

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Gordon G. Cooper, Master-In-Equity
Trial Court Case No. 2011-CP-42-0500

Appellate Case No. 2019-000404

RECEIVED
DEC 20 2019
SC Court of Appeals

Super Suds, LLC, Appellant,

v.

Carolina Properties Holdings, LLC, Walter W. Parker, IV, the United States of America by
and through the U.S. Small Business Administration, Carolina Clean Greer I, LLC, and
Community Development & Improvement Corporation, Defendants,

Of Which Carolina Properties Holdings, LLC, and Walter W. Parker, IV are the Respondents.

**RECORD ON APPEAL
VOLUME I**

Michael B.T. Wilkes (S.C. Bar #6107)
mwilkes@wilkeslaw.com
C. Daniel Atkinson (S.C. Bar #72721)
datkinson@wilkeslaw.com
Wilkes Law Firm, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113
Attorneys for Appellant Super Suds, LLC

Patrick C. Wooten (S.C. Bar #77985)
Patrick.wooten@nelsonmullins.com
Nelson Mullins Riley & Scarborough, LLP
151 Meeting St., 6th Floor
Charleston, SC 29401
(843) 853-5200
Attorney for Respondents

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Branch Banking & Trust Company,)
)
Plaintiff,)
)
v.)
)
Carolina Properties Holdings, LLC,)
Walter W. Parker IV, the United States)
of America by and through the US Small)
Business Administration, Carolina Clean)
Greer I, LLC and Community Development)
& Improvement Corporation,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-42-0500

**CONSENT ORDER SUBSTITUTING
PARTIES PURSUANT TO RULE 25(c)
AND SUBSTITUTING COUNSEL**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 31 AM 9:01
M. HOPE BLACKLEY

This is a mortgage foreclosure action; the Plaintiff Branch Banking and Trust Company of South Carolina ("BB&T") has sold and assigned the Note and Mortgage that forms the basis of its claim to Super Suds LLC and requests, by the submission of this Consent Order, that the court substitute Super Suds LLC as the Plaintiff in this action pursuant to Rule 25(c), SCRPC, and to substitute counsel.

It is therefore, ORDERED, ADJUDGED AND DECREED that:

1. Super Suds LLC is hereby substituted as the Plaintiff in this action.
2. The caption of this action is amended to reflect Super Suds LLC as the Plaintiff.
3. The Plaintiff's counsel of record shall be shown as:

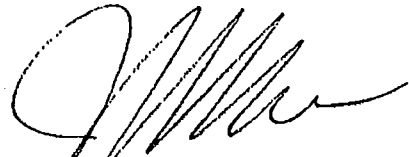
S. Allan Hill, Esq.
819 East North Street
Greenville, SC 29601
(864) 242-4995

4. Weyman C. Carter and McNair Law Firm, P.A. are hereby relieved as counsel of

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 27 AM 9:58
VOID
CLOCKED IN ERROR
M. HOPE BLACKLEY



4. Weyman C. Carter and McNair Law Firm, P.A. are hereby relieved as counsel of record for the Plaintiff.



Circuit Court Judge

10/28, 2011

THE UNDERSIGNED ATTORNEYS CONSENT:



Weyman C. Carter, SC Bar #15255
McNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, SC 29602
(864) 271-4940
Attorney for BB&T



S. Allan Hill
819 East North Street
Greenville, SC 29601
(864) 242-4995
Attorney for Super Suds LLC

FILED
CLERK OF COURT
ABLAUGH COUNTY
2011 OCT 31 AM 9:02
M. HOPE BLACKLEY

[Additional attorney consents on following pages]

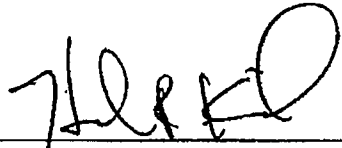
THE UNDERSIGNED ATTORNEY OF RECORD CONSENTS:



George J. Conits
Assistant U.S. Attorney
55 Beattie Place, Suite 700
Greenville, SC 29601
(864) 282-2100

FILED
CLERK OF COURT
CHARLESTON COUNTY
2011 OCT 31 AM 9:02
M. HOPE BLACKLEY

THE UNDERSIGNED ATTORNEY OF RECORD CONSENTS:



Howard R. Kinard
Johnson, Smith, Hibbard and Wildman Law Firm, L.L.P.
P.O. Drawer 5587
Spartanburg, SC 29304
(864) 582-8121

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 31 AM 9:02
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Super Suds, LLC,)
)
Plaintiff,)
)
v.)
)
Carolina Properties Holdings, LLC,)
Walter W. Parker IV, the United States)
of America by and through the US Small)
Business Administration, Carolina Clean)
Greer I, LLC and Community Development)
& Improvement Corporation,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-42-0500

ORDER OF REFERENCE

The above-entitled foreclosure action is equitable in nature, and none of the defendants have filed compulsory legal counterclaims. Now, therefore,

IT IS ORDERED that the above entitled action be referred to the Hon. Gordon G. Cooper, Master in Equity for Spartanburg County for the purpose of taking testimony and determining all issues of law and fact with authority to enter a final judgment herein pursuant to Rule 53 of the South Carolina Rules of Civil Procedure. Any appeal from the Master in Equity shall be made directly to the Court of Appeals of the State of South Carolina.

IT IS SO ORDERED.

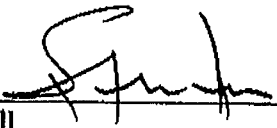
M. Hope Blackley/Gordon G. Cooper
Presiding Judge, Seventh Judicial Circuit/
Clerk of Court, Spartanburg County

Spartanburg, South Carolina
September 25, 2014

2014 SEP 25 PM 12:01

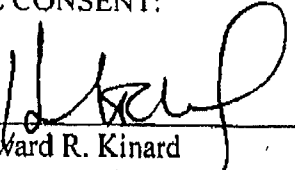
Masters Cost Paid
Date 9-24-14
\$ 100.00

WE SO MOVE:

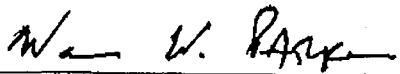


S. Allan Hill
819 E. North Street
Greenville, SC 29601
864-242-4995
Attorney for Plaintiff

WE CONSENT:



Howard R. Kinard
Johnson, Smith, Hibbard and Wildman Law Firm, L.L.P.
P.O. Drawer 5587
Spartanburg, SC 29304
(864) 582-8121
Attorney for Defendant, Community Development & Improvement Corporation



Walter W. Parker IV, individually and
on behalf of Carolina Properties Holdings, LLC
961 Saye Creek Drive
Madison, GA 30650
(706) 342-9115

By  with his
PERMISSION

2014 SEP 25 PM 12:01

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-42-0500

Super Suds, LLC

Plaintiff,)

vs.)

Carolina Properties Holdings, LLC, Walter
W. Parker, IV, et. al.

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
S. Allan Hill, Bar No. 10256
Address:
819 East North Street
Greenville, SC 29601
Phone: (864) 242-4995 Fax (864) 242-5500
E-mail: ahill@greenvillelaw.net Other: _____

Defendant's Attorney:
_____, Bar No. _____
Address: _____
Phone: _____ Fax _____
E-mail: _____ Other: _____

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

SECTION I: Hearing Information

Nature of Motion: _____

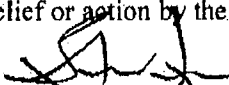
Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

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


Signature of Attorney for ☒ Plaintiff/☐ Defendant

September 23, 2014
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

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

JUDGE'S SECTION

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

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	ORDER DENYING
	)	MOTION TO DISQUALIFY ALLAN
vs.	)	HILL AS COUNSEL AND
	)	MOTION TO COMPEL DEPOSITION
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	C.A. No.: 2011-CP-42-0500
by and through the U.S. Small Business	)	
Administration, Carolina Clean Greer I,	)	
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
_____	)	

This matter came before the Court on Defendants Carolina Properties Holdings, LLC's ("CPH") and Walter W. Parker, IV's ("Parker") Motion to Disqualify Allan Hill ("Hill") as counsel of record for Plaintiff Super Suds, LLC ("Super Suds"), and CPH's and Parker's Motion to Compel the Deposition of Allan Hill. Counsel for Super Suds, CPH, Parker, Hill and Community Development & Improvement Corporation ("CDIC") were present at the hearing on August 14, 2017. For the reasons set forth in this Order, CPH's and Parker's Motion to Disqualify Hill and their Motion to Compel Hill's Deposition are DENIED.

I. FACTUAL FINDINGS

On February 2, 2011, Branch Banking & Trust Company ("BB&T") filed the above-captioned action (the "Action") to foreclose a CPH mortgage (the "Mortgage") which secures a CPH note (the "Note") (the Note and Mortgage are referred to collectively as the "Loan"). BB&T was represented by attorney Weyman Carter of McNair Law Firm, P.A. On April 21,

2011, Parker filed an Answer and Counterclaim *pro se*, and purportedly on behalf of CPH. The Mortgage encumbers real property on which a car wash owned by CPH is situated (the "Property"). The United States of America, by and through the Small Business Administration (the "SBA"), is a defendant, because it holds a subordinate mortgage on the Property. CDIC is a defendant because it previously held a security interest on equipment installed on the Property; that lien has expired.

Super Suds purchased the Loan from BB&T in 2011; Allan Hill represented Super Suds in connection with the purchase of the Loan. On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T. On October 31, 2011, Super Suds was substituted for BB&T as plaintiff, and Allan Hill was substituted as plaintiff's counsel in this Action. On August 9, 2016, Charles D. LeGrand appeared as co-counsel with Hill for Super Suds, and both Hill and LeGrand continue to represent Super Suds in this action.

CPH and Parker claim, *inter alia*, that the Note and Mortgage were satisfied and extinguished in 2011 through delivery to Hill of a Deed in Lieu of Foreclosure ("DIL") allegedly conveying title to the Property to Super Suds. Super Suds contends as follows: (1) Hill communicated with Parker in 2011 concerning the possibility of dismissing Super Suds' Amended Complaint, if SBA and CDIC would release their respective claims and liens, in which event Super Suds could accept a DIL from CPH and receive clear title to the Property; (2) Hill prepared a DIL for execution by CPH, which CPH executed and delivered to Hill in trust, pending the possible resolution of the subordinate liens; (4) Hill accepted delivery of the DIL in trust, and continues to hold it in trust in connection with the possible settlement of certain claims in this Action, but has not been able to obtain resolution of the remaining subordinate lien of the SBA; (5) All of Hill's actions and communications in this Action have been on behalf of Super

Suds as one of its attorney of record; and (6) Super Suds and its attorneys have not made a written or other settlement agreement with CPH or Parker, which is enforceable under Rule 43(k), SCRCP, thereby necessitating the continued prosecution of this Action.

II. FINDINGS OF LAW

CPH and Parker claim Hill should be disqualified as counsel to Super Suds in this Action, because he is a necessary witness under Rule 3.7(a), RPC, Rule 407, SCACR (2014). They cite *Brooks v. S.C. Commission on Indigent Defense*, 419 S.C. 319, 797 S.E.2d 402 (Ct. App. 2017) in support of their assertion. In *Brooks*, the Court recognized the potential inconsistencies in the roles of advocate and witness. *Id.*, 419 S.C. at 325. It also recognized, however, “the countervailing rationale that a party could call opposing counsel as a necessary witness, requiring his or her disqualification, purely for tactical or strategic reasons.” *Id.* To balance these competing concerns, the *Brooks* court adopted a test used in other jurisdictions and found that that an attorney is likely to be a necessary witness (1) when the attorney’s testimony is relevant to disputed, material questions of fact and (2) *there is no other evidence available to prove those facts. Id.* (emphasis added).

CPH and Parker’s reliance on Rule 3.7(a), RPC, Rule 407, SCACR (2014), is misplaced. Hill is not a witness as to the facts underlying the merits of the BB&T Loan and its original collection and foreclosure steps. BB&T made the Loan and then instituted this Action before Super Suds and Hill’s involvement. Accordingly, all of Hill’s actions on behalf of Super Suds have been for the purpose of prosecuting this Action, including possibly resolving elements of this Action.

Rule 43(k), SCRCP, provides as follows:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

The very purpose of Rule 43(k), SCRCP, is to prevent disputes as to the existence and terms of agreements regarding pending litigation. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d-724, 725 (2006). No agreement affecting this proceeding is binding unless one of the conditions of Rule 43(k), SCRCP, is met. *Id.* CPH and Parker have not contended that a consent order or stipulation in open court proves their settlement contention, and they have not yet presented to this Court a written settlement agreement. If CPH and Parker move to compel a purported settlement, the Court will consider said motion, and will determine what information it requires, if any, of Parker, Hill or any other witness, as to whether in 2011 an enforceable settlement agreement was made under Rule 43(k), SCRCP.

Hill is not a “necessary witness” on the merits of the foreclosure issues, and has acted only as an attorney of record for Super Suds in this Action. Accordingly, there is no basis for disqualifying Hill from continuing to act as an attorney of record for Super Suds, and no basis for deposing Hill as to his services as an attorney of record for Super Suds.

IV. CONCLUSION

For the foregoing reasons, this Court finds that Hill is not a necessary witness pursuant to Rule 3.7, RPC, Rule 407, SCACR (2014), and CPH and Parker's Motion to Disqualify Hill is hereby DENIED, and their Motion to Compel the Deposition of Hill is DENIED.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO BE ATTACHED.]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Order/Disqualify

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2017-09-01 09:39:09 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	PROPOSED ANSWER TO
	)	AMENDED COMPLAINT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

ANSWER

Defendants, Carolina Properties Holding, LLC and Walt Parker, answer the allegations of the amended complaint as follows:

FOR A FIRST DEFENSE

1. Except as specifically admitted below, each allegation of the Complaint is denied.
2. The Defendants admit the allegations of paragraphs 1, 2, 3, 6, 7, 8, 12, 13, 15, and 16.
3. The Defendant admits the allegations of paragraph 4 to the extent that at the time this foreclosure was commenced, Defendant Carolina Properties Holdings, LLC, was a limited liability company organized and existing under the laws of the state of South Carolina and the owner of record of the subject property.
4. The Defendants admit the allegations of paragraph 5 to the extent it is alleged that Defendant Parker was a resident of Beaufort County, South Carolina, at the time this action was commenced. The remaining allegations of paragraph 5 are denied.

5. The Defendants admit the allegations of paragraph 8, 9, 10, and 11 to the extent that the mortgage is filed of record. However, the mortgage's enforceability is denied for the reasons set forth in the defenses.

6. The Defendant Walt Parker admits the allegations of paragraph 14 to the extent that he executed in favor of BB&T a personal guaranty of the subject debt but denies that the guaranty is enforceable for the reasons set forth in the defenses.

7. No response is required to allegations of paragraph 17.

8. Admits the allegations of paragraphs 18, 19, and 20 to the extent that they allege that Defendants were in default under the terms of the note, mortgage, and guarantee at the time the original summons and complaint were filed. The defendants deny that they are currently in default as to the note, mortgage and guaranty as these documents are no longer enforceable for the reasons set forth in the defenses.

9. Admits upon information and belief the allegations of paragraph 21 and 28.

10. In response to the allegations of paragraphs 22, 23, 24, and 25, the Defendants crave reference to said loan documents which speak for themselves, but deny that they are enforceable against the defendants for the reasons set forth in the defenses.

11. Defendants deny the allegations of paragraph 26.

12. Defendants deny that Plaintiff is entitled to seek a deficiency judgment against Defendant Parker.

FOR A SECOND DEFENSE

(Failure to State a Claim)

13. Each of the allegations contained above is realleged and incorporated by reference.

14. The amended complaint fails to state a claim for which relief can be granted.

FOR A THIRD DEFENSE

(Merger of Title)

15. Defendant Walt Parker in his individual capacity and as an officer of Carolina Property Holdings, LLC (herein referred to as Defendants), in an effort to resolve the original foreclosure actions and the Defendants' obligations on the note and mortgage, negotiated with BB&T for the sale of the note and mortgage to Ken Howard and Super Suds.

16. These negotiations were undertaken by Mr. Parker directly with Ken Howard on behalf of Super Suds and with their attorney Allan Hill and included among other things an agreement that Super Suds would purchase the note and mortgage from BB&T. After which, Defendants would tender a deed-in-lieu of foreclosure to Super Suds in full satisfaction of the Defendants' obligations under the note and mortgage. At all times during these negotiations, Allan Hill, attorney for Ken Howard and Super Suds, Ken Howard and Super Suds were aware that junior liens attached to the subject property and agreed that satisfaction of those liens would be the sole responsibility of Ken Howard and Super Suds.

17. The Defendants and BB& T entered into a Settlement Agreement and Mutual Release of Claims effective September 19, 2011, wherein the Defendants released BB&T from any claims related to the note and mortgage, including the original counterclaim filed against BB&T, in exchange for BB&T's agreement to enter a Note Sales Agreement with Ken Howard and Super Suds. On or about September 19, 2011, Ken Howard and Super Suds executed a Note Sales Agreement, whereby Ken Howard and Super Suds purchased the subject note and mortgage from BB&T.

18. On October 24, 2011, Defendants executed and delivered to Allan Hill a deed-in-lieu

of foreclosure whereby Defendants conveyed their interest in the subject real estate to Super Suds. The deed in lieu of foreclosure was prepared by Super Suds attorney, Allan Hill and provides as follows:

The consideration for this deed is the satisfaction and cancellation of an indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD Office for Spartanburg County in ROD Mortgage Book 3542, at Page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.00, together with accrued interest computed at the annual rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property or any improvements thereon.

19. On or about October 24, 2011, Super Suds took possession of the subject real estate and began operating a car wash and has had continuous and uninterrupted possession of said premises and derived substantial profits therefrom.

20. Walt Parker, having satisfied his obligations under the agreement with Ken Howard and Super Suds and having conveyed his interest in the subject property, believed that this foreclosure action had been rendered moot and dismissed.

21. Defendants received no further communications concerning this matter until May 26, 2016, when Parker received notice from the Defendant Small Business Administration (SBA) advising that the SBA would pursue collection of the guarantee of the loan secured by a second mortgage on the subject property.

22. On or about August 3, 2016, Mr. Parker received a copy of an Amended Lis Pendens indicating that Super Suds had not in fact dismissed the foreclosure but would now pursue the action.

23. On or about September 7, 2016, Mr. Parker was advised that his name had been

signed by attorney Allan Hill to a consent order referring this foreclosure to the Master in Equity on September 25, 2014.

22. Defendants assert the Plaintiff Super Suds lacks standing to foreclose the note and mortgage because the viability of said documents were extinguished by merger of title when Super Suds, as holder of the note and mortgage accepted the deed in lieu of foreclosure through its agent Allan Hill and that Super Suds took title to the encumbered real estate subject to the junior lienholders.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM

(Breach of Contract)

24. Each and every allegation contained above is realleged and incorporated by reference.

25. Defendants will show that the resumption of this mortgage foreclosure is a breach of contract in which Defendants tendered the deed-in-lieu of foreclosure in consideration of Super Suds dismissal of the foreclosure action and assumption of the junior liens attached to the subject property.

26. Defendant Walt Parker will suffer real and ascertainable losses as a direct and proximate result of said breach including liability to the SBA for a guarantee of the SBA's loan that is secured by the SBA mortgage on the subject property.

FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM

(Equitable Accounting and Set Off)

26. Each and every allegation contained above is realleged and incorporated by reference.

27. To the extent this Court would find that Super Suds is entitled to pursue this

foreclosure, Defendants ask that the Court require Super Suds to produce an equitable accounting of the profits and losses derived from its occupation of the subject property and operation of a business thereon since 2011 and that said profits be offset by any amounts that may be owed by Defendants on account of the note and mortgage, as required by the assignment of rents and profits provision of the mortgage.

**FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unjust Enrichment)**

28. Each and every allegation contained above is realleged and incorporated by reference.

29. To the extent this Court would find that Super Suds is entitled to pursue this foreclosure, Defendants allege that Super Suds has been unjustly enriched by having taken possession of the subject property and operated a business thereon since 2011.

30. Super Suds has derived and retained substantial income from operation of this business on the subject property and allowing Super Suds to retain these proceeds would result in an unjust enrichment.

**FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(South Carolina Unfair Trade Practices Act)**

31. Each and every allegation contained above is realleged and incorporated herein by reference.

32. The actions of the Plaintiff and Third-Party Defendants, above-described, constitute unfair and deceptive acts and practices in the conduct of trade and commerce, as prohibited by the South Carolina Unfair Trade Practices Act, 39-5-10 et seq., and are willful violations thereof.

33. The actions of Super Suds have a real and substantial potential for repetition and affect the public interest.

34. Defendants have suffered an ascertainable loss due to the unlawful actions of Super Suds and Ken Howard entitling Defendants to recover actual damages in an amount to be proven at trial, treble said actual damages, and an award of attorney's fees and costs.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTER CLAIM

(Restitution)

35. Each and every allegation contained above is realleged and incorporated herein by reference.

36. To the extent this Court allows this foreclosure to proceed, Defendants allege Super Suds induced Defendants to allow Super Suds to take possession of the subject property and that Super Suds has benefited by deriving profits from operation of a business thereon, and therefore Defendants are entitled to restitution from Super Suds for any and all profits that Super Suds derived from operation of its business on the subject property since 2011.

FOR A NINTH DEFENSE AND BY WAY OF COUNTER CLAIM

(Fraud)

37. Each and every allegation contained above is realleged and incorporated by reference.

38. To the extent this Court allows this foreclosure to proceed, Super Suds and Ken Howard fraudulently induced Defendants to convey a deed-in-lieu of foreclosure to Super Suds and to allow Super Suds to occupy the subject property and operate its business thereon for over six years by representing that Super Suds would take the property subject to the junior liens, that all amounts owed by the Defendants under the note and mortgage would be extinguished, and that Plaintiff would dismiss this foreclosure action.

39. Super Suds and Ken Howard knew that the mortgage foreclosure action was not dismissed and they did not make an effort to dismiss their claims.

40. Defendants believed and relied on the representations by Super Suds, Ken Howard and their attorney and agent Allan Hill, and for this said consideration, conveyed the subject property to Super Suds and abandoned the real estate.

41. Furthermore, Super Suds and Ken Howard accepted the deed-in-lieu with knowledge of the false claims and reckless disregard for the representation.

42. Super Suds and Ken Howard then took possession of the subject real estate and operated a business thereon for six years and derived substantial profit therefrom.

43. Now Super Suds resumes this mortgage foreclosure and attempts thereby to extinguish the junior liens leaving Defendant Walt Parker obligated to the SBA on the guarantee of the loan secured by the SBA mortgage on the subject property.

44. Accordingly, Defendants pray for actual damages of any amounts that may be owed by Defendants on account of the note and mortgage and any amounts that may be owed to the junior lienholders. Alternatively, to the extent this Court allows this foreclosure to proceed, Defendants assert damages of any and all profits that Super Suds derived from operation of its business on the subject property since 2011.

45. Furthermore, Defendant requests punitive damages which are the natural and proximate consequence of Plaintiff's fraudulent misrepresentation.

FOR A TENTH DEFENSE AND BY WAY OF COUNTER CLAIM
(Unconscionability)

46. Each and every allegation contained above is realleged and incorporated by reference.

47. Defendants delivered the deed in lieu of foreclosure without representation of counsel and believed that Plaintiff would dismiss the foreclosure and assume responsibility for debts owed to the junior lienholders. A disparity in the parties' bargaining power existed as

Defendants sought to avoid foreclosure with few alternatives other than the agreement proposed by Super Suds and Ken Howard through its attorney and agent Allan Hill. The failure to dismiss the action or satisfy the junior lienholders, as intended, has a profoundly discriminatory effect of exploiting the Defendants while providing a substantial benefit to Ken Howard and Super Suds. Furthermore, the continued pursuit of this action was an unfair surprise.

48. By its unconscionable actions, Plaintiff is barred from any form of relief.

**FOR A ELEVENTH DEFENSE
(Estoppel)**

49. Each and every allegation contained above is realleged and incorporated by reference.

50. Plaintiff's causes of action are barred on the basis of estoppel.

**FOR A TWELFTH DEFENSE
(Waiver)**

51. Each and every allegation contained above is realleged and incorporated by reference.

52. Plaintiff's causes of action are barred on the basis of waiver.

**FOR AN THIRTEENTH DEFENSE
(Laches)**

53. Each and every allegation contained above is realleged and incorporated by reference.

54. Plaintiff's causes of action are barred on the basis of laches.

**FOR A FOURTEENTH DEFENSE
(Unclean Hands)**

55. Each and every allegation contained above is realleged and incorporated by reference.

56. Plaintiff's causes of action are barred under the doctrine of "unclean hands".

FOR A FIFTEENTH DEFENSE

(Accord and Satisfaction)

57. Each and every allegation contained above is realleged and incorporated by reference.

58. Defendant would show that the complaint is barred by the doctrine of accord and satisfaction.

WHEREFORE, having answered this complaint, the Defendants pray that this matter be dismissed with costs and attorney's fees; that the Court grant judgment in favor of the Defendant; and for such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson

Barbara E. Brunson

LAW OFFICE OF BARBARA E. BRUNSON, LLC

SC Bar No.: 0012940

P.O. Box 50943

Columbia, SC 29250

T: (803) 799-0425

F (877) 310-8766

barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson

Max T. Hyde, Jr. (SC Bar # 17014)

Ryan E. Gaylord (SC Bar # 101946)

Samantha L. Nicholson (SC Bar #102790)

HYDE LAW FIRM, P.A.

753 E. Main St., Suite One

Spartanburg, SC 29302

T: (864) 804-6330

F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANTS, CAROLINA
PROPERTIES HOLDINGS, LLC AND WALTER W.
PARKER, IV

_____, 2017
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Master/Order/Form 4

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2017-12-05 12:09:07 page 14 of 14

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-42-0500

Super Suds, LLC

Carolina Properties Holdings, LLC,
Walter W. Parker, IV, the United States
of America by and through the US Small
Business Administration, Carolina Clean
Greer I, LLC and Community
Development & Improvement
Corporation,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Samantha L. Nicholson, Attorney for Walt
Parker and Carolina Property Holdings, LLC

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: **The Defendants', Walt Parker and Carolina Property Holdings, LLC, motion to file an amended answer is granted. Proposed Answer to Amended Complaint attached.**

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

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

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

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.

The Defendants', Walt Parker and Carolina Property Holdings, LLC, motion to file an amended answer is granted. Proposed Answer to Amended Complaint attached.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR DECLARATION
	)	UNDER RULE 43 (k), SCRCP
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Plaintiff's motion seeking a declaration under Rule 43(k), SCRCP that several defenses and counterclaims of Defendants Carolina Property Holdings, LLC ("CPH") and Walter W. Parker, IV's ("Parker") fail because there is no settlement agreement between Super Suds and CPH and Parker enforceable under Rule 43(k), SCRCP. For the reasons set forth in this Order, Plaintiff's Motion for Declaration Under Rule 43(k), SCRCP is DENIED.

I. FACTUAL FINDINGS

In 2005, Carolina Properties Holdings took out a commercial loan with Branch Banking and Trust Company (hereinafter "BB&T") to begin a car wash and finance the real estate purchase. BB&T and CPH signed a note (hereinafter the "Note") secured by a mortgage (hereinafter the "Mortgage"), and personally guaranteed by Parker.

Additionally, the United States of America, by and through the Small Business Administration (hereinafter "SBA") holds a mortgage to secure a promissory note (collectively hereinafter "SBA Loan"), entered into and modified in 2007. Parker also personally guaranteed the SBA loan in the amount of \$133,000.00. Carolina Clean Greer I (Carolina Clean) was named as a defendant because it may have held an interest in the property as an operator and holds a possible lien on personal property located on the property. Community Development and Improvement Corporation (hereinafter the "CDIC") is the holder of an expired security of equipment fixed to the Property.

On February 2, 2011, BB&T filed the above-captioned foreclosure action against CPH, as the borrower, and Parker personally, as the guarantor. BB&T named SBA and CDIC as junior lienholders.

After CPH defaulted on the Note, Super Suds purchased the Note from BB&T. The sale of the Note was conditioned on Parker's execution of a Settlement and Mutual Release of Claims as to BB&T. Super Suds also received an executed Deed in Lieu of Foreclosure as to the Property.

In 2011, BB&T was represented by Weyman Carter of McNair Law Firm, P.A. Super Suds was and continues to be represented by Allan Hill. CPH and Mr. Parker were represented by Leon Jones of Jones & Walden during the initial stages of the BB&T foreclosure. Parker acted on behalf of himself and CPH, without representation, during negotiations with Allan Hill. CPH and Parker retain additional counsel in 2016 hiring Hyde Law Firm, P.A.

On August 18, 2011, Super Suds purchased the BB&T loan for \$200,000. At that time, the loan balance was \$601,427.10, and Super Suds was aware of both junior

lienholders, the SBA and CDIC. On September 20, 2011, Parker communicated with Allan Hill via email that he planned to execute a Settlement Agreement and Mutual Release of Claims with BB&T, and sought to confirm that Ken Howard, Super Suds, LLC and/or the new note holder would not pursue a deficiency judgment against CPH or him personally. Allan Hill responded that Mr. Parker's understanding was correct. On September 23, 2011, as a condition of the BB&T note sale, Mr. Parker and CPH signed a Settlement and Mutual Release of Claims with BB&T, effective September 19, 2011. On October 27, 2011, CPH and Parker dismissed their counterclaims.

Allan Hill drafted a Deed in Lieu of Foreclosure, which he sent to Mr. Parker for execution. On October 24, 2011, Walt Parker executed the Deed in Lieu of Foreclosure (hereinafter "DIL") and delivered the DIL to Allan Hill's office. According to the DIL, Super Suds received absolute titled to the Property with consideration for this deed being the satisfaction and cancellation of an indebtedness from the Grantor.

On October 31, 2011, the Circuit Court signed a Consent Order Substituting Parties Pursuant to Rule 25(c) and Substituting Counsel, which was filed by BB&T and signed by attorneys for BB&T, Super Suds, SBA and CDIC. Accordingly, Super Suds stepped into the shoes of BB&T as plaintiff in the above-captioned matter. At approximately the same time in 2011, CPH and Mr. Parker surrendered the Property to Super Suds. Super Suds took possession of the Property and has operated its business there since that time.

On August, 3, 2016, Plaintiff filed an Amended Lis Pendens and Notice of Appearance of Charles LeGrand. On December 5, 2017, Defendants filed an Amended Answer and Counterclaims. Plaintiff contends that several defenses and counterclaims of

Defendants should fail because there is no settlement agreement between Super Suds and CPH and Parker enforceable under Rule 43(k), SCRCP, including: CPH's and Parker's Third Defense (Merger of Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (South Carolina Unfair Trade Practices Act), Ninth Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), Fifteenth Defense (Accord and Satisfaction), and any other defense CPH and Parker contend are based upon an alleged settlement agreement.

Plaintiff contends that no agreement affecting this proceeding is binding unless one of the conditions of Rule 43 (k), SCRCP, is met. Defendants dispute that Rule 43 (k), SCRCP, applies. Defendants also assert that a merger of title occurred when the Deed in Lieu of Foreclosure was delivered to Super Suds attorney, extinguishing the underlying debt and the equitable mortgage interests in the property. Defendants have not filed a motion to compel a settlement agreement.

II. STANDARD OF REVIEW

Rule 43(k), SCRCP, states:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel...

Rule 43(k), South Carolina Rules of Civil Procedure.

The Supreme Court's discussion of the applicability of Rule 43(k), SCRCP, involves parties represented by counsel seeking to compel a settlement agreement. *See*

Farnsworth, 627 S.E.2d 724, 726, 367 S.C. 634 (S.C., 2006) (holding that Rule 43(k) applied to a letter signed by both counsels); *see also Ashfort Corporation v. Palmetto Construction Group, Inc.*, 458 S.E.2d 533, 535, 318 S.C. 492, 493 (S.C., 1995) (holding that Rule 43(k) applied to a settlement agreement signed by the parties and confirmed by counsel). “Rule 43(k) is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation . . . [and it] is applicable to settlement agreements.” *See id.* at 534 and 493-4. In *Galloway*, the Court of Appeals emphasizes that compliance with Rule 43(k) is a burden placed on an attorney to motivate the attorney to protect his client’s interest by reducing the agreement to writing with material terms and conditions of the agreement. *See Galloway*, 481 S.E.2d at 716, 325 S.C. at 547.

Regarding whether Rule 43(k) applies to settlement agreements pending litigation, the Supreme Court states in *Farnsworth*, “[u]nder our general rules of construction, the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *Farnsworth*, 627 S.E.2d at 726, 367 S.C. at 634 (*quoting State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002)). “In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” *Id.* (*quoting Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). Ultimately, the *Farnsworth* Court required strict compliance with the requirements of Rule 43 (k) “because Rule 43 (k) plainly applies to all settlement agreements signed by counsel.” *Id.* (*emphasis added*).

