hird Island Investments, Inc. (hereinafter referred to as "Hird"), answering Complaint of Plaintiffs, would respectfully show unto this Honorable Court that:

**FOR A FIRST DEFENSE:**

1. Each and every allegation of the Complaint not specifically admitted is denied.
2. Hird admits the allegations contained in Paragraph 1 of the Complaint.
3. Hird is without sufficient information to form a belief as to the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.
4. Hird is without sufficient information to form a belief as to the allegations contained in Paragraph 3 of the Complaint, and therefore denies the same.
5. Hird admits the allegations contained in Paragraph 4 of the Complaint.
6. Hird is without sufficient information to form a belief as to the allegations contained in Paragraph 5 of the Complaint, and therefore denies the same.
7. Hird admits the allegations contained in Paragraph 6 of the Complaint.
8. Hird admits the allegations contained in Paragraph 7 of the Complaint.

9. The allegations contained in Paragraph 8 have been admitted, denied, or qualified hereinbefore or hereinafter.
10. Hird admits the allegations contained in Paragraph 9 of the Complaint.
11. Hird admits the allegations contained in Paragraph 10 of the Complaint.
12. Hird denies the allegations contained in Paragraph 11 of the Complaint.
13. Hird denies so much of the allegations contained in Paragraph 12 of the Complaint as allege it failed and refused to convey the property to Lady Beaufort, and admits the rest thereof.
14. Hird denies the allegations contained in Paragraph 13 of the Complaint.
15. Hird denies the allegations contained in Paragraph 14 of the Complaint.
16. Hird denies the allegations contained in Paragraph 15 of the Complaint.
17. The allegations contained in Paragraph 16 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
18. Hird admits the allegations contained in Paragraph 17 of the Complaint.
19. Hird denies the allegations contained in Paragraph 18 of the Complaint.
20. Hird denies the allegations contained in Paragraph 19 of the Complaint.
21. Hird denies the allegations contained in Paragraph 20 of the Complaint.
22. The allegations contained in Paragraph 21 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
23. Hird admits the allegations contained in Paragraph 22 of the Complaint.
24. Hird admits the allegations contained in Paragraph 23 of the Complaint.
25. Hird denies the allegations contained in Paragraph 24 of the Complaint.
26. Hird denies the allegations contained in Paragraph 25 of the Complaint.
27. Hird denies the allegations contained in Paragraph 26 of the Complaint.
28. Hird denies the allegations contained in Paragraph 27 of the Complaint.
29. Hird denies the allegations contained in Paragraph 28 of the Complaint.

30. Hird denies the allegations contained in Paragraph 29 of the Complaint.

31. Hird denies the allegations contained in Paragraph 30 of the Complaint.

32. Hird denies the allegations contained in Paragraph 31 of the Complaint.

33. Hird denies the allegations contained in Paragraph 32 of the Complaint.

34. The allegations contained in Paragraph 33 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.

35. Hird admits the allegations contained in Paragraph 34 of the Complaint.

36. Hird admits the allegations contained in Paragraph 35 of the Complaint.

37. Hird denies the allegations contained in Paragraph 36 of the Complaint.

38. Hird denies the allegations contained in Paragraph 37 of the Complaint.

39. Hird denies the allegations contained in Paragraph 38 of the Complaint.

40. Hird denies the allegations contained in Paragraph 39 of the Complaint.

41. Hird denies the allegations contained in Paragraph 40 of the Complaint.

42. Hird denies the allegations contained in Paragraph 41 of the Complaint.

**FOR A SECOND DEFENSE AND BY WAY OF A COUNTERCLAIM  
AGAINST LADY BEAUFORT, LLC**

(Breach of Contract)

43. Hird incorporates each and every allegation and response above as though specifically set out verbatim in this Counterclaim.

44. In breach of the Agreement, Lady Beaufort, LLC failed and refused to close on the sale of the Property.

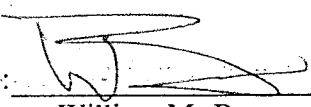
45. In breach of the Agreement, Lady Beaufort, LLC failed and refused to pay Hird the purchase price for the Property.

46. As a result of the breach of the Agreement by Lady Beaufort, LLC, Hird has been damaged.

47. Hird is entitled to actual damages, interest and attorney's fees.

WHEREFORE, having fully answered, Hird requests that this Court inquire into the matters raised by the pleadings and pass its Order as may be just and equitable under the circumstances.

WILLIAM M. BOWEN, P.A.

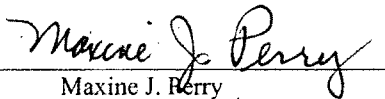
By: 

William M. Bowen  
Attorney for Defendant Hird  
P.O. Drawer 6128  
Hilton Head Island, SC 29938  
T: (843) 842-5000; F: (843) 686-5990  
wilbowbb@hargray.com

Hilton Head Island, South Carolina  
June 9, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing Answer and Counterclaim to Plaintiffs' Amended Complaint by personally depositing a copy addressed to Plaintiffs' counsel of record on this 10<sup>th</sup> day of June, 2014, by U.S. Postal Service, first class mail, postage prepaid.

  
Maxine J. Perry

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

INVERNESS, LLC,

Plaintiff,

v.

LADY BEAUFORT, LLC,

Defendant.

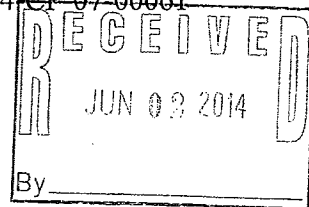
IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

Case No. 2014-CP-07-0052

SUMMONS

2014 MAY 29 PM 3:20  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

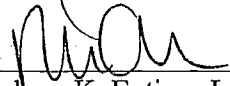
Case No. 2014-CP-07-00061



TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address show below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

ANDREW K. EPTING, JR., LLC

  
Andrew K. Epting, Jr., Esq.  
Michelle N. Endemann, Esq.  
46A State Street, Charleston, SC 29401  
P: 843.377.1871; F: 843.377.1310  
[ake@epting-law.com](mailto:ake@epting-law.com); [mne@epting-law.com](mailto:mne@epting-law.com)

Charleston, South Carolina  
May 20, 2014

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

INVERNESS, LLC,

Plaintiff,

v.

LADY BEAUFORT, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

Case No. 2014-CP-07-0052

AMENDED COMPLAINT

Case No. 2014-CP-07-00061

2014 MAY 29 PM 3:21  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

Plaintiffs Lady Beaufort, LLC ("Lady Beaufort") and Tideland Realty, Inc. ("Tideland") file this action against Defendants Inverness, LLC ("Inverness") and Hird Island Investments, Inc. ("Hird Island"). In support of this action, Plaintiffs would show the Court the following:

1. This action arises out of the Agreement to Buy and Sell Real Estate ("Agreement") dated August 19, 2013 wherein Lady Beaufort contracted to buy and Hird Island contracted to sell 2.9 acres of real property located in Beaufort, SC, with an address of 9 Sams Point Road (TMS # 123 015 000 0605 0000) (the "Property").

2. Plaintiff Lady Beaufort is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina.

3. Plaintiff Tideland is a licensed real estate agency, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina. Matt

Trumps of Tidelands is the Buyer's agent in the transaction at issue and is entitled to a 5% commission from Defendant Hird Island pursuant to the Agreement.