III. FINDING REGARDING RULE 43(k), SCRPC

Accordingly, Rule 43(k), SCRPC, is not applicable because that Defendants, Parker and CPH, were unrepresented during the negotiations with attorney Allan Hill and at the issuance of the Deed in Lieu of Foreclosure. The burden of compliance with Rule 43(k) is placed on attorneys rather than unrepresented parties. Furthermore, the rules of statutory construction show that Rule 43(k) should not apply to pro se litigants. The plain and ordinary meaning should be given to Rule 43(k), and accordingly the rule should be applied to "agreement[s] between counsel". Rule 43 (k), SCRPC.

Neither Defendants nor Plaintiff presented to the court a settlement agreement meeting the requirements of Rule 43(k), SCRPC. Allowing Plaintiff to utilize Rule 43(k), SCRPC, to avoid Defendants' defenses and counterclaims would be unjust given that Defendants were not represented by counsel and have not sought to compel a settlement agreement. Instead, the parties' intention is evidenced by the transfer of title to the subject property via the Deed in Lieu of Foreclosure. Accordingly, Plaintiff's use of Rule 43(k) to fail Defendants' defenses and counterclaims is misplaced.

III. CONCLUSION

For the foregoing reasons, the Court finds that Rule 43(k) shall not be applied in this matter and Plaintiff's Motion for Declaration Under Rule 43(k), SCRPC is DENIED.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2018-09-27 13:38:37 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	ORDER GRANTING
	)	DEFENDANT CAROLINA
	)	PROPERTIES HOLDINGS, LLC, AND
	)	WALTER W. PARKER, IV'S MOTION
	)	FOR SUMMARY JUDGMENT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

This matter came before the court on Defendant Carolina Property Holdings, LLC's (CPH) and Walter W. Parker, IV's (Parker) Motion to Dismiss that was couched as a motion for summary judgment. Counsel for Super Suds, CPH, and Parker were present at the hearing on July 17, 2018. For the reasons set forth in this Order, CPH's and Parker's motion for summary judgment is GRANTED.

I. FATUAL FINDINGS

On February 2, 2011, Branch Banking & Trust (BB&T) filed the above-captioned case to foreclose a mortgage securing a note owed to BB&T by CPH. The original amount owed on the note was \$585,000.00. The mortgage encumbers real property in Spartanburg County on which a car wash was operating that was owned by CPH. The United States of America, by and through the Small Business Administration (SBA), was named as a party because it holds a subordinate

mortgage; Carolina Clean Greer I (Carolina Clean) was named as a defendant because it was a prior operating company and is alleged in the complaint to hold a possible lien on personal property located on the property; and Community Development & Improvement Corporation (CDIC) was named as defendant because it holds a subordinate lien on the property. Parker had personally guaranteed the SBA loan in the amount of \$133,000.00.

Parker filed an answer and counterclaim against BB&T on September 1, 2011.

On September 16, 2011, Super Suds, LLC purchased the subject loan from BB&T and accepted an assignment of mortgage. On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T. On October 31, 2011, Super Suds was substituted as Plaintiff and a Notice of Appearance was filed by Allan Hill.

Allan Hill, attorney for Super Suds, drafted and sent a deed-in-lieu of foreclosure (DIL) to defendant Parker through which Parker on behalf of CPH conveyed title to the subject property to Super Suds, the holder of the first mortgage loan. Mr. Parker promptly executed the deed-in-lieu on October 24, 2011, and returned it to Mr. Hill.

The DIL purported to convey absolute title to the property and provides, in pertinent part, as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest as computed as the annual percentage rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the

above described property or any improvements thereon.

DIL dated October 24, 2011.

Immediately after delivery of the DIL, Super Suds assumed possession of the property and began operating its business. Super Suds has operated the car wash continuously since that time on the property. After assuming possession of the property in 2011, Super Suds erected a new sign indicating Super Suds was operating the car wash and made improvements to the property. Super Suds admits that it has commingled the revenue derived from this car wash with income from the other car washes that it owns and is unable to provide an exact accounting for this location.

The case lay dormant on the roster for the Court of Common Pleas from October 31, 2011 to September 25, 2014, when an order of reference was consented to by Super Suds and allegedly by CPH and Parker. The Consent Order is signed by attorney Allan Hill purportedly on behalf of both parties. The matter came before this Court on September 12, 2016, for a hearing and the Court ordered the hearing continued to allow time for discovery. Notices of Appearances have been filed by Charles LeGrand on behalf of the plaintiff and Max Hyde, Samantha Nicholson and Barbara Brunson on behalf of the defendants Parker and CPH. After the September 12, 2016 hearing, activity commenced on the matter. Defendants Parker and CPH filed a motion to dismiss on April 5, 2017. Plaintiff filed a Motion for a Declaration under Rule 43 of the SCRCP on April 18, 2018. The parties have engaged in discovery.

At a status conference held on May 21, 2018, the Court scheduled a hearing on the Motion to Dismiss and Motion for a Declaration under Rule 43 of the SCRCP for July 17, 2018. The Court further ordered that counsel prepare and file briefs in support of their respective motions by July 9, 2018. On July 9, 2018, Plaintiff's counsel and Defendant's counsel filed

briefs in support of their respective motions. In addition, Defendant's counsel filed a memorandum in opposition to the Motion for Declaration under Rule 43. In its Memorandum in Support of Motion to Dismiss or in the Alternative Motion for Summary Judgment, Defendant asserted that the Motion to Dismiss would be converted to a motion for summary judgment pursuant to Rule 12(b) SCRPC. No objection was raised to the converting Defendant's motion to dismiss to a motion for summary judgment prior to or at the hearing.

The record before the court on the hearing of these motions includes the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super Suds, and Walt Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

II. STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC, *See Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). The moving party may discharge the burden of demonstrating the absence of a genuine issue of material fact by pointing to the absence of evidence to support the nonmoving party's case. *See Lanham v. Blue Cross and Blue Shield of S.C., Inc.*, 349 S.C. 356, 563 S.E.2d 331 (2002). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

III. FINDINGS OF LAW

Defendant Parker claims that (1) when the deed-in-lieu of foreclosure (DIL), which had been drafted and sent to him by the attorney for Super Suds, was returned to Mr. Hill, a merger of title occurred as a matter of law pursuant to the unambiguous language of the DIL, and (2) even if the language in the DIL had not been clear, the intent to convey title to the property may be ascertained by the actions of the parties. Therefore, Super Suds lacks standing to pursue this foreclosure action because it holds title to the property.

With respect to the doctrine of merger, the South Carolina Supreme Court has held that "...[w]hen the holder of a mortgage acquires the equity of redemption or the legal title to the land merger will take place, unless the parties intend otherwise." *Thompson v. Hudgens*, 161 S.C. 450, 161 S.E. 807, 810 (S. C. 1931). Equitable encumbrances cease to exist when the equitable and legal titles vest in the same person. *See also* *First Federal Savings and Loan Assn. of South Carolina v. Finn*, 300 S.C. 228, 387 S.E.2d 253, 254 (S. Ct. 1989).

Further, the Court in *Finn*, noted that the interpretation of a deed is an equitable matter and construction of a clear and unambiguous deed is a question of law for the Court. *See* *Gardner v. Mozingo*, 293 SC 23, 358 S.E. 2d 390 (1987); *see also* *Bennet v. Investors Title Ins., Co.*, 370 S.C., 635 S.E.2d 660 (S.C. App. 2006); *Penza v. Pendleton Stations LLC*, 404 S.C. 198; 743 S. E. 2d 850 (S.C. App. 2013). To determine the intent of the parties to a deed, the court must look first to the language of the deed. If the language is ambiguous or unclear, the court may resort to extrinsic evidence. *Id.*

The language in the DIL clearly states that "...[g]rantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever..." In addition, the DIL provides that: "The

consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee..” This language in the DIL clearly provides that the grantor conveyed absolute title to the grantee. As such the legal and equitable interests in the property merged and the equitable interest (mortgage) was extinguished.

Plaintiff claims that acceptance of the DIL was conditioned on Super Suds successful negotiations with the SBA for release of its mortgage. The DIL does not indicate that it is conditional on any further actions by the grantee or Super Suds.

To the extent there was any ambiguity in the DIL, well recognized rules of construction provide that any ambiguity must be construed against the drafter. *Duncan v. Little*, 384 S.C.420, 682 S.E.2d 788 (2009) (rejecting the argument that an agreement was ambiguous and noting that even if there were an ambiguity, it would be construed against the drafter). Here Plaintiff’s attorney prepared the DIL. If Super Suds had intended to take the DIL with conditions, the drafter could have included conditional language in the DIL. Instead, the DIL clearly purports to convey absolute title and extinguish the related debt. Therefore, the DIL should be construed to be unconditional.

Even if the DIL had not expressly conveyed absolute title, the intent of the parties is evident from Super Suds actions upon purchasing the BB&T loan and delivery of the DIL to its attorney. The parties do not dispute the fact that Super Suds assumed possession of the property and began to operate a car wash thereon. Super Suds changed the signage to indicate that it was operating the car wash, and Super Suds made improvements to the property. Super Suds mingled the revenue it received from this car wash with revenue that it received from other car washes that it operated and never provided an accounting to CPH as a mortgagee in possession. These undisputed facts show that Super Suds took possession of the property as an owner.

No activity occurred in this matter from October 31, 2011, until September 2014. The matter was referred to the Master on September 25, 2014, and still no activity occurred in the case until the hearing held on September 12, 2016. During all this time, Super Suds continuously operated a business on the property and represented that it was the owner of the property. Super Suds was unable to explain why the foreclosure languished for five years. The length of time that this case remained dormant demonstrates that Super Suds did not intend to pursue the foreclosure and considered that it owned the property.

The Court finds that the provisions of the DIL itself are clear and unambiguous. The DIL provides for the transfer of absolute title to Super Suds and for the cancelation of any indebtedness owed to Super Suds. As such, legal and equitable title to the subject property merged, the mortgage ceased to exist, and Super Suds has no standing to pursue this foreclosure action. The DIL specifically states that the consideration for the conveyance is satisfaction of any debt owed by the grantor to the grantee. Super Suds' attorney drafted the DIL and the deed includes no caveats or conditions that indicate any intent that it conveyed less than absolute title or that the conveyance was conditional. Super Suds took possession of the property and acted as an owner, operating its business there since 2011. Although Super Suds claims Mr. Hill's acceptance of the DIL was conditional, Super Suds has produced no evidence that Mr. Hill made such a representation to Parker. Nor has Super Suds produced any other evidence to indicate that its attorney's acceptance of the DIL was conditional or that its attorney performed any follow-up activities consistent with conditional acceptance. Five years elapsed from the time Super Suds was substituted as Plaintiff and the resumption of activity on this foreclosure in 2016. This further demonstrates that Super Suds did not intend to pursue the foreclosure and considered itself to hold legal title to the property on which it operated its business.

III. CONCLUSION

For these reasons, the Court finds that as a matter of law, the legal and equitable interest in the subject property merged upon delivery of the DIL to plaintiff's attorney and Super Suds has no standing to pursue this foreclosure action. Defendants' motion for summary judgment is GRANTED.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Order/Summary Judgment

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2018-09-27 13:38:07 page 9 of 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION TO STRIKE
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Defendant's, Carolina Properties Holdings, LLC (CPH) and Walter W. Parker, IV (Parker), Motion to Strike Plaintiff's Submission of Affidavit of Counsel and the Affidavit of Allan Hill from the record. For the reasons set forth in this Order, Defendant's Motion to Strike is GRANTED.

On July 17, 2017, the Court heard the Defendant's Motion to Dismiss and Plaintiff's Motion for a Declaration under Rule 43(k) of the SCRCF. The Court ruled from the bench granting Defendant's Motion to Dismiss, which was converted to a Motion for Summary Judgment, and denying Plaintiff's Motion for a Declaration under Rule 43(k), SCRCF.

The record before the court on the hearing of these motions included the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super Suds, and Walt

Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

On September 7, 2018, after the hearing on the Motion to Dismiss and Motion for a Declaration under Rule 43(k) of the SCRCF, after the Court's ruling from the bench, but before the Court signed an Order as to these motions, Plaintiff submitted a document named "Plaintiff's Submission of Affidavit of Counsel (Plaintiff's Submission). Plaintiff's Submission was an explanation of Plaintiff's denial of this Court's ruling on July 17, 2018. Attached to Plaintiff's Submission was the Affidavit of S. Allan Hill (Affidavit).

On September 27, 2018, the Court signed the Order granting Defendant's Summary Judgment Motion and the Order denying Plaintiff's Motion for Declaration under Rule 43(k), SCRCF.

On October 8, 2018, Plaintiff filed motions to reconsider each order.

On October 29, 2018, Defendants, CPH and Parker, filed this Motion to Strike.

Accordingly, Plaintiff's Submission and the Affidavit were filed after the completion of hearings on all pending motions, after the Court verbally stated its ruling from the bench, prior to the Court signing a written order, and prior to any motion for reconsideration.

Plaintiff's Submission and Affidavit were not a timely submission with any legal basis. If the Submission and Affidavit were in response to a Summary Judgment motion, they would be required to conform to the rules of evidence according to Rule 56(e). The testimony of Allan Hill as submitted in the Affidavit would not be admissible at trial.

For the foregoing reasons, the Defendant's Motion to Strike is GRANTED. Plaintiff's Submission of Affidavit of Counsel and Affidavit of S. Allan Hill are stricken in their entirety. IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2019-02-06 10:32:03 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO RECONSIDER COURT'S
	)	ORDER GRANTING DEFENDANTS'
	)	MOTION FOR SUMMARY
	)	JUDGMENT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on Plaintiff's Motion for Reconsideration of the Court's Order Granting Defendants' Motion for Summary Judgment. Present at a hearing on January 17, 2018, were counsel for Super Suds, LLC (Super Suds), Charles D. LeGrand and Allan S. Hill, and counsel for Carolina Properties Holdings, LLC (CPH), and Walter W. Parker, IV (Parker), Samantha L. Nicholson and Barbara E. Brunson. The Court has reviewed the briefings, the record, and the files herein, and is fully informed. For the reasons set forth in this Order, Plaintiff's Motion for Reconsideration of the Order Granting Defendant's Motion for Summary Judgment is DENIED.

I. FACTUAL FINDINGS

1. On February 2, 2011, Branch Banking & Trust (BB&T) filed the above-captioned case to foreclose a mortgage securing a note owed to BB&T by CPH. The original amount owed on the note was \$585,000.00.

2. The mortgage encumbers real property in Spartanburg County on which a car wash was operating that was owned by CPH.

3. The United States of America, by and through the Small Business Administration (SBA), was named as a party because it holds a subordinate mortgage; Carolina Clean Greer I (Carolina Clean) was named as a defendant because it was a prior operating company and is alleged in the complaint to hold a possible lien on personal property located on the property; and Community Development & Improvement Corporation (CDIC) was named as defendant because it holds a subordinate lien on the property. Parker had personally guaranteed the SBA loan in the amount of \$133,000.00.

4. Parker filed an answer and counterclaim against BB&T on September 1, 2011.

5. On September 16, 2011, Super Suds, LLC purchased the subject loan from BB&T and accepted an assignment of mortgage.

6. On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T.

7. On October 31, 2011, Super Suds was substituted as Plaintiff and a Notice of Appearance was filed by Allan Hill.

8. Allan Hill, attorney for Super Suds, drafted and sent a deed-in-lieu of foreclosure (DIL) to defendant Parker through which Parker on behalf of CPH conveyed title to the subject property to Super Suds, the holder of the first mortgage loan.

9. Parker promptly executed the DIL on October 24, 2011, and returned it to Mr. Hill.

10. The DIL purported to convey absolute title to the property and provides, in pertinent part, as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest as computed as the annual percentage rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

DIL dated October 24, 2011.

11. Immediately after delivery of the DIL, Super Suds assumed possession of the property and began operating its business. Super Suds has operated the car wash continuously since that time on the property.

12. The case lay dormant on the roster for the Court of Common Pleas from October 31, 2011 to September 25, 2014, when an order of reference moved the case to the Master-in-Equity.

13. The matter came before this Court on September 12, 2016, for a hearing and the Court ordered the hearing continued to allow time for discovery.

14. After the September 12, 2016 hearing, activity commenced on the matter.

15. Defendants Parker and CPH filed a motion to dismiss on April 5, 2017. Plaintiff filed a Motion for a Declaration under Rule 43(k) of the SCRCF on April 18, 2018. The parties since engaged in discovery.

16. On July 17, 2017, the Court heard the Defendant's Motion to Dismiss, and Plaintiff's Motion for a Declaration under Rule 43(k) of the SCRCF.

17. The record before the court on the hearing of these motions includes the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super Suds, and Walt Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

18. Thereafter, on September 27, 2018, this Court signed and filed an Order Denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRCF, and an Order Granting Defendant Carolina Properties Holdings, LLC, and Walter W. Parker, IV's Motion for Summary Judgment.

19. On October 8, 2018, Plaintiff filed motions to reconsider each order.

20. On October 29, 2018, Defendants, CPH and Parker, filed a Motion to Strike.

II. DISCUSSION

The Court considered all factors and the full record in determining whether to grant Defendant's Motion for Summary Judgment. The Court granted Defendant's Motion for Summary Judgment on the grounds that a merger of title occurred when Plaintiff Walt Parker signed the deed in lieu of foreclosure (DIL) and delivered it to the Super Suds' attorney. In granting the motion for summary judgment, the Court invoked its equitable powers to put into place that "...which ought to have been done." See Kerr v. City of Columbia, 232 S.C. 405, 102

S.E. 2d 364, 366 (S. Ct. 1958) (affirming the decision of the master in equity that "...the court will regard as done that which ought to have been done.); Regions Bank v. Wingard Properties, Inc. 394 S.C. 241, 715 S.E. 2d 348, 352-353 (S.Ct. App. 2011) (noting that the case at issue involved several maxims of equity including "...equity regards as done that which ought to have been done").

The Court's ruling on Summary Judgement shall stand based on the merger of title that occurred upon delivery of the DIL to Plaintiff's attorney. As such, Super Suds has no standing to pursue this foreclosure action. The Court found the parties' intended to convey property evidenced by the transfer of title to the subject property via the deed in lieu of foreclosure and Super Suds' uninterrupted possession of the property since 2011 without record of an accounting of rents and profits.

Plaintiff argues that it received insufficient notice that the motion to dismiss would be converted to a motion for summary judgment. At Status Conference in May 9, 2018, the Court set hearings for all pending motions for July 17, 2018, including Defendant's Motion to Dismiss and Plaintiff's Motion for Declaration under Rule 43(k). The Court requested briefs be filed by July 9, 2018. Defendants filed its Brief converting the Motion to Dismiss into a Motion for Summary Judgment on July 9, 2018. Plaintiff notes that the Defendant's Brief was filed fewer than 10 days prior to the Court's hearing date.

Rule 12(c) states "[i]f on motion for judgment on the pleadings matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion by Rule 56. While Rule 56(c) does state that motions for summary judgment shall be served 10 days prior to a

hearing, the Court of Appeals has also ruled that “[p]ursuant to Rule 56 ‘all parties should have been given a reasonable opportunity to present all materials such as affidavits, depositions, etc., pertinent to a motion on summary judgment.’” *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989).

Plaintiff did not object to the procedural posture of the Motion for Summary Judgment that had been noted in Defendants’ brief in support of its motion prior to the hearing or at the hearing. Defendant filed its brief within the time required by the Court. Plaintiff submitted no response to Defendant’s motion or its brief thereof. Instead, Plaintiff was present at the hearing and argued in opposition to the summary judgment motion. Plaintiff had reasonable opportunity to present evidence in opposition to the Motion for Summary Judgment, but Plaintiff did not present evidence in opposition until after the Court’s oral ruling, but prior to the entry of an Order on the Motion for Summary Judgment on the issue. Plaintiff had the opportunity to submit amendments to the proposed order, and did so. Yet, none of Plaintiff’s current objections to the Order were included.

Accordingly, the Plaintiff’s motion to reconsider the order granting Defendant’s motion for summary judgment on the grounds that Plaintiff had insufficient notice that the motion would be argued as a motion for summary judgment is denied because Plaintiff had reasonable notice that the motion would be converted when the brief in support of the motion was filed in accordance with the Scheduling Order and Plaintiff waived any objection to the timing of the conversion when Plaintiff failed to raise the objection prior to or at the hearing.

Plaintiff claims that Defendant’s motion is a motion to enforce a settlement agreement. However, the Court ruled that delivery of the DIL was an effective merger of title, and Plaintiff had no standing to pursue foreclosure. The Court found, “[w]hen the deed-in-lieu of foreclosure

(DIL), which had been drafted and sent to [Parker] by the attorney for Super Suds, was returned to Mr. Hill, a merger of title occurred as a matter of law pursuant to the unambiguous language of the DIL, and ...even if the language in the DIL had not been clear, the intent to convey title to the property may be ascertained by the actions of the parties. Therefore, Super Suds lacks standing to pursue this foreclosure action because it holds title to the property.” The Court ruled on doctrine of merger of title rather than a purported settlement agreement. The Court considered Super Suds’ immediate possession of the property, no separate accounting for rents and profits, length of time the case languished on the docket, and lack of follow-up from Super Suds’ counsel to determine effective delivery and merger.

III. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff’s Motion for Reconsideration of the Granting Defendant’s motion for Summary Judgment is Denied.

IT IS SO ORDERED.

[JUDGE’S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2019-02-06 10:32:43 page 8 of 8

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Super Suds, LLC,

Plaintiff,

IN THE COURT OF COMMON PLEAS

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER COURT'S
ORDER DENYING DECLARATION
UNDER RULE 43 (k), SCRCP**

vs.

C.A. NO: 2011-CP-42-0500

Carolina Properties Holdings, LLC,
Walter W. Parker, IV, the United States of
America by and through the US Small
Business Administration, Carolina Clean
Greer I, LLC and Community Development
& Improvement Corporation,

Defendants.

This matter is before the Court on Plaintiff's Motion for Reconsideration of the Court's Order Denying Declaration Under Rule 43(k), SCRCP. Present at a hearing on January 17, 2018, were counsel for Super Suds, LLC (Super Suds), Charles D. LeGrand and Allan S. Hill, and counsel for Carolina Properties Holdings, LLC (CPH), and Walter W. Parker, IV (Parker), Samantha L. Nicholson and Barbara E. Brunson. The Court has reviewed the briefings, the record, and the files herein, and is fully informed. For the reasons set forth in this Order, Plaintiff's Motion for Reconsideration of the Order Denying a Declaration Under Rule 43(k), SCRCP is DENIED.

I. FACTUAL FINDINGS

1. On February 2, 2011, Branch Banking & Trust (BB&T) filed the above-captioned case to foreclose a mortgage securing a note owed to BB&T by CPH. The original amount owed on the note was \$585,000.00.

2. The mortgage encumbers real property in Spartanburg County on which a car wash was operating that was owned by CPH.

3. The United States of America, by and through the Small Business Administration (SBA), was named as a party because it holds a subordinate mortgage; Carolina Clean Greer I (Carolina Clean) was named as a defendant because it was a prior operating company and is alleged in the complaint to hold a possible lien on personal property located on the property; and Community Development & Improvement Corporation (CDIC) was named as defendant because it holds a subordinate lien on the property. Parker had personally guaranteed the SBA loan in the amount of \$133,000.00.

4. Parker filed an answer and counterclaim against BB&T on September 1, 2011.

5. On September 16, 2011, Super Suds, LLC purchased the subject loan from BB&T and accepted an assignment of mortgage.

6. On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T.

7. On October 31, 2011, Super Suds was substituted as Plaintiff and a Notice of Appearance was filed by Allan Hill.

8. Allan Hill, attorney for Super Suds, drafted and sent a deed-in-lieu of foreclosure (DIL) to defendant Parker through which Parker on behalf of CPH conveyed title to the subject property to Super Suds, the holder of the first mortgage loan.

9. Parker promptly executed the DIL on October 24, 2011, and returned it to Mr. Hill.

10. The DIL purported to convey absolute title to the property and provides, in pertinent part, as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest as computed as the annual percentage rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

DIL dated October 24, 2011.

11. Immediately after delivery of the DIL, Super Suds assumed possession of the property and began operating its business. Super Suds has operated the car wash continuously since that time on the property.

12. The case lay dormant on the roster for the Court of Common Pleas from October 31, 2011 to September 25, 2014, when an order of reference moved the case to the Master-in-Equity.

13. The matter came before this Court on September 12, 2016, for a hearing and the Court ordered the hearing continued to allow time for discovery.

14. After the September 12, 2016 hearing, activity commenced on the matter.

15. Defendants Parker and CPH filed a motion to dismiss on April 5, 2017. Plaintiff filed a Motion for a Declaration under Rule 43(k) of the SCRCF on April 18, 2018. The parties since engaged in discovery.

16. On July 17, 2017, the Court heard the Defendant's Motion to Dismiss, and Plaintiff's Motion for a Declaration under Rule 43(k) of the SCRCF.

17. The record before the court on the hearing of these motions includes the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super Suds, and Walt Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

18. Thereafter, on September 27, 2018, this Court signed and filed an Order Denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRCF, and an Order Granting Defendant Carolina Properties Holdings, LLC, and Walter W. Parker, IV's Motion for Summary Judgment.

19. On October 8, 2018, Plaintiff filed motions to reconsider each order.

20. On October 29, 2018, Defendants, CPH and Parker, filed a Motion to Strike.

II. DISCUSSION

21. The Court considered all factors and the full record in determining whether to issue a declaration under Rule 43(k), SCRCF.

22. The intent of the Court in denying the motion for declaration was to promote a just result.

23. The Court found the parties' intentions of the parties to convey property evidenced by the transfer of title to the subject property via the Deed in Lieu of Foreclosure, and Super Suds' possession of the property since 2011 without record of an accounting of rents and

profits. Accordingly, the Court did not issue a declaration under Rule 43(k), SCRCP, and the Plaintiff's motion is denied. The Court's ruling on Summary Judgement shall stand and based on the merger of title upon delivery of the DIL to Plaintiff's attorney, Super Suds has no standing to pursue this foreclosure action.

III. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff's Motion for Reconsideration of the Order Denying Declaration Under Rule 43(k), SCRCP, is DENIED.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2019-02-12 17:02:02 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	AMENDED ORDER GRANTING
	)	DEFENDANT'S MOTION TO STRIKE
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	

This matter is before the Court on Defendant's, Carolina Properties Holdings, LLC (CPH) and Walter W. Parker, IV (Parker), Motion to Strike Plaintiff's Submission of Affidavit of Counsel and the Affidavit of Allan Hill from the record. For the reasons set forth in this Order, Defendant's Motion to Strike is GRANTED.

On July 17, 2017, the Court heard the Defendant's Motion to Dismiss and Plaintiff's Motion for a Declaration under Rule 43(k) of the SCRCP. The Court ruled from the bench granting Defendant's Motion to Dismiss, which was converted to a Motion for Summary Judgment, and denying Plaintiff's Motion for a Declaration under Rule 43(k), SCRCP.

The record before the court on the hearing of these motions included the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super Suds, and Walt

Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

On September 7, 2018, after the hearing on the Motion to Dismiss and Motion for a Declaration under Rule 43(k) of the SCRCPP, after the Court's ruling from the bench, but before the Court signed an Order as to these motions, Plaintiff submitted a document named "Plaintiff's Submission of Affidavit of Counsel (Plaintiff's Submission). Plaintiff's Submission was an explanation of Plaintiff's denial of this Court's ruling on July 17, 2018. Attached to Plaintiff's Submission was the Affidavit of S. Allan Hill (Affidavit).

On September 27, 2018, the Court signed the Order granting Defendant's Summary Judgment Motion and the Order denying Plaintiff's Motion for Declaration under Rule 43(k), SCRCPP.

On October 8, 2018, Plaintiff filed motions to reconsider each order.

On October 29, 2018, Defendants, CPH and Parker, filed this Motion to Strike.

Accordingly, Plaintiff's Submission and the Affidavit were filed after the completion of hearings on all pending motions, after the Court verbally stated its ruling from the bench, prior to the Court signing a written order, and prior to any motion for reconsideration.

Plaintiff's Submission and Affidavit were not a timely submission with any legal basis. If the Submission and Affidavit were in response to a Summary Judgment motion, they would be required to conform to the rules of evidence according to Rule 56(e). The testimony of Allan Hill as submitted in the Affidavit would not be admissible at trial.

For the foregoing reasons, the Defendant's Motion to Strike is GRANTED. Plaintiff's Submission of Affidavit of Counsel and Affidavit of S. Allan Hill are stricken in their entirety. IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2019-02-12 17:02:31 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Branch Banking and Trust Company,

Plaintiff(s)

vs.

Carolina Properties Holdings, LLC, Walter W. Parker IV, and the United States of America by and through the U.S. Small Business Administration

Defendant(s)

(Please Print)

Submitted By: Weyman C. Carter

Address: Post Office Box 447, Greenville, SC 29602

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 42-
2011-CP-42-DS00

SC Bar #: 15255

Telephone #: 864-271-4940

Fax #: 864-271-4015

Other:

E-mail: wecarter@mcnair.net

NOTE: The cover sheet 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 cover sheet 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)	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) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	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 Commission (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:

Weyman Carter

Date: January 27, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union 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 210th 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.

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M. H. E. BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG :)
)
Branch Banking and Trust Company,)
)
Plaintiff,)

v.)

Carolina Properties Holdings, LLC,)
Walter W. Parker IV, and the United States)
of America by and through the US Small)
Business Administration,)
)
Defendants.)

2011LP4200193
IN THE COURT OF COMMON PLEAS
C/A No.

2011-CP-42-0500

LIS PENDENS

(Non-Jury Foreclosure)
(Deficiency Demanded)

NOTICE IS HEREBY GIVEN that an action has been commenced or soon will be commenced upon Complaint of the above-named Plaintiff against the above-named Defendants for foreclosure of the following Mortgage:

That certain Mortgage given by Carolina Properties Holdings, LLC to Branch Banking and Trust Company of South Carolina in the original principal amount of Five Hundred Eighty Five Thousand and no/100 Dollars (\$585,000.00), dated October 21, 2005 and recorded October 24, 2005 at 2:01 p.m. in the records of Spartanburg County, South Carolina in Mortgage Book 3542, at Page 190.

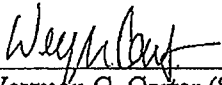
The real property covered and affected by the above-described Mortgage was, at the time of the making thereof and at the time of the filing of this Notice, described as follows:

All that piece, parcel or lot of land, with improvements thereon or to be constructed thereon, being shown as 0.56 acres on a survey for Jones Cooley and Rajai Marzouca, dated April 24, 2003, by Site Design, Inc. recorded in Plat book 154, Page 279, in the Office of the Register of Deeds in Spartanburg County.

This is the same property conveyed to Carolina Properties Holdings, LLC by deed of Jones M. Cooley, Jr. and Rajai Y. Marzouca as recorded August 26, 2005, in Deed Book 83-U, Page 906, Office of the Register of Deeds for Spartanburg County.

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MARCOPEL

Tax Map Number: 9 03-10 092.00
Street Address: 14115 East Wade Hampton Boulevard, Greer, SC


Weyman C. Carter (SC Bar #15255)
McNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940
Attorneys for Plaintiff

Greenville, South Carolina
January 27, 2011

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Branch Banking and Trust Company,

Plaintiff,

v.

Carolina Properties Holdings, LLC,
Walter W. Parker IV and the United States
Of America by and through the US Small
Business Administration,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NUMBER 2011-CP-42-0500

ANSWER AND COUNTERCLAIM

Defendants, Carolina Properties Holdings, LLC and Walter W. Parker IV, answering the Complaint of the Plaintiff and asserting counterclaim, would respectfully show as follows:

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless expressly admitted herein.
2. Responding to Paragraphs 1 through 26 of the Complaint, Defendants admit the allegations contained in these paragraphs.
3. Defendants deny the allegations contained in Paragraphs 27 and 28 and demand strict proof thereof.

**FOR A SECOND DEFENSE
(Unclean Hands)**

4. Defendants incorporate herein by reference the foregoing paragraphs of this Answer to the extent consistent with this defense.
5. Plaintiff's Complaint is barred by the doctrine of unclean hands.

**FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
CAUSE OF ACTION
(Breach of Verbal Agreement)**

6. Defendants incorporate herein by reference the foregoing paragraphs of this Answer to the extent consistent with this defense and cause of action.

7. The value of the business property as determined by the Plaintiff was sufficient to waive deficiency judgment against Defendants.