4. Defendant Hird Island is a corporation organized and existing under the laws of the state of Georgia, doing business in Beaufort County, South Carolina.

5. Defendant Inverness is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina.

Inverness is the subsequent purchaser of the Property.

6. This Court has jurisdiction over the parties to this action and over the subject matter alleged herein.

7. Venue is proper in Beaufort County.

**FOR A FIRST CAUSE OF ACTION  
AS TO HIRD INVESTMENTS  
(Breach of Contract)**

8. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

9. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

10. The Agreement is and was at all relevant times valid and enforceable.

11. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

12. In breach of the Agreement, Hird Island failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness.

13. In breach of the Agreement, Hird Island failed and refused to pay Tidelands the real estate commission of 5% as set forth in the Agreement.

14. As a result of Hird Island's breaches, Plaintiffs have been damaged.

15. Plaintiffs are entitled actual damages, interest, and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION  
AS TO INVERNESS**

**(Intentional Interference with a Contract)**

16. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

17. The Agreement under which Hird Investments agreed to sell and Lady Beauport agreed to buy the Property is and was at all relevant times valid and enforceable.

18. Defendant Inverness had knowledge, both actual and constructive, of the Agreement and tortiously interfered with the Seller, causing Hird Island to refuse to convey the Property to Lady Beaufort and instead to convey the Property to Inverness.

19. As a proximate result of Inverness' unjustified interference, Plaintiffs have been damaged.

20. Plaintiffs are entitled to actual and punitive damages, together with interest and attorneys' fees.

**FOR A THIRD CAUSE OF ACTION  
AS TO INVERNESS & HIRD INVESTMENTS  
(Action to Set Aside the Deed)**

21. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

22. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

23. The Agreement is and was at all relevant times valid and enforceable.

24. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

Case No. 2014-CP-07-0052

SUMMONS

2014 MAY 29 PM 3:20  
JEREMY ROSENBAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

INVERNESS, LLC,

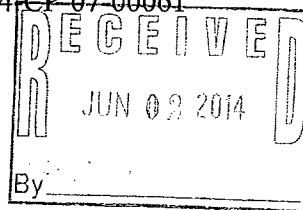
Plaintiff,

v.

LADY BEAUFORT, LLC,

Defendant.

Case No. 2014-CP-07-00061



TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address show below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

ANDREW K. EPTING, JR., LLC

  
Andrew K. Epting, Jr., Esq.  
Michelle N. Endemann, Esq.  
46A State Street, Charleston, SC 29401  
P: 843.377.1871; F: 843.377.1310  
[ake@epting-law.com](mailto:ake@epting-law.com); [mne@epting-law.com](mailto:mne@epting-law.com)

Charleston, South Carolina  
May 20, 2014

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

INVERNESS, LLC and HIRD ISLAND  
INVESTMENTS, INC.,

Defendants.

Case No. 2014-CP-07-0052

AMENDED COMPLAINT

2014 MAY 29 PM 3:21  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

INVERNESS, LLC,

Plaintiff,

v.

LADY BEAUFORT, LLC,

Defendant.

Case No. 2014-CP-07-00061

Plaintiffs Lady Beaufort, LLC ("Lady Beaufort") and Tideland Realty, Inc. ("Tideland") file this action against Defendants Inverness, LLC ("Inverness") and Hird Island Investments, Inc. ("Hird Island"). In support of this action, Plaintiffs would show the Court the following:

1. This action arises out of the Agreement to Buy and Sell Real Estate ("Agreement") dated August 19, 2013 wherein Lady Beaufort contracted to buy and Hird Island contracted to sell 2.9 acres of real property located in Beaufort, SC, with an address of 9 Sams Point Road (TMS # 123 015 000 0605 0000) (the "Property").

2. Plaintiff Lady Beaufort is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina.

3. Plaintiff Tideland is a licensed real estate agency, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina. Matt

Trumps of Tidelands is the Buyer's agent in the transaction at issue and is entitled to a 5% commission from Defendant Hird Island pursuant to the Agreement.

4. Defendant Hird Island is a corporation organized and existing under the laws of the state of Georgia, doing business in Beaufort County, South Carolina.

5. Defendant Inverness is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina.

Inverness is the subsequent purchaser of the Property.

6. This Court has jurisdiction over the parties to this action and over the subject matter alleged herein.

7. Venue is proper in Beaufort County.

**FOR A FIRST CAUSE OF ACTION  
AS TO HIRD INVESTMENTS  
(Breach of Contract)**

8. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

9. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

10. The Agreement is and was at all relevant times valid and enforceable.

11. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

12. In breach of the Agreement, Hird Island failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness.

13. In breach of the Agreement, Hird Island failed and refused to pay Tidelands the real estate commission of 5% as set forth in the Agreement.

14. As a result of Hird Island's breaches, Plaintiffs have been damaged.

15. Plaintiffs are entitled actual damages, interest, and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION  
AS TO INVERNESS**

**(Intentional Interference with a Contract)**

16. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

17. The Agreement under which Hird Investments agreed to sell and Lady Beauport agreed to buy the Property is and was at all relevant times valid and enforceable.

18. Defendant Inverness had knowledge, both actual and constructive, of the Agreement and tortiously interfered with the Seller, causing Hird Island to refuse to convey the Property to Lady Beauport and instead to convey the Property to Inverness.

19. As a proximate result of Inverness' unjustified interference, Plaintiffs have been damaged.

20. Plaintiffs are entitled to actual and punitive damages, together with interest and attorneys' fees.

**FOR A THIRD CAUSE OF ACTION  
AS TO INVERNESS & HIRD INVESTMENTS  
(Action to Set Aside the Deed)**

21. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

22. Lady Beauport entered into an Agreement with Defendant Hird Island whereby Lady Beauport would purchase the Property for the sum of \$260,000.00.

23. The Agreement is and was at all relevant times valid and enforceable.

24. Lady Beauport is and was at all relevant times ready willing and able to purchase the Property.

25. In breach of the Agreement, Hird Island failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness.

26. Defendant Inverness had knowledge, both actual and constructive, of the Agreement but purchased the Property from Bird Investments regardless of the Agreement and with complete disregard for the rights of Lady Beaufort and Lady Beaufort's valid claim to the property and acted in concert with Hird Island to defraud Lady Beaufort.

27. The sale and conveyance of the Property from Hird Investments to Inverness was in bad faith, and Inverness was not a bona fide purchaser. Accordingly, Lady Beaufort's claim to the property is superior to that of Inverness.

28. At the time of the transfer to Inverness, Hird Island was contractually bound to convey the property to Lady Beaufort, and Lady Beaufort had a valid claim to the property as well as valid causes of action against the Defendants.

29. The transfer of the Property to Inverness was made to hinder and delay Lady Beaufort in exercising its claim to the property and to avoid Hird Island's liability to Lady Beaufort by attempting to put the Property beyond the reach of Lady Beaufort.

30. The transfer of the property to Inverness was made by Hird Island with the actual intent of defrauding Lady Beaufort and preventing Lady Beaufort from obtaining title to the property.