8. The Plaintiff through its agent verbally agreed to waive the deficiency judgment against Defendants.

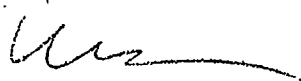
9. The Plaintiff has since reneged on this agreement.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendants respectfully request:

A. That Plaintiff's Complaint relative to deficiency judgment be dismissed;
and

B. Such other and further relief as the Court deems just and proper.

Sincerely,



Walter W. Parker IV
Defendant

Beaufort, South Carolina
April 18, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Branch Banking and Trust Company,
Plaintiff,

v.

Carolina Properties Holdings, LLC,
Walter W. Parker IV, the United States
of America by and through the US Small
Business Administration, Carolina Clean
Greer I, LLC and Community Development
& Improvement Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A No. 2011-CP-42-0500

**AMENDED
COMPLAINT**

(Non-Jury Foreclosure)
(Deficiency Demanded)

The Plaintiff, complaining of the above-named Defendants, would respectfully allege and show the Court that:

1. This is an action to foreclose a mortgage on real property located in Spartanburg County, South Carolina.

2. Since this foreclosure action involves a commercial loan to a business, the Home Affordable Modification Program is inapplicable.

3. The Plaintiff, Branch Banking and Trust Company ("BB&T" or "Plaintiff"), is a banking corporation organized and existing under the laws of the State of North Carolina and the successor by merger to Branch Banking and Trust Company of South Carolina.

4. The Defendant, Carolina Properties Holdings, LLC ("CPH" or "Borrower"), is a limited liability company organized and existing under the laws of the state of South Carolina and the owner of record of the subject property.

5. The Defendant, Walter W. Parker IV ("Parker") is, upon information and belief, an individual resident of Morgan County, Georgia. At the time of the commencement of this action and service of the Summons and Complaint, Parker was a resident of Beaufort County, South Carolina.

6. The remaining Defendants named in this action hold or may claim a lien or interest in the subject property.

7. On October 21, 2005, CPH, made, executed and delivered a Promissory Note (hereinafter the "Note") to BB&T whereby it promised to pay to the order of BB&T the principal sum of Five Hundred Eighty Five Thousand and no/100 Dollars (\$585,000.00), together with interest at a fixed rate equal to 7.50% per annum. Other terms and conditions are set forth in the Note.

8. A true and correct copy of the Note is attached hereto as Exhibit A and incorporated herein by reference.

9. On October 21, 2005, in order to secure the indebtedness represented by the Note, CPH executed and delivered to BB&T a Mortgage of Real Estate (hereinafter the "Mortgage") encumbering the real property located in Spartanburg County, South Carolina (the "Premises") which is described as follows:

All that piece, parcel or lot of land, with improvements thereon or to be constructed thereon, being shown as 0.56 acres on a survey for Jones Cooley and Rajai Marzouca, dated April 24, 2003, by Site Design, Inc. recorded in Plat book 54, Page 279, in the Office of the Register of Deeds in Spartanburg County.

This is the same property conveyed to the mortgagor herein by deed of Jones M. Cooley, Jr. and Rajai Y. Marzouca as recorded August 26, 2005, in Deed Book 83-U, Page 906, Office of the Register of Deeds for Spartanburg County.

Tax Map Number: 9 03-10 092.00

Street Address: 14115 East Wade Hampton Boulevard, Greer, SC

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M. HOPE BRADLEY

10. The mortgage also encumbers "all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate" described in the Mortgage. Further references to the "Premises" shall include the above property encumbered by the Mortgage.

11. The Mortgage was recorded on October 24, 2005 at 2:01 p.m. in the records of Spartanburg County, South Carolina in Mortgage Book 3542, at Page 190 and is a first mortgage on the Premises.

12. A true and correct copy of the Mortgage is attached hereto as Exhibit B and incorporated herein by reference.

13. On October 21, 2005, Parker executed a Guaranty (the "Guaranty") by which he unconditionally guaranteed the payment of all obligations of CPH to BB&T.

14. A true and correct copy of the Guaranty is attached as Exhibit C and incorporated by reference.

15. CPH executed a series of Note Modification Agreements (the "Modification Agreements") in connection to the Note. The last Note Modification Agreement of the series was executed on May 19, 2010 and modified the Note so that CPH was to pay the accrued interest on a monthly basis with such interest payments commencing on June 19, 2010 and terminating on the maturity date of October 19, 2010, at which point in time, the remainder of the principal and interest became due.

16. True and correct copies of the Modification Agreements are attached hereto as a collective Exhibit D and incorporated herein by reference.

17. Further references to the Note shall mean the Note as modified by the Modification Agreements.

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18. The Borrower is in default under the terms of the Note and Mortgage for its failure to pay the loan at its stated maturity date of October 19, 2010.

19. The Borrower is further in default for its failure to pay the 2009 and 2010 ad valorem taxes on the Premises. BB&T has advanced \$2,845.31 to pay the 2009 taxes on the Premises and is entitled to recover the amount advanced as part of the obligation secured by the Mortgage. BB&T further reserves the right to advance the amount necessary to pay the 2010 ad valorem taxes and to recover the amount advanced as additional debt secured by the Mortgage.

20. BB&T also advanced \$2,050.00 in order to have the Premises appraised and inspected and is entitled to recover the amount advanced as part of the obligation secured by the Mortgage.

21. As a result of the defaults set forth above, BB&T has placed the Note and Mortgage in the hands of its attorneys for collection by foreclosure.

22. The Note provides that BB&T shall be entitled to recover all costs of collection, including reasonable attorney's fees deemed to be 15% of the principal and interest outstanding on the Note, if the Note is referred to an attorney for collection.

23. The Note further provides BB&T the option to accrue interest on the Note after an event of default at a Default Rate equal to the sum of BB&T's Prime Rate plus five percent annum (Prime plus 5.0%). BB&T reserves the right to accrue and collect interest at the Default Rate in this action.

24. The amount due under the Note (exclusive of attorneys fees and costs of collection) as of December 8, 2010, is \$573,828.32, consisting of principal of \$561,808.59, accrued interest of \$11,134.12 and late fees of \$885.61; interest continues to accrue on the unpaid principal balance at a present per diem rate of \$81.93. Interest figures are calculated at the contract rate, without prejudice

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to BB&T's right to accrue and collect interest at the Default Rate.

25. The amounts advanced by BB&T to pay the ad valorem taxes as well as the amounts advanced to have the Premises appraised and inspected are also recoverable under the Mortgage.

26. The Plaintiff is entitled to a judgment of foreclosure and sale of the Premises described in the Mortgage.

27. The Plaintiff does not waive and specifically demands a deficiency judgment against both Carolina Properties Holdings, LLC and Walter W. Parker IV, jointly and severally, to the extent the total debt secured by the Mortgage remains unsatisfied after the proceeds of the sale of the Premises.

28. The following Defendants may claim an interest in the subject property, which interest is junior to the Mortgage held by Plaintiff:

- The Small Business Administration, an agency of the Government of the United States of America, by virtue of a mortgage from CPH to the Administrator of the Small Business Administration in the amount of \$133,000.00, dated December 11, 2007 and recorded February 12, 2008 in Book 4036, Page 975, in the office of the Register of Deeds for Spartanburg County, South Carolina. The mortgage to Small Business Administration was modified by an instrument recorded on August 1, 2008 in Book 4118, Page 565 in the office of the Register of Deeds for Spartanburg County, South Carolina.
- Carolina Clean Greer I, LLC by virtue of its occupancy as an operator of the business located on the Premises and by virtue of a possible interest in the personal property located on the Premises.
- Community Development & Improvement Corporation, by virtue of a Security

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B. HOPE BRADLEY

Agreement from Carolina Clean Greer I, LLC and CPH dated July 23, 2009, whereby Carolina Clean Greer I, LLC and CPH purportedly granted Community Development & Improvement Corporation a security interest in certain personal property located on the Premises, and by virtue of a UCC-1 Financing Statement filed with the South Carolina Secretary of State on July 27, 2009 under Certificate Number 090727-0951212 (or 090727-0961212) reflecting the security interest.

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

a. That Plaintiff have judgment against the Defendants, Carolina Properties Holdings, LLC and Walter W. Parker IV, jointly and severally, in the amount outstanding under Note, together with a reasonable attorney's fee in an amount equal to 15% of the outstanding debt, the costs of collection and post judgment interest at the legal rate;

b. That the Plaintiff's Mortgage be declared a first mortgage on the Premises described herein;

c. That the court determine the relative lien priority of the Plaintiff and of Community Development & Improvement Corporation in the personal property located on the Premises and that the court determine the interest, if any, of Carolina Clean Greer I, LLC in the personal property located on the Premises.

d. That the Premises be sold subject to the right of redemption of the United States as provided in the United States Code.

e. That the Premises be sold free and clear of all liens and interest, and the equity of redemption be barred, subject to any unpaid and after accruing ad valorem taxes, and that the proceeds of the sale be applied as follows:

FIRST, to the costs and expenses of the within action and sale;

SECOND, to the payment and discharge of the amount due to Plaintiff under the Note, together with costs and a reasonable attorney's fee;

THIRD, the surplus, if any, be distributed according to law;

f. For an Order directing and empowering the Sheriff of Spartanburg County, South Carolina, to place the successful purchaser(s) at such foreclosure sale in possession of the Premises should the same become necessary.

g. That the Court grant a deficiency judgment against Defendants, Carolina Properties Holdings, LLC and Walter W. Parker IV, jointly and severally; and

h. For such other and further relief as this Court deems just and proper.



Weyman C. Carter S.C. Bar #15255
McNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, SC 29602
(864) 271-4940

Attorneys for Plaintiff

Greenville, South Carolina
July 22, 2011

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	ANSWER TO AMENDED
	)	COMPLAINT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

ANSWER

Defendants, Carolina Properties Holding, LLC and Walt Parker, answer the allegations of the amended complaint as follows:

FOR A FIRST DEFENSE

1. Except as specifically admitted below, each allegation of the Complaint is denied.
2. The Defendants admit the allegations of paragraphs 1, 2, 3, 6, 7, 8, 12, 13, 15, and 16.
3. The Defendant admits the allegations of paragraph 4 to the extent that at the time this foreclosure was commenced, Defendant Carolina Properties Holdings, LLC, was a limited liability company organized and existing under the laws of the state of South Carolina and the owner of record of the subject property.
4. The Defendants admit the allegations of paragraph 5 to the extent it is alleged that Defendant Parker was a resident of Beaufort County, South Carolina, at the time this action was commenced. The remaining allegations of paragraph 5 are denied.

5. The Defendants admit the allegations of paragraph 8, 9, 10, and 11 to the extent that the mortgage is filed of record. However, the mortgage's enforceability is denied for the reasons set forth in the defenses.

6. The Defendant Walt Parker admits the allegations of paragraph 14 to the extent that he executed in favor of BB&T a personal guaranty of the subject debt but denies that the guaranty is enforceable for the reasons set forth in the defenses.

7. No response is required to allegations of paragraph 17.

8. Admits the allegations of paragraphs 18, 19, and 20 to the extent that they allege that Defendants were in default under the terms of the note, mortgage, and guarantee at the time the original summons and complaint were filed. The defendants deny that they are currently in default as to the note, mortgage and guaranty as these documents are no longer enforceable for the reasons set forth in the defenses.

9. Admits upon information and belief the allegations of paragraph 21 and 28.

10. In response to the allegations of paragraphs 22, 23, 24, and 25, the Defendants crave reference to said loan documents which speak for themselves, but deny that they are enforceable against the defendants for the reasons set forth in the defenses.

11. Defendants deny the allegations of paragraph 26.

12. Defendants deny that Plaintiff is entitled to seek a deficiency judgment against Defendant Parker.

FOR A SECOND DEFENSE

(Failure to State a Claim)

13. Each of the allegations contained above is realleged and incorporated by reference.

14. The amended complaint fails to state a claim for which relief can be granted.

FOR A THIRD DEFENSE

(Merger of Title)

15. Defendant Walt Parker in his individual capacity and as an officer of Carolina Property Holdings, LLC (herein referred to as Defendants), in an effort to resolve the original foreclosure actions and the Defendants' obligations on the note and mortgage, negotiated with BB&T for the sale of the note and mortgage to Ken Howard and Super Suds.

16. These negotiations were undertaken by Mr. Parker directly with Ken Howard on behalf of Super Suds and with their attorney Allan Hill and included among other things an agreement that Super Suds would purchase the note and mortgage from BB&T. After which, Defendants would tender a deed-in-lieu of foreclosure to Super Suds in full satisfaction of the Defendants' obligations under the note and mortgage. At all times during these negotiations, Allan Hill, attorney for Ken Howard and Super Suds, Ken Howard and Super Suds were aware that junior liens attached to the subject property and agreed that satisfaction of those liens would be the sole responsibility of Ken Howard and Super Suds.

17. The Defendants and BB& T entered into a Settlement Agreement and Mutual Release of Claims effective September 19, 2011, wherein the Defendants released BB&T from any claims related to the note and mortgage, including the original counterclaim filed against BB&T, in exchange for BB&T's agreement to enter a Note Sales Agreement with Ken Howard and Super Suds. On or about September 19, 2011, Ken Howard and Super Suds executed a Note Sales Agreement, whereby Ken Howard and Super Suds purchased the subject note and mortgage from BB&T.

18. On October 24, 2011, Defendants executed and delivered to Allan Hill a deed-in-lieu

of foreclosure whereby Defendants conveyed their interest in the subject real estate to Super Suds. The deed in lieu of foreclosure was prepared by Super Suds attorney, Allan Hill and provides as follows:

The consideration for this deed is the satisfaction and cancellation of an indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD Office for Spartanburg County in ROD Mortgage Book 3542, at Page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.00, together with accrued interest computed at the annual rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property or any improvements thereon.

19. On or about October 24, 2011, Super Suds took possession of the subject real estate and began operating a car wash and has had continuous and uninterrupted possession of said premises and derived substantial profits therefrom.

20. Walt Parker, having satisfied his obligations under the agreement with Ken Howard and Super Suds and having conveyed his interest in the subject property, believed that this foreclosure action had been rendered moot and dismissed.

21. Defendants received no further communications concerning this matter until May 26, 2016, when Parker received notice from the Defendant Small Business Administration (SBA) advising that the SBA would pursue collection of the guarantee of the loan secured by a second mortgage on the subject property.

22. On or about August 3, 2016, Mr. Parker received a copy of an Amended Lis Pendens indicating that Super Suds had not in fact dismissed the foreclosure but would now pursue the action.

23. On or about September 7, 2016, Mr. Parker was advised that his name had been

signed by attorney Allan Hill to a consent order referring this foreclosure to the Master in Equity on September 25, 2014.

22. Defendants assert the Plaintiff Super Suds lacks standing to foreclose the note and mortgage because the viability of said documents were extinguished by merger of title when Super Suds, as holder of the note and mortgage accepted the deed in lieu of foreclosure through its agent Allan Hill and that Super Suds took title to the encumbered real estate subject to the junior lienholders.

**FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(Breach of Contract)**

24. Each and every allegation contained above is realleged and incorporated by reference.

25. Defendants will show that the resumption of this mortgage foreclosure is a breach of contract in which Defendants tendered the deed-in-lieu of foreclosure in consideration of Super Suds dismissal of the foreclosure action and assumption of the junior liens attached to the subject property.

26. Defendant Walt Parker will suffer real and ascertainable losses as a direct and proximate result of said breach including liability to the SBA for a guarantee of the SBA's loan that is secured by the SBA mortgage on the subject property.

**FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM
(Equitable Accounting and Set Off)**

26. Each and every allegation contained above is realleged and incorporated by reference.

27. To the extent this Court would find that Super Suds is entitled to pursue this

foreclosure, Defendants ask that the Court require Super Suds to produce an equitable accounting of the profits and losses derived from its occupation of the subject property and operation of a business thereon since 2011 and that said profits be offset by any amounts that may be owed by Defendants on account of the note and mortgage, as required by the assignment of rents and profits provision of the mortgage.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unjust Enrichment)

28. Each and every allegation contained above is realleged and incorporated by reference.

29. To the extent this Court would find that Super Suds is entitled to pursue this foreclosure, Defendants allege that Super Suds has been unjustly enriched by having taken possession of the subject property and operated a business thereon since 2011.

30. Super Suds has derived and retained substantial income from operation of this business on the subject property and allowing Super Suds to retain these proceeds would result in an unjust enrichment.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(South Carolina Unfair Trade Practices Act)

31. Each and every allegation contained above is realleged and incorporated herein by reference.

32. The actions of the Plaintiff and Third-Party Defendants, above-described, constitute unfair and deceptive acts and practices in the conduct of trade and commerce, as prohibited by the South Carolina Unfair Trade Practices Act, 39-5-10 et seq., and are willful violations thereof.

33. The actions of Super Suds have a real and substantial potential for repetition and affect the public interest.

34. Defendants have suffered an ascertainable loss due to the unlawful actions of Super Suds and Ken Howard entitling Defendants to recover actual damages in an amount to be proven at trial, treble said actual damages, and an award of attorney's fees and costs.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTER CLAIM
(Restitution)

35. Each and every allegation contained above is realleged and incorporated herein by reference.

36. To the extent this Court allows this foreclosure to proceed, Defendants allege Super Suds induced Defendants to allow Super Suds to take possession of the subject property and that Super Suds has benefited by deriving profits from operation of a business thereon, and therefore Defendants are entitled to restitution from Super Suds for any and all profits that Super Suds derived from operation of its business on the subject property since 2011.

FOR A NINTH DEFENSE AND BY WAY OF COUNTER CLAIM
(Fraud)

37. Each and every allegation contained above is realleged and incorporated by reference.

38. To the extent this Court allows this foreclosure to proceed, Super Suds and Ken Howard fraudulently induced Defendants to convey a deed-in-lieu of foreclosure to Super Suds and to allow Super Suds to occupy the subject property and operate its business thereon for over six years by representing that Super Suds would take the property subject to the junior liens, that all amounts owed by the Defendants under the note and mortgage would be extinguished, and that Plaintiff would dismiss this foreclosure action.

39. Super Suds and Ken Howard knew that the mortgage foreclosure action was not dismissed and they did not make an effort to dismiss their claims.

40. Defendants believed and relied on the representations by Super Suds, Ken Howard and their attorney and agent Allan Hill, and for this said consideration, conveyed the subject property to Super Suds and abandoned the real estate.

41. Furthermore, Super Suds and Ken Howard accepted the deed-in-lieu with knowledge of the false claims and reckless disregard for the representation.

42. Super Suds and Ken Howard then took possession of the subject real estate and operated a business thereon for six years and derived substantial profit therefrom.

43. Now Super Suds resumes this mortgage foreclosure and attempts thereby to extinguish the junior liens leaving Defendant Walt Parker obligated to the SBA on the guarantee of the loan secured by the SBA mortgage on the subject property.

44. Accordingly, Defendants pray for actual damages of any amounts that may be owed by Defendants on account of the note and mortgage and any amounts that may be owed to the junior lienholders. Alternatively, to the extent this Court allows this foreclosure to proceed, Defendants assert damages of any and all profits that Super Suds derived from operation of its business on the subject property since 2011.

45. Furthermore, Defendant requests punitive damages which are the natural and proximate consequence of Plaintiff's fraudulent misrepresentation.

FOR A TENTH DEFENSE AND BY WAY OF COUNTER CLAIM
(Unconscionability)

46. Each and every allegation contained above is realleged and incorporated by reference.

47. Defendants delivered the deed in lieu of foreclosure without representation of counsel and believed that Plaintiff would dismiss the foreclosure and assume responsibility for debts owed to the junior lienholders. A disparity in the parties' bargaining power existed as

Defendants sought to avoid foreclosure with few alternatives other than the agreement proposed by Super Suds and Ken Howard through its attorney and agent Allan Hill. The failure to dismiss the action or satisfy the junior lienholders, as intended, has a profoundly discriminatory effect of exploiting the Defendants while providing a substantial benefit to Ken Howard and Super Suds. Furthermore, the continued pursuit of this action was an unfair surprise.

48. By its unconscionable actions, Plaintiff is barred from any form of relief.

FOR A ELEVENTH DEFENSE
(Estoppel)

49. Each and every allegation contained above is realleged and incorporated by reference.

50. Plaintiff's causes of action are barred on the basis of estoppel.

FOR A TWELFTH DEFENSE
(Waiver)

51. Each and every allegation contained above is realleged and incorporated by reference.

52. Plaintiff's causes of action are barred on the basis of waiver.

FOR AN THIRTEENTH DEFENSE
(Laches)

53. Each and every allegation contained above is realleged and incorporated by reference.

54. Plaintiff's causes of action are barred on the basis of laches.

FOR A FOURTEENTH DEFENSE
(Unclean Hands)

55. Each and every allegation contained above is realleged and incorporated by reference.

56. Plaintiff's causes of action are barred under the doctrine of "unclean hands".

FOR A FIFTEENTH DEFENSE

(Accord and Satisfaction)

57. Each and every allegation contained above is realleged and incorporated by reference.

58. Defendant would show that the complaint is barred by the doctrine of accord and satisfaction.

WHEREFORE, having answered this complaint, the Defendants pray that this matter be dismissed with costs and attorney's fees; that the Court grant judgment in favor of the Defendant; and for such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson
Barbara E. Brunson
LAW OFFICE OF BARBARA E. BRUNSON, LLC
SC Bar No.: 0012940
P.O. Box 50943
Columbia, SC 29250
T: (803) 799-0425
F (877) 310-8766
barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson
Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
Samantha L. Nicholson (SC Bar #102790)
HYDE LAW FIRM, P.A.
753 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330

F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANTS, CAROLINA
PROPERTIES HOLDINGS, LLC AND WALTER W.
PARKER, IV

December 6, 2017

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	REPLY TO DEFENDANTS'
	)	ANSWER TO AMENDED COMPLAINT
v.	)	AND COUNTERCLAIMS
	)	
Carolina Properties Holdings, LLC	)	
Walter W. Parker IV, the United States	)	
Of America by and through the US Small	)	2011-CP-42-0500
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

Plaintiff replies to the affirmative defenses and counterclaims alleged in the Answer to Amended Complaint (the "Answer") filed by the defendants, Carolina Properties Holdings, LLC ("CPH") and Walter W. Parker IV ("Parker").

FOR A FIRST DEFENSE

1-14. No answer is required of the matters stated in paragraphs 1 through 14 of the Answer.

15. Plaintiff has insufficient information to admit or deny the matters stated in paragraph 15 and thus denies the same.

16. Plaintiff denies the allegations stated in paragraph 16 of the Answer except so much of paragraph 16 as alleges that Allan Hill is the attorney for Super Suds, LLC.

17. Plaintiff admits so much of the allegations of paragraph 17 of the Answer as allege that Super Suds executed a Note Purchase and Sale Agreement with BB&T dated

September 19, 2011. Plaintiff has insufficient information to admit or deny the remaining allegations of paragraph 17 and thus denies the same.

18. Plaintiff admits so much of paragraph 18 of the Answer as allege that the defendant, Carolina Properties Holdings, LLC, executed a deed in lieu of foreclosure for the property which is the subject of this action, and that such deed was prepared by plaintiff's attorney, Allan Hill. Plaintiff denies that the delivery of the deed was an absolute conveyance of title, rather the deed was delivered to Hill in trust, during, and as part of, settlement negotiations which failed to result in a settlement agreement.

19. Plaintiff admits so much of the allegations of paragraph 19 of the Answer as allege that Super Suds took possession of the subject property in October, 2011 and began operating the car wash located thereon. Plaintiff took possession of the Property after default on the loan and abandonment of the property by CPH, and in accordance with the terms of the mortgage. Plaintiff denies the remaining allegations of paragraph 19.

20. Paragraph 20 of the Answer states the belief of the defendant Parker; plaintiff has no information regarding defendant's beliefs and thus denies the same, but notes Defendants have not pled the existence of a written settlement agreement enforceable under Rule 43(k), SCRCF.

21. Plaintiff has insufficient information to admit or deny the matters stated in paragraph 21 of the Answer and thus denies the same.

22. Beginning after paragraph number 22 of the Answer, the paragraphs are not numbered sequentially, and will be referred to hereinafter by the number assigned to them by defendants in the Answer.

First 22. Plaintiff admits so much of paragraph 22 (first #22) as allege that an Amended Lis Pendens was filed and a copy thereof mailed to defendant Parker; plaintiff has no information as to when Parker received the amended Lis Pendens.

Second 22. Plaintiff denies the allegations of paragraph 22 (second #22) which allege that plaintiff lacks standing to bring this action.

23. Plaintiff admits so much of the allegations of paragraph 23 of the Answer as allege that Allan Hill signed a Consent Order of Reference on behalf of defendant Parker; this signature was, however, with Parker's permission.

24-26. Plaintiff denies the allegations of paragraphs 24, 25, 26, and the second paragraph numbered 26, and notes Defendants have not pled the existence of a written settlement agreement enforceable under Rule 43(k), SCRPC.

27. Paragraph 27 does not allege facts but is a request for the Court to require an accounting. Plaintiff will provide an accounting of the rents, issues, and profits derived from the property with any profits being applied to the reduction of the debt owed to plaintiff. The debt owed to plaintiff on the note, mortgage, and guaranty agreement is the principal sum of \$561,808.59, plus interest, late charges, court costs, and attorney's fees which have accrued on the debt (hereinafter referred to collectively as the "Debt").

28-29. Plaintiff denies the allegations of paragraphs 28 and 29 of the Answer.

30. Plaintiff denies the allegations of paragraph 30 of the Answer. Plaintiff will provide an accounting of the rents, issues, and profits derived from the property with any profits being applied to the reduction of the Debt owed to plaintiff.

31-35. Plaintiff denies the allegations of paragraphs 31, 32, 33, 34, and 35 of the Answer.

36. Plaintiff admits so much of the allegations of paragraph 36 of the Answer as allege that Super Suds took possession of the property and operated a carwash thereon. Plaintiff took possession of the mortgaged property after CPH defaulted on the mortgage and abandoned the property; plaintiff's actions were in accordance with the terms of the mortgage. Plaintiff will provide an accounting of the rents, issues, and profits derived from the property with any profits being applied to the reduction of the Debt owed to plaintiff. Plaintiff denies the remainder of paragraph 36.

37-39. Plaintiff denies the allegations of paragraphs 37, 38, and 39 of the Answer.

40. Plaintiff admits so much of the allegations of paragraph 40 of the Answer as allege that the defendant, Carolina Properties Holdings, LLC, abandoned the subject property; plaintiff denies the remaining allegations of paragraph 40 of the Answer.

41. Plaintiff denies the allegations of paragraph 41 of the Answer.

42. Plaintiff admits so much of the allegations of paragraph 42 of the Answer as allege that plaintiff took possession of the mortgaged property. Plaintiff took possession of the mortgaged property after CPH defaulted on the mortgage and abandoned the property; plaintiff's actions were in accordance with the terms of the mortgage. Plaintiff will provide an accounting of the rents, issues, and profits derived from the property with any profits being applied to the reduction of the Debt owed to plaintiff. Plaintiff denies that it derived substantial profits from the property.

43. Plaintiff admits so much of the allegations of paragraph 43 of the Answer as allege that this foreclosure action, like any foreclosure action, seeks to extinguish the junior lienholders. Plaintiff denies that this is a resumption of a foreclosure action because this action was never dismissed.

44. Paragraph 44 of the Answer is a statement of the prayer for relief, which plaintiff denies, except that plaintiff will provide an accounting of the rents, issues, and profits derived from the property with any profits being applied to the reduction of the Debt owed to plaintiff.

45-58. Plaintiff denies the allegations of paragraphs 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of the Answer.

59. All allegations contained in the Answer not specifically admitted or explained in this Reply are denied.

FOR A SECOND DEFENSE

60. The responses and answers contained in the foregoing paragraphs are realleged and incorporated herein by reference.

61. Defendants allege that plaintiff breached the terms of a contract the consideration for which was the dismissal of this action. An agreement in consideration of the dismissal of an action is a settlement agreement, and under Rule 43 (k) of the South Carolina Rules of Civil Procedure such an agreement must be in the form of a consent order or written agreement signed by the parties and counsel to be binding on either party.

62. In its Order dated September 1, 2017, this Court found that these defendants "have not yet presented to this Court a written settlement agreement." The Court held that "No agreement affecting this proceeding is binding unless one of the conditions of Rule 43 (k), SCRCF, is met."

63. No written settlement agreement exists; thus the alleged agreement is not enforceable against plaintiff, and all the factual issues alleged by defendants related to any alleged agreement are precluded by the Order previously entered by this Court.

64. Defendants' Fourth Defense and Counterclaim, Seventh Defense and Counterclaim, and Ninth Defense and Counterclaim fail to state causes of action upon which relief may be granted.

**FOR A THIRD DEFENSE
(Statute of Frauds)**

65. The responses and answers contained in the foregoing paragraphs are realleged and incorporated herein by reference.

66. Under South Carolina law, a contract in consideration of real estate must be in writing to be enforced.

67. Defendants' Answer alleges a contract regarding real estate, but defendants have not produced a written memorandum or agreement signed by plaintiff to satisfy the South Carolina Statute of Frauds, or Rule 43(k), SCRPC.

**FOR A FOURTH DEFENSE
(Laches, Acquiescence, Estoppel)**

68. The responses and answers contained in the foregoing paragraphs are realleged and incorporated herein by reference.

69. Defendants abandoned the property in October, 2011.

70. Relying on defendants' actions, plaintiff took possession of the property and has spent considerable sums preserving and protecting the property, including, but not limited to repairs, maintenance, taxes, and insurance.

71. A delay of 6 years is an unreasonable and unexplained length of time to delay enforcement of a claimed right by defendants, the enforcement of which will cause prejudice to plaintiff.

72. Defendants' delay of 6 years to object to plaintiff's possession of the property constitutes acquiescence in plaintiff's occupation, use, and possession of the property.

73. Defendants' acquiescence estops defendants from now raising or arguing the issue of plaintiff's right to take possession and to preserve the property against waste or loss.

74. Defendants' unreasonable delay in claiming that plaintiff was somehow obligated to pay defendants' debts estops defendants from raising this claim now.

WHEREFORE having fully replied to the answer and counterclaims of the defendants, Carolina Properties Holdings, LLC, and Walter W. Parker, IV, plaintiff prays that the Court dismiss Defendants' counterclaims and grant judgment in favor of plaintiff.

Attorneys for the Plaintiff:

LeGRAND LAW FIRM, LLC
s/Charles D. LeGrand
Charles D. LeGrand (SC Bar #9910)
310 Mills Avenue, Suite 103
Greenville, SC 29605
(864) 242-6461

S. Allan Hill (SC Bar #10256)
s/ S. Allan Hill
819 E. North St.
Greenville, SC 29601
(864) 242-4995

Greenville, SC
Date: January 10, 2018

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Super Suds, LLC,

Plaintiff,

v.

Carolina Properties Holdings, LLC,
Walter W. Parker, IV, the United States of
America by and through the US Small
Business Administration, Carolina Clean
Greer I, LLC and Community Development
& Improvement Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

MOTION TO DISMISS

C.A. NO: 2011-CP-42-0500

Pursuant to 12(b)(6), SCRCP, Defendants Carolina Properties Holdings, LLC and Walter W. Parker, IV, move to dismiss the claims asserted by Plaintiff against them, on the grounds that Plaintiff fails to state a claim upon which relief can be granted. Super Suds, LLC has no enforceable rights under the mortgage, and the Complaint should be dismissed. This motion will be supported by the pleadings, discovery, and Defendants' Brief in Support of Defendants' Motion to Dismiss to be filed subsequently hereto.

RESPECTFULLY SUBMITTED,

s/ Max T. Hyde, Jr.

Max T. Hyde, Jr. (SC Bar # 17014)

Ryan E. Gaylord (SC Bar # 101946)

HYDE LAW FIRM, P.A.

753 E. Main St., Suite One

Spartanburg, SC 29302

T: (864) 804-6330

F: (864) 804-6449

max@maxhydelawfirm.com

ryan@maxhydelawfirm.com

April 5, 2017

Spartanburg, South Carolina

ATTORNEYS FOR DEFENDANTS
CAROLINA PROPERTIES HOLDINGS,
LLC AND WALTER W. PARKER, IV

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO
	)	DISQUALIFY COUNSEL
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	

The Defendants, Carolina Properties Holdings, LLC and Walter W. Parker, IV, by and through their undersigned attorneys hereby move the Court for an order disqualifying Plaintiff's counsel, Allan Hill, from participation in above mentioned trial. Said motion is made upon the ground that Allan Hill is a necessary witness and should be disqualified pursuant to Rule 3.7 of the South Carolina Rules of Professional Responsibility. In support of this motion, see the Brief in Support of Defendants' Motion to Disqualify. Defendants would request an evidentiary hearing to support counsel's removal.

RESPECTFULLY SUBMITTED,

s/ Max T. Hyde, Jr.
Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
HYDE LAW FIRM, P.A.
753 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330

May 26, 2017
Spartanburg, South Carolina

F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANTS,
CAROLINA PROPERTIES HOLDINGS,
LLC AND WALTER W. PARKER, IV

ELECTRONICALLY FILED - 2017 May 26 1:14 PM - SPARTANBURG - COMMON PLEAS - CASE#2011CP4200500

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' FIRST MOTION TO
	)	COMPEL
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	

The Defendants, Carolina Properties Holdings, LLC and Walter W. Parker, IV, move the Court for an order requiring Plaintiff to comply with discovery request pursuant to Rule 37(a)(1) of the South Carolina Rules of Civil Procedure (SCRCPP), submit to deposition pursuant to Rule 37(d) of the South Carolina Rules of Civil Procedure (SCRCPP), and requiring Plaintiff to pay the attorneys' fees and expenses incurred by Defendants in obtaining said requested Order. In support of this motion, Defendants show the Court as follows:

Interrogatories

On March 24, 2017, Defendants, Carolina Properties Holdings, LLC and Walter W. Parker, IV served their First Interrogatories and First Requests for Production on Plaintiff making the responses due no later than April 24, 2017. [See Exhibits A-B].

Plaintiff has failed or refused, and continues to fail or refuse to respond to Defendants' discovery requests and such responses are past due. Plaintiff has not communicated anything

upon which he wishes to claim privilege. Furthermore, Plaintiff's lack of cooperation in discovery is preventing the Defendants from properly defending the matter against Plaintiff.

Deposition

Defendant's undersigned counsel attempted to schedule the deposition of Allan Hill. On or about April 5, 2017, Allan Hill was personally served with the deposition notice and subpoena to appear April 18, 2017 at the LeGrand Law Firm in Greenville, SC. On or about April 11, 2017 Defendants conceded to postpone the deposition because Allan Hill personally retained separate counsel in response to the Notice of Deposition and Subpoena and the new counsel requested additional time to become familiar with the case. Since that time, Plaintiff has refused to submit to deposition. Furthermore, Charles LeGrand represented to the court on January 26, 2017 that Allan Hill withdrew as an attorney of record to serve as a witness in the litigation. However, Plaintiff claims that Allan Hill is an attorney of record in this case.

Affirmation of Rule 11(a)

Pursuant to Rule 11(a), SCRCF, undersigned counsel for the Defendants further affirms that he communicated with opposing counsel prior to the filing of this Motion in a good faith effort to resolve this matter. Efforts were unavailing and no responses have been received as of the date of the signing of this motion.

Conclusion

Accordingly, Defendant respectfully requests an Order Pursuant to Rule 37(a)(1) and Rule 37(d), SCRCF, compelling Plaintiff to fully and in a timely manner, respond to Defendants' First Interrogatories and First Request for Production, to submit to deposition, and requiring Plaintiff to pay the attorney's fees and expenses incurred by Defendants in obtaining the order

unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

RESPECTFULLY SUBMITTED,

s/ Max T. Hyde, Jr.

Max T. Hyde, Jr. (SC Bar # 17014)

Ryan E. Gaylord (SC Bar # 101946)

HYDE LAW FIRM, P.A.

753 E. Main St., Suite One

Spartanburg, SC 29302

T: (864) 804-6330

F: (864) 804-6449

max@maxhydelawfirm.com

ryan@maxhydelawfirm.com

May 26, 2017

Spartanburg, South Carolina

ATTORNEYS FOR DEFENDANTS,
CAROLINA PROPERTIES HOLDINGS,
LLC AND WALTER W. PARKER, IV

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO FILE
	)	ANSWER TO AMENDED
	)	COMPLAINT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 15, SCRCP, Defendants, Carolina Properties Holdings, LLC, and Walter W. Parker, IV, hereby respectfully ask this Court for leave to file an Answer to Amended Complaint in the above captioned matter asserting additional counterclaims and defenses.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Branch Banking and Trust Company (herein after "BB&T"), initiated this foreclosure in 2011. At that time, Defendants engaged in settlement negotiations with both BB&T and a third-party that is now the current Plaintiff, Super Suds, LLC. As a result of negotiations, Super Suds, LLC agreed to purchase BB&T's underlying promissory note and mortgage from BB&T and accepted a deed-in-lieu of foreclosure from Defendants Carolina Properties Holdings, LLC and Walt W. Parker. A Consent Order Substituting Parties was filed on October 31, 2011, substituting Super Suds, LLC for BB&T. However, Super Suds, LLC's claims against the Defendants were not dismissed as the parties agreed upon when Carolina

Properties Holdings and Walt W. Parker delivered a deed-in-lieu of foreclosure. Five years later, on August 9, 2016, Super Suds, LLC filed an Amended Lis Pendens providing the Defendants notice that claims were not dismissed and that the foreclosure would proceed. Defendants now move for leave from the Court to file an answer to the Amended Complaint and to raise defenses against Super Suds, LLC that were not applicable to the original Plaintiff, BB&T.

Facts are substantially different at the present date than when the foreclosure was initiated by BB&T, who is no longer a party. Defendants were not aware that Plaintiff Super Suds, LLC, had not dismissed the foreclosure as agreed when the Defendants delivered the deed in lieu of foreclosure to Allan Hill, the attorney for Super Suds. Defendants Carolina Properties Holdings and Walt Parker were not represented by counsel when they negotiated with BB&T and Super Suds, LLC, in 2011. At the time of Defendants' first answer, Plaintiff Super Suds, LLC had yet to accept the deed-in-lieu of foreclosure, assume possession and control of the underlying real estate to operate its business, and in turn receive substantial income from the operation of the business on the subject property, as it has for the past five (5) years. The false representations from Plaintiff Super Suds, LLC were not yet understood. Defendants now seek to amend their answers to the Amended Complaint to address the intervening transactions and occurrences.

II. STANDARD OF REVIEW

Rule 15(a)(2) provides that in considering a request to amend, the "court should freely give leave when justice so requires." The Court of Appeals provided that, "leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986)). The Court has "wide latitude" to grant a motion to amend. *City of*

Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232, 599 S.E.2d 462, 465 (Ct. App. 2004) (quoting *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997)).

The burden of proof falls on the party opposing the motion. *See Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 22, 431 S.E.2d 587, 590 (1993). The opposing party is prejudiced by “a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Pool v. Pool*, 329 S.C. 324, 328—29, 494 S.E.2d 829, 823 (1998) (citation omitted). The court should grant leave to amend where no proper reason can be found such as bad faith, undue delay, or prejudice. *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 158 (Ct. App. 1988).

III. ARGUMENT

Defendants’ request to add additional counterclaims and defenses to its answer would not prejudice the Plaintiff. Discovery is ongoing and a trial is not scheduled. Defendants’ depositions of key witnesses are not scheduled and, in fact, have been unnecessarily delayed by the Plaintiff. Plaintiff will have ample time to reply to additional matters and to prepare to try this case, if necessary. Furthermore, Defendant is on notice of the basis of the defenses and counterclaims because Defendants’ counsel communicated with Plaintiff’s counsel to ask for consent to file an amended Answer. Finally, Defendants will be substantially prejudiced if not allowed to assert the defenses against the successor to the original plaintiff. Most of these defenses arose during negotiations for the sale of the note and mortgage to Super Suds, LLC, after Super Suds, LLC purchased the note and mortgage, and when Super Suds accepted a deed in lieu of foreclosure and assumed control of the subject property.

Therefore, this Court should grant Defendants’ notion because no prejudice will occur to the plaintiff. Further, the Defendants will suffer irreparable damage if not allowed to assert all of the defenses and counterclaims available to them.

IV. AFFIRMATION RULE 11(a)

Pursuant to Rule 11(a), SCRCP, undersigned counsel for the Defendants further affirms that communication with opposing counsel prior to the filing of this Motion would serve no useful purpose to resolve this matter. Efforts to confer on related issues were unavailing as of the date of the signing of this motion.

V. CONCLUSION

Movants acted without undue delay and in good faith to seek leave from the Court to file the answer to Amended Complaint and to add additional counterclaims and defenses. This motion is not being filed for any other improper purpose. Granting this motion would not prejudice the Plaintiff; however, if not granted permission to answer the Amended Complaint Defendants will be prevented from pursuing relevant claims against the successor Plaintiff, Super Suds, LLC.

For the reasons set forth herein and in the hearing on this matter, Defendants respectfully request that the Court enter an order granting this motion and allowing Defendants leave to file its Answer to Amended Complaint to assert additional counterclaims and affirmative defenses against Plaintiff.

RESPECTFULLY SUBMITTED,

s/ Barbara Brunson
Barbara E. Brunson
LAW OFFICE OF BARBARA E. BRUNSON, LLC
SC Bar No.: 0012940
P.O. Box 50943

Columbia, SC 29250
T: (803) 799-0425
F (877) 310-8766
barbara@brunsonlawsc.com

s/ Max T. Hyde Jr.
Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
HYDE LAW FIRM, P.A.
753 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330
F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANTS, CAROLINA
PROPERTIES HOLDINGS, LLC AND WALTER W.
PARKER, IV

June 14, 2017

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	MEMORANDUM IN
	)	OPPOSITION TO MOTION TO
vs.	)	COMPEL
	)	
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	C.A. No.: 2011-CP-42-0500
by and through the U.S. Small Business	)	
Administration, Carolina Clean Greer I,	)	
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
	)	

Super Suds, LLC ("Super Suds"), by and through undersigned counsel, hereby submits this memorandum in opposition to Defendants Carolina Properties Holdings, LLC's and Walter W. Parker, IV's ("Defendants") Motion to Compel, particularly with respect to its request to depose Super Suds' counsel Allan Hill in the above-referenced Action (the "Action").

I. FACTUAL AND PROCEDURAL BACKGROUND

In the Action, Super Suds seeks to foreclose a mortgage (the "Mortgage") which secures a note (the "Note") that it purchased in 2011 (the Note and Mortgage are referred to collectively as the "Loan"). The Mortgage encumbers real property on which a car wash owned by Defendants is situated. The United States of America by and through the Small Business Administration (the "SBA") is a defendant because it holds a subordinate mortgage on the Property; the amount owed to SBA on its mortgage is in excess of \$260,000. Community

Development & Improvement Corporation ("CDIC") is a defendant because it previously held a security interest on equipment installed on the Property; that lien has expired.

Super Suds purchased the Loan from BB&T in 2011; Allan Hill represented Super Suds in connection with the purchase of the Loan. Super Suds was substituted as plaintiff and Allan Hill as plaintiff's counsel in this Action. Defendants claim that the Note and Mortgage were satisfied and extinguished in 2011 through a Deed in Lieu of Foreclosure (DIL) conveying title to Super Suds.

Attempting to resolve the Action, the parties engaged in settlement negotiations in the fall of 2011. As part of those negotiations, the parties agreed that Defendants would execute a DIL to be held in trust while Super Suds tried to negotiate lien releases with the subordinate lienholders. Super Suds was unsuccessful in resolving the subordinate liens, and no valid and binding settlement agreement was entered into and executed by Super Suds and Defendants as required by the South Carolina Rules of Civil Procedure. As such, Super Suds never accepted and recorded the deed, and title remains vested with Defendant, Carolina Properties Holdings, LLC.

Defendants have served written discovery requests in this Action, and have also sought to take the deposition of Hill. The currently pending Motion to Compel, which Defendants filed on May 26, 2017, relates to all of those discovery and deposition requests. Plaintiff has answered Defendants' Interrogatories and responded to Defendants' Request to Produce with the exception of certain confidential financial records. Plaintiff's counsel has corresponded with Defendants' counsel to request consent to a Confidentiality Order to protect plaintiff's financial information; as of the date of this brief Defendants' counsel has not consented to such an Order. Plaintiff has

filed a Motion for Protective Order regarding this issue. The parties agreed to postpone the deposition of Allan Hill and Ken Howard to allow newly retained counsel for Allan Hill to become familiar with the case. Ken Howard does not object to being deposed. The only issue remaining is whether Defendants can depose plaintiff's counsel, Allan Hill.

II. ISSUE

Hill, as counsel of record in the Action, should not be compelled to give deposition testimony in the instant Action.

III. APPLICABLE LAW

A. **Scope of Discovery under the South Carolina Rules of Civil Procedure.**

Rule 26(a), SCRCF, governs the scope of discovery and provides that:

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c) of this Rule.

B. **The South Carolina District Court's Analysis in *Cooper v. Omni Ins. Co.*, 2015 WL 193802 (D.S.C. April 29, 2015).**

In *Omni*, the Court denied defendant's motion to compel the deposition testimony of plaintiff's counsel. That case involved a bad faith claim in which plaintiff's counsel represented a client in an auto/accident tort suit against defendant's insured. At trial, plaintiff obtained a verdict well in excess of defendant's minimum coverage limits. Defendant then assigned his bad faith claim to plaintiff, who then brought suit against Omni Insurance Company ("Omni").

During the bad faith action, Omni's counsel sought the deposition testimony of plaintiff's counsel (who represented plaintiff during the underlying case), arguing that the facts and circumstances surrounding the underlying wreck case called into question the facts and circumstances surrounding the underlying case and the failure of the claim to settle. *Omni*, 2015 WL 193802 at *2. Omni further contended that the settlement communications involving plaintiff's counsel implicated relevant facts and circumstances in the bad faith case. *Id.*

In *Omni*, plaintiff's counsel urged the court to adopt what some consider to be the seminal, although not universally adopted, test regarding the propriety of deposing opposing counsel. *Id.* at *3. See *Shelton v. American Motors*, 805 F.2d 1323 (8th Cir. 1987). In *Shelton*, the court set forth a burden-shifting test favoring the party opposing the deposition. The test requires the party seeking the deposition to show (1) no other means exists to obtain the information than to depose opposing counsel, (2) the information sought is relevant and non-privileged, and (3) the information is crucial to the preparation of the case. *Shelton*, 803 F.2d at 1327. The *Omni* court examined other jurisdictions' approaches to the issue of attorney depositions as well. *Omni*, 2015 WL 193802 at *4-5.

The *Omni* court did not adopt a specific test for deciding the propriety of deposing opposing counsel. Rather, it distilled the question to an analysis of whether the information

sought by opposing counsel was particularly within the knowledge of the would-be deponent. *Id.* at *6.

Omni's counsel argued that plaintiff's counsel should be deposed because she was involved in settlement-related communications with Omni in the underlying wreck case. Plaintiff's counsel countered by asserting she was not the sole source of information regarding any of those communications. *Id.* In fact, she participated in settlement communications directly with Omni. *Id.* The *Omni* court noted that Omni's own employees, other attorneys in the underlying action, or other parties identified in interrogatories, may have been able to provide the information Omni's counsel sought regarding the underlying settlement communications. *Id.* at 7.

Omni further argued that it wanted to get plaintiff counsel's "version of events" regarding the settlement negotiations. The court rebutted that argument by articulating that the applicable test is whether the facts and circumstances surrounding the negotiations were particularly within plaintiff's counsel's knowledge, not Omni's desire to get her version of events. *Id.* The court denied Omni's motion to compel on the grounds Omni did not show there were no other means for obtaining the discovery it seeks. *Id.*

C. Rule 43(k), SCRCP

Rule 43(k), SCRCP, provides as follows:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

IV. ANALYSIS

A. Defendants Fail the *Omni* Test.

Under the *Omni* test, Defendants' Motion to Compel the deposition testimony should be denied. Defendants, although they have not yet articulated what testimony they seek from Hill, cannot show that Hill possesses knowledge of the facts and circumstances of this case that are particularly within his knowledge, or that there are no other means for obtaining the discovery Defendants seek through Hill's deposition testimony. Defendants may not seek Hill's testimony only to get his "version of events." In terms of the analysis in which the Court should engage, this issue squares remarkably with the issue presented to the *Omni* court.

B. Rule 43(k), SCRPC, Obviates the Need for Hill's Deposition Testimony as to the Entry into a Settlement Agreement.

Even without knowing the specific testimony Defendants seek to elicit from Hill, his testimony cannot alter the fact that there was no valid and binding settlement agreement between the parties to this Action. None of the prescribed methods of consummating an agreement affecting the Action were accomplished pursuant to Rule 43(k), SCRPC. Super Suds, acting through its counsel Hill, attempted to negotiate a settlement of the Action by using a DIL. Super Suds was unable to obtain lien releases from junior lienholders and thus never entered into a binding settlement agreement with Defendants.

The purpose of Rule 43(k), SCRPC, is to prevent disputes as to the existence and terms of agreements regarding pending litigation. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). No agreement is binding unless one of the conditions of Rule 43(k), SCRPC, is met. *Id.* Thus, even if the parties had reached an agreement-in-principle to resolve the Action, which Super Suds denies, the agreement was never

given legal effect under Rule 43(k), SCRCF. Hill's testimony certainly is not required to prove the lack of a binding settlement agreement.

V. CONCLUSION

Because Hill's testimony as to the facts and circumstances sought to be elicited may be obtained from other witnesses or parties to the Action, and because his testimony is unnecessary to the determination of whether a valid settlement agreement was affected by the parties, the Court should deny Defendants' Motion to Compel Hill's deposition.

LeGRAND LAW FIRM, LLC
Attorneys for Plaintiff

By: s/ Charles D. LeGrand
Charles D. LeGrand (SC Bar# 009910)
310 Mills Ave., Suite 103
Greenville, SC 29605
(864) 242-6461

Greenville, SC

Date: August 11, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION
	)	TO DEFENDANTS' MOTION TO AMEND
v.	)	
	)	
Carolina Properties Holdings, LLC	)	
Walter W. Parker IV, the United States	)	
Of America by and through the US Small	)	2011-CP-42-0500
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

Super Suds, LLC ("Super Suds"), by and through undersigned counsel, hereby submits this Memorandum in Opposition to defendants', Carolina Properties Holdings, LLC's ("CPH") and Walter W. Parker, IV ("Parker"), Motion to Amend, in the above-referenced Action (the "Action").

I. FACTUAL AND PROCEDURAL BACKGROUND

This case was filed in 2011 by Branch Banking and Trust Company ("BB&T"). CPH and Parker filed an answer and counterclaim (Parker filed this pleading on behalf of CPH even though Parker is not a South Carolina licensed attorney). Parker and CPH, through their attorney, Leon Jones, negotiated with BB&T to resolve their obligations. As a result of these negotiations, BB&T agreed to sell the loan to Super Suds, LLC ("Super Suds") and waive any deficiency judgment against CPH and Parker; in exchange CPH and Parker agreed to dismiss

their counterclaims with prejudice. Super Suds was substituted as plaintiff, and Allan Hill as plaintiff's attorney, by Order entered October 31, 2011.

CPH executed a deed in lieu of foreclosure which was held in escrow by Alan Hill while Hill attempted to negotiate releases from the subordinate lienholders. Hill's efforts continued into 2012, but he was unable to secure a release of the subordinate liens, so Super Suds did not accept delivery of the deed. Super Suds is the owner and holder of the note and mortgage given by CPH; the debt owed to Super Suds now exceeds \$700,000.

II. LAW

Rule 15(a), South Carolina Rules of Civil Procedure, provides that a party may amend his pleading only by leave of the court, and leave shall be freely given when justice so requires and does not prejudice any other party. The prejudice referred to in Rule 15 is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits which the party would not have faced if the amended claim had been included in the original pleading. Patton v. Miller, Op No. 27730, App Case No. 2015-002135 (S.C., filed July 26, 2017). Stating that South Carolina Rule 15 is substantially the same as the Federal Rule, the Court in Patton quoted from a United States Supreme Court case, Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227 (1962) as follows:

In the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be freely given.

In the Patton case, the court noted that the record did not contain a basis for a finding of prejudice because the defendants did not argue prejudice and the circuit court did not conduct a prejudice analysis. The Court found that there was no new issue presented by Patton's proposed amendment therefore the amendment would cause no disadvantage to the defendants and therefore there was no prejudice. Id p. 16.

III. ANALYSIS

Defendant's motion states that the "[f]acts are substantially different at the present date than when the foreclosure was initiated by BB&T..." Actually the facts giving rise to the underlying cause of action are exactly the same as when the case was filed in 2011. Defendants' motion also states that CPH and Parker were not represented by counsel when they negotiated with BB&T. This is also not true; CPH and Parker were represented by Leon Jones and Staci Close of the law firm of Jones and Walden. Defendants' motion states that certain false representations by Super Suds were not yet understood at the time of defendants' first answer, but does not allege what facts defendants' think may have been false. Furthermore defendants have not stated any new facts or outlined any causes of action they propose to allege against the plaintiff.

To delay the case further by allowing defendants to amend their answer would seriously prejudice the plaintiff because the plaintiff, by purchasing the loan from BB&T, played an integral role in obtaining a waiver of the deficiency judgment against CPH and Parker. For plaintiff to now be required to litigate new claims would be prejudicial to the plaintiff and grossly inequitable. CPH and Parker have had 6 years to raise these matters.

Any new matters which defendants could allege would be futile because they would not change the outcome for defendants. Plaintiff's case is based on a note and mortgage which defendants do not deny. Defendants also do not deny that the note and mortgage are in default. Any new matters would not change the underlying facts of plaintiff's cause of action: 1) plaintiff holds a note and mortgage (which the defendants do not deny signing), 2) defendants are in default under the note and mortgage, and 3) plaintiff is entitled to foreclose its mortgage. Answering new claims or defenses would require more time and more money by plaintiff with no benefit for defendants.

Any new defenses or counter-claims alleged by CPH and Parker would be futile, and answering these new claims would be prejudicial to plaintiff. There can be no prejudice to CPH or Parker by proceeding with the case.

IV. CONCLUSION

Defendants' motion to amend pursuant to Rule 15(a) SCRPC should be denied because allowing defendants to amend now would require plaintiff to investigate and defend a new claim which at this point would be seriously present prejudicial to plaintiff. Furthermore, any claim that the defendants could bring in this now six-year-old foreclosure case would be futile because the rights of the parties were fixed in 2011. The defendants, CPH and Parker, agreed to waive their counterclaims against the original plaintiff, BB&T. Nothing that the defendants could plead would change the facts that the plaintiff holds a note and mortgage signed by CPH, and that CPH was in 2011, and is still, in default on the note and mortgage. Plaintiff is entitled to foreclose absent proof of any affirmative defense originally raised in defendants' original answer. Finally, defendants' attorney did not give any indication in his motion or prior to the

hearing of any new facts or causes of action which could defeat the plaintiff's foreclosure case. Requiring plaintiff and the court to guess at defendants' supposed new facts or theories is prejudicial and could only be interposed for the purpose of delaying the inevitable conclusion of an otherwise straightforward foreclosure case.

LeGRAND LAW FIRM, LLC
Attorneys for the Plaintiff

s/Charles D. LeGrand
Charles D. LeGrand (SC Bar #009910)
310 Mills Avenue, Suite 103
Greenville, SC 29605
(864) 242-6461

Greenville, SC

Date: August 11, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	MOTION FOR DECLARATION
	)	UNDER RULE 43(k), SCRCF
vs.	)	
	)	C.A. No.: 2011-CP-42-0500
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	
by and through the U.S. Small Business	)	
Administration, Carolina Clean Greer I,	)	
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
	)	

Plaintiff Super Suds, LLC ("Super Suds"), by and through its undersigned counsel, hereby moves the Court for a Declaration Under Rule 43(k), SCRCF, that several defenses and counterclaims of Defendants Carolina Property Holdings, LLC's ("CPH") and Walter W. Parker, IV's ("Parker") fail because there is no settlement agreement between Super Suds and CPH and Parker enforceable under Rule 43(k), SCRCF. Super Suds requests that the Court conduct a hearing under Rule 43(k), and determine that there is no enforceable settlement agreement to support the following defenses and counterclaims: CPH's and Parker's Third Defense (Merger of Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (South Carolina Unfair Trade Practices Act), Ninth Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), Fifteenth Defense (Accord and Satisfaction), and any other defense CPH and Parker contend are based upon an alleged settlement agreement. All of these defenses and counterclaims depend upon the existence of a valid and binding settlement agreement between the parties. Defendants CPH and Parker cannot

demonstrate the existence of a settlement agreement that satisfies the requirements of Rule 43(k), SCRCF.

On February 2, 2011, Branch Banking & Trust Company ("BB&T") filed the above-captioned action (the "Action") to foreclose a mortgage given by CPH (the "Mortgage") as to secure a CPH note (the "Note") (the Note and Mortgage are referred to collectively as the "Loan"). BB&T was represented by Weyman Carter of McNair Law Firm, P.A. On April 21, 2011, Parker filed an Answer and Counterclaim *pro se*, and purportedly on behalf of CPH. The Mortgage encumbers real property on which a car wash owned by CPH is situated (the "Property"). The United States of America, by and through the Small Business Administration (the "SBA"), is a defendant, because it holds a subordinate mortgage on the Property. CDIC is a defendant, because it previously held a security interest on equipment installed on the Property; that lien has expired.

Super Suds purchased the Loan from BB&T in 2011; Allan Hill represented Super Suds in connection with the purchase of the Loan. *See* Order Denying Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition, September 1, 2017 (the "September 1 Order"). On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T. *Id.* On October 31, 2011, Super Suds was substituted for BB&T as plaintiff, and Allan Hill was substituted as plaintiff's counsel in this Action. *Id.* On August 9, 2016, Charles D. LeGrand appeared as co-counsel with Hill for Super Suds, and both Hill and LeGrand continue to represent Super Suds in this action. *Id.*

On December 6, 2017, CPH and Parker filed and served an Amended Answer and Counterclaims, to which Super Suds replied on January 10, 2018. CPH and Parker claim, *inter alia*, that the Note and Mortgage were satisfied and extinguished in 2011 through delivery to Hill

of a Deed in Lieu of Foreclosure ("DIL") allegedly conveying title to the Property to Super Suds. *Id.*

Super Suds contends as follows: (1) Hill communicated with Parker in 2011 concerning the possibility of dismissing Super Suds' Amended Complaint, if SBA and CDIC would release their respective claims and liens, in which event and if certain other steps were taken, Super Suds could accept a DIL from CPH and receive clear title to the Property; (2) Hill prepared a DIL for execution by CPH, which CPH executed and delivered to Hill in trust, pending the possible resolution of the subordinate liens; (3) Hill accepted delivery of the DIL in trust, and continues to hold it in trust in connection with the possible settlement of certain claims in this Action, but has not been able to obtain resolution of the remaining subordinate lien of the SBA; (4) all of Hill's actions and communications in this Action have been on behalf of Super Suds as one of its attorneys of record; and (5) Super Suds and its attorneys have not made a written or other settlement agreement with CPH or Parker, which is enforceable under Rule 43(k), SCRCF. Accordingly, Super Suds is entitled to continue prosecuting this Action. *Id.*

Rule 43(k), SCRCF, provides as follows:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCF.

As this court has already ruled: "The very purpose of Rule 43(k), SCRCF, is to prevent disputes as to the existence and terms of agreements regarding pending litigation. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). No agreement affecting this proceeding is binding unless one of the conditions of Rule 43(k),

SCRCP, is met. *Id.* CPH and Parker have not contended that a consent order or stipulation in open court proves their settlement contention, and they have not yet presented to this Court a written settlement agreement.” (September 1 Order at p.4).

Based on South Carolina Rule of Civil Procedure 43(k), supporting case law, prior orders of the Court in this case, supporting memoranda of law to be submitted to the Court, and oral arguments to be conducted on this Motion, Plaintiff Super Suds is entitled to a declaration that it has no settlement agreement with CPH and Parker that is enforceable under Rule 43(k) to support any of CPH and Parker’s defenses and counterclaims, including without limitation the following: Third Defense (Merger of Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (South Carolina Unfair Trade Practices Act), Ninth Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), and Fifteenth Defense (Accord and Satisfaction).

Respectfully submitted,

LEGRAND LAW FIRM, LLC

s/Charles D. LeGrand

Charles D. LeGrand (SC Bar #9910)
310 Mills Avenue, Suite 103
Greenville, SC 29605
(864) 242-6461

S. Allan Hill

s/S. Allan Hill

S. Allan Hill (SC Bar #10256)
819 E. North Street
Greenville, SC 29601
(864) 242-4995

Attorneys for Plaintiff Super Suds, LLC
Greenville, SC
April 18, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiff	)	MOTION FOR DECLARATION
	)	UNDER RULE 43(k), SCRCF
vs.	)	
	)	C.A. No.: 2011-CP-42-0500
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	
by and through the U.S. Small Business	)	
Administration, Carolina Clean Greer I,	)	
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
	)	

Plaintiff Super Suds, LLC ("Super Suds"), by and through its undersigned counsel, hereby submits this Memorandum in Support of its Motion for Declaration Under Rule 43(k), SCRCF, that several of Defendants' Carolina Property Holdings, LLC's ("CPH") and Walter W. Parker, IV's ("Parker") defenses and counterclaims fail because there is no settlement agreement between Super Suds and CPH and Parker enforceable under Rule 43(k), SCRCF. Super Suds has requested that the Court conduct a hearing under Rule 43(k), and determine that there is no enforceable settlement agreement to support the following defenses and counterclaims: CPH's and Parker's Third Defense (Merger of Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (South Carolina Unfair Trade Practices Act), Ninth Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), Fifteenth Defense (Accord and Satisfaction), and any other defense CPH and Parker contend are based upon an alleged settlement agreement. All of these defenses and counterclaims depend upon the existence of a valid and binding settlement agreement between the parties. Defendants

CPH and Parker cannot demonstrate the existence of a settlement agreement that satisfies the requirements of Rule 43(k), SCRPC.

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 2, 2011, Branch Banking & Trust Company (“BB&T”) filed the above-captioned action (the “Action”) to foreclose a CPH mortgage (the “Mortgage”) which secures a CPH note (the “Note”) (the Note and Mortgage are referred to collectively as the “Loan”). BB&T was represented by attorney Weyman Carter of McNair Law Firm, P.A. On April 21, 2011, Parker filed an Answer and Counterclaim *pro se*, and purportedly on behalf of CPH. The Mortgage encumbers real property on which a car wash owned by CPH is situated (the “Property”). The United States of America, by and through the Small Business Administration (the “SBA”), is a defendant, because it holds a subordinate mortgage on the Property. CDIC is a defendant, because it previously held a security interest on equipment installed on the Property; that lien has expired.

On December 6, 2017, CPH and Parker filed and served an Amended Answer and Counterclaims, to which Super Suds replied on January 10, 2018.

Super Suds purchased the Loan from BB&T in 2011; Allan Hill represented Super Suds in connection with the purchase of the Loan. *See* Order Denying Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition, September 1, 2017 (the “September 1 Order”). On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T. *Id.* On October 31, 2011, Super Suds was substituted for BB&T as plaintiff, and Allan Hill was substituted as plaintiff’s counsel in this Action. *Id.* On August 9, 2016, Charles D. LeGrand appeared as co-counsel with Hill for Super Suds, and both Hill and LeGrand continue to represent Super Suds in this action. *Id.*

CPH and Parker claim, *inter alia*, that the Note and Mortgage were satisfied and extinguished in 2011 through delivery to Hill of a Deed in Lieu of Foreclosure ("DIL") allegedly conveying title to the Property to Super Suds. *Id.* Super Suds contends as follows: (1) Hill communicated with Parker in 2011 concerning the possibility of dismissing Super Suds' Amended Complaint, if SBA and CDIC would release their respective claims and liens, in which event and if certain other steps were taken, Super Suds could accept a DIL from CPH and receive clear title to the Property; (2) Hill prepared a DIL for execution by CPH, which CPH executed and delivered to Hill in trust, pending the possible resolution of the subordinate liens; (3) Hill accepted delivery of the DIL in trust, and continues to hold it in trust in connection with the possible settlement of certain claims in this Action, but has not been able to obtain resolution of the remaining subordinate lien of the SBA; (4) All of Hill's actions and communications in this Action have been on behalf of Super Suds as one of its attorneys of record; and (5) Super Suds and its attorneys have not made a written or other settlement agreement with CPH or Parker, which is enforceable under Rule 43(k), SCRCPP. Accordingly, Super Suds is entitled to continue prosecuting this Action. *Id.*

II. LAW/ARGUMENT

Rule 43(k), SCRCPP, provides as follows:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCPP.

The very purpose of Rule 43(k), SCRCPP, is to prevent disputes as to the existence and terms of agreements regarding pending litigation. *Farnsworth v. Davis Heating & Air*

Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). No agreement affecting this proceeding is binding unless one of the conditions of Rule 43(k), SCRCp, is met. *Id.* CPH and Parker have not contended that a consent order or stipulation in open court proves their settlement contention. As this Court has found, CPH and Parker have not yet presented to this Court a written settlement agreement. (September 1 Order).