31. Hird Island's fraudulent intent is imputable to Inverness.

32. The transfer of the Property to Inverness is void pursuant to S.C. Code Ann. § 27-23-10 and should be set aside.

**FOR A FOURTH CAUSE OF ACTION  
AS TO HIRD INVESTMENTS  
(Specific Performance)**

33. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

34. Lady Beaufort entered into an Agreement with Defendant Bird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

35. The Agreement is and was at all relevant times valid and enforceable.

36. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

37. Defendant Bird Island has failed and refused to sell and convey the Property to Lady Beaufort.

38. The Property is unique in character and in nature.

39. Lady Beaufort lacks an adequate remedy at law.

40. As a direct and proximate result of Defendant Bird Island's failure and refusal to sell and convey the subject property to Lady Beaufort, Lady Beaufort is entitled to a Court Order requiring Bird Island to perform under the Agreement and convey the property to Lady Beaufort.

41. As a direct and proximate result of Defendant Hird Island's failure and refusal to sell and convey the subject property to Lady Beaufort, Lady Beaufort is entitled to recover attorneys' fees and costs.

WHEREFORE, Plaintiffs respectfully request the Court grant the following relief:

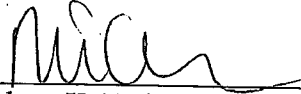
- a. Void the sale and set aside the deed to Inverness;
- b. Award Plaintiffs' their actual damages plus interest, attorneys' fees, and punitive damages;

c. Order Hird Investments to specifically perform the Agreement; and

d. For such other and further relief as this Court deems appropriate.

Respectfully Submitted By:

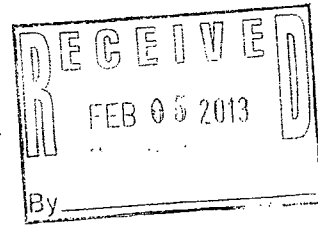
ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., Esq.  
Michelle N. Endemann, Esq.  
46A State Street  
Charleston, SC 29401  
Telephone: 843.377.1871  
Facsimile: 843.377.1310  
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[mne@epting-law.com](mailto:mne@epting-law.com)

ATTORNEYS FOR THE PLAINTIFFS

May 20, 2014  
Charleston, SC



**WILLIAM M. BOWEN, P. A.**

**ATTORNEY AT LAW**

**POST OFFICE DRAWER 6128**

**HILTON HEAD ISLAND, SOUTH CAROLINA 29938**

**E-MAIL: WILBOW@HARGRAY.COM**

**(NOT FOR CONFIDENTIAL COMMUNICATIONS)**

**PHYSICAL LOCATION:**

**52 New Orleans Road, Suite 202**

**Hilton Head Island, SC 29928**

**Telephone 843/842-5000**

**Facsimile 843/686-5990**

**February 4, 2014**

**File No.: 13-315**

**Hon. Jerri Roseneau**

**Clerk of Court**

**P. O. Drawer 1128**

**Beaufort, SC 29901**

**Re: Lady Beaufort, LLC, et al. vs. Inverness, LLC and Hird  
Island Investments, Inc.  
C/A 2014-CP-07-0052**

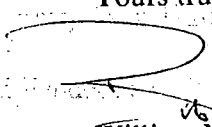
**Dear Jerri:**

**With regard to the above-styled action, enclosed for filing are an original and one copy of Defendant Hird Island Investment's Answer and Counterclaim.**

**Please return one clocked copy to me by placing it in our courier box (labeled "The Title Company").**

**Many thanks and with kind regards, I remain**

**Yours truly,**

  
**William M. Bowen**

**WMB:mjp**

**Enclosures**

**cc: (w/enclosure)**

**Andrew K. Epting, Jr., Esquire**

**Sherwood N. Fender**

|                                |   |                                      |
|--------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS         |
|                                | ) | FOURTEENTH JUDICIAL CIRCUIT          |
| COUNTY OF BEAUFORT             | ) | Case No. 2014-CP-07-0052             |
|                                | ) |                                      |
| Lady Beaufort, LLC & Tideland  | ) |                                      |
| Realty, Inc.,                  | ) |                                      |
|                                | ) |                                      |
| Plaintiffs,                    | ) | Answer and Counterclaim of Defendant |
|                                | ) | Hird Island Investments, Inc.        |
| vs.                            | ) |                                      |
|                                | ) |                                      |
| Inverness, LLC and Hird Island | ) |                                      |
| Investments, Inc.,             | ) |                                      |
| Defendants.                    | ) |                                      |
|                                | ) |                                      |

Defendant, Hird Island Investments, Inc. (hereinafter referred to as "Hird"), answering Complaint of Plaintiffs, would respectfully show unto this Honorable Court that:

**FOR A FIRST DEFENSE:**

1. Each and every allegation of the Complaint not specifically admitted is denied.
2. Hird admits the allegations contained in Paragraph 1 of the Complaint.
3. Hird is without sufficient information to form a belief as to the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.
4. Hird is without sufficient information to form a belief as to the allegations contained in Paragraph 3 of the Complaint, and therefore denies the same.
5. Hird admits the allegations contained in Paragraph 4 of the Complaint.
6. Hird is without sufficient information to form a belief as to the allegations contained in Paragraph 5 of the Complaint, and therefore denies the same.
7. Hird admits the allegations contained in Paragraph 6 of the Complaint.
8. Hird admits the allegations contained in Paragraph 7 of the Complaint.
9. The allegations contained in Paragraph 8 have been admitted, denied, or qualified hereinbefore or hereinafter.
10. Hird admits the allegations contained in Paragraph 9 of the Complaint.
11. Hird admits the allegations contained in Paragraph 10 of the Complaint.

12. Hird denies the allegations contained in Paragraph 11 of the Complaint.
13. Hird denies so much of the allegations contained in Paragraph 12 of the Complaint as allege it failed and refused to convey the property to Lady Beaufort, and admits the rest thereof.
14. Hird denies the allegations contained in Paragraph 13 of the Complaint.
15. Hird denies the allegations contained in Paragraph 14 of the Complaint.
16. Hird denies the allegations contained in Paragraph 15 of the Complaint.
17. The allegations contained in Paragraph 16 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
18. Hird admits the allegations contained in Paragraph 17 of the Complaint.
19. Hird denies the allegations contained in Paragraph 18 of the Complaint.
20. Hird denies the allegations contained in Paragraph 19 of the Complaint.
21. Hird denies the allegations contained in Paragraph 20 of the Complaint.
22. The allegations contained in Paragraph 21 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
23. Hird admits the allegations contained in Paragraph 22 of the Complaint.
24. Hird admits the allegations contained in Paragraph 23 of the Complaint.
25. Hird denies the allegations contained in Paragraph 24 of the Complaint.
26. Hird denies the allegations contained in Paragraph 25 of the Complaint.
27. Hird denies the allegations contained in Paragraph 26 of the Complaint.
28. Hird denies the allegations contained in Paragraph 27 of the Complaint.
29. The allegations contained in Paragraph 28 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
30. Hird admits the allegations contained in Paragraph 29 of the Complaint.
31. Hird admits the allegations contained in Paragraph 30 of the Complaint.
32. Hird denies the allegations contained in Paragraph 31 of the Complaint.