The record testimony in this action demonstrates that there was no agreement in principle to settle the foreclosure action, much less a Rule 43(k)-compliant settlement agreement. The following exchange from Ken Howard's (Super Suds's principal) deposition illustrates the lack of agreement between the parties:

Q. What were your goals for this deal in purchasing the note? What was your intended outcome?

A. What was my what?

Q. Your goal or your intended outcome.

A. Get a clear title on it.

(Deposition of Ken Howard, p. 20, ll. 2-6).

When asked about his awareness of a Deed in Lieu of Foreclosure, Mr. Howard replied, "Never heard of one." (Howard Depo., p. 23, l. 11). Mr. Howard also stated that he was pursuing this lawsuit because he wanted a "clear deed on the property." (Howard Depo., p. 37, l. 6).

Parker's and CPH's position in this case is that the unilateral execution and transmission of the DIL to Super Suds's attorney constituted a settlement of the foreclosure action. Parker's deposition testimony belies his assertion. Parker identified an email from himself to Hill during the course of the negotiations with BB&T. Parker Depo., p. 91, l. 1 – p.99. l. – 10. Parker stated

to Hill "I want to memorialize the verbal agreement we have that ...Super Suds ... will not pursue a deficiency judgment against Carolina Properties or me. Also, I heard you say that ... Super Suds... would not be filing a 1099 for the forgiveness of debt." (Parker depo. p. 92. l. 1 – 2). Conspicuously absent are any terms relating to the payment, assumption, or satisfaction of the SBA loan or dismissal of this foreclosure action, terms which Parker now claims were part of some un-written agreement. Parker's own statements in this email assume that this foreclosure action would continue to the normal conclusion of judgment of foreclosure and sale, which is why he was concerned that Super Suds, as the new noteholder, not seek a deficiency judgment against him.

Parker identified another email from himself to plaintiff's counsel, Allan Hill, which occurred prior to the Deed in Lieu being signed. (Parker Depo, p.98, l.25 – p.99, l. 12). In this email from Parker to Hill, Parker gave Hill contact information for certain individuals with the SBA, and stated "Greg Dixon Lead Loan Specialist, was the individual who said they would take \$2000 to go away." (Parker Depo. p. 99, l. 11-12). With this information Parker was either helping Hill negotiate a release of the SBA loan or misleading Hill about whether the second mortgage could be released. Parker mailed the deed in lieu to Hill's office during the time Hill was trying to resolve the second mortgage with SBA.

Parker and CPH did not, however, deliver any other documents that are required and/or customary in consummating a deed in lieu of foreclosure transaction. For example, they did not deliver to Super Suds an estoppel certificate, a FIRPTA affidavit, a certificate of tax compliance, a LLC certificate of good standing, or LLC resolutions and certificates approving the transaction. Moreover, there is no evidence of a title commitment or policy issued to Super Suds in

connection with the transaction. Lastly, and most importantly, there was no executed settlement agreement among the parties.

Parker admits much of the foregoing in his deposition. Consider the following exchange between counsel for Super Suds and Parker:

Q. Did you sign an affidavit in conjunction with this deed in lieu of foreclosure that referenced the other liens on this property?

...

A. I don't remember.

Q. Did you sign any other document or affidavit that related to the value of the property?

A. Possibly.

Q. Do you have that document?

A. No.

Q. -was a single asset entity? Did you obtain a certificate of compliance from the Department of Revenue – South Carolina Department of Revenue for this transaction?

A. I don't remember if I did or not.

Q. Did you prepare an LLC resolution that would have authorized you, as a manager of this LLC, to convey this property?

A. No.

Q. Was there an order of dismissal that you signed, or agreed to, as part of this deed in lieu of foreclosure transaction?

A. No.

(Deposition of Walter Parker, pp. 101, ll. 15-17, 22, 23-24; p. 102, ll. 1, 3-4, 22-25; p. 103, ll. 1-12)

Finally, and most importantly, Parker conceded that he has never signed a settlement agreement with Super Suds for this case, responding “No” when asked, “Is there a settlement agreement that you have signed with Super Suds for this case?” (Parker Depo., p. 103, ll. 17-20).

Contrast Parker’s and CPH’s position regarding settlement with Super Suds against the resolution it achieved with BB&T. In connection with the sale of its note to Super Suds, BB&T required the execution of a Settlement Agreement as a condition precedent to the sale (the “BB&T Settlement Agreement”). (Parker Depo. Exhibit 24). The BB&T Settlement Agreement specifically stated the terms of the settlement between BB&T and Parker and CPH. It required Parker and CPH to dismiss their counterclaim against BB&T. It also specifically stated that BB&T was not releasing its claims against Parker and CPH, but that the agreement to sell its note to Super Suds was sufficient consideration for the BB&T Settlement Agreement. The BB&T Settlement Agreement was executed by BB&T, Parker, and CPH, which provided the certainty regarding the terms of the settlement that the *Farnsworth* court stated is the purpose of Rule 43(k), SCRCP.

III. CONCLUSION

Based on Rule 43(k), SCRCP, supporting case law, prior orders of the Court in this case, this memorandum of law, and oral arguments to be conducted on this Motion, Plaintiff Super Suds is entitled to a declaration that it has no settlement agreement with CPH and Parker that is enforceable under Rule 43(k) to support any of CPH and Parker’s defenses and counterclaims that depend upon the existence of a valid and binding settlement agreement between the parties, including without limitation the following: Third Defense (Merger of Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (South Carolina Unfair

Trade Practices Act), Ninth Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), and Fifteenth Defense (Accord and Satisfaction).

Respectfully submitted,

LEGRAND LAW FIRM, LLC

s/Charles D. LeGrand
Charles D. LeGrand (SC Bar #9910)
LeGrand Law Firm, LLC
310 Mills Avenue, Suite 103
Greenville, SC 29605
(864) 242-6461

s/ S. Allan Hill
S. Allan Hill (SC Bar #10256)
819 E. North Street
Greenville, SC 29601
(864) 242-4995

Attorneys for Plaintiff Super Suds, LLC

Greenville, SC
July 9, 2018

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Super Suds, LLC,

Plaintiff,

IN THE COURT OF COMMON PLEAS

**DEFENDANT CAROLINA
PROPERTIES HOLDINGS, LLC, AND
WALTER W. PARKER, IV'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
DECLARATION UNDER RULE 43 (k),
SCRCP**

vs.

C.A. NO: 2011-CP-42-0500

Carolina Properties Holdings, LLC,
Walter W. Parker, IV, the United States of
America by and through the US Small
Business Administration, Carolina Clean
Greer I, LLC and Community Development
& Improvement Corporation,

Defendants.

COMES NOW, DEFENDANTS, Carolina Properties Holdings, LLC (hereinafter "CPH"), and Walter W. Parker, IV (hereinafter "Mr. Parker") (collectively "Defendants"), by and through undersigned counsel, and responds in opposition to Plaintiff's Motion for Declaration Under Rule 43 (k), SCRCP, as follows:

I. INTRODUCTION

Plaintiff, Super Suds, LLC (hereinafter "Plaintiff" or "Super Suds") contends that several defenses and counterclaims of Defendants fail because there is no settlement agreement between Super Suds, LLC and Defendants which is enforceable under Rule 43 (k), SCRCP. Plaintiff claims the existence of such settlement agreement is essential to defenses and counterclaims, specifically but not limited to: Third Defense (Merger of

Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), and Fifteenth Defense (Accord and Satisfaction).

Defendant asserts Rule 43 (k), SCRCF, does not apply to the agreement entered into by Super Suds and the pro se Defendants. Nonetheless, Super Suds and the Defendants did enter into a settlement agreement with material terms which have been carried into effect. The defenses and counterclaims are not dependent upon the existence of a Rule 43 (k) settlement agreement, and such defenses and counterclaims do not fail because they can be supported with sufficient evidence as equity should provide.

II. STATEMENT OF FACTS

In 2005, Carolina Properties Holdings took out a commercial loan with Branch Banking and Trust Company (hereinafter “BB&T”) to begin a car wash and finance the real estate purchase. BB&T and CPH signed a note (hereinafter the “Note”) secured by a mortgage (hereinafter the “Mortgage”), both guaranteed by Mr. Parker. *See* Exhibit A of the Summons and Complaint filed herein. Additionally, the United States of America, by and through the Small Business Administration (hereinafter “SBA”) holds a mortgage to secure a promissory note (collectively hereinafter “SBA Loan”), entered into and modified in 2007. Community Development and Improvement Corporation (hereinafter the “CDIC”) is the holder of an expired lienholder of a security interest as to equipment fixed to the Property. On February 2, 2011, BB&T filed the above-captioned foreclosure action against CPH, as the borrower, and Mr. Parker personally, as the guarantor. BB&T named SBA and CDIC as junior lienholders.

To avoid foreclosure and satisfy debts related to the property, Mr. Parker came to an agreement with both BB&T and the present Plaintiff, Super Suds. *See* Affidavit of Walt W. Parker IV filed herein August 4, 2018. Super Suds would purchase the Note from BB&T, and BB&T would sell the Note in exchange for Mr. Parker execution of a Settlement and Mutual Release of Claims as to BB&T. *See id.* Super Suds would also receive an executed Deed in Lieu of Foreclosure as to the Property in exchange for the opportunity to purchase the Note. *See id.*

In 2011, BB&T was represented by Weyman Carter of McNair Law Firm, P.A. Super Suds was and continues to be represented by Allan Hill. CPH and Mr. Parker were represented by Leon Jones of Jones & Walden during the initial stages of the BB&T foreclosure; however, Leon Jones ceased representation during the negotiations. CPH and Mr. Parker were not represented at the final agreement between Ken Howard and the Defendants. CPH and Mr. Parker did not retain another attorney until 2016 hiring Hyde Law Firm, P.A.

On August 18, 2011, Super Suds purchased the priority BB&T loan for \$200,000. At that time, the loan balance was \$601,427.10, and Super Suds was aware of both junior lienholders, the SBA and CDIC. On September 20, 2011, Mr. Parker communicated with Allan Hill via email that he planned to execute a Settlement Agreement and Mutual Release of Claims with BB&T, and sought to confirm that Ken Howard, Super Suds, LLC and/or the new note holder would not pursue a deficiency judgment against CPH or him personally. *See* E-mail Correspondence between Walt Parker and Allan Hill dated September 20, 2011, attached hereto as Exhibit A. Allan Hill responded that Mr. Parker's understanding was correct. *See id.* On September 23, 2011, as a condition of the BB&T

note sale, Mr. Parker and CPH signed a Settlement and Mutual Release of Claims with BB&T, effective September 19, 2011. On October 27, 2011, CPH and Parker dismissed their counterclaims.

Allan Hill drafted a Deed in Lieu of Foreclosure, which he sent to Mr. Parker for execution. On October 24, 2011, Walt Parker executed the Deed in Lieu of Foreclosure (hereinafter "DIL") and delivered the DIL to Allan Hill's office. *See* Affidavit of Walt W. Parker IV filed herein August 4, 2018; *see also* Deed-in-Lieu of Foreclosure, attached hereto as Exhibit B. According to the DIL, Super Suds received absolute title to the Property with consideration for this deed being the satisfaction and cancellation of an indebtedness from the Grantor. Super Suds received title upon delivery and no statement ever indicated that the DIL was held in trust by Allan Hill.

On October 31, 2011, the Circuit Court signed a Consent Order Substituting Parties Pursuant to Rule 25(c) and Substituting Counsel, which was filed by BB&T and signed by attorneys for BB&T, Super Suds, SBA and CDIC. This Consent Order was not signed by CPH or Mr. Parker. Accordingly, Super Suds stepped into the shoes of BB&T as plaintiff in the above-captioned matter. Then all action related to the matter ceased.

At approximately the same time in 2011, CPH and Mr. Parker surrendered the Property to Super Suds. Super Suds took possession of the Property and has operated its business there since that time. *See* Affidavit of Walt W. Parker IV filed herein August 4, 2018. Ken Howard believed Super Suds owned the Property from 2011 until 2016 when questions arose. Mr. Howard's deposition admitted as follows:

- Q. Who do you believe is the owner of the property?
- A. I don't know. I thought I was.

Q. Until 2016?

A. Well, that's when the questions started flying. Yes ma'am.

Dep. of Ken Howard, 59:13 to 60:18, attached hereto as Exhibit C.

CPH and Mr. Parker were not aware of any further action in the above-captioned matter until 2016. *See* Affidavit of Walt W. Parker IV filed herein August 4, 2018. In 2016, notice from the Department of Treasury of Mr. Parker's debt to the SBA triggered awareness of this continued foreclosure action. *See id.* Around the same time, Mr. Parker received notice of an Amended Lis Pendens filed by Super Suds, and Notice of Appearance of Charles LeGrand retained to represent Super Suds, both filed August 3, 2016. *See id.* Plaintiff continues to seek foreclosure.

Defendants contend that Super Suds has no right to foreclosure because Defendants tendered the DIL in full satisfaction of the obligations under the Note and mortgage. Defendants also asserted the aforementioned defenses and counterclaims accordingly.

Plaintiff contends that no agreement affecting this proceeding is binding unless one of the conditions of Rule 43 (k), SCRPC, is met. Defendants dispute that Rule 43 (k), SCRPC, applies.

III. Rule 43(k), SCRPC

Rule 43(k), SCRPC, "Agreements of Counsel" states:

No agreement *between counsel* affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation *signed by counsel* and entered in the record, or unless made in open court and noted upon

the record, or reduced to writing and signed by the parties *and their counsel*.

Settlement agreements shall be handled in accordance with Rule 41.1, SCRCF.

South Carolina Rules of Civil Procedure, Rule 43 (k) (emphasis added).

The Supreme Court has ruled on the applicability of Rule 43(k) in cases that involve represented parties, and upheld the burden of counsel to place settlement agreements on the record.

In *Farnsworth v. Davis Heating*, 627 S.E.2d 724, 726, 367 S.C. 634 (S.C., 2006), the Supreme Court of South Carolina discussed the applicability of Rule 43(k). Farnsworth brought an action for breach of contract and negligence. Farnsworth's attorney sent a settlement letter, which Davis' attorney signed. Farnsworth rescinded the agreement, and Davis filed a motion to compel. The Court stated, "Under our general rules of construction, the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* (quoting *State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002)). "In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." *Id.* (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). Ultimately, the Court required strict compliance with the requirements of Rule 43 (k) "because Rule 43 (k) plainly applies to all settlement agreements signed by counsel," even where both parties admitted there was a duly executed written agreement. *Id.* The Court rejected the argument that Rule 43 (k) does not apply where the agreement is admitted or has been carried into effect, again emphasizing that Rule 43 (k) applies to all settlement agreements signed by counsel. *Id.* (distinguishing *Ashfort Corp.*, 318 S.C. at 494, 458

S.E.2d at 534 n. 1) (*rejecting* reliance on Court Rule 14, which was the predecessor to Rule 43 (k)).

Farnsworth does not reverse *Ashfort* because the Supreme Court held Rule 43(k) applicable in both cases. In *Ashfort Corporation v. Palmetto Construction Group, Inc.*, 458 S.E.2d 533, 318 S.C. 492 (S.C., 1995), appellants argued that Rule 43(k) was inapplicable because the agreement was entered into between the parties and then confirmed by the parties' counsel. *Id.* The Court stated, "[t]he intent of Rule 43(k) is to require all agreements regarding pending litigation" to meet the conditions of Rule 43(k). *Ashfort*, 458 S.E. at 535, 318 S.C. at 495. Again in *Ashfort*, the parties were represented by counsel, and the agreement confirmed by counsel. *See id.*

In *Galloway v. Regis Corporation*, 481 S.E.2d 714, 716, 325 S.C. 541 (S.C. App., 1996), the Court of Appeals recognized strict compliance with Rule 43(k) resulted in an unfair result. Prior to trial, the attorneys informed the trial court that a settlement agreement was reached after mediation, but no formal settlement agreement was signed. *See id.* at 715. A form order dismissed the case as settled. *See id.* Later, Galloway filed a motion to compel Regis to comply, and the trial court enforced the alleged settlement. *See id.* at 716. The Court of Appeals reversed because there was no evidence of record as to the terms of the settlement agreement. *See id.* The court emphasized that the decision was made primarily to motivate attorneys to protect client's interests by reducing the agreement to writing with material terms and conditions of the agreement. *See id.* at 716-17. Again, the court bases the applicability of Rule 43(k) on the actions of attorneys.

IV. DISCUSSION

A. **Applicability of Rule 43(k)**

Rule 43(k), SCRCF, should not apply to this settlement agreement entered into by the Plaintiff's counsel and Mr. Parker. Rule 43(k), SCRCF, states, "[n]o agreement *between counsel* ... shall be binding unless... reduced to writing and signed by the parties *and their counsel*." Rule 43(k), South Carolina Rules of Civil Procedure. According to rules of statutory construction, rules should be given their plain and ordinary meaning. See *Farnsworth*, 627 S.E.2d at 726, 367 S.C. at 634 (noting the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.) The language of the rule states "between counsel" and includes provisions for written stipulations to be "signed by counsel" or "reduced to writing and signed by the parties and their counsel." The court should interpret Rule 43(k), as governing settlement "Agreements of Counsel" as the rule is titled.

The Supreme Court's discussion of the applicability of Rule 43(k) involves parties that are represented by counsel. See *Farnsworth*, 627 S.E.2d at 726, 367 S.C. at 634 (S.C., 2006) (holding that Rule 43(k) applied to a letter signed by both counsels); see also *Ashfort*, 458 S.E.2d at 535, 318 S.C. at 493 (holding that Rule 43(k) applied to an agreement signed by the parties and confirmed by counsel). In *Galloway*, the Court of Appeals accentuates that compliance with Rule 43(k) is a burden on an attorney to protect his client's interest. See *Galloway*, 481 S.E.2d at 716, 325 S.C. at 547.

The court enforces Rule 43(k) with strict compliance to relieve the court of determining existence and terms of agreements. See *Ashfort*, 458 S.E.2d at 535, 318 S.C.

at 493 (noting the time of the court should not be taken up with such matters). Yet, in this case, the existence and terms of an agreement are plain. The court would waste more time trying to determine an accounting of rents and profits on behalf of Super Suds, which may be next to impossible to do because Super Suds did not keep an accounting. Instead, Super Suds believed itself to be the owner of the property according to the DIL. *See* Deposition of Ken Howard, 50:13-18 (stating Ken Howard believed he owned the property). An agreement, which is evidenced by a DIL signed and delivered by a pro se litigant, is not a case to apply Rule 43(k).

Applying Rule 43(k), which is a rule intended for agreements of counsel, in a case involving a pro se litigant would have an unintended result. Each condition contemplated by Rule 43(k) requires signature by counsel, except agreements “made in open court and noted upon the record.” Rule 43(k), South Carolina Rules of Civil Procedure. Here, if the court sought strict compliance with Rule 43(k), the settlement agreement should have been made in open court and noted upon the record because Defendants had no counsel to sign an agreement. CPH and Mr. Parker had no opportunity to place the agreement on the record. The Defendants believed all actions on its behalf were completed to end the foreclosure action. *See* Affidavit of Walt W. Parker IV filed herein August 4, 2018. The Defendants had signed the Settlement and Mutual Release of Claims with BB&T, and dismissed their counterclaims. They had also delivered the executed DIL to Super Suds via Allan Hill. *See* Affidavit of Walt W. Parker IV filed herein August 4, 2018. Mr. Parker even emailed Allan Hill to memorialize the verbal agreement that Ken Howard, Super Suds, LLC and/or the new note holder will not pursue a deficiency judgment

against Carolina Properties Holdings LLC or him. *See Exhibit A.* Then all legal actions ceased for over four years.

Rule 43(k) should not apply to an agreement negotiated and signed by a pro se litigant. Rule 43(k) seeks to hold attorneys accountable for placing agreements on the record. Super Suds should not benefit from Allan Hill's failure to place the agreement on the record. Instead, Super Suds left this action on the docket from 2011 to 2016 without action, and then sought foreclosure while in possession of the Property and a signed DIL. Therefore, the court should not enter a declaration that Defendant's defenses and counterclaims are not supported by a settlement agreement meeting the requirements of Rule 43 (k), SCRPC because Rule 43 (k) should not apply.

B. Satisfaction of Rule 43(k)

The settlement agreement should not be dependent on meeting the requirements of Rule 43(k). The agreement was not an agreement between counsels, although it did affect the proceedings of pending litigation. The agreement could not be signed by the persons required because Defendants were not represented by counsel. Here, the agreement was reduced to writing and included the e-signature of Walt Parker, and Allan Hill, yet it still does not meeting the requirements of Rule 43 (k) because Parker was not an attorney. Additionally, the DIL of foreclosure was drafted by Allan Hill and signed by Walt Parker, which still does not meet the requirements of Rule 43 (k) because Walt Parker is not an attorney. Mr. Parker had no counsel to sign on his behalf, but he did make all efforts to reduce the agreement to writing and confirm with counsel.

C. Equitable Estoppel

Thus, Super Suds should not be permitted to benefit from its' counsel's failure to strictly comply with Rule 43(k). The parties entered into a settlement agreement sufficient to support Defendant's defenses and counterclaims, and the court should consider the enforceability of the settlement agreement under South Carolina contract law. The settlement agreement was reduced to writing and carried out by the parties sufficiently to prove a meeting of the minds and mutual assent to be bound. The settlement agreement is evidenced by the email messages between Walt Parker and Allan Hill, including electronic signatures, as well as the DIL. Additionally, the agreement between CPH, Mr. Parker, and Super Suds has been carried into effect since 2011.

Super Suds purchased the Note from BB&T. CPH and Mr. Parker signed and filed a Settlement and Mutual Release of Claims as to BB&T. Super Suds received the DIL from CPH, absolute title to the Property, and possession of the Property. Super Suds believed it was the owner of the Property, operated its' business on the Property since 2011, and derived substantial profit thereof. From 2011 until 2016, no action took place in the above-captioned matter of knowledge to the parties. Super Suds has not complied with the terms of the settlement agreement by failing to dismiss the present action. Therefore, the parties have a settlement agreement sufficient to support the Defendant's defenses and counterclaims. Furthermore, the defenses and counterclaims are not dependent upon the existence of a settlement agreement, which meets the requirements of Rule 43(k), SCRCP.

V. CONCLUSION

WHEREFORE, based on the foregoing, supporting case law, supporting memoranda to be submitted, oral arguments, Defendants respectfully request the Court deny Plaintiff's Motion for Declaration Under Rule 43 (k); alternatively declare that Super Suds, LLC and the Defendants entered into an enforceable agreement, and that such agreement is sufficient to support any of CPH and Parker's defenses and counterclaims, specifically but not limited to: Third Defense (Merger of Title), Fourth Defense and Counterclaim (Breach of Contract), Seventh Defense and Counterclaim (Fraud), Tenth Defense and Counterclaim (Unconscionability), and Fifteenth Defense (Accord and Satisfaction); and for such other and further relief as is just and proper.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson

Barbara E. Brunson
LAW OFFICE OF BARBARA E. BRUNSON, LLC
SC Bar No.: 0012940
P.O. Box 50943
Columbia, SC 29250
T: (803) 799-0425
F (877) 310-8766
barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson

Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
Samantha L. Nicholson (SC Bar #102790)
HYDE LAW FIRM, P.A.
753 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330
F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANTS,
CAROLINAPROPERTIES HOLDINGS, LLC AND
WALTER W. PARKER, IV

July 9, 2018

Spartanburg, South Carolina

Exhibit A

**September 20, 2011 Email Correspondence Between Walt Parker
and Allan Hill**

Charles LeGrand

From: Allan Hill <ahill@greenvillelaw.net>
Sent: Friday, September 09, 2016 6:01 PM
To: Charles LeGrand
Subject: FW: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

S. Allan Hill
 Attorney, CPA
 819 E. North St.
 Greenville, SC 29601
 (864)242-4995
 (864)331-3050 Direct Dial
 (864)242-5500 fax
ahill@greenvillelaw.net

From: S. Allan Hill [<mailto:ahill@greenvillelaw.net>]
Sent: Tuesday, September 20, 2011 4:50 PM
To: 'Walter Parker'
Subject: RE: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

Walt,

Your understanding is correct.

S. Allan Hill
 Attorney, CPA
 819 E. North St.
 Greenville, SC 29601
 (864)242-4995
 (864)242-5500 fax
ahill@greenvillelaw.net

From: Walter Parker [<mailto:wwparker4@gmail.com>]
Sent: Tuesday, September 20, 2011 4:13 PM
To: ahill@greenvillelaw.net
Cc: rebecca@greenvillelaw.net
Subject: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

Allen,

I am preparing to execute the Settlement Agreement and Stipulation of Dismissal, which is a condition precedent to the BB&T note sale. I wanted to memorialize the verbal agreement we have that Ken Howard, Super Suds LLC and/or the new note holder will not pursue a deficiency judgment against Carolina Properties Holdings LLC or me. Also, I heard you say that Ken Howard, Super Suds LLC and/or the new note holder would not be filing a 1099 for the forgiveness of debt.

Please let me know if my understanding is correct.

Best Regards,
Walt Parker
843-473-9365

ELECTRONICALLY FILED - 2018 Jul 09 8:09 PM - SPARTANBURG - COMMON PLEAS - CASE#2011CP4200500

Exhibit B
DEED IN LIEU OF FORECLOSURE

COUNTY OF SPARTANBURG

DEED IN LIEU OF FORECLOSURE
(No Title Examination)

KNOW ALL MEN BY THESE PRESENTS, that **Carolina Properties Holdings, LLC**, in consideration of Ten and NO/100ths (\$10.00) DOLLARS, and as a deed in lieu of foreclosure, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **Super Suds, LLC**, its successors and assigns forever;

SEE ATTACHED SCHEDULE "A"

TMS#: 9 03-10 092.00

This conveyance is made subject to any and all existing reservations, easements, rights of way, zoning ordinances, setback lines, and restrictions or protective covenants that may appear of public record or on the premises affecting the property herein conveyed.

Grantee's Address: Super Suds, LLC, 200 Ford Street, Greer, SC 29650

The consideration for this deed is the satisfaction and cancellation of an indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD Office for Spartanburg County in ROD Mortgage Book 3542, at Page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest computed at the annual rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein, and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging, or in any wise incident or appertaining; to have and to hold all and singular the premises beforementioned unto grantee(s), and the grantee's(s') successors and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs, executors and administrators to warrant and forever defend all and singular said premises unto grantee(s) and grantee's(s') successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s) hand(s) and seal(s) this 24 day of October, 2011.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Carolina Properties Holdings, LLC

Walter W. Parker, IV
By: Walter W. Parker, IV
Its: Manager

Stacy H. Harker-Merley

STATE OF SOUTH CAROLINA)

COUNTY OF Beaufort)

ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by the Principal and was executed and acknowledged to be the free act and voluntary deed of the Principal.

WITNESS my signature this 24 day of October, 2011.

Stacy H. Harker-Merley
Notary Public for: South Carolina
My Commission expires: _____

My Commission Expires September 12, 2017

PREPARED BY: S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North Street, Greenville, SC 29601

SCHEDULE "A"

ALL that piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, being shown as 0.56 acres on a survey for Jones Cooley and Raja Marzouca, dated April 24, 2003, by Site Design, Inc. recorded in Plat Book 154, Page 279, in the Spartanburg County ROD Office.

This being the same property conveyed to the Grantor herein by Jones M. Colley, Jr. and Rajai Y. Marzouca recorded in the Spartanburg County ROD office on August 26, 2005, in Deed Book 83-U at Page 906.

TMS#: 9 03-10 092.00

Grantor's Name: **Carolina Properties Holdings, LLC**

- PREPARED BY: S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North Street, Greenville, SC 29601

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred bearing County Tax Map Number 9 03-10 092.00 was transferred by **Carolina Properties Holdings, LLC** to **Super Suds, LLC** on _____, 2011.
3. The deed is exempt from the deed recording fee because (See information section of affidavit):

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgage or deed pursuant to foreclosure proceedings;
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Grantee
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

S. Allan Hill, Attorney at Law
819 E. North Street
Greenville, SC 29601
(864) 242-4995

SWORN to before me this _____ day of _____, 2011.

Notary Public for South Carolina
My Commission Expires:

Exhibit C

Deposition of Kenneth Howard, Sr. June 14, 2018

180614KH

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

SUPER SUDS, LLC,

Plaintiff,

vs.

C.A. 2011-CP-42-0500

CAROLINA PROPERTIES HOLDINGS, LLC, WALTER
W. PARKER, IV, THE UNITED STATES OF AMERICA
BY AND THROUGH THE U.S. SMALL BUSINESS
ADMINISTRATION, CAROLINA CLEAN GREER I,
LLC, AND COMMUNITY DEVELOPMENT &
IMPROVEMENT CORPORATION,

Defendants.

D E P O S I T I O N

WITNESS: MORRIS KENNETH HOWARD, SR.
DATE: June 14, 2018
TIME: 10:24 A.M.
LOCATION: LeGrand Law Firm, LLC
 310 Mills Avenue, Suite 103
 Greenville, South Carolina 29605
TAKEN BY: Attorneys for the Defendants
REPORTED BY: Jeanne M. McLaren, RMR, CSR

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1 APPEARANCES:

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180614KH

ATTORNEYS FOR PLAINTIFF
SUPER SUDS, LLC:

LeGRAND LAW FIRM
BY: CHARLES D. LeGRAND, ESQUIRE
310 Mills Avenue, Suite 103
Greenville, South Carolina 29605
864-242-6461
clegrand@legrandlaw.com

- AND-

S. ALLAN HILL, CPA - LAWYERS
BY: S. ALLAN HILL, ESQUIRE
819 E. North Street
Greenville, South Carolina 29601
864-242-4995
ahill@greenvillelaw.net

ATTORNEYS FOR DEFENDANTS
CAROLINA PROPERTIES HOLDINGS, LLC., ET AL.:

HYDE LAW FIRM, P.A.
BY: MAX T. HYDE, JR., ESQUIRE
SAMANTHA L. NICHOLSON, ESQUIRE
753 East Main Street, Suite One
Spartanburg, South Carolina 29302
864-804-6330
max@maxhydelawfirm.com
samantha@maxhydelawfirm.com

- AND-

LAW OFFICE OF BARBARA E. BRUNSON, LLC
BY: BARBARA E. BRUNSON, LLC
1408 Gregg Street
Columbia, South Carolina 29201
803-799-0425
barbara@brunsonlawsc.com

Also Present: Ms. Virginia Parker

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that
this deposition is being taken in accordance with the
South Carolina Rules of Civil Procedure, Rule 30; that
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23 A. Not for any period of time.
24 Q. Okay. Would you be prepared to apply any of
25 the profits that you've currently made to the debt

50

1 associated with the property?
2 A. I don't understand.
3 Q. Do you understand that you could be required
4 to apply any of your profits from this location to the
5 debt that's associated with this location?
6 A. No.
7 Q. Okay. Do you believe that you're the owner of
8 the property?
9 A. Right now?
10 Q. (Nods head).
11 A. I'm -- I'm really -- I don't know. I don't
12 know what I believe.
13 Q. Who do you believe is the owner of the
14 property?
15 A. I don't know. I thought I was.
16 Q. Until 2016?
17 A. Well, that's when the questions started

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180614KH.txt

18 flying. Yes, ma'am.

19 Q. Do you believe that, if you're not the owner
20 of the property, that it could be sold?

21 A. I don't know. I think I own the first
22 mortgage. I think.

23 Q. All right. For any of the other locations
24 that you own, do you have any idea of which one is the
25 most profitable?

51

1 A. Of what I've -- of my locations now?

2 Q. Yes.

3 A. Which one is most profitable, is that the
4 question?

5 Q. Right.

6 A. Without look at them, I can't tell. But more
7 than likely, my one bay automatic, I think, is the most
8 profitable.

9 Q. All right. Can you give me one minute?

10 A. Sure.

11 MS. NICHOLSON: Do you mind if we take a
12 break?

13 THE WITNESS: I'd like to have one, restroom.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	C.A. No.: 2011-CP-42-0500
	)	
vs.	)	
	)	MEMORANDUM OF LAW IN SUPPORT
Carolina Properties Holdings, LLC, Walter	)	OF MOTION TO DISMISS OR IN THE
W. Parker, IV, the United States of America	)	ALTERNATIVE MOTION FOR
by and through the U.S. Small Business	)	SUMMARY JUDGMENT
Administration, Carolina Clean Greer I, LLC,	)	
and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
	)	

DEFENDANTS, Carolina Properties Holdings, LLC (hereinafter "CPH") and Walter W. Parker, IV (hereinafter "Parker") (collectively hereinafter "Defendants"), by and through undersigned counsel, hereby submit this brief in support of Defendants' motion to dismiss pursuant to Rule 12(b) (6) or in the alternative motion for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as follows:

INTRODUCTION

Defendants filed a Motion to Dismiss April 17, 2017, on the grounds that, Plaintiff Super Suds, LLC (hereinafter "Super Suds") lacks standing to pursue a foreclosure because it cannot establish a debt to recover in the foreclosure based on the fact that the attorney for Super Suds, the first mortgage holder, drafted and received an executed a deed in lieu of foreclosure from the Defendants conveying absolute title to the property to Super Suds in full satisfaction of the debt secured by the subject mortgage..

Alternatively, Defendants seek summary judgment in favor of the Defendants where the express language of the DIL evidences intent to convey absolute title of the Property to the Plaintiff with consideration being the satisfaction and cancellation of debt and creating a merger of legal and equitable interest of the mortgagee. Defendants also contend that the parties' express intent is evidenced by statements surrounding the execution of the DIL, Super Suds' control of the property since 2011, intent to extinguish the debt, and Super Suds' knowledge of the junior lienholders prior to drafting the DIL.

STATEMENT OF FACTS

On September 19, 2011, Super Suds entered a Note Purchase and Sale Agreement with Brank Banking and Trust Company (BB&T), wherein Super Suds purchased the note and mortgage that are the subject of this action.¹ Allan Hill, attorney for Super Suds, drafted and sent a deed-in-lieu of foreclosure (DIL) to defendant Walt Parker through which Mr. Parker would convey title to the subject property to Super Suds, the holder of the first mortgage loan. Reply to Def. Ans. to Am. Complaint 18. The DIL purported to convey absolute title to the property. *See* Deed in Lieu of Foreclosure, attached herein as Exhibit B. Mr. Parker promptly executed the deed-in-lieu on October 24, 2011, and returned it to Mr. Hill. *Id.*; *see also* Exhibit B. The DIL of foreclosure signed by Mr. Parker was prepared by Super Suds' attorney, Allan Hill. Rpl. to Def. Am. Ans. and Ctcl. The DIL, attached as Exhibit B, provides as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190. The loan balance of said mortgage and the note secured by

¹ This mortgage foreclosure action was originally filed February 2, 2011, by Branch Bank and Trust (BB&T) against Parker, CPH, SBA and CDIC. The United States of America, by and through the SBA is a defendant, because it holds a subordinate mortgage on the Property. CDIC is a defendant because it previously held a security interest on equipment installed on the Property

said mortgage is the sum of \$601,427.10, together with accrued interest as computed as the annual percentage rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

DIL dated October 24, 2011.

Immediately after delivery of the DIL, Super Suds assumed possession of the property and began operating its business on the property. Super Suds has operated the car wash continuously since that time. *See* Howard Dep. 32: 15-24, Exhibit A..

Mr. Parker believed that the foreclosure had been resolved, having performed all of the obligations asked of him, and knowing that Super Suds purchased the note and mortgage, accepted a deed-in-lieu of foreclosure, assumed possession of the property, and began operating a its business thereon. *See* Parker Aff. filed Aug. 4, 2017. However, this foreclosure was never dismissed and remained dormant on the Spartanburg County Court of Common Pleas roster until September 25, 2014, when the case was referred to the Master in Equity.² Thereafter, Charles LeGrand noticed his appearance, and filed an Amended Lis Pendens on August 3, 2016, a status conference was held in September 2016, and this became an active matter. Defendants' filed a motion to dismiss on April 4, 2017. Pursuant to an order from this court granting leave to amend its answer, Defendants filed an amended answer and counterclaims on December 6, 2017. A reply to the amended answer and counterclaims was filed on January 10, 2018.

² The case was referred to the Master via a consent order purportedly consented to by Mr. Parker. Mr. Parker's alleged consent is evidenced by Mr. Hill's signature on behalf of Mr. Parker. Mr. Parker denies having been aware of the order of reference or having consented to it. Parker Aff. filed Aug. 4, 2018.

STANDARD OF REVIEW

"[T]he trial court may treat a 12(b)(6) motion as a motion for summary judgment and consider matters presented outside the pleadings if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the South Carolina Rules of Civil Procedure." *Baird v. Charleston County*, 511 S.E.2d 69, 333 S.C. 519, 527 (*citing* *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995)).

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12(b), SCRPC.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRPC. The moving party may discharge the burden of demonstrating the absence of a genuine issue of material fact by pointing to the absence of evidence to support the nonmoving party's case. *See Lanham v. Blue Cross and Blue Shield of S.C., Inc.*, 349 S.C. 356, 563 S.E.2d 331 (2002). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming*, 350 S.C. at 493-94, 567 S.E.2d at 860. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts

that show there is a genuine issue of fact remaining for trial.” *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

LAW AND ANALYSIS

1. Plaintiff's Failure to State a Claim for which relief can be granted.

Defendants assert that summary judgment is appropriate because Super Suds cannot establish the existence of a debt upon which to foreclose. When the DIL of foreclosure was delivered to Super Suds' attorney, Allan Hill, a merger of title occurred and the mortgage loan debt was extinguished. As such, Super Suds has no standing to continue this mortgage loan foreclosure.

A mortgage allows the holder to recover satisfaction of a debt owed from the land pledged under the instrument. *See* S.C. Code Ann. § 29-3-10 (2018). Yet, no order for sale under foreclosure may be valid without first establishing the existence of a debt. *See* S.C. Code Ann. § 29-3-630 (2018). As noted by the South Carolina Supreme Court “[w]hen the holder of a mortgage acquires the equity of redemption or the legal title to the land merger will take place, unless the parties intend otherwise.” *Thompson v. Hudgens*, 161 S.C. 450, 161 S.E. 807, 810 (S.C., 1931). Equitable encumbrances cease to exist when the equitable and legal titles vest in the same person. *See* *First Federal Savings and Loan Assn. of South Carolina v. Finn*, 300 S.C. 228, 387 S.E.2d 253, 254 (S.C., 1989).

In *McCraney v. Morris*, 170 S.C. 250, 170 S.E. 276 (S.C., 1933), the Supreme Court of South Carolina states that the express intentions of the parties will control when determining whether merger of title occurred. South Carolina cases on merger of title hold that when no intention to prevent the merger of title has been expressed and cannot be implied from the circumstances and interests of the party, a presumption in favor of merger arises and that the

burden of overcoming the presumption is on the party that denies there was a merger. *Thompson* at page 810; *Finn* at page 254; *Gainey v. Anderson* 87 S.C. 47 68 S.E. 888 (S.C., 1910). As noted by the Court in *Finn*, this rule is often applied in cases where a mortgagee receives title to the mortgaged property from the mortgagor in exchange for forgiveness of debt and then discovers subsequent liens against the property that exceed the value of the real estate. *Finn* at 254 (citing *Maxwell v. Epton*, 177 S.C. 184, 181 S.E.2d. 16 (1935); *McCraney v. Morris*, 170 S.C. 250, 170 S.E.2d. 276 (1933)).

Here, the intentions of the parties were express prior to the execution of the DIL. On September 20, 2011, Parker emailed Super Suds' counsel Allan Hill stating:

I want to memorialize the verbal agreement we have that Ken Howard, Super Suds LLC and/or the new note holder will not pursue a deficiency judgment against Carolina Properties Holdings LLC or me. Also I heard you say that Ken Howard, Super Suds LLC and/or the new note holder would not be filing a 1099 for the forgiveness of debt. Please let me know if my understanding is correct.

See Email Correspondence between Walt Parker and Allan Hill dated September 20, 2011, attached hereto as Exhibit C. Allan Hill replied "Walt, Your understanding is correct." See *id*.

Furthermore, the parties' intentions were express in the Deed in Lieu of Foreclosure itself, which states:

The consideration of this deed is the satisfaction and cancellation of an indebtedness from the Grantor to the Grantee... Grantor, in executing and delivering this deed to Grantee, acknowledges that this an absolute deed and not a mortgage... conveying complete title...

Deed in Lieu of Foreclosure, Exhibit B.

Therefore, the express intention of the parties should control to unite Super Suds, LLC's interests in title and mortgage. See *McCraney*, 170 S.C. at 250, 170 S.E. at 279.. The Defendants were released from indebtedness upon execution of the Deed in Lieu of Foreclosure and proper delivery to Allan Hill when Super Suds received absolute title. Super Suds, LLC cannot establish

the existence of a debt, and an order for sale under foreclosure would not be valid against the parties. Accordingly, Super Suds, LLC failed to state a claim for which relief can be granted, and Defendants request the court grant summary judgment in Defendants' favor.

2. Summary Judgment in favor of Defendants is appropriate in this case because the plain, unambiguous language of the DIL expresses the intent of the parties that the deed was given in full satisfaction of the debt and that it is a deed absolute merging the legal and equitable interests of the mortgagee.

The DIL clearly provides that "[t]he consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee." This expression of the intent of the parties as drafted by Super Suds' attorney clearly establishes that the DIL of foreclosure conveys title to the subject property to Super Suds in satisfaction of the debt underlying the mortgage.

South Carolina appellate courts have held that the interpretation of a deed is an equitable matter and construction of a clear and unambiguous deed is a question of law for the Court. *See Gardner v. Mazingo*, 293 SC 23, 358 S.E. 2d 390 (1987); *see also Penza v. Pendleton Stations LLC*, 404 S.C. 198; 743 S. E. 2d 850 (S.C. App. 2013). Further, to determine the intent of the parties to a deed, the court must look first to the language of the deed. If the language is ambiguous or unclear, the court may resort to extrinsic evidence. *Id.*

Here, the language in the DIL is clear. The grantor conveyed absolute title in consideration for the satisfaction and cancellation of the debt owed the grantee. As drafted by Allan Hill, the DIL provides as follows:

Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

Deed in Lieu of Foreclosure, Exhibit B.

The execution and proper delivery of the DIL sufficiently establishes Super Suds' absolute ownership of the Property. Based on the unambiguous language of the DIL, the Defendants argue that, as a matter of law, the legal and equitable interest in the real estate merged when the DIL was delivered to Hill. Super Suds became the owner of the subject property and the debt underlying this foreclosure was satisfied. Defendants therefore ask this court to grant its motion for summary judgment based on the clear and unambiguous terms of the deed that Plaintiff lacks standing to foreclose the note and mortgage.

3. Summary Judgment in favor of Defendants is appropriate in this case because the uncontroverted facts show that the parties intended to transfer of ownership in the property and extinguish underlying debt, although Defendants argue that the Court need look no further than the terms of the deed to discern the parties' intent.

A Court may also look to the intention of the parties at the time of the conveyance to determine whether a merger of title occurred. *See Finn.* at 254. Evidence that the parties intended that a merger take place may be gleaned from the fact that: (a) Ken Howard immediately took possession of the property upon receipt of the deed-in-lieu of foreclosure, invested in improvements to the properties, began operating a business in the name of Super Suds with signage on the property, and made no further attempt to enforce the mortgage that he purchased from BB&T until he became aware that the action was still pending shortly before the status conference on September 2016; (b) Ken Howard stated he purchased the Note with the intent to have a deed to the Property; (c) the DIL, communications between the parties, and testimony of the Ken Howard evidence an intent to extinguish debt; and (d) Ken Howard had knowledge of junior lienholders.

A. Control of the Subject Property

Super Suds has maintained exclusive control over the Property continuously since 2011. Mr. Howard states in his deposition, as follows, that he took control of the property and began operating a car wash shortly after purchasing the note and mortgage:

Q. How long did it take you to start operating Super Suds there?

A. I did some work on the property. I don't know the exact --- how many days or -- I mean, you know, after I spent the \$200,000, I had to try to get it to make some money.

Q. What was the process like?

A. The process?

Q. Um-hum.

A. Well, it had a terrible parking lot.

Whoever -- whoever built it didn't know what they was doing. So we went in and redid the parking lot, took a lot of curving out. The entrance on the back was too narrow. We widened it.

Q. Um-hum.

A. Painted the building, got equipment people in there to get it going the way it was supposed to.

Q. And did you get a sign out front changed to say Super Suds?

A. I did. I actually moved the sign.

Q. Was that effective?

A. Hum?

Q. Was that effective?

A. I hope so.

...

A. I understood that, you know,

it was mine to go try and fix it and get it going.

Howard Dep. 32:15-25 and 34:1-16, Exhibit A.

Super Suds intended to be the owner of the property. Super Suds may claim to be a mortgagee in possession, however, there is no evidence of such claim. If Super Suds were the mortgagee in possession, Super Suds would be required to keep an accurate accounting of their earnings in order to apply such proceeds towards the mortgage. The mortgage requires that upon default under the mortgage, the mortgagee shall "appoint[t] a receiver of the rents, issues, and profits, who...shall apply the residue... toward the payment of the debt secured hereby."³ Super Suds kept no accounts of the rents and profits of the business on the property. Super Suds admittedly does not know the expenses for this location or have a reasonable means to determine them because records of expenses are kept for all car wash locations that Super Suds owns. *See* Howard Dep. 41: 23 to 42:4, Exhibit A.

Super Suds continued operation of its business on the property for almost five years from October 2011 through August 2016 with no accounting of rents and profits and no contact with Defendants. Super Suds believed it to be the Property owner, yet took no action to dismiss or pursue the above-captioned foreclosure action. Now, Super Suds has had the opportunity for discovery, and Defendants are entitled to summary judgment against Super Suds.

³ See Mortgage filed herein as Summons and Complaint, Exhibit A.

B. Express Intent for Ownership of the Property

The Deposition of Ken Howard shows that Mr. Howard intended to purchase the real estate and business located thereon and relied on his attorney, Allan Hill, to handle all the details of the transaction to that end. When questioned as to Mr. Howard's intent when purchasing the note and mortgage from BB&T, Mr. Howard specifically stated that he wanted to obtain title to the real estate and begin operating his business on it. This exchange is as follows:

Q. And did you intend for Walt to convey the property to you?

A. Yes.

Q. Okay. And did you expect to receive title of the property when you purchased the note?

A. Say what?

Q. To receive title of the property when you purchased the note?

A. Yes, ma'am,

Q. And did you receive the property itself?

A. Receive it?

Q. Yes.

A. I started operating it, yes. Is that the question?

Q. Yes. What was your awareness of the deed in lieu of foreclosure?

A. Never heard of one.

Q. Okay. Did you expect Walt to execute a deed to convey the title to you?

- A. I didn't understand how it would work or when. I - - I don't - I mean, I definitely wanted a deed, a clear deed. That's the purpose of buying it, to have a clear deed.

Howard Dep. 26: 20 to 27:17, Exhibit A.

While Mr. Howard's testimony shows some confusion as to how he obtained title to the property, he was represented by attorney Allan Hill and relied on Mr. Hill to execute the details of the transaction. Howard Dep. 18:22-19:5, Exhibit A. Howard's deposition testimony also shows that he was ambivalent about the details of the transaction instead relying on Allan Hill to see to the details. This is evident when he was asked about the terms of the purchase agreement that he signed in conjunction with purchase of the note and mortgage from BB&T. When questioned as to whether he read the whole document, Mr. Howard replied as follows:

- A. No, ma'am.
- Q. You did not?
- A. Huh-uh. That's why I pay him.

Howard Dep. 20:16-18, Exhibit A.

C. Extinguishing Debt as Intent of Merger of Title

Both parties intended to extinguish the Defendants' debt by the DIL. Other indicia of the intent of the mortgagee and mortgagor when the DIL was tendered can be whether the debt underlying the mortgage was extinguished. *See Finn* at 254. In this case, the mortgagee's intent to extinguish the debt in exchanged for the DIL of foreclosure can be determined by the unambiguous language in the DIL that provides as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190

DIL, Exhibit B.

Furthermore, communications between Walt Parker and Allan Hill express the parties' intent to exchange the Property for release from the foreclosure action. As stated above, Parker asked Allan Hill to confirm the agreement stating, "I want to memorialize the verbal agreement we have that Ken Howard, Super Suds LLC and/or the new note holder will not pursue a deficiency judgment against Carolina Properties Holdings LLC or me." Allan Hill confirms, "Your understanding is correct." See Exhibit C.

In addition, Ken Howard testified at the deposition that he did not expect to receive payment from Walt Parker and CPH once the title to the property securing the loan was given to Super Suds. Mr. Howard's testimony is as follows:

Q. Did you believe that, if
you received title to the property, that you would then
not receive any money that was due on the note you purchased?

A. Not receive? I wasn't expecting any money out of that deal.

Howard Dep. 40:23-25 1-5, Exhibit A.

The value gained by the DIL was the Property transferred. Mr. Howard intended nothing more than the value of the Property at the time Parker executed and delivered the DIL. Therefore, the Plaintiff cannot prove that any debt remained to be foreclosed upon, and Defendants are entitled to summary judgment against the Plaintiff.

D. Knowledge of Junior Liens

In the *Finn* case, the South Carolina Supreme Court held that the doctrine of merger has been applied in cases where the mortgagee forgave the mortgage debt in exchange for receiving

a mortgage the mortgaged property even in cases where the mortgagee subsequently discovered liens against the property that exceeded the value of the property. *Id.* at 254.

In the *Finn* case, the Finns sought assistance in obtaining financing to build a home on a lot that they owned. The Finns conveyed the property to a contractor who was able to obtain a construction loan. The Finns then signed a contract of sale to purchase the property from the contractor. The contractor obtained construction financing from First Federal Savings and Loan Association of South Carolina (First Federal) and gave First Federal a mortgage on the subject property to secure the construction loan. When the contractor failed to perform as agreed, he reconveyed the property to the Finns. First Federal commenced a mortgage loan foreclosure, and the Finns defended the foreclosure by asserting an equitable lien on the property that was prior to the First Federal mortgage. The Finns', by their own admission, knew of the First Federal lien at the time of the reconveyance and the deed specified that they took title subject to the all mortgages. The Court held that the "only inferable intention at the time of merger of legal and equitable title was to take the lot and house encumbered by ... [the] mortgage lien." *Id.* at 254.

In this case, Ken Howard stated at the deposition that he was not aware of the junior liens on the property at the time he agreed to purchase the note and mortgage from BB&T; however, he was represented by counsel throughout the transaction. BB&T was in the process of foreclosing on its mortgage when Super Suds purchased the note and mortgage. The junior liens were properly filed of record in the Spartanburg County Register of Deed's Office.

Email correspondence between Walt Parker and Allan Hill dated August 18, 2011, shows that Allan Hill was aware of the junior liens prior to execution of the DIL because Mr. Parker provided contact information for the SBA loan and Community Development and Improvement Corporation (CDIC) loan to Mr. Hill at Hill's request. *See* Email Correspondence between Walt

Parker and Allan Hill, dated August 18, 2011, attached hereto as Exhibit D. The exchange occurred two months prior to the delivery of the DIL to Mr. Hill. *See id.* Since Allan Hill was clearly aware of the junior liens that knowledge should be imputed to his client. *See Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496, 497 (holding that knowledge of the existence of a prior lien imputed to plaintiff through its attorney).

Mr. Howard, in fact, admitted that he had at some point been informed by Mr. Hill that junior liens attached to the property. His deposition testimony on that point is as follows:

Q. Okay, thank you. Were you aware of the CDIC equipment loan and the SBA loan on the property prior to you purchasing the BB&T note?

A. No Ma'am.

Q. OK. What was your first knowledge of those loans?

A. I don't know when. Allan told me about it sometime after the --- I don't know when he told me. The BB&T guy never mentioned it to me.

Howard Dep. 21:3-11, Exhibit A.

Q. Did you have any knowledge of your attorney seeking information about the CDIC loan?

A. I did. Allan told me, and I don't know when it was, that there was a second on it with the SBA and one -- also one on some equipment.

Howard Dep. 22: 9-13, Exhibit A.

Mr. Howard is a businessman with over 25 years of experience owning and managing car wash businesses in the Greenville and Spartanburg area. He has purchased and sold several businesses and currently owns four car washes. Howard Dep. 4:25 to 9:25, Exhibit A. As a sophisticated businessman represented by counsel throughout the purchase and sale of the note and mortgage from BB&T and the acceptance of the DIL from Defendants, Mr. Howard should be held to have had sufficient notice of the liens filed of record and identified in the foreclosure pleadings.

CONCLUSION

Defendants respectfully ask that this court grant Defendants' motion to dismiss for failure to state a claim upon which relief can be granted because upon delivery of the DIL, merger of title occurred and Plaintiff cannot establish a debt upon which to base a foreclosure claim.

Alternatively, Defendants respectfully ask that this Court grant Defendants' for summary judgment on the grounds that the unambiguous terms of the deed in lieu demonstrate that the grantor conveyed absolute title to the grantee in consideration of satisfaction and cancelation of debt owed to the grantee. As a result, the mortgage and junior liens are merged with title to the property. Because the plain language of the DIL shows the intent of the parties, the Court is able to construe the intent as a matter of law and grant the motion for summary judgment.

If, however, the Court deems it appropriate to look to extrinsic facts to determine intent, the undisputed testimony of Ken Howard shows that Super Suds intended to receive title to the property and acted accordingly when the DIL was delivered to Allan Hill and Super Suds assumed control of the property. At the time of the conveyance, Super Suds had imputed, if not actual, knowledge of the junior liens. In addition, Super Suds had no intention to collect or expectation to receive that further payment from Defendants on the subject note and mortgage.

These actions are consistent with the terms of the DIL whereby absolute title is conveyed to Super Suds. Upon the transfer of title, the legal and equitable interests in the property merged and Super Suds no longer has standing to pursue a foreclosure.

WHEREFORE, based on the foregoing, supporting case law, supporting memoranda to be submitted, oral arguments, Defendants respectfully request the Court grant the Defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted, or in the alternative, grant an order of Summary Judgment in favor of the Defendants.

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson

Barbara E. Brunson
LAW OFFICE OF BARBARA E. BRUNSON, LLC
SC Bar No.: 0012940
P.O. Box 50943
Columbia, SC 29250
T: (803) 799-0425
F (877) 310-8766
barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson

Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
Samantha L. Nicholson (SC Bar #102790)
HYDE LAW FIRM, P.A.
753 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330
F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

ATTORNEYS FOR DEFENDANTS,
CAROLINAPROPERTIES HOLDINGS, LLC AND
WALTER W. PARKER, IV

July 9, 2018

Spartanburg, South Carolina

Exhibit A

Deposition of Kenneth Howard, Sr., June 14, 2018

180614KH

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

SUPER SUDS, LLC,

Plaintiff,

vs.

C.A. 2011-CP-42-0500

CAROLINA PROPERTIES HOLDINGS, LLC, WALTER
W. PARKER, IV, THE UNITED STATES OF AMERICA
BY AND THROUGH THE U.S. SMALL BUSINESS
ADMINISTRATION, CAROLINA CLEAN GREER I,
LLC, AND COMMUNITY DEVELOPMENT &
IMPROVEMENT CORPORATION,

Defendants.

D E P O S I T I O N

WITNESS: MORRIS KENNETH HOWARD, SR.
DATE: June 14, 2018
TIME: 10:24 A.M.
LOCATION: LeGrand Law Firm, LLC
 310 Mills Avenue, Suite 103
 Greenville, South Carolina 29605
TAKEN BY: Attorneys for the Defendants
REPORTED BY: Jeanne M. McLaren, RMR, CSR

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1 APPEARANCES:

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ATTORNEYS FOR PLAINTIFF
SUPER SUDS, LLC:

LeGRAND LAW FIRM
BY: CHARLES D. LeGRAND, ESQUIRE
310 Mills Avenue, Suite 103
Greenville, South Carolina 29605
864-242-6461
clegrand@legrandlaw.com

- AND-

S. ALLAN HILL, CPA - LAWYERS
BY: S. ALLAN HILL, ESQUIRE
819 E. North Street
Greenville, South Carolina 29601
864-242-4995
ahill@greenvillelaw.net

ATTORNEYS FOR DEFENDANTS
CAROLINA PROPERTIES HOLDINGS, LLC., ET AL.:

HYDE LAW FIRM, P.A.
BY: MAX T. HYDE, JR., ESQUIRE
SAMANTHA L. NICHOLSON, ESQUIRE
753 East Main Street, Suite One
Spartanburg, South Carolina 29302
864-804-6330
max@maxhydelawfirm.com
samantha@maxhydelawfirm.com

- AND-

LAW OFFICE OF BARBARA E. BRUNSON, LLC
BY: BARBARA E. BRUNSON, LLC
1408 Gregg Street
Columbia, South Carolina 29201
803-799-0425
barbara@brunsonlawsc.com

Also Present: Ms. Virginia Parker

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that
this deposition is being taken in accordance with the
South Carolina Rules of Civil Procedure, Rule 30; that
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14 Q. Well, Ken, I'm Samantha Nicholson, and it's a
15 pleasure to be here with you today. Obviously, we have
16 a lot of people here in the room. It's just going to be
17 a conversation between the two of us and kind of walk
18 through what's happened here since a little before 2011,
19 and get to know a little more about you as well. So
20 could you start by just saying your full name and
21 address for the court reporter?

22 A. Morris Kenneth Howard, Sr., 133 Indigo Court,
23 Greer, South Carolina 29651.

24 Q. Thank you. And what do you do for a living?

25 A. I work for myself.

4

1 Q. Okay. And what do you do for yourself?

2 A. Well, I fool with work -- you know, run car
3 washes.

4 Q. Um-hum.

5 A. I own some car washes. I also have a couple
6 of companies that pump septic tanks.

7 Q. And how long have you run car washes?

8 A. I bought my first car wash in 1993.

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180614KH.txt

- 9 Q. Okay. And what did you do prior to that?
- 10 A. I was in the garbage business.
- 11 Q. And what's the extent of your formal
- 12 education?
- 13 A. I'm sorry?
- 14 Q. What's the extent of your formal education?
- 15 A. High school.
- 16 Q. Are you the owner of Super Suds, LLC?
- 17 A. I am.
- 18 Q. And also the manager of Super Suds, LLC?
- 19 A. I am.
- 20 Q. How long have you owned and operated
- 21 Super Suds?
- 22 A. I couldn't give you an exact date. You're
- 23 talking about when Super Suds -- I think it was 2003.
- 24 Q. Okay.
- 25 A. I sold -- yeah, 2003.

5

- 1 Q. Now, was that -- did you purchase Super Suds
- 2 from anyone?
- 3 A. No. No, ma'am.
- 4 Q. But you created the business in 2003?

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180614KH.txt

5 A. I did.

6 Q. Okay. And how long have you known

7 Walt Parker?

8 A. I really don't know him.

9 Q. Okay. Can you tell me about any relationship
10 you've had with Walt Parker?

11 A. With Walt Parker?

12 Q. (Nods head).

13 A. I can't give you any dates, but I guess I
14 first met him when I opened the car wash on
15 Wade Hampton.

16 Q. Um-hum.

17 A. Then probably -- I don't know, probably two or
18 three conversations after that. But as far as knowing
19 him, I don't know him. I know him when I see him.

20 Q. Did you ever operate any car washes on behalf
21 of Walt?

22 A. With Walt?

23 Q. With him or behalf of him.

24 A. No, ma'am.

25 Q. And so you didn't manage any business that

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1 Walt owned?

2 A. No.

3 Q. Okay. So do you have a pretty good
4 understanding of how car washes operate?

5 A. I hope so.

6 Q. And so can you tell me a little bit more about
7 how you got into the car wash business back in 2003?

8 A. In 2003?

9 Q. Um-hum.

10 A. Okay. That was the second time I got in.

11 Q. Okay.

12 A. Yeah. I started -- I bought my first one in
13 '93.

14 Q. Okay.

15 A. And then sold I those and stayed out for a
16 while, and then I bought one in 2003, started back.

17 Q. Um-hum. Back in '93, how did you get into the
18 business back then?

19 A. A friend of mine had one for sale, and I had
20 sold my garbage business so I bought one.

21 Q. Um-hum. Did you only own one at that time?

22 A. Just the one at that time.

23 Q. Um-hum. When did you purchase your second car

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24 wash?

25 A. Sometime after '93. I couldn't tell you when.

7

1 It's been a long time.

2 Q. Yes. So when you got out of the business for
3 a time, how many -- how many did you own at that point?

4 A. When I got out the first time?

5 Q. Um-hum.

6 A. Six.

7 Q. Okay. So in 2003, you purchased one. When
8 did you purchase your second after that?

9 A. I couldn't give you a exact date. Probably a
10 year or so later.

11 Q. Um-hum. Well, tell me a little bit about how
12 you operate your car washes and your business structure.

13 A. Well, we go to our car washes every day, me or
14 one of my employees, dump trash, clean the parking lot
15 up, check everything and leave. Once a week we'll get
16 our money out and tally up, do all the book work on it.
17 And that's basically it. We visit them all every day,
18 somebody does.

19 Q. Okay. And how many?

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20 A. Now?

21 Q. Yes.

22 A. Now I've got four.

23 Q. Okay. How many employees do you have?

24 A. I'm sorry?

25 Q. How many employees do you have?

8

1 A. I don't have any full-time employees. I've
2 just got a retired guy that helps dump trash for me.

3 Q. Okay. So let's go back to 2011, and tell me
4 about your awareness of the construction of the car wash
5 at 14115 East Wade Hampton Boulevard.

6 A. And what do you want to know?

7 Q. Were you aware that it was under construction,
8 being built?

9 A. Well, I didn't know -- I didn't know what was
10 going on until I saw it built, you know. It was -- I
11 don't remember when that was, but it was prior to 2011.

12 Q. Right. Did you ever contact Walt Parker while
13 this car wash was under construction?

14 A. Under construction? No, ma'am.

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8 Q. What conversations did you have with BB&T?

9 A. They called me -- the first time he called and
10 told me that Mr. Parker told him to call me and asked me
11 if I was interested. And I said, well, not at what I
12 understand he'd have to have. And he said, would you
13 make an offer? And I said, yeah. I offered him
14 200,000. He quickly declined.

15 Q. Um-hum.

16 A. Then I don't know how much later, a few weeks,
17 couple weeks, I'm not sure, but he called me again. And
18 he asked me if I was still interested. And I said,
19 well, you know, I made the offer. He says, is the offer
20 still good? And I said, yes. And he said, well, we're
21 going to sell it to you -- or sell you the mortgage.

22 Q. Um-hum. And did you have an attorney
23 representing you during this time?

24 A. I did.

25 Q. And who was that?

16

1 A. Allan Hill.

2 Q. And at what point did you retain Allan Hill?

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3 A. Well, he's done stuff for me for years. I
4 called him and told him about it, and he said he'd take
5 care of it.

6 Q. So he engaged on your behalf --

7 A. Yes, ma'am.

8 Q. -- with BB&T? Were you aware that 561,859 was
9 owed on the BB&T promissory note in 2011?

10 A. I did not know the number. I knew there
11 was -- you know, I knew it was pretty high. As a matter
12 of fact -- I mean, from what I thought, I thought it was
13 more than that. But I'd never seen it in writing
14 anywhere, what it was.

15 Q. What did you believe the payment -- the amount
16 owed was?

17 A. I thought it was over 600, but -- I mean, I
18 don't know. I never saw exactly how much it was.

19 Q. But you were still willing to go forward with
20 the purchase of the note?

21 A. The note, yes, ma'am.

22 (Defendants' Exhibit No. 1, note purchase
23 closing statement, is identified for
24 testimony.)

25 BY MS. NICHOLSON:

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17

1 Q. At this time I'm showing Ken Howard what is
2 Defendants' Exhibit Number 1. This is the note purchase
3 closing statement. If you can flip to that -- this tab
4 here. Well, if you'll just tell me first, is that your
5 signature on the bottom here?

6 A. Is that what?

7 Q. Is that your signature?

8 A. It is, yes.

9 Q. Very good.

10 A. Um-hum.

11 Q. Can you flip to this tab, to page -- and have
12 you seen this document before?

13 A. Yeah. I signed the front of it. Do you mean
14 did I read the whole document?

15 Q. (Nods head).

16 A. No, ma'am.

17 Q. You did not?

18 A. Huh-uh. That's why I pay him.

19 Q. So -- okay. I'm just --

20 A. It didn't matter to me what he owed on it.

21 Q. But you were aware of the amount owed on
22 the --

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23 A. Not this amount, no, ma'am.

24 Q. Not that amount?

25 A. No.

18

1 Q. Okay.

2 A. I didn't know the exact amount.

3 Q. Okay, thank you. Were you aware of the CDIC
4 equipment loan and the SBA loan on the property prior to
5 you purchasing the BB&T note?

6 A. No, ma'am.

7 Q. Okay. What was your first knowledge of those
8 loans?

9 A. I don't know when. Allan told me about it
10 sometime after the -- I don't know when he told me. The
11 BB&T guy never mentioned it to me.

12 Q. Okay. Had you had any conversation with Walt
13 about --

14 A. No, ma'am.

15 Q. -- loans on the property?

16 A. Definitely not.

17 Q. Okay. Did you seek any information about

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18 these loans?

19 A. Did I?

20 Q. Yes.

21 A. No, ma'am.

22 Q. Did your attorney on your behalf?

23 A. What?

24 Q. Seek information about the CDIC loan?

25 MR. LeGRAND: Objection to the form. You're

19

1 asking him for someone else's opinion or work?