33. Hird denies the allegations contained in Paragraph 32 of the Complaint.

34. Hird denies the allegations contained in Paragraph 33 of the Complaint.

35. Hird denies the allegations contained in Paragraph 34 of the Complaint.

36. Hird denies the allegations contained in Paragraph 35 of the Complaint.

37. Hird denies the allegations contained in Paragraph 36 of the Complaint.

**FOR A SECOND DEFENSE AND BY WAY OF A COUNTERCLAIM  
AGAINST LADY BEAUFORT, LLC  
(Breach of Contract)**

38. Hird incorporates each and every allegation above as though specifically set out verbatim in this Counterclaim.

39. In breach of the Agreement, Lady Beaufort, LLC failed and refused to close on the sale of the Property.

40. In breach of the Agreement, Lady Beaufort, LLC failed and refused to pay Hird the purchase price for the Property.

41. As a result of the breach of the Agreement by Lady Beaufort, LLC, Hird has been damaged.

42. Hird is entitled to actual damages, interest and attorney's fees.

WHEREFORE, having fully answered, Hird requests that this Court inquire into the matters raised by the pleadings and pass its Order as may be just and equitable under the circumstances.

**WILLIAM M. BOWEN, P.A.**

By: \_\_\_\_\_

William M. Bowen

Attorney for Defendant Hird

P.O. Drawer 6128

Hilton Head Island, SC 29938

T: (843) 842-5000; F: (843) 686-5990

Hilton Head Island, South Carolina

February 3, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing Answer and Counterclaim on Plaintiffs by personally depositing a copy addressed to their counsel of record this 4th day of February, 2014, by U.S. Postal Service, first class mail, postage prepaid.

\_\_\_\_\_  
Maxine J. Perry

STATE OF SOUTH CAROLINA  
COUNTRY OF BEAUFORT

LADY BEAUFORT, LLC. & TIDELAND  
REALTY INC.,

Plaintiffs,

v.

HIRD ISLAND INVESTMENTS, INC. and  
SHERWOOD N. FENDER,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH CIRCUIT

Case No. 2014-CP-07-0052

**SECOND AMENDED COMPLAINT**

Plaintiffs Lady Beaufort, LLC ("Lady Beaufort") and Tideland Realty, Inc. ("Tideland") file this action against Defendants HIRD ISLAND INVESTMENTS, INC. ("Hird") and SHERWOOD N. FENDER ("Fender"). In support of this action, Plaintiffs would show the Court the following:

1. This action arises out of the Agreement to Buy and Sell Real Estate ("Agreement") dated August 19, 2013 wherein Lady Beaufort contracted to buy and Hird Island contracted to sell 2.9 acres of real property located in Beaufort, SC, with an address of 9 Sams Point Road (TMS # 123 015 000 0605 0000) (the "Property").

2. Plaintiff Lady Beaufort is a limited liability company, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina.

3. Plaintiff Tideland is a licensed real estate agency, organized and existing under the laws of the state of South Carolina, doing business in Beaufort County, South Carolina. Matt Trumps of Tidelands is the Buyer's agent in the transaction at issue and is entitled to a 5% commission from Defendant Hird Island pursuant to the Agreement.

4. Defendant Hird Island is a corporation organized and existing under the laws of the state of Georgia, doing business in Beaufort County, South Carolina.

5. Defendant Fender is an individual doing business in Beaufort County, South Carolina.

6. The events the subject of this suit concern real property in Beaufort County, South Carolina.

7. This Court has jurisdiction over the parties to this action and over the subject matter alleged herein.

8. Venue is proper in Beaufort County.

**FOR A FIRST CAUSE OF ACTION  
AS TO HIRD INVESTMENTS  
(Breach of Contract)**

8. Plaintiffs repeat and reallege the foregoing allegations as if they were fully set forth herein verbatim.

9. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

10. The Agreement is and was at all relevant times valid and enforceable.

11. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

12. In breach of the Agreement, Hird Island failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness.

13. In breach of the Agreement, Hird Island failed and refused to pay Tideland's the real estate commission of 5% as set forth in the Agreement.

14. As a result of Hird Island's breaches, Plaintiffs have been damaged in that it was required to retain counsel and incur expense to acquire the property that Hird was legally obligated to sell to Lady Beaufort.

15. Plaintiffs are entitled actual damages, interest, and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION  
AS TO HIRD INVESTMENTS AND SHERWOOD FENDER  
(Breach of Contract Accompanied by a Fraudulent Act/Fraud)**

16. Plaintiffs repeat and reallege each of the allegations of this complaint as if they were fully set forth herein verbatim.

17. The Agreement under which Hird Investments agreed to sell and Lady Beaufort agreed to buy the Property is and was at all relevant times valid and enforceable.

18. Lady Beaufort was at all relevant times ready willing and able to purchase the Property.

19. In breach of the Agreement, Defendants failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness without informing Lady Beaufort.

20. Defendants sold the property to Inverness with complete disregard for the rights of Lady Beaufort and Lady Beaufort's valid claim to the property and acted in concert to defraud Lady Beaufort.

21. The selling of the property to Inverness constitutes an act characterized by dishonesty in fact or unfair dealing.

22. The sale and conveyance of the Property from Hird Investments to Inverness was in bad faith, and Inverness was not a bona fide purchaser.

23. Despite acting through a corporate entity, Fender is liable for his own torts.

24. The actions of the Defendants as set forth above were negligent, willful, and fraudulent.

25. As a result of Defendants' breaches and fraud, Plaintiffs have been damaged.

26. Plaintiffs are entitled to actual and punitive damages, together with interest and attorneys' fees.

**FOR A THIRD CAUSE OF ACTION  
AS TO HIRD INVESTMENTS AND SHERWOOD FENDER  
(Fraudulent Transfer)**

27. Plaintiffs repeat and reallege each of the allegations of this complaint as if they were fully set forth herein verbatim.

28. Lady Beaufort entered into an Agreement with Defendant Hird Island whereby Lady Beaufort would purchase the Property for the sum of \$260,000.00.

29. The Agreement is and was at all relevant times valid and enforceable.

30. Lady Beaufort is and was at all relevant times ready willing and able to purchase the Property.

31. In breach of the Agreement, Defendants failed and refused to sell and convey the Property to Lady Beaufort and instead conveyed the property to a third-party, Inverness.

32. Defendants sold the property to Inverness with complete disregard for the rights of Lady Beaufort and Lady Beaufort's valid claim to the property and acted in concert to defraud Lady Beaufort.

33. The sale and conveyance of the Property from Hird Investments to Inverness was a fraudulent conveyance as Hird Investments and Fender acted in bad faith, and Inverness was not a bona fide purchaser.

34. At the time of the transfer to Inverness, Hird Island was contractually bound to convey the property to Lady Beaufort, and Lady Beaufort had a valid claim to the property as well as valid causes of action against the Defendants.

35. The transfer of the Property to Inverness was made to hinder and delay Lady Beaufort in exercising its claim to the property and to avoid Defendants' liability to Lady Beaufort by attempting to put the Property beyond the reach of Lady Beaufort.

36. The transfer of the property to Inverness was made with the actual intent of defrauding Lady Beaufort and preventing Lady Beaufort from obtaining title to the property.

37. The transfer of the Property to Inverness is in violation of S.C. Code Ann. § 27-23-10 and Lady Beaufort is entitled to damages.

**FOR A FOURTH CAUSE OF ACTION  
AS TO SHERWOOD FENDER  
(Negligent Misrepresentation)**

38. Plaintiffs repeat and reallege each of the allegations of this complaint as if they were fully set forth herein verbatim.

39. Fender made false representations to the Lady Beaufort regarding the Property, including that Hird Island was ready willing and able to close its real estate contract with Lady Beaufort and that the Property would be conveyed to Lady Beaufort.