2 MS. NICHOLSON: I am asking him if his

3 attorney sought information about this CDIC loan, any

4 information about it.

5 THE WITNESS: The question is, did he tell me

6 he was seeking -- I don't understand. Ask me one more

7 time.

8 BY MS. NICHOLSON:

9 Q. Did you have any knowledge of your attorney
10 seeking information about the CDIC loan?

11 A. I did. Allan told me, and I don't know when
12 it was, that there was a second on it with the SBA and
13 one -- also one on some equipment.

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5 Q. Did you believe that the property is worth
6 more or less than the BB&T loan on it?

7 A. That I give or what the note was?

8 Q. The note.

9 A. I didn't think -- did I think it was worth
10 more?

11 Q. (Nods head).

12 A. No, ma'am.

13 Q. What did you believe the property to be worth?

14 A. 200,000.

15 Q. Did you accept BB&T's offer to sell the note
16 for 200,000 with the conditions of an "as is" sale and
17 Walt's execution of a settlement agreement with BB&T?

18 A. I didn't, no, ma'am.

19 Q. Okay. Did you know that Walt was required to
20 dismiss his counterclaim against BB&T with prejudice for
21 foregoing this right?

22 A. I don't understand the question.

23 Q. Okay. Did you know that as you were
24 purchasing the BB&T note for the 200,000, that Walt was
25 executing a settlement agreement with BB&T to release

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1 any counterclaim?

2 A. No.

3 Q. Were you aware of the foreclosure action that
4 BB&T had against Walt Parker?

5 A. No, ma'am.

6 Q. Okay. Tell me, did you intend to hold
7 Walt Parker responsible for the amount due on the
8 promissory note when you purchased it?

9 A. Did I intend to hold him responsible?

10 Q. Yes.

11 A. I didn't know anything about it.

12 Q. The amount due on the BB&T promissory note,
13 did you intend to hold him responsible for that amount?

14 A. I think I've already said I didn't. This is
15 the first first mortgage I've ever bought, so I didn't
16 know the -- I didn't know how it worked. My
17 understanding was if you own the first mortgage, you're
18 in the first position. And that's where I thought I
19 was.

20 Q. And did you intend for Walt to convey the
21 property to you?

22 A. Yes.

23 Q. Okay. And did you expect to receive title of

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24 the property when you purchased the note?

25 A. Say what?

23

1 Q. To receive title of the property when you
2 purchased the note?

3 A. Yes, ma'am.

4 Q. And did you receive the property itself?

5 A. Did I receive it?

6 Q. Yes.

7 A. I started operating it, yes. Is that the
8 question?

9 Q. Yes. What was your awareness of a deed in
10 lieu of foreclosure?

11 A. Never heard of one.

12 Q. Okay. Did you expect Walt to execute a deed
13 to convey the title to you?

14 A. I didn't understand how it would work or when.
15 I -- I don't -- I mean, I definitely wanted a deed, a
16 clear deed. That's the purpose of buying it, to have a
17 clear deed.

18 (Defendants' Exhibit No. 3, deed in lieu
19 of foreclosure, is identified for testimony.)

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2 be on my behalf.

3 Q. Um-hum.

4 A. I don't know what that consisted of.

5 Q. Um-hum. All right. Did you expect your
6 attorney to take care of whatever paperwork was required
7 after you purchased the note for you to have the
8 property?

9 A. Yes, ma'am.

10 Q. Okay. And did you just stay in touch with
11 your attorney about the settling matters after you
12 signed the note?

13 A. Yes. I called him occasionally to see how it
14 was going.

15 Q. Um-hum. Can you tell me when you took
16 possession of the property?

17 A. Not exact dates but right after I paid
18 the -- bought the note.

19 Q. Okay. How long did it take you to start
20 operating Super Suds there?

21 A. I did some work on the property. I don't know
22 the exact -- how many days or -- I mean, you know, after
23 I spent the 200,000, I had to try to get it to make some
24 money.

25 Q. Sure. What was that process like?

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28

1 A. The process?

2 Q. Um-hum.

3 A. Well, it had a terrible parking lot.

4 Whoever -- whoever built it didn't know what they was
5 doing. So we went in and redid the parking lot, took a
6 lot of curving out. The entrance on the back was too
7 narrow. We widened it.

8 Q. Um-hum.

9 A. Painted the building, got equipment people in
10 there to get it going the way it was supposed to.

11 Q. And did you get a sign out front changed to
12 say Super Suds?

13 A. I did. I actually moved the sign.

14 Q. Was that effective?

15 A. Hum?

16 Q. Was that effective?

17 A. I hope so.

18 Q. Okay.

19 A. It was sitting way off -- way behind, a
20 terrible location. It couldn't have hurt it.

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21 Q. Did you have any separate agreement that
22 allowed you to operate Super Suds on the property?

23 A. Do what now?

24 Q. Did you have any separate agreement or
25 anything written that allowed --

29

1 A. No, ma'am.

2 Q. -- you to operate Super Suds?

3 A. I was under the understanding that, you know,
4 it was mine to go try to fix it and get it going.

5 Q. Okay.

6 A. Maybe that's -- whatever.

7 Q. And you've operated Super Suds there since
8 that day?

9 A. Yes, ma'am.

10 Q. And you received income there from Super Suds
11 on that site?

12 A. From that site?

13 Q. Yes, sir.

14 A. Yes, ma'am.

15 Q. Do you think that Walt believed he would walk
16 away from this with some debt at the end of everything?

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18 memorialize the verbal agreement we have that
19 Ken Howard, Super Suds, LLC and/or the new note holder
20 will not pursue a deficiency judgment against
21 Carolina Properties Holdings, LLC or me. Also, I heard
22 you say that Ken Howard, Super Suds, LLC and/or the new
23 note holder would not be filing a 1099 for the
24 forgiveness of debt. Please, let me know if my
25 understanding is correct."

35

1 Q. Thank you.

2 A. How did I do?

3 Q. That was excellent reading, thank you. Did
4 you know, around September of 2011, any information
5 about any deficiency judgment?

6 A. No, ma'am.

7 Q. Okay. And did -- that's fine. Were you aware
8 that your attorney had information about this SBA loan
9 or the CDIC loan?

10 A. When?

11 Q. In 2011.

12 A. No, ma'am.

13 (Defendants' Exhibit No. 5, another email

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14 between Walt Parker and Attorney Allan Hill,
15 is identified testimony.)

16 BY MS. NICHOLSON:

17 Q. Okay. I'm showing what is Defendants' Exhibit
18 Number 5 to Mr. Howard. This is an email that was
19 sent -- this was from Walt Parker to Allan Hill, some
20 information about the SBA loan or the CDIC loan. Is
21 this new information to you?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. You said, is this new information?

25 Q. Yes, sir.

36

1 A. Yes. I've never seen this.

2 Q. Did you have any awareness of whether or not
3 your attorney was in communication with either
4 organization?

5 A. Did I have information -- did I know that he
6 was in contact with them? I would assume he'd been in
7 contact with BB&T.

8 Q. Okay.

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23 A. That I would not receive money from the note?

24 MS. NICHOLSON: Can you repeat the question?

25 THE REPORTER: "Q. Did you believe that, if

34

1 you received title to the property, that you would then
2 not receive any money that was due on the note you
3 purchased?"

4 THE WITNESS: Not receive? I wasn't expecting
5 any money out of the deal.

6 BY MS. NICHOLSON:

7 Q. Okay. I'm showing Defendants' Exhibit Number
8 4 again to Mr. Howard. Do you mind just reading this on
9 to the record, this -- starting, "I am preparing"?

10 A. Um-hum.

11 Q. Do you mind reading that on to -- out loud for
12 the record?

13 A. Not at all.

14 Q. Thank you.

15 A. "I am preparing to execute this Settlement
16 Agreement and Stipulation of Dismissal; which is a
17 condition precedent to the BB&T note sale. I wanted to

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Exhibit B
DEED IN LIEU OF FORECLOSURE

Space above this line for recording information

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

DEED IN LIEU OF FORECLOSURE
(No Title Examination)

KNOW ALL MEN BY THESE PRESENTS, that **Carolina Properties Holdings, LLC**, in consideration of Ten and NO/100ths (\$10.00) DOLLARS, and as a deed in lieu of foreclosure, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **Super Suds, LLC**, its successors and assigns forever;

SEE ATTACHED SCHEDULE "A"

TMS#: 9 03-10 092.00

This conveyance is made subject to any and all existing reservations, easements, rights of way, zoning ordinances, setback lines, and restrictions or protective covenants that may appear of public record or on the premises affecting the property herein conveyed.

Grantee's Address: Super Suds, LLC, 200 Ford Street, Greer, SC 29650

The consideration for this deed is the satisfaction and cancellation of an indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD Office for Spartanburg County in ROD Mortgage Book 3542, at Page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest computed at the annual rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein, and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging, or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto grantee(s), and the grantee's(s') successors and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs, executors and administrators to warrant and forever defend all and singular said premises unto grantee(s) and grantee's(s') successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s) hand(s) and seal(s) this 24 day of October, 2011.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Carolina Properties Holdings, LLC

Walter W. Parker, IV Walter W. Parker, IV
By: Walter W. Parker, IV
Its: Manager

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort) ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by the Principal and was executed and acknowledged to be the free act and voluntary deed of the Principal.

WITNESS my signature this 24 day of October, 2011.

Janet A. Mynick
Notary Public for: South Carolina
My Commission expires: _____

My Commission Expires September 12, 2017

PREPARED BY: S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North Street, Greenville, SC 29601

SCHEDULE "A"

ALL that piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, being shown as 0.56 acres on a survey for Jones Cooley and Raja Marzouca, dated April 24, 2003, by Site Design, Inc. recorded in Plat Book 154, Page 279, in the Spartanburg County ROD Office.

This being the same property conveyed to the Grantor herein by Jones M. Colley, Jr. and Rajai Y. Marzouca recorded in the Spartanburg County ROD office on August 26, 2005, in Deed Book 83-U at Page 906.

TMS#: 9 03-10 092.00

Grantor's Name: **Carolina Properties Holdings, LLC**

- PREPARED BY: S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North Street, Greenville, SC 29601

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

)
)
)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred bearing County Tax Map Number 9 03-10 092.00 was transferred by Carolina Properties Holdings, LLC to Super Snds, LLC on _____, 2011.
3. The deed is exempt from the deed recording fee because (See information section of affidavit):

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgage or deed pursuant to foreclosure proceedings;
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Grantee
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

S. Allan Hill, Attorney at Law
819 E. North Street
Greenville, SC 29601
(864) 242-4995

SWORN to before me this _____ day of _____, 2011.

Notary Public for South Carolina
My Commission Expires:

Exhibit C
Email Correspondence Between Walt Parker and Allan Hill,
dated September 20, 2011

Charles LeGrand

From: Allan Hill <ahill@greenvillelaw.net>
Sent: Friday, September 09, 2016 6:01 PM
To: Charles LeGrand
Subject: FW: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

S. Allan Hill
 Attorney, CPA
 819 E. North St.
 Greenville, SC 29601
 (864)242-4995
 (864)331-3050 Direct Dial
 (864)242-5500 fax
ahill@greenvillelaw.net

From: S. Allan Hill [<mailto:ahill@greenvillelaw.net>]
Sent: Tuesday, September 20, 2011 4:50 PM
To: 'Walter Parker'
Subject: RE: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

Walt,

Your understanding is correct.

S. Allan Hill
 Attorney, CPA
 819 E. North St.
 Greenville, SC 29601
 (864)242-4995
 (864)242-5500 fax
ahill@greenvillelaw.net

From: Walter Parker [<mailto:wwparker4@gmail.com>]
Sent: Tuesday, September 20, 2011 4:13 PM
To: ahill@greenvillelaw.net
Cc: rebecca@greenvillelaw.net
Subject: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

Allen,

I am preparing to execute the Settlement Agreement and Stipulation of Dismissal, which is a condition precedent to the BB&T note sale. I wanted to memorialize the verbal agreement we have that Ken Howard, Super Suds LLC and/or the new note holder will not pursue a deficiency judgment against Carolina Properties Holdings LLC or me. Also, I heard you say that Ken Howard, Super Suds LLC and/or the new note holder would not be filing a 1099 for the forgiveness of debt.

Please let me know if my understanding is correct.

Best Regards,
Walt Parker
843-473-9365

ELECTRONICALLY FILED - 2018 Jul 09 8:09 PM - SPARTANBURG - COMMON PLEAS - CASE#2011CP4200500

Exhibit D

**Email Correspondence between Walt Parker and Allan Hill, dated
August 18, 2011**

Charles LeGrand

From: Allan Hill <ahill@greenvillelaw.net>
Sent: Tuesday, December 27, 2016 4:50 PM
To: Charles LeGrand
Subject: FW: Contact Information for SBA and CDIC

Just found this.

S. Allan Hill
 Attorney, CPA
 819 E. North St.
 Greenville, SC 29601
 (864)242-4995
 (864)331-3050 Direct Dial
 (864)242-5500 fax
ahill@greenvillelaw.net

From: Walter Parker [<mailto:wwparker4@gmail.com>]
Sent: Thursday, August 18, 2011 11:40 AM
To: ahill@greenvillelaw.net
Subject: Contact Information for SBA and CDIC

Allen,

It was a pleasure to speak with you. Here is the contact information I promised:

SBA Disaster Loan

The borrower name is Carolina Properties Holdings LLC SBA Disaster loan number 30849260-03. Derenda Fisher was my point of contact. Greg Dixon Lead Loan Specialist was the individual who said they would take \$2,000 to go away. His number is 714/564-2880.

Derenda Fisher
 Loan Specialist
 JS Small Business Administration
 National Disaster Loan Resolution Center
 200 W. Santa Ana Blvd., Suite 180
 Santa Ana, CA 92701-4134
714-564-2809
202-741-6752 Fax
Derenda.Fisher@SBA.Gov

Community Development and Improvement Corporation

The borrower name is Carolina Clean Greer I, LLC & Carolina Properties Holdings LLC Loan number is 20019. The lender contact is Fred Gibbs with Banc Capital and Financial Services P.O. Box 3218 Spartanburg, SC 29304. His telephone is 864-576-6678

CDIC
 P.O. Box 90
 Graniteville, SC 29829

864-649-6673

Thanks,

Walt

843-473-9365

000133

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	PLAINTIFF'S MOTION TO
	)	RECONSIDER COURT'S ORDER
vs.	)	DENYING PLAINTIFF'S MOTION FOR
	)	DECLARATION UNDER RULE 43(k),
	)	SCRCP
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	
by and through the U.S. Small Business	)	
Administration, Carolina Clean Greer I,	)	C.A. No.: 2011-CP-42-0500
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Rule 59(e), Plaintiff Super Suds, LLC ("Plaintiff") submits the following Motion to Alter or Amend the Judgment in the Court's Order of September 27, 2018, denying Plaintiff's Motion for a Declaration Under Rule 43(k), SCRCP. Plaintiff submits this Motion because the Court improperly rewarded Defendant Carolina Properties Holdings, LLC, for not being represented by counsel during a proceeding in this court, despite clear legal holdings requiring representation by counsel in the Circuit Court.

FACTUAL AND PROCEDURAL BACKGROUND

The Court conducted a hearing in this matter on July 17, 2018. One of the Motions entertained was a Motion by Plaintiffs for a Declaration that there was no enforceable settlement agreement entered between Plaintiff and Defendants Carolina Properties Holdings, LLC, and Walter W. Parker, IV (collectively referenced as "Moving Defendants").

On September 1, 2017, this Court entered an Order finding that “[n]o agreement affecting this proceeding is binding unless one of the conditions of Rule 43(k), SCRCPP, is met.” Order of September 1, 2017, Denying Moving Defendant’s Motion to Disqualify Hill, hereinafter, “9/1/17 Order,” p. 4, citing *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). The Court further ruled that “[i]f [Moving Defendants] move to compel a purported settlement agreement, the Court will consider said motion, and will determine what information it requires, if any, of Parker, Hill or any other witness, as to whether in 2011 an enforceable settlement agreement was made under Rule 43(k), SCRCPP.” *Id.*

Following this ruling, on December 6, 2017, Moving Defendants filed an Answer to Plaintiff’s Amended Complaint, which included an allegation of merger of title, alleging that the dispute was settled by provision of a deed in lieu of foreclosure. On April 18, 2018, Plaintiff filed a Motion for Declaration Under Rule 43(k), SCRCPP, asking the Court to conduct a hearing under Rule 43(k), and to determine that there is no enforceable settlement agreement. The Court conducted this hearing on July 17, 2018, issuing its Order denying the Motion on September 27, 2018; Plaintiff received notice of the ruling on that date.

ARGUMENT

1. The September 27, 2018, Order Reversed a Prior Ruling of the Court on the Controlling Law; However, Moving Defendants Did Not Follow the Proper Procedure or Schedule for Relief from the Prior Order.

On September 1, 2017, this Court found that “[n]o agreement affecting this proceeding is binding unless one of the conditions of Rule 43(k), SCRCPP, is met.” 9/1/17 Order, p. 4. Moving Defendants never filed any Motion, either under Rule 59 or Rule 60 challenging that finding.

Under Rule 59, SCRCP, Moving Defendants should have sought reconsideration within 10 days of receipt of the notice of the September 1, 2017 Order, and they did not do so.

Moving Defendants have failed to provide any evidence that there is a written agreement between the parties which complies with Rule 43(k), meaning they failed to meet the requirements set forth in the Court's September 1, 2017 Order.

2. In the Simultaneously-Heard Motion for Summary Judgment, Moving Defendants Moved to Enforce a Purported Settlement Agreement, Which is Disputed By Plaintiff.

Regardless of the title given to Moving Defendants' Motion for Summary Judgment, Moving Defendants have essentially filed a Motion to Enforce a Purported Settlement Agreement. Moving Defendants contend that the Deed in Lieu constitutes part of a settlement agreement, which would affect this "proceeding," *i.e.* that would result in the dismissal of this civil action; and they have asked for the Court to make this ruling. In assessing a Motion to Enforce a Settlement Agreement, the Court should consider all evidence presented to it, including, but not limited to, all arguments, law and other matters presented in previous motions in this matter, the representations of counsel in court, and any other items presented as evidence regarding the parties' intentions. The Order does not indicate the Court considered all of this information, and, therefore, Plaintiff seeks modification of the Order for the Court to state that it considered the full record. The purported settlement agreement occurred after this action was commenced; therefore, it would be an agreement affecting the proceedings, and Rule 43(k), SCRCP, should govern evaluation of the agreement.

3. Rule 43(k) Applies to a Settlement Agreement Affecting a Pending Suit, Regardless of Whether All Parties are Represented by Counsel. The Only Variance Would Be that Pro Se Parties Do Not Need an Additional Signature of Counsel.

“Rule 43(k), SCRCF, is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation . . . and it is applicable to settlement agreements.” *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 493-4, 458 S.E.2d 533, 534 (1995). Moving Defendants argue that Rule 43(k) does not apply to what they contend to be a settlement agreement ending this pending case solely because Carolina Properties Holdings, LLC did not have counsel to sign a document reaching this agreement. Moving Defendants applied this same argument of Rule 43(k)’s inapplicability to Defendant Parker, who elected to represent himself, but who failed to obtain an enforceable release under Rule 43(k).¹ Moving Defendants have provided no legal support for why their failure to have counsel bars application of a rule which this very court has recognized holds “the very purpose [of which] is to prevent disputes as to the existence and terms of agreements regarding pending litigation.” 9/1/17 Order, p. 4, *citing Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725. Without such legal support, the Court should find that Rule 43(k), SCRCF, applies to any settlement agreement modifying this case after filing, including the purported deed in lieu. Based on this finding, and the absence of any document satisfying the requirements of Rule 43(k), the Court should reverse its order denying Plaintiff’s Motion for a Declaration Under Rule 43(k).

¹ South Carolina’s Supreme Court has noted that “[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law. *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003) (Footnote 5).

4. By Finding that Rule 43(k), SCRCF, is Inapplicable to This Matter Because Carolina Properties Holdings, LLC Was Unrepresented, the Court Has Provided a Reward and an Equitable Remedy to a Party Based Directly on Its Unclean Hands Through Its Failure to Comply with Court Rules.

South Carolina's Supreme Court has clearly stated that a non-lawyer cannot represent a corporation or any other jural entity, like an LLC, in a Circuit Court or appellate court. *See Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999) (finding corporate entity must be represented by counsel in circuit or appellate court). By finding that Rule 43(k) is inapplicable to an agreement affecting a pending proceeding, because Carolina Properties Holdings, LLC, did not have counsel, the Court is rewarding this LLC for clearly violating a rule governing pending proceedings before the Court of Common Pleas. In essence, Moving Defendants have obtained equitable relief to terminate a pending proceeding for foreclosure based solely on Carolina Properties Holdings, LLC's failure to be represented by counsel in this proceeding, even though it was legally obligated to be represented by counsel. The Court has allowed Carolina Properties Holdings to use its unclean hands to obtain equitable relief.

CONCLUSION

On September 1, 2017, the Court found that Rule 43(k) applied and that Moving Defendants had no evidence to satisfy the Rule 43(k) requirements. Regardless of the title given to the Motions, both Plaintiff and Moving Defendants have sought a determination of whether there is a settlement agreement which affects this litigation. It is undisputed that Moving Defendants still have identified no document which satisfies the requirements of Rule 43(k).

The only argument that Moving Defendants have presented to bar application of Rule 43(k) is that Moving Defendants, including an LLC, were unrepresented by counsel at the time Parker claims he made a settlement agreement with Plaintiff's counsel. There is no legal support for a finding that Rule 43(k) is inapplicable to cases involving pro se litigants, because our Supreme Court has determined that pro se litigants are subject to all procedural and substantive legal requirements applicable to cases involving counsel. Further, denying application of Rule 43(k) based on this position rewards Carolina Properties Holdings, LLC for an LLC's failure to comply with the unambiguous requirement of the Supreme Court of South Carolina that an LLC must be represented by counsel in a circuit court proceeding. Accordingly, the Court should reverse its Order denying Plaintiff's Motion for a Declaration pursuant to Rule 43(k). The Court should find that there is no settlement agreement controlling this proceeding, and the matter should proceed to a determination on the merits.

Respectfully submitted,

LEGRAND LAW FIRM, LLC

s/Charles D. LeGrand

Charles D. LeGrand (SC Bar #9910)
310 Mills Avenue, Suite 103
Greenville, SC 29605
(864) 242-6461

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	PLAINTIFF'S MOTION TO
	)	RECONSIDER ORDER GRANTING
vs.	)	DEFENDANTS' MOTION FOR
	)	SUMMARY JUDGMENT
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	
by and through the U.S. Small Business	)	C.A. No.: 2011-CP-42-0500
Administration, Carolina Clean Greer I,	)	
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 59 and Rule 60, SCRCP, Plaintiff Super Suds, LLC ("Plaintiff") moves this Court for an Order altering its order dated September 27, 2018, granting the purported Motion for Summary Judgment of Defendants Carolina Properties Holdings, LLC ("CPH") and Walter W. Parker, IV ("Parker") (CPH and Parker are collectively referenced as "Moving Defendants"). Plaintiff respectfully submits that the Court should deny Moving Defendants' Motion for Summary Judgment, because 1) it was procedurally improper, and 2) the Court improperly limited the record considered in ruling on Moving Defendants' Motion for Summary Judgment. Further, the Court should not have heard Moving Defendants' Motion for Summary Judgment at the July 17, 2018, hearing, because it was not timely.

FACTUAL AND PROCEDURAL BACKGROUND

The Court conducted a hearing in this case on July 17, 2018. One of the Motions entertained was a purported Motion for Summary Judgment from Moving Defendants, in which

Moving Defendants argued that Moving Defendants resolved their debt with Plaintiff by presenting a deed in lieu of foreclosure; however, Moving Defendants never filed a pleading with the Court entitled "Motion for Summary Judgment." Rather, on April 5, 2017, Moving Defendants filed a Rule 12(b)(6), SCRCF, Motion to Dismiss, arguing that Plaintiff "ha[d] no enforceable rights under the mortgage." On July 9, 2018, fewer than ten days before the Court conducted a hearing on the Motion to Dismiss, Moving Defendants filed a Memorandum in Support of their Motion to Dismiss. For the first time, Moving Defendants stated that they sought summary judgment in the alternative to the Motion to Dismiss. Moving Defendants introduced multiple pieces of evidence into the record through this motion, which moved outside the four corners of the filed pleadings. The Court never made an affirmative finding regarding the conversion, and it never provided Plaintiff with an opportunity to supplement the record in opposition to the purported Motion for Summary Judgment.

ARGUMENT

1. The Court's Order Does Not Accurately Cite the Procedural Posture of the Purported Motion for Summary Judgment.

Plaintiff describes its procedural objections to the posture of the Motion in detail below.

The Order should, but does not, note that the Brief which purportedly converted the Motion to Dismiss into a Motion for Summary Judgment was filed fewer than 10 days prior to the Court's hearing date. Further, the Order's recitation of the record considered does not include the statements and affidavit of Alan Hill, which should be in the record, pursuant to the plain language of Rule 12(b), SCRCF. The Order fails to note that the Court is required to allow the non-moving party to present evidence in opposition to a Motion for Summary Judgment if a

Rule 12(b)(6) motion is converted to a Motion for Summary Judgment by the Court. The conclusions of the Order state there is no evidence that Hill's acceptance of the deed was conditional, but Hill's affidavit, which should be in the record, makes that very statement. The Court should modify its Order to reflect the untimely conversion, and it should note that Hill's Affidavit was part of the record considered, based on the Court's obligation, under Rule 12(b), SCRCF, to allow Plaintiff to supplement the record in opposition to a Motion for Summary Judgment, where a Motion to Dismiss is converted to a Motion for Summary Judgment.

Additionally, the Court should withdraw its Order granting Moving Defendants' Motion for Summary Judgment, because the hearing was not timely, and Plaintiff did not consent to the conversion or the untimely hearing.

2. Moving Defendants Have Moved to Enforce a Purported Settlement Agreement, Which is Disputed By Plaintiff. The Court Should Have Considered All Evidence It Has Received Related to Parties' Intentions.

Regardless of the title given to Moving Defendants' Motions, they have essentially filed a Motion to Enforce a Purported Settlement Agreement. Moving Defendants contend that Parker made an oral agreement with Plaintiff's attorney, Allan Hill, that if Parker, on behalf of his company, Carolina Properties Holdings, LLC, tendered to Hill a Deed in Lieu of the foreclosure, Plaintiff would dismiss its foreclosure action, despite the existence of the Small Business Administration Mortgage. Allan Hill directly refutes the patently illogical contention that on behalf of Plaintiff, he would have made an agreement that gives the SBA first mortgage status. Moving Defendants contend that Parker's communications with Hill rise to the level of an enforceable settlement agreement, and they have asked for the Court to enforce the alleged

settlement agreement by granting their purported motion for summary judgment on what is tantamount to an affirmative defense of accord and satisfaction, and dismiss this action. Such a Motion is wholly inappropriate to be brought under Rule 12(b)(6), SCRCP, because the Deed in Lieu, and all representations related to it, constitute matters outside the pleadings. In assessing a Motion to Enforce a Settlement Agreement, the Court should consider all evidence presented to it, including, but not limited to, all arguments, law, and other matters presented in previous motions in this matter, the representations of counsel in court, and any other items presented as evidence regarding the parties' intentions. The Proposed Orders do not indicate the Court considered all of this information; Plaintiff requests that the Court modify its Order to demonstrate that it considered all of these matters as part of the record before the Court. The purported settlement agreement occurred after this action was commenced; therefore, it would be an agreement affecting the proceedings, and Rule 43(k), SCRCP, should govern evaluation of the agreement.

In deciding Plaintiff's Motion for Declaration under Rule 43(k), SCRCP, the Court was not required to receive sworn testimony, unless the Court determined such testimony was required. In that event, the Court could have placed Hill on the witness stand to answer questions for the Court. Given the posture, the same factual record considered by the Court in the Motion for Declaration should have been considered in ruling on the Motion for Summary Judgment. Hill's affidavit, presented as a supplement after the Court converted the Motion to Dismiss to a Motion for Summary Judgment, is simply a verification of the facts Plaintiff and its attorney presented to the Court related to the purported settlement agreement, including those cited by the Court in its orders. Accordingly, the Affidavit served to ensure that all evidence presented to the Court was in an admissible form when the Court ruled on Moving Defendants'

Motion for Summary Judgment. Failure to treat the affidavit accordingly constitutes a failure to comply with the requirements of Rule 12(b), when a Motion to Dismiss is converted to a Motion for Summary Judgment.

2. Even If the Matter Were Considered as a Proper Motion Under Rule 12, SCRCF, The Court Failed to Allow Presentation of Opposing Evidence When It Considered Matters Outside the Pleadings, Violating the Requirements of Rule 12(b) and Rule 56, SCRCF.

Moving Defendants couched their initial motion as a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRCF. “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory.” *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

Rule 12(b), SCRCF, further states:

If, on a motion asserting the defense numbered (6) to dismiss for failure to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion **shall** be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

Rule 12(b), SCRCF (emphasis added). While the Proposed Order on the Motion for Summary Judgment implies some sort of waiver by Plaintiff, the use of the mandatory word “shall” in the rule indicates that the Court must give parties a right to submit evidence, and that such right is not something that can be waived by inaction.

Rule 56 sets specific timelines for presentation of motions and evidence for courts considering motions for summary judgment. Specifically, motions for summary judgment “must be served at least 10 days before the time fixed for the hearing [on said motion].” Rule 56(c), SCRCF. Parties opposing these motions are allowed to file affidavits establishing issues of material fact up to two days prior to a hearing on the Motion for Summary Judgment. *Id.*

Part of the reason that Rule 12(b), SCRCF, requires the Court to make a finding allowing a Motion for Summary Judgment when a moving party files extrinsic evidence in support of a Rule 12(b)(6) Motion to Dismiss is that there are two legal standards applicable to the Motions. For a Motion to Dismiss, the opposing party need merely rely on the allegations contained within the Complaint, as well as any inferences drawn therefrom. *Baird, supra*, 333 S.C. at 527. To oppose a Motion for Summary Judgment, the non-moving party must identify specific, admissible facts upon which it relies. *See Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 69 (Ct. App. 1985). Plaintiff approached the hearing anticipating a Motion to Dismiss, with plans to oppose that Motion using its pleading, which unquestionably states a cause of action upon which relief may be granted, a routine suit on a debt and for foreclosure. Moving Defendants argued a Motion for Summary Judgment, without leave to do so. If the Court made an explicit finding that it was appropriate to convert the Motion to one under Rule 56, which Rule 12 requires but which was not done, the Court was required, by mandatory language in Rule 12(b), to give Plaintiff leave to file additional evidence in opposition to the Motion. Plaintiff submitted that evidence, but the Court’s order does not indicate that the Court considered this evidence. Such failure to consider the evidence presented violates mandatory language from Rule 12(b), SCRCF.

Plaintiff files this Motion to again explicitly note its opposition to the Court’s conversion of Moving Defendants’ Motion to Dismiss into a Motion for Summary Judgment. The hearing

conducted on that Motion failed to comply with the requirements of Rule 56, SCRCF, in that there were fewer than ten days between the filing of the first mention of an alternative Motion for Summary Judgment, and the hearing on this motion. Plaintiff expressly objects to the untimeliness of the hearing. Furthermore, and without waiving these objections, Rule 12(b), SCRCF, requires that the Court provide Plaintiff a reasonable opportunity to present material in opposition to a Motion for Summary Judgment. The Court's Order granting Moving Defendants' Motion for Summary Judgment does not demonstrate that the Court considered all previous pleadings filed and arguments made as to what testimony would be presented by counsel, if so required. If the Court failed to consider this evidence, it did not comply with the requirements of Rule 12 and Rule 56, and the Court should modify its ruling to comply with those rules. Further, the Court should consider the Affidavit of Allan Hill, filed on September 7, 2018, as evidence presented into the record in this matter in opposition to Moving Defendants' Motion for Summary Judgment. The Affidavit of Hill creates an issue of material fact as to Moving Defendants' contention that delivery of the Deed in Lieu was effective to convey title to Plaintiff. Defendant's argument results in a Deed in Lieu substituting as a Settlement Agreement without meeting the requirements of Rule 43 (k). Therefore, Moving Defendants' Motion for Summary Judgment should be denied.