40. Fender had a pecuniary interest in making the aforementioned false statements to Lady Beaufort.

41. Fender owed Lady Beaufort a duty of care to see that he communicated truthful information to the Lady Beaufort.

42. Fender breached that duty by failing to exercise due care by making false and misleading statements to Lady Beaufort and then selling the property to a third-party.

42. Lady Beaufort justifiably relied on the representations made by Fender.

43. Lady Beaufort suffered a pecuniary loss as the proximate result of its reliance upon the representations of Fender and is entitled to damages.

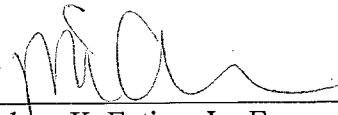
WHEREFORE, Plaintiffs respectfully request the Court grant the following relief:

a. Award Plaintiffs' their actual damages plus interest, attorneys' fees, and punitive damages; and

b. Award such other and further relief as this Court deems appropriate.

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., Esq.  
Michelle N. Endemann, Esq.  
46A State Street  
Charleston, SC 29401  
Telephone: 843.377.1871  
Facsimile: 843.377.1310  
[ake@epting-law.com](mailto:ake@epting-law.com)  
[mne@epting-law.com](mailto:mne@epting-law.com)

ATTORNEYS FOR THE PLAINTIFFS

November 11, 2014  
Charleston, SC

**WILLIAM M. BOWEN, P. A.**

**ATTORNEY AT LAW**

**POST OFFICE DRAWER 6128**

**HILTON HEAD ISLAND, SOUTH CAROLINA 29938**

**E-MAIL: WILBOW@HARGRAY.COM**

**(NOT FOR CONFIDENTIAL COMMUNICATIONS)**

**PHYSICAL LOCATION:**

**52 New Orleans Road, Suite 202  
Hilton Head Island, SC 29928**

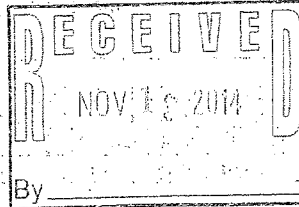
**Telephone 843/842-5000**

**Facsimile 843/686-5990**

**November 12, 2014**

**File No.: 13-315**

**Hon. Jerri A. Roseneau  
Clerk of Court  
P. O. Drawer 1128  
Beaufort, SC 29901**



**Re: Lady Beaufort, LLC, et al. v.  
Hird Island Investments, Inc. and Sherwood N. Fender  
Case No. 2014-CP-07-0052**

**Dear Jerri:**

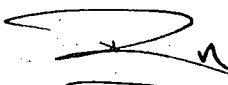
With regard to the above-styled action, enclosed for filing are an original and one copy of the Answer to Second Amended Complaint and Counterclaim of Defendants.

Please return one clocked copy to our office by placing it in our courier box (labeled "The Title Company").

By copy of this letter with enclosures to counsel for the Plaintiffs, we hereby serve same upon them.

Many thanks and with kind regards, I remain

Yours truly,

  
William M. Bowen

WMB:mjp  
Enclosures

cc: (w/enclosure)

Andrew K. Epting, Jr., LLC

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS |
|                                    | ) | FOURTEENTH JUDICIAL CIRCUIT  |
| COUNTY OF BEAUFORT                 | ) | Case No. 2014-CP-07-0052     |
|                                    | ) |                              |
| Lady Beaufort, LLC & Tideland      | ) |                              |
| Realty, Inc.,                      | ) |                              |
|                                    | ) |                              |
| Plaintiffs,                        | ) |                              |
|                                    | ) | ANSWER TO SECOND AMENDED     |
| vs.                                | ) | COMPLAINT AND COUNTERCLAIM   |
|                                    | ) |                              |
| Hird Island Investments, Inc., and | ) |                              |
| Sherwood N. Fender                 | ) |                              |
| Defendants,                        | ) |                              |

Defendant, Hird Island Investments, Inc. ("Hird"), and Defendant, Sherwood N. Fender ("Fender") (collectively "Defendants"), answering Complaint of Plaintiffs, would respectfully show unto this Honorable Court that:

FOR A FIRST DEFENSE:

1. Each and every allegation of the Complaint not specifically admitted is denied by Defendants.
2. Defendants admit the allegations contained in Paragraph 1 of the Complaint.
3. Defendants are without sufficient information to form a belief as to the allegations contained in Paragraph 2 of the Complaint, and therefore deny the same.
4. Defendants are without sufficient information to form a belief as to the allegations contained in Paragraph 3 of the Complaint, and therefore deny the same.
5. Defendants admit the allegations contained in Paragraph 4 of the Complaint.
6. Defendants admit so much of the allegations contained in Paragraph 5 of the Complaint as allege Fender is an individual and a resident of Beaufort County.
7. Defendants admit the allegations contained in Paragraph 6 of the Complaint.
8. Defendants admit the allegations contained in Paragraph 7 of the Complaint.
9. Defendants admit the allegations contained in Paragraph 8 of the Complaint.
10. The allegations contained in Repeated Paragraph 8 (under First Cause of Action) have been admitted, denied, or qualified hereinbefore or hereinafter.

11. Defendants admit the allegations contained in Paragraph 9 of the Complaint.
12. Defendants admit the allegations contained in Paragraph 10 of the Complaint.
13. Defendants deny the allegations contained in Paragraph 11 of the Complaint.
14. Answering Paragraph 12, Hird admits it conveyed the Property to a third party when Lady Beaufort defaulted under the Agreement.
15. Hird denies the allegations contained in Paragraph 13 of the Complaint.
16. Hird denies the allegations contained in Paragraph 14 of the Complaint.
17. Hird denies the allegations contained in Paragraph 15 of the Complaint.
18. The allegations contained in Paragraph 16 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
19. Hird admits the allegations contained in Paragraph 17 of the Complaint.
20. Hird denies the allegations contained in Paragraph 18 of the Complaint.
21. Hird denies the allegations contained in Paragraph 19 of the Complaint.
22. Answering Paragraph 20 of the Complaint, Hird admits it sold the property to Inverness.
23. Hird denies the allegations contained in Paragraph 21 of the Complaint.
24. Hird denies the allegations contained in Paragraph 22 of the Complaint.
25. Hird denies the allegations contained in Paragraph 23 of the Complaint.
26. Hird denies the allegations contained in Paragraph 24 of the Complaint.
27. Hird denies the allegations contained in Paragraph 25 of the Complaint.
28. Hird denies the allegations contained in Paragraph 26 of the Complaint.
29. The allegations contained in Paragraph 27 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
30. Hird admits the allegations contained in Paragraph 28 of the Complaint.
31. Hird admits the allegations contained in Paragraph 29 of the Complaint.

32. Hird denies the allegations contained in Paragraph 30 of the Complaint.
33. Defendants deny the allegations contained in Paragraph 31 of the Complaint.
34. Defendants deny the allegations contained in Paragraph 32 of the Complaint.
35. Defendants deny the allegations contained in Paragraph 33 of the Complaint.
36. Defendants deny the allegations contained in Paragraph 34 of the Complaint.
37. Defendants deny the allegations contained in Paragraph 35 of the Complaint.
38. Defendants deny the allegations contained in Paragraph 36 of the Complaint.
39. Defendants deny the allegations contained in Paragraph 37 of the Complaint.
40. The allegations contained in Paragraph 38 of the Complaint have been admitted, denied, or qualified hereinbefore or hereinafter.
41. Fender denies the allegations contained in Paragraph 39 of the Complaint.
42. Fender denies the allegations contained in Paragraph 40 of the Complaint.
43. Fender denies the allegations contained in Paragraph 41 of the Complaint.
44. Fender denies the allegations contained in Paragraph 42 of the Complaint.
45. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

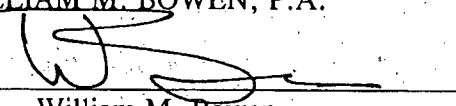
**FOR A SECOND DEFENSE AND BY WAY OF A COUNTERCLAIM  
AGAINST LADY BEAUFORT, LLC  
(Breach of Contract)**

46. Hird incorporates each and every allegation above as though specifically set out verbatim in this Counterclaim.
47. In breach of the Agreement, Lady Beaufort, LLC failed and refused to close on the sale of the Property.
48. In breach of the Agreement, Lady Beaufort, LLC failed and refused to pay Hird the purchase price for the Property.
49. As a result of the breach of the Agreement by Lady Beaufort, LLC, Hird has been damaged.

50. Hird is entitled to actual damages, interest and attorney's fees.

WHEREFORE, having fully answered, Hird requests that this Court inquire into the matters raised by the pleadings and pass its Order as may be just and equitable under the circumstances.

WILLIAM M. BOWEN, P.A.

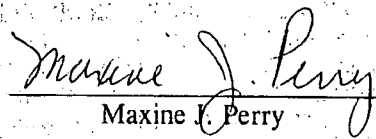
By: 

William M. Bowen  
Attorney for Defendant Hird  
P.O. Drawer 6128  
Hilton Head Island, SC 29938  
T: (843) 842-5000; F: (843) 686-5990  
wilbowbb@hargray.com

Hilton Head Island, South Carolina  
November 12, 2014

#### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Answer to Second Amended Complaint and Counterclaim on Plaintiffs by personally depositing a copy addressed to their counsel of record this 12th day of November, 2014, by U.S. Postal Service, first class mail, postage prepaid.

  
Maxine J. Perry



**AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE  
(GENERAL USE AND LOTS/ACREAGE)**

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into as of the Effective Date between:

Buyer(s), Lady Beaufort, LLC ("Buyer"), and  
Seller(s), Hind Island Investments, Inc. ("Seller").

☒ **BUYER** ☐ **SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE**

- (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 starting at 10 AM (M/Tu/WTh/Fr) and counted from 10 AM of the first Business Day following the Effective Date. Business Days shall not begin or end on a 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

2. **PURCHASE PRICE:** ~~\$250,000.00~~ \$260,000.00 (USD)

Payable by ☒ a combination of financing and cash or ☐ cash. Payment shall be good funds.

The sale of Buyer's real property ☐ is ☐ is not required for Purchase and this contingency 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, landscapes, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in working order, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer is solely responsible for inquiring about lease issues prior to signing Contract. Lending Issues: (see Adjustments). Lensed items on Property can include fuel tanks, alarm systems, satellite equipment, roll carts etc. and contain fuel, etc.

Address 9 Sans Point Road Unit #

City Beaufort State of South Carolina

Zip 29907 County of Beaufort

Lot  Block  Section/Phase  Subdivision

Other 2.9 +/- Acres Plat Attached as Exhibit TMS 123 015 000 0605 0000

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 See Other ("Closing Date") with an automatic extension of 5 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 general warranty deed free of encumbrances and liens except as herein stated; and in ownership type and name(s): TBD  
or as stipulated by Buyer. The deed shall be delivered to the Closing Attorney's

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

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Titeland Realty, Inc., 41 Sea Island Parkway Beaufort, SC 29907  
Phone: 843.323.6131

Fax: 843.323.1390

Staff Trainings

Kerr Pender

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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 debts, along with all keys, codes, any remote controls, available documents (ex. manuals, equipment warranties, service info, etc.) and similar ownership items to Buyer at Closing.

6. EARNEST MONEY: \$1,000.00 (USD) Earnest Money, is paid as follows: \$1,000.00 accompanies this offer and \$\_\_\_\_\_ will be paid within \_\_\_\_\_ Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (wire, etc.) 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 Tideland Realty, Inc. 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 HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT 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 OTHERWISE AGREED UPON IN THIS CONTRACT OR FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SO TREASURER. 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 OR MEDIATION IS TO BE UTILIZED, PARTIES AGREE THAT \$\_\_\_\_\_ OF EARNEST MONEY SHALL BE RELEASED AND/OR PAID TO THE ESCROW AGENT PRIOR TO FILING INTERPLEADER OR MEDIATION AS COMPENSATION. ESCROW AGENT ACKNOWLEDGES DUTIES.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, Insurance (mortgage insurance, life insurance lender/owner, 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, FHIA/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/lens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs unless otherwise agreed:

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

☒ At Closing, Seller will pay Buyer's transaction costs not to exceed \$\_\_\_\_\_ OR \_\_\_\_\_ % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHIA/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.

BUYER ☐ ☐ DATE \_\_\_\_\_, TIME \_\_\_\_\_  
SELLER ☐ ☐ DATE \_\_\_\_\_, TIME \_\_\_\_\_

7. FINANCE: Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 15 year or ☐ 30 year or ☐ other \_\_\_\_\_ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum \_\_\_\_\_ % and maximum \_\_\_\_\_ % 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 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"). If a Lender declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. Buyer shall apply for financing within \_\_\_\_\_ Business Days from the Effective Date and shall provide the Seller with reasonable written loan pre-approval documentation within \_\_\_\_\_ Business Days from the Effective Date. If the Seller and Brokers are notified of inability to obtain financing during the

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Financing Period, either Party may terminate this Contract by Notice and Earnest Money shall be returned to the Buyer.  
Proposed Lender: \_\_\_\_\_ ☐ FHA ☐ VA ☐ Conventional ☐ Seller  
☐ Other \_\_\_\_\_

An FHA VA Financing Addendum ☐ is ☐ is not attached, Additional financing terms ☐ are ☐ are not attached.

8. **INSPECTION/REINSPECTION RIGHTS:** Buyer and qualified/certified inspectors ("inspectors") can 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.

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 (electricians, plumbers, etc.) 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 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 rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and inspectors use insurance to manage risk.

9. **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. Otherwise, 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.

10. **SURVEY, TITLE EXAMINATION, INSURANCE:** Brokers recommend Buyer have Property surveyed, title examined, and appropriate insurance (including owner's title) effective at Closing. Seller to cancel existing insurance and Buyer to obtain new insurance policies by Closing unless otherwise agreed upon in writing by Parties. 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 and requirements of insurance for the property prior to signing Contract.

11. **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.

12. **DUE DILIGENCE:**

The DUE DILIGENCE PERIOD ends no later than 30 Business Days after the original Effective Date unless the Parties agree in writing to extend the DUE DILIGENCE PERIOD.

During the Due Diligence Period, Seller agrees Buyer may choose any of the following:

- (1) Conduct/obtain Inspections
- (2) Deliver Repairs Request(s) Notice to Seller
- (3) Proceed under amended Contract
- (4) Proceed under As Is Contract
- (5) Terminate Contract by Delivering "Notice of Termination" and "Termination Fee" to Seller

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**TERMINATION:** During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ \_\_\_\_\_ USD Good Funds. Termination Fee paid to Seller by payment or, by release to Seller an appropriate amount of Earnest Money or, by a combination of payment to Seller and an appropriate amount of Earnest Money (Escrow Agent shall timely disburse upon Buyer timely signing any required Earnest Money Disbursement agreement for payment of the Termination Fee). If Seller receives the Delivered Notice of Termination and the full Delivered Termination Fee during the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination and all of the Termination Fee to Seller prior to the end of the Due Diligence Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

**SHOULD BUYER FAIL TO REACH A NEW/AMENDED CONTRACT OR TERMINATE THE CONTRACT:** 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.

**13. FIRE OR CASUALTY OR INJURY:** In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Buyer will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to the Seller. If Buyer proceeds according to the Contract, Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

**14. BUILDING PERMIT:** This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than \_\_\_\_\_ Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

**15. REZONING:** This Contract ☐ is ☒ is not contingent upon the Property being zoned to \_\_\_\_\_ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than \_\_\_\_\_ Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

**16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY:** This Contract ☐ is ☒ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than \_\_\_\_\_ Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and/or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ \_\_\_\_\_, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other \_\_\_\_\_. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other \_\_\_\_\_.

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17. **CONDITION OF PROPERTY:** Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

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

☐ Buyer and Seller agree that Seller has delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy by delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing. Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70.

☒ 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).

19. **LEAD BASED PAINT/LEAD HAZARDS:** If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms and give copies to Brokers.

20. **MEGAN'S 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, clandestine laboratory, and crime information from appropriate law enforcement officials or information sources.

21. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this Contract. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. **SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX:** Seller and Buyer will comply with the provisions of the SC Code 12-8-500 (as amended) regarding state income tax withholding requirements if the Seller is not a resident or has not filed SC 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.

23. **ROLLBACK TAXES (IF ANY):** The Parties agree that the ☒ Seller or ☐ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

24. **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS:** All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by Buyer and paid for by Buyer.

All of these reports or certifications shall be completed no later than 30 Business Days after the original Effective Date, unless the Parties agree in writing to extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests), the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. 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.

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Upon Delivery Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to 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 or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

**25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE):** Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral or otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

**26. 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.

**27. DEFAULT:**

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
  - (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.

**28. MEDIATION CLAUSE:** 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@SCOREALTORES.org 1-800-233-6301). 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 Date. 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 a interpleader 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.

**29. 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.

**30. 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 termite, 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

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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 (7) 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.

**31. 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 SO 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.**

**32. BROKER LIABILITY LIMITATION:** Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc, including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

**33. 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. (Land issues may include: restrictions and easements that may affect desired use, drainage issues, hazardous wastes, environmental issues, water rights, availability of water, sewer or septic waste water issues, soil tests, wetlands surveys and studies, subordination, lot releases, and other issues.) If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here: Closing shall take place within 7 days of the end of the due diligence period. Seller to pay a commission of 5% to Tideland Realty Inc. at closing. Seller to provide copies of all pertinent due diligence including but not limited to wetlands studies, land plans, surveys, zoning data, engineering, etc, within 40 hours of execution.

**34. NOTICE AND DELIVERY:** Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral 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 Notice, 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.

**35. 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.

BUYER

BUYER

SELLER

SELLER

HAVE READ THIS PAGE

Form 330 PAGE 7 of 8  
Kerr Pender

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30. 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 8 ☐ AM ☒ PM on August 19, 2013 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.  
If signer is not a Party, appropriate legal documents (Power of Attorney, Corporate Authorization, etc.) are ☐ attached or ☐ to be Delivered within \_\_\_\_\_ Business Days.

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

BUYER: [Signature] Date: 8/19/13 Time: 9:47 am  
WITNESS: [Signature] Date: 8/19/13 Time: 9:48 am  
BUYER: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
WITNESS: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

SELLER: [Signature] Date: 8/19/13 Time: \_\_\_\_\_  
WITNESS: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
SELLER: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
WITNESS: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

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[Signature] BUYER ☐ BUYER ☐ SELLER ☒ SELLER HAVE READ THIS PAGE

Form 330 PAGE 8 of 9

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Kerr Pender

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: \_\_\_\_\_

ESCROW AGENT NAME: \_\_\_\_\_ Tideland Realty, Inc.

ESCROW AGENT'S LAW FIRM/COMPANY/BROKERAGE: \_\_\_\_\_ Tideland Realty, Inc.

ESCROW AGENT CONTACT INFO: 843-252-0996 95 Sea Island

Suite 104

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

LICENSEE: Matt Trumps 80 LICENSE # \_\_\_\_\_ EXPIRES \_\_\_\_\_

BROKER IN CHARGE: Matt Trumps 80 LICENSE # \_\_\_\_\_ EXPIRES \_\_\_\_\_

BROKERAGE COMPANY NAME: Tideland Realty

MEMBERS OF: Daufort ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: \_\_\_\_\_

NOTICE EMAIL/FAX: \_\_\_\_\_

MOBILE PHONE: (843) 252-0996 OFFICE PHONE: \_\_\_\_\_ OTHER: \_\_\_\_\_

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

LICENSEE: \_\_\_\_\_ 80 LICENSE # \_\_\_\_\_ EXPIRES \_\_\_\_\_

BROKER IN CHARGE: \_\_\_\_\_ 80 LICENSE # \_\_\_\_\_ EXPIRES \_\_\_\_\_

BROKERAGE COMPANY NAME: \_\_\_\_\_

MEMBERS OF: \_\_\_\_\_ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: \_\_\_\_\_

NOTICE EMAIL/FAX: \_\_\_\_\_

MOBILE PHONE: \_\_\_\_\_ OFFICE PHONE: \_\_\_\_\_ OTHER: \_\_\_\_\_

\*DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND OTHER ASSOCIATED LICENSEES ARE DUAL AGENTS.



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

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Form 330 PAGE 9 of 9  
Kurt Bender

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7147

RECORDED  
2017 Mar -31 09:53 AM

BEAUFORT COUNTY AUDITOR



BEAUFORT COUNTY SC - ROD  
BK 3558 Pgs 2031-2032  
FILE NUM 2017012572  
03/13/2017 04:26:30 PM  
REC'D BY rbins RCPT# 842582  
RECORDING FEES \$10.00  
County Tax \$132.00  
State Tax \$312.00

Prepared by and Return to:  
EVERSOLE LAW FIRM, P.C.  
1509 King St.  
Beaufort, SC 29902

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that SHERWOOD N. FENDER, in the State aforesaid, for and in consideration of the sum of ONE HUNDRED TWENTY THOUSAND and NO/100 DOLLARS (\$120,000.00), to him in hand paid at and before the sealing of these presents by A & K HOLDING CO., LLC, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said A & K HOLDING CO., LLC, its Successors and Assigns forever, the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on St. Helena Island, Beaufort County, South Carolina, containing 5 acres, more or less, and being more particularly described as Lot 4, of Addison Acres Subdivision as shown on that certain plat prepared by David E. Gasque, RLS recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 75 at Page 15. For a more complete description as to metes and bounds, courses and distances, reference may be had to the aforementioned plat of record.

This conveyance is subject to any and all applicable Covenants, Restrictions, Conditions, Easements and Rights-of Way as set forth at the Office of the Register of Deeds for Beaufort County, South Carolina.

This is the same property acquired by the within Grantor by deed of Brickyard Holdings, Inc. dated July 15, 2008 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2757 at Page 2468.

DMP: R300-017-000-0386-0000

Grantee's Address: 1509 King St.  
Beaufort, SC 20092

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

ADD DMP Record 3/27/2017 03:10:43 PM  
BEAUFORT COUNTY TAX MAP REFERENCE  
Dist Map SMap Parcel Block Week  
R300 017 000 0386 0000 00

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said A & K HOLDING CO., LLC, its Successors and Assigns, and SHERWOOD N. FENDER does hereby bind himself and his Heirs and Assigns, to warrant and forever defend all and singular the said Premises unto the said A & K HOLDING CO., LLC, its Successors, and Assigns as hereinabove provided against himself and his heirs and assigns, and any person or persons whomsoever lawfully claiming or to claim the same, or any part hereof.

WITNESS our hands and seals this 1 day of March, 2017.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Catherine K. Swanson  
Witness

SHERWOOD N. FENDER

Della Kody  
Witness

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

PROBATE

Personally appeared before me the undersigned and made oath that s/he saw the within-named SHERWOOD N. FENDER, sign the within sign, seal and as his act and deed, deliver the within written Deed; and that s/he with the other witness witnessed the execution thereof.

Catherine K. Swanson  
Witness

Sworn to before me, this 1<sup>st</sup>  
day of March, 2017.

Della Kody  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 3/25/2024

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10 PB  
Fender  
3211

RECORDED  
2017 Jul -10 08:52 AM

  
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD  
BK 3580 Pgs 2295-2297  
FILE NUM 2017030160  
06/06/2017 12:17:39 PM  
REC'D BY pbaxley RCPT# 8525  
RECORDING FEES \$10.00

Prepared by:  
Alysoun M. Eversole  
Eversole Law Firm, P.C.  
1509 King St.  
Beaufort, SC 29902

ADD DMP Record 6/29/2017 08:47:52 AM  
BEAUFORT COUNTY TAX MAP REFERENCE  
Dist Map SMap Parcel Block Week  
R200 018 000 0522 0002 00

DMP: R200-018-000-0522-0002

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT ) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that **SHERWOOD N. FENDER** for and in consideration of the sum of **TEN AND 00/100 (\$10.00) DOLLARS** to him in hand paid at and before the sealing of these presents by **ADDISON D. FENDER**, Post-Office Drawer 1101, Beaufort, SC 29901 in the state aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said **ADDISON D. FENDER**, his heirs and assigns forever, in fee simple, the following described real property, to-wit:

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Palmetto Business Park of Lady's Island, Beaufort County, South Carolina, known as Unit 1B, PalPro Horizontal Property Regime, being a portion of Lot 7 as shown on that certain plat prepared by David E. Gasque, RLS, dated April 9, 2013 and recorded with the Register of Deeds Office for Beaufort County, South Carolina in Record Book 3232 at Page 2612.

AND ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of Palpro Horizontal Property Regime referred to hereinabove recorded in Record Book 3232 at Page 2584.

AND ALSO a perpetual, non-exclusive 50' easement and right of way for the purpose of ingress and egress over that certain road known as Kemmerlin Way all of which is more particularly shown on the subdivision plat of Palmetto Business Park of Lady's Island prepared by David E. Gasque, RLS, dated April 8, 2003, last revised May 16, 2005 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107 at Page 54.

This being a portion of that property acquired by the within-named Grantor by Deed of

Brickyard Holdings, Inc. dated February 1, 2008 and recorded with the Register of Deeds Office for Beaufort County, South Carolina in Record Book 2724 at Page 1489.

This instrument prepared by Eversole Law Firm, PC, Alysoun M. Eversole, 1509 King Street, Beaufort, SC 29902 without the benefit of title examination or opinion of title.

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

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said **ADDISON D. FENDER**, his heirs and assigns, and Grantor does hereby bind himself and his heirs and assigns to warrant and forever defend all and singular said premises unto the said **ADDISON D. FENDER**, his heirs and assigns as hereinabove provided against Grantor and his heirs and assigns and any person or persons whomsoever lawfully claiming, or to claim the same or any part thereof.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

WITNESS my hand and seal this 30<sup>th</sup> day of May, 2017.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

[Signature]  
Witness 1

[Signature]  
Witness 2

[Signature]  
SHERWOOD N. FENDER

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

ACKNOWLEDGEMENT

I, (Notary) Dorah A. Rodgers do hereby certify that Sherwood N. Fender, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN TO BEFORE ME, this 30<sup>th</sup> day of May, 2017.

[Signature]

Notary Public for South Carolina

My Commission Expires: 3/25/2024

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
The Honorable Marvin H. Dukes, III, Master in Equity

Case No. 2014-CP-07-0052  
Appellate Case No. 2019-001270

Lady Beaufort, LLC & Tideland Realty, Inc.,.....Appellants,

v.

Hird Island Investments, Inc., Sherwood N. Fender, Addison D. Fender, Martha B. Fender,  
William B. Bowen, Lady Kemmerlin, LLC, Brickyard Holdings, Inc., and A&K Holding Co.,  
LLC, Defendants,

AND

William M. Bowen, Third-Party Plaintiff,

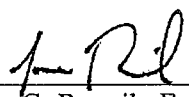
v.

James S. Kerr and Matt Trumps, Third-Party Defendants,

*Of Which Hird Island Investments, Inc. and Sherwood N. Fender are the Respondents.*

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) SCRAP, the undersigned Counsel for Appellants certifies that the  
Record on Appeal contains all material proposed to be included by the parties and not any other  
material.

  
Jaan G. Rannik, Esquire  
Andrew K. Epting, Jr., Esquire  
ANDREW K. EPTING, JR., LLC  
46A State Street, Charleston, SC 29401  
P: (843) 377-1871  
F: (843) 377-1310  
[ake@epting-law.com](mailto:ake@epting-law.com)  
[jgr@epting-law.com](mailto:jgr@epting-law.com)

ATTORNEYS FOR RESPONDENTS/APPELLANTS

RECEIVED  
JAN 02 2020  
SC Court of Appeals

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JAN 02 2020  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
The Honorable Marvin H. Dukes, III, Master in Equity

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William B. Bowen, Lady Kemmerlin, LLC, Brickyard Holdings, Inc., and A&K Holding Co.,  
LLC, Defendants,

AND

William M. Bowen, Third-Party Plaintiff,

v.

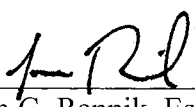
James S. Kerr and Matt Trumps, Third-Party Defendants,

*Of Which Hird Island Investments, Inc. and Sherwood N. Fender are the Respondents.*

RECEIVED  
JAN 02 2020  
SC Court of Appeals

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) SCRAP, the undersigned Counsel for Appellants certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

  
\_\_\_\_\_  
Jaan G. Rannik, Esquire  
Andrew K. Epting, Jr., Esquire  
ANDREW K. EPTING, JR., LLC  
46A State Street, Charleston, SC 29401  
P: (843) 377-1871  
F: (843) 377-1310  
[ake@epting-law.com](mailto:ake@epting-law.com)  
[jgr@epting-law.com](mailto:jgr@epting-law.com)

ATTORNEYS FOR RESPONDENTS/APPELLANTS