Further, Moving Defendants have provided no proof of any agreement which complies with Rule 43(k), and the settlement agreement which Moving Defendants contend exists as a result of the provision of the deed in lieu of foreclosure to Hill is not an enforceable settlement agreement in this case. Accordingly, Moving Defendants have failed to prove their Motion for Summary Judgment, and it should be denied.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Reconsider the Order granting Summary Judgment to Moving Defendants should be granted, and Moving Defendants' Motion to Dismiss and Motion for Summary Judgment should be denied. Further, the Order should find that Rule 43(k), SCRCF, governs all settlement agreements affecting litigation after the commencement of the litigation, and no Rule 43(k)-compliant agreement has been proven in this case. This finding regarding Rule 43(k) is, on its own, sufficient basis for the Court to deny Moving Defendants' Motion for Summary Judgment. If the Court finds Rule 43(k) inapplicable, the Hill Affidavit and information provides sufficient evidence to create an issue of material fact, which must be resolved through a hearing, rather than a Motion for Summary Judgment.

Beyond the Rule 43(k) issue, the Court should modify its Order to reflect more accurately the procedural posture, which is that Moving Defendants filed a Rule 12(b)(6) motion, which they attempted to convert to a Motion for Summary Judgment fewer than 10 days before the hearing date. Further, the Order should reflect that Plaintiff never consented to this conversion, nor did Plaintiff consent to a hearing of the Motion fewer than 10 days from filing of the Brief which attempted to convert the Motion to Dismiss. Accordingly, the Court should withdraw its Order granting Moving Defendants' Motion for Summary Judgment, because the proceeding did not comply with the requirements of Rule 12 or Rule 56, SCRCF.

Finally, if the Court determines that Moving Defendants were entitled to a hearing on their purported Motion for Summary Judgment, despite their failure to comply with the requirements of Rule 12 and Rule 56, SCRCF, Plaintiff should be afforded an opportunity to supplement the record in opposition to the Motion for Summary Judgment; and the Court's

Order should also reflect that Plaintiff filed a timely submission of the Hill Affidavit to supplement the record, prior to the Court's issuance of a ruling on the Motion for Summary Judgment.

Respectfully submitted,

LEGRAND LAW FIRM, LLC

s/Charles D. LeGrand

Charles D. LeGrand (SC Bar #9910)
310 Mills Avenue, Suite 103
Greenville, SC 29605
(864) 242-6461

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' CAROLINA
	)	PROPERTIES HOLDINGS, LLC
	)	AND WALT W. PARKER, IV'S
	)	MOTION TO STRIKE SUBMISSION
	)	AND AFFIDAVIT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

Defendants, Carolina Properties Holdings, LLC ("CPH"), and Walter W. Parker IV ("Parker") (collectively "Defendants"), hereby respectfully object to Plaintiff, Super Suds, LLC's ("Plaintiff") Submission of Affidavit of Counsel ("Submission") and the Affidavit of S. Allan Hill ("Affidavit"), and move this Court for an Order striking the Submission and Affidavit from the record pursuant to the South Carolina Rules of Evidence, Rule 12(f) and Rule 56(3), South Carolina Rules of Civil Procedure.

I. FACTUAL AND PROCEDURAL BACKGROUND

1. On February 2, 2011, Branch Banking & Trust (BB&T) filed the above-captioned case to foreclose a mortgage securing a note owed to BB&T by CPH. The original amount owed on the note was \$585,000.00.

2. The mortgage encumbers real property in Spartanburg County on which a car wash was operating that was owned by CPH.

3. The United States of America, by and through the Small Business Administration (SBA), was named as a party because it holds a subordinate mortgage; Carolina Clean Greer I (Carolina Clean) was named as a defendant because it was a prior operating company and is alleged in the complaint to hold a possible lien on personal property located on the property; and Community Development & Improvement Corporation (CDIC) was named as defendant because it holds a subordinate lien on the property. Parker had personally guaranteed the SBA loan in the amount of \$133,000.00.

4. Parker filed an answer and counterclaim against BB&T on September 1, 2011.

5. On September 16, 2011, Super Suds, LLC purchased the subject loan from BB&T and accepted an assignment of mortgage.

6. On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T.

7. On October 31, 2011, Super Suds was substituted as Plaintiff and a Notice of Appearance was filed by Allan Hill.

8. Allan Hill, attorney for Super Suds, drafted and sent a deed-in-lieu of foreclosure (DIL) to defendant Parker through which Parker on behalf of CPH conveyed title to the subject property to Super Suds, the holder of the first mortgage loan.

9. Mr. Parker promptly executed the deed-in-lieu on October 24, 2011, and returned it to Mr. Hill.

10. The DIL purported to convey absolute title to the property and provides, in pertinent part, as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest as computed as the annual percentage rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

DIL dated October 24, 2011.

11. Immediately after delivery of the DIL, Super Suds assumed possession of the property and began operating its business. Super Suds has operated the car wash continuously since that time on the property.

12. The case lay dormant on the roster for the Court of Common Pleas from October 31, 2011 to September 25, 2014, when an order of reference was consented to by Super Suds and allegedly by CPH and Parker.

13. The Consent Order is signed by attorney Allan Hill purportedly on behalf of both parties.

14. The matter came before this Court on September 12, 2016, for a hearing and the Court ordered the hearing continued to allow time for discovery.

15. Notices of Appearances have been filed by Charles LeGrand on behalf of the Plaintiff, and Max Hyde, Samantha Nicholson and Barbara Brunson on behalf of the Defendants Parker and CPH.

16. After the September 12, 2016 hearing, activity commenced on the matter. Defendants Parker and CPH filed a motion to dismiss on April 5, 2017. Plaintiff filed a Motion for a Declaration under Rule 43(k) of the SCRCPP on April 18, 2018. The parties have engaged in discovery.

17. On May 26, 2017, Defendants filed a Motion to Disqualify Counsel Allan Hill from participation in this trial pursuant to Rule 3.7, South Carolina Rules of Professional Responsibility, upon the grounds that he is a necessary witness. Defendants filed a brief of the same.

- a. Plaintiff filed a Memorandum in Opposition to the Motion to Disqualify Allan Hill as Counsel on July 28, 2017.
- b. On September 1, 2017, this Court denied Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition.

18. On July 17, 2017, the Court heard the Defendant's Motion to Dismiss and Plaintiff's Motion for a Declaration under Rule 43(k) of the SCRCPP.

- a. In its Memorandum in Support of Motion to Dismiss or in the Alternative Motion for Summary Judgment, Defendant asserted that the Motion to Dismiss would be converted to a motion for summary judgment pursuant to Rule 12(b) SCRCPP. No objection was raised to the converting Defendant's motion to dismiss to a motion for summary judgment prior to or at the hearing.

19. The record before the court on the hearing of these motions includes the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super

Suds, and Walt Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

20. On September 7, 2018, after hearings on the Motion to Dismiss and Motion for a Declaration under Rule 43(k) of the SCRCP, and after the Court signed an Order as to these motions, Plaintiff submitted a document named "Plaintiff's Submission of Affidavit of Counsel" stating Plaintiff's denial of this Court's ruling on July 17, 2018. Plaintiff's Counsel, Charles D. LeGrand restates Plaintiff's legal arguments, but cites no legal purpose for filing an Affidavit of S. Allan Hill.

21. On September 7, 2018, Plaintiff filed together with Charles D. LeGrand's Submission of Affidavit of Counsel, an Affidavit of S. Allan Hill ("Affidavit"), which supports no pending motion or pleading. The Affidavit largely restates Plaintiff's arguments submitted as Memorandum to the Court or Charles D. LeGrand's verbal arguments proposed at the hearing on July 17, 2018.

22. Thereafter, on September 27, 2018, this Court signed and filed an Order Denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRCP, and an Order Granting Defendant Carolina Properties Holdings, LLC, and Walter W. Parker, IV's Motion for Summary Judgment.

II. ARGUMENT TO STRIKE SUBMISSION AND AFFIDAVIT

A. No Basis for Submission

23. Plaintiff's Submission and Affidavit were filed after the completion of hearings on all pending motions, after the Court verbally stated its ruling, and prior to the Court signing a written order.

24. Plaintiff established no specific basis for submission of the Affidavit.

25. As counsel of record, Allan S. Hill should have no need to submit an affidavit, but may proffer arguments in all legal avenues available pursuant to civil procedure.
26. This Affidavit is an attempt to convert legal arguments into evidentiary testimony. Allan Hill plucked out statements from memorandum and hearings, which were asserted as legal arguments and asserts them in his Affidavit as fact.
27. Plaintiff should not be permitted to submit an Affidavit of fact into the record after the Court ruled on all pending matters with no legal basis.

B. Allan S. Hill is not a "Necessary Witness"

28. This Court ruled in an Order Denying Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition that, "Hill is not a 'necessary witness' on the merits of the foreclosure issues, and has acted only as an attorney of record for Super Suds in this Action."¹
29. This Court prevented Defendant's from deposing Allan Hill determining that he is acting as an officer of the court and attorney of record in this litigation, rather than a witness to the matter.²
30. In Plaintiff's Memorandum in Opposition to Motion to Disqualify Allan Hill as Counsel, Plaintiff claims Allan Hill is not a necessary witness stating, "[t]o the extent testimony is needed to develop and prove their theory, Defendants can rely on testimony of parties to this Action and other third-party fact witnesses..."³
31. Allan Hill should not be permitted to use his Affidavit as a means to evade Rule 3.7 of the South Carolina Rules of Professional Conduct, when it would not be possible to rely

¹ See Order Denying Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition, § II, 4, September 1, 2017.

² See *id.*

³ Plaintiff's Memorandum in Opposition to Motion to Disqualify Allan Hill as Counsel, § III(A).

on his testimony at trial. *See* Rule 3.7, SCRPC (stating that a lawyer shall not advocate in a trial in which the lawyer is likely to be a necessary witness).

32. At trial, Allan Hill would be prevented from asserting facts unless he was testifying according to Rule 3.4(e), South Carolina Rules of Professional Conduct. *See* Rule 3.4(e), SCRPC (“A lawyer shall not...in trial... assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause...”).

33. The Submission and Affidavit is an attempt to assert personal knowledge of facts in issue.

34. The Court should not permit Allan Hill to testify via Affidavit of personal knowledge when the Court stated Allan Hill is not a necessary witness and did not permit Defendants to Depose Allan Hill.

C. Inconsistent with the Rules of Evidence

35. An affidavit must conform to the Rules of Evidence and show that the affiant is competent to testify to the matters stated therein, according to South Carolina Rules of Civil Procedure, Rule 56(e).

36. Although the Submission and Affidavit were submitted after the Court granted Summary Judgment, the documents must comply with the Rules of Evidence.

37. The majority of the Affidavit is impermissible hearsay. *See* Rule 801, SCRE.

38. Allan Hill attempts to quote prior assertions in his Affidavit introducing them into evidence to prove the truth of the matter asserted. *See* Rule 801, SCRE.

39. Allan Hill should not be permitted to affirm or verify statements or arguments on record according to his selection in an Affidavit that reads like testimony.

40. Upon information and belief, the Affidavit is an inappropriate attempt to introduce evidence in the form of a closing argument. If this were a closing argument, the attorney would be limited to facts on the record. Many of Hills quotes are legal arguments and not evidentiary facts. New evidence is not to be presented in a closing argument. Furthermore, a closing argument would be inappropriate after the Court issued a ruling.

D. Redundant, immaterial, impertinent

41. Under Rule 12(f), SCRCPP, "at any time the court may order stricken from any pleading an insufficient defense or any redundant, immaterial, impertinent or scandalous matter."

42. The facts and/or legal arguments asserted in the Affidavit are redundant.

43. This matter includes a record that states the facts in numerous pleadings, motions, and hearings.

44. Additionally, the Submission and Affidavit are immaterial because they were filed after the Court ruled on the facts.

45. Moreover, the timing of the Submission and Affidavit cause them to be impertinent. The Court heard all facts and arguments and made a ruling on the matter. The Submission and Affidavit should not be used to evade permissible avenues for assertion of facts and claims according to South Carolina Rules of Civil Procedure.,

46. Therefore, Plaintiff's Submission and Affidavit are redundant, immaterial, and impertinent and should be stricken from the record and disregarded as evidence.

CONCLUSION

47. Defendants object to Plaintiff's Submission of Affidavit of Counsel and Affidavit of S.

Allan Hill and move for this Court to strike them from the record.

48. This motion is supported by the pleadings in this case, applicable law, applicable procedural rules, the record, and any memorandum of law which may be filed.

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson

Barbara E. Brunson (SC Bar # 0012940)
LAW OFFICE OF BARBARA E. BRUNSON, LLC
P.O. Box 50943
Columbia, SC 29250
T: (803) 799-0425
F (877) 310-8766
barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson

Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
Samantha L. Nicholson (SC Bar #102790)
HYDE LAW FIRM, P.A.
753 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330
F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

*ATTORNEYS FOR DEFENDANTS, CAROLINA
PROPERTIES HOLDINGS, LLC AND WALTER W.
PARKER, IV*

October 15, 2018

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Super Suds, LLC,	)	
	)	
Plaintiff	)	PLAINTIFF'S BRIEF IN OPPOSITION
	)	TO MOTION TO DEFENDANTS'
vs.	)	MOTION TO STRIKE
	)	
Carolina Properties Holdings, LLC, Walter	)	
W. Parker, IV, the United States of America	)	C.A. No.: 2011-CP-42-0500
by and through the U.S. Small Business	)	
Administration, Carolina Clean Greer I,	)	
LLC, and Community Development &	)	
Improvement Corporation	)	
	)	
Defendants.	)	
	)	

Plaintiff Super Suds, LLC ("Plaintiff") submits this Brief in Opposition to the Motion to Strike the Affidavit of Allan Hill filed by Defendants Carolina Property Holdings, LLC ("CPH") and Walter W. Parker, IV ("Parker") (CPH and Parker are collectively referenced as "Moving Defendants"). Plaintiff opposes the Motion to Strike because it violates the clear terms of Rule 56 and because the Court improperly limited the record it considered in Moving Defendants' Motion for Summary Judgment, as well as the Order granting Moving Defendants' Motion for Summary Judgment.

RELEVANT PROCEDURAL BACKGROUND

The Court conducted a hearing in this case on July 17, 2018. One of the Motions entertained was a purported Motion for Summary Judgment from Moving Defendants, in which Moving Defendants argued that Moving Defendants made an agreement to present a deed in lieu of foreclosure to Plaintiff, and in exchange Plaintiff would satisfy Defendant's debt and dismiss

this foreclosure action. Moving Defendants never filed a pleading with the Court entitled "Motion for Summary Judgment." Rather, on April 5, 2017, Moving Defendants filed a Rule 12(b)(6), SCRCF, Motion to Dismiss, arguing that Plaintiff "ha[d] no enforceable rights under the mortgage." On July 9, 2018, less than ten days before the Court conducted a hearing on the Motion to Dismiss, Moving Defendants filed a Memorandum in Support of their Motion to Dismiss. For the first time, Moving Defendants stated that they sought summary judgment in the alternative to dismissal pursuant to their Motion to Dismiss. Moving Defendants introduced multiple pieces of evidence into the record through this Motion to Dismiss, which moved outside the four corners of the pleadings filed. Prior to the hearing, the Court never made an affirmative finding that it was converting the Motion to Dismiss into a Motion for Summary Judgment, and the Court afforded Plaintiff no opportunity to submit evidence in opposition to the Motion for Summary Judgment prior to ruling. On September 7, 2018, Plaintiff filed a Submission of Counsel, as well as an affidavit from S. Allan Hill. On October 15, 2018, Moving Defendants filed a Motion to Strike the submission and affidavit.

ARGUMENT

1. Rule 12(b) Provides a Legal Basis for Submission of the Hill Affidavit.

On July 9, 2018, less than ten days prior to the scheduled hearing for the Motion to Dismiss, Moving Defendants filed a Brief which for the first time purportedly converted the Motion to Dismiss to a Motion for Summary Judgment. Rule 12(b), SCRCF states:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all

parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12(b), SCRCPP (emphasis added). Moving Defendants offered matters outside the pleadings in support of their Motion to Dismiss, and the Court converted the Motion to a Motion for Summary Judgment. Under the plain language of Rule 12(b), the Court was required, with or without a motion from the parties, to give the parties reasonable opportunity to submit material made pertinent by the Motion for Summary Judgment. The submissions at issue address the contentions of the Motion for Summary Judgment, and Rule 12(b) requires that they be admitted into the record, with or without a Motion by Plaintiff to that effect.

As an attorney of record for Plaintiff, Hill has provided the Court in various filings and on the record his knowledge and intent in communicating with Moving Defendants and in denying that he entered into an enforceable settlement agreement with them for the dismissal of this civil action (collectively "Plaintiff's Denial"). Plaintiff's Denial has been properly presented to the Court with respect to the Court's evaluation of whether Plaintiff, through Hill, entered into an enforceable settlement agreement for the dismissal of this civil action. Unless the Court directed otherwise, which it did not, Hill was not required to present Plaintiff's Denial as sworn testimony. Hill's Affidavit is intended to present Plaintiff's Denial in the form of sworn testimony, which is typically required for establishing issues of fact to oppose a Motion for Summary Judgment. Furthermore, Hill's Affidavit was filed within a reasonable period of time after an untimely hearing on a Motion for Summary Judgment. Moving Defendants contend there was no legal basis for submission of the affidavit, completely ignoring the explicit requirements of Rule 12(b), regarding the submission of evidence in opposition to a Motion to Dismiss converted into a Motion for Summary Judgment.

Moving Defendants' purported Motion for Summary Judgment is nothing more than a motion to compel enforcement of settlement agreement. Plaintiff contends that Hill's sworn testimony is not required in order for the Court to decide whether Plaintiff and Moving Defendants made an enforceable settlement agreement. However, Moving Defendants contend there is no sworn testimony that establishes an issue of fact with respect to whether there is an enforceable settlement agreement. Reserving its opposition to this position, Plaintiff has filed the Hill Affidavit to verify Plaintiff's Denial by the sworn testimony of an attorney of record. Contrary to Moving Defendants' assertions, Hill has made no effort to evade Rule 3.7 of the Rules of Professional Conduct.

2. Hill's Affidavit Establishes Issues of Material Fact Sufficient to Defeat Moving Defendants' Motion for Summary Judgment.

Moving Defendants cite the Court's Order of September 1, 2017, as a finding that Hill is not a "necessary witness" for purposes of opposing Moving Defendants' purported Motion for Summary Judgment. In doing so, Moving Defendants conveniently ignore all of that Order's findings regarding the applicability of Rule 43(k), SCRCP, to the dispute at hand. In its September 1, 2017 Order, the Court held that "[n]o agreement affecting this proceeding is binding unless one of the conditions of Rule 43(k), SCRCP, is met." September 1, 2017 Order, p. 4, *citing Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). The Court's finding in that Order that Hill was not a necessary witness was premised upon the fact that no settlement agreement dispute arose unless or until a Rule 43(k) compliant settlement agreement could be produced in the case. The Court effectively reversed this finding in its ruling on the Motions argued on July 17, 2018; and Plaintiff has filed motions for reconsideration.

Hill's Affidavit establishes that a genuine issue of material fact exists with respect to whether Hill, on behalf of Plaintiff, entered into an enforceable settlement agreement with Moving Defendants. The primary issues of material fact are as follows:

1. Whether there was a meeting of the minds between Plaintiff and Moving Defendants sufficient to create an agreement to resolve the foreclosure;

2. Whether there is sufficient verification of an agreement to satisfy the requirements of Rule 43(k), SCRCF, regarding an agreement affecting the proceedings; and

3. Whether Plaintiff intended to dismiss the foreclosure action prior to resolution of the SBA loan.

3. Hill is Competent to Testify, and His Testimony Is Admissible in this Case.

Moving Defendants apparently contend that Hill's affidavit does not demonstrate his competency to testify. This contention is not credible. The affidavit notes, correctly, that Hill is counsel of record in this matter, meaning he is an attorney authorized by the Supreme Court of South Carolina to appear in the courts of this state. Under Rule 402, SCACR, to hold this status, Hill must be at least 21 years of age, and found of sound mind and character by the Committee on Character and Fitness, both conditions of which necessarily render him capable of providing affidavit testimony. It strains credulity for an officer of this Court to contend another officer of the Court is not sufficiently competent to render testimony via affidavit.

As to Moving Defendants' contentions regarding the admissibility of assertions contained in the Hill Affidavit, Moving Defendants identify no specific statements they contend are hearsay. Hill's affidavit verifies statements made to the Court by co-counsel, which were based

(and represented to the court to be based on) Hill's personal knowledge. Hill's testifying as to his personal knowledge regarding communications does not constitute hearsay, rather it serves as a verification of statements made by co-counsel as to which Hill would testify, if required to do so.

Moving Defendants identify no statements which they deem to be redundant – in fact, the Order they submitted to the Court demonstrates that the statements are unique and material. The very purpose of the affidavit was to create evidence by affidavit to address factual contentions, after the Court elected to convert Moving Defendants' Motion to Dismiss to a Motion for Summary Judgment.

CONCLUSION

Pursuant to the plain, express language of Rule 12(b), Plaintiff was required to have an opportunity to introduce evidence to create an issue of fact as to the Motion for Summary Judgment, once the Court elected to convert Moving Defendants' Motion to Dismiss into a Motion for Summary Judgment. Accordingly, the Hill Affidavit was appropriately filed. The matters asserted therein are relevant to the matter at hand, and they are admissible. Accordingly, Moving Defendants' Motion to Strike should be denied.

LEGRAND LAW FIRM, LLC

s/Charles D. LeGrand

Charles D. LeGrand (SC Bar #9910)

310 Mills Avenue, Suite 103

Greenville, SC 29605

(864) 242-6461

Greenville, SC

Date: October 29, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' CAROLINA
	)	PROPERTIES HOLDINGS, LLC
	)	AND WALT W. PARKER, IV'S
	)	RESPONSE TO PLAINTIFF'S
	)	MOTION TO RECONSIDER
	)	COURT'S ORDER DENYING
	)	PLAINTIFF'S MOTION FOR
	)	DECLARATION UNDER Rule 43(k),
	)	SCRCP
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	

Defendants, Carolina Properties Holdings, LLC ("CPH"), and Walter W. Parker IV ("Parker") (collectively "Defendants"), hereby respectfully respond to Plaintiff, Super Suds, LLC's ("Plaintiff") Motion to Reconsider Court's Order Denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRCP, as follows:

1. The Court accepted the plain and ordinary meaning of Rule 43(k), SCRCP.

Rule 43(k), SCRCP, states:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed

by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel...

Rule 43(k), South Carolina Rules of Civil Procedure (*emphasis added*).

The Court considered that there were not two attorneys involved and determined that Rule 43(k) was not applicable in this case. As argued, the burden of compliance with Rule 43(k) is placed on attorneys rather than unrepresented parties. Although the intention of Rule 43(k) is to prevent disputes as to the existence and terms of agreements, the court found that the intention of the parties was evident by a number of factors including: Super Suds' counsel drafted the Deed in Lieu of Foreclosure (DIL) and then did not make further contact with Defendants after acceptance; Super Suds' immediate possession; the number of years Super Suds operated the business on the property without a separate accounting of rents and profits; and the fact that there was no action in the case itself for years. Therefore, the effect on the pending litigation is not at issue.

2. The Court's Prior Ruling on September 27, 2018 is not reversed.

On September 1, 2017, the Court Denied Defendant's Motion to Disqualify Allan Hill as Counsel and Denied Motion to Compel Deposition. This ruling decided that Allan Hill should not be disqualified as counsel to Super Suds in this action under Rule 3.7(a), RPC, Rule 407, SCACR. The Court heard arguments and accepted briefs related to this issue. The Court's decision was not a ruling based on briefs, arguments, memoranda, etc. related to Rule 43(k).

The language regarding Rule 43(k), SCRCP was included in the Court's Order regarding counsel as a necessary witness as the Court elaborated to say, "If CPH and Parker move to compel a purported settlement, the Court will consider said motion, and will determine what

information it requires, if any of Parker, Hill or any other witness, as to whether in 2011 an enforceable settlement agreement was made under Rule 43(k), SCRCP.”

Plaintiff references an Order entered by this court on September 1, 2017 citing the requirements of Rule 43(k), SCRCP. However, the Order referenced was the Order Denying the Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition finding that, “Hill is not a necessary witness pursuant to Rule 3.7, RPC, and Rule 407, SCACR (2014).”

3. The Court has provided a just remedy.

The Court ruled as follows:

Neither Defendants nor Plaintiff presented to the court a settlement agreement meeting the requirements of Rule 43(k), SCRCP. Allowing Plaintiff to utilize Rule 43(k), SCRCP, to avoid Defendants’ defenses and counterclaims would be unjust given that Defendants were not represented by counsel and have not sought to compel a settlement agreement. Instead, the parties’ intention is evidenced by the transfer of title to the subject property via the Deed in Lieu of Foreclosure.

Super Suds accepted a Deed in Lieu of Foreclosure, took possession of the subject property, was substituted as Plaintiff in this action, operated a business on the subject property without keeping an accounting of rents and profits, and then let the action languish on the docket for years.

Parker was represented for the negotiations with the original Plaintiff, Branch Banking and Trust. However, Parker’s retainer was exhausted and he represented himself in his dealings with Super Suds, LLC. On October 24, 2011, Parker executed and returned the Deed in Lieu of Foreclosure to Allan Hill, which was prepared by Allan Hill. On October 27, 2011, Parker dismissed the counterclaim asserted against BB&T, with prejudice. On October 31, 2011, an

order was entered substituting parties and counsel, which Parker did not sign. Thereafter, no action occurred in this matter until 2014 when the case was referred to the Master in Equity allegedly with Parker's signature. On August 9, 2016, Charles D. LeGrand appeared as counsel for Super Suds, LLC. On August 29, 2016, Hyde Law Firm, P.A. made an appearance on behalf of Parker and CPH. When Parker realized this case was still on the docket and would continue in litigation he sought representation. Parker has not attempted to evade court rules.

The issue of the unauthorized practice of law by a non-lawyer representing a corporate entity has been addressed by the South Carolina Supreme Court several times. Plaintiff cites *Renaissance Enters, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999). In *Renaissance*, the Court held that a non-lawyer shareholder of a Subchapter S corporation could not represent a corporation in appellate or circuit courts. However, the Court did not dismiss the appeal that the non-lawyer had filed on behalf of a corporation. Instead, the Court remanded the appeal to the Court of Appeals, where presumably, the corporation could retain counsel to pursue the appeal.

Since the *Renaissance* decision, the Supreme Court has addressed the unauthorized practice of law in other cases and has refrained from penalizing the corporation or individuals involved. For example, in *Brown v. Coe*, 365 S.C. 137, 616 S.E. 2d 705 (S. Ct. 2005), the Court held that the personal representative of an estate who was not a lawyer engaged in the unauthorized practice of law by filing and serving a notice of appeal. *Id.* at 708. However, the Court refused to penalize the estate by dismissing the appeal. Rather, the Court weighed the equities and determined that the interests of justice were better served by denying the motion to dismiss the appeal and allowing the estate the opportunity to retain counsel to continue the appeal. *Id.* at 709.

In *Rogers Townsend & Thomas*, 419 S.C. 240, 797 S.E. 2d 396 (S. Ct. 2017), the Court refrained from issuing an injunction against a property management company that had engaged in the unauthorized practice of law by filing liens and other documents against homeowners without the involvement of counsel. However, the Court noted that the management company had obtained counsel to handle these matters since the alleged infraction, and the Court, therefore, refused to grant an injunction permanently enjoining the management company from the unauthorized practice of law. The Court held that an injunction would be too drastic a remedy when the management company had already changed its practices. *Id.* 797 S.E. 2d 400-401.

Similarly, the unfortunate circumstances that led Mr. Parker to file an answer on behalf of Carolina Property Holdings, LLC, should not preclude Carolina Property Holdings from asserting defenses to the Plaintiff's Rule 43 claim. Mr. Parker retained counsel as soon as he became aware that this action was pending despite his having signed and delivered a deed-in-lieu of foreclosure to Allan Hill.

Furthermore, Super Suds, LLC received the Deed in Lieu of Foreclosure and has enjoyed the use and possession of the subject property since 2011, and would be unjustly enriched by precluding Defendants from asserting defenses to the Rule 43(k) claim and not acknowledging the merger of titled that occurred when Super Suds, LLC accepted the DIL.

CONCLUSION

The Court properly denied Plaintiff's Motion for a Declaration Under Rule 43(k), SCRC, and should uphold its Order thereof.

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson
Barbara E. Brunson (SC Bar # 0012940)
LAW OFFICE OF BARBARA E. BRUNSON, LLC
P.O. Box 50943
Columbia, SC 29250
T: (803) 799-0425
F (877) 310-8766
barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson
Max T. Hyde, Jr. (SC Bar # 17014)
Ryan E. Gaylord (SC Bar # 101946)
Samantha L. Nicholson (SC Bar #102790)
HYDE LAW FIRM, P.A.
360 E. Main St., Suite One
Spartanburg, SC 29302
T: (864) 804-6330
F: (864) 804-6449
max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

*ATTORNEYS FOR DEFENDANTS, CAROLINA
PROPERTIES HOLDINGS, LLC AND WALTER W.
PARKER, IV*

January 16, 2018

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Super Suds, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' CAROLINA
	)	PROPERTIES HOLDINGS, LLC
	)	AND WALT W. PARKER, IV'S
	)	RESPONSE TO PLAINTIFF'S
	)	MOTION TO RECONSIDER
	)	COURT'S ORDER GRANTING
	)	SUMMARY JUDGMENT
	)	
vs.	)	C.A. NO: 2011-CP-42-0500
	)	
Carolina Properties Holdings, LLC,	)	
Walter W. Parker, IV, the United States of	)	
America by and through the US Small	)	
Business Administration, Carolina Clean	)	
Greer I, LLC and Community Development	)	
& Improvement Corporation,	)	
	)	
Defendants.	)	
	)	

Defendants, Carolina Properties Holdings, LLC ("CPH"), and Walter W. Parker IV ("Parker") (collectively "Defendants"), hereby respectfully respond to Plaintiff, Super Suds, LLC's ("Plaintiff") Motion to Reconsider Court's Order Denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRCF, as follows:

1. The timing of Defendant's Motion for Summary Judgment created no prejudice to Plaintiff.

On April 5, 2017, Defendants filed a Motion to Dismiss. On May 9, 2018, at the Status Conference, the Court set hearings for all pending motions for July 17, 2018, including Defendant's Motion to Dismiss and Plaintiff's Motion for Declaration under Rule 43(k). The Court requested briefs be filed by July 9, 2018. Defendants filed its Brief converting the Motion

to Dismiss into a Motion for Summary Judgment on July 9, 2018. Plaintiff notes that the Defendant's Brief was filed fewer than 10 days prior to the Court's hearing date.

Rule 12(c) states "[i]f on motion for judgment on the pleadings matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion by Rule 56. While Rule 56(c) does state that motions for summary judgment shall be served 10 days prior to a hearing, the Court of Appeals has also ruled that "[p]ursuant to Rule 56 'all parties should have been given a reasonable opportunity to present all materials such as affidavits, depositions, etc., pertinent to a motion on summary judgment.'" *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989).

Plaintiff did not object to the procedural posture of the Motion for Summary Judgment prior to the hearing nor at the hearing. Defendant filed its Brief within the time required by the Court. Plaintiff submitted no response to Defendant's Motion to Dismiss or its Brief thereof. Instead, Plaintiff was present at the hearing and argued its position against Summary Judgment. Plaintiff did have a reasonable opportunity to present evidence in opposition to the Motion for Summary Judgment, but Plaintiff did not present evidence in opposition until after the Court's ruling on the issue. Plaintiff had the opportunity to submit amendments to the proposed order, and did so. Yet, none of Plaintiff's current objections to the Order were included.

Plaintiff notes that the standard to oppose a Motion for Summary Judgment is different than that of a Motion to Dismiss and requires, "the non-moving party [to] identify specific, admissible facts upon which it relies." *Dyer v. Moss*, 284 S.C. 208, 211, 325 S.E.2d 69, 69 (Ct. App. 1985). The Affidavit of Allan Hill is the only evidence which the Plaintiff argues that the

Court did not consider. Plaintiff further contends that the Court's failure to consider this evidence is a failure to comply with Rule 12 and Rule 56. The timing of the hearing did not preclude Plaintiff from submitting Allan Hill's Affidavit. Even if Plaintiff had submitted Allan Hill's Affidavit prior to the Court's ruling, the Affidavit would not be admissible. Allan Hill's Affidavit should not be considered, and would not create an issue of material fact for the following reasons.

2. The Affidavit of Allan Hill should not be included on the record.

The hearing on this matter was held on July 17, 2018, where the Court ruled from the bench. The Court instructed Defendant's counsel to prepare the proposed order and confer with Plaintiff's counsel. On September 7, 2018, Plaintiff submitted an Affidavit of Allan Hill along with Plaintiff's Submission of Affidavit of Counsel. Allan Hill's Affidavit was submitted after the Court made its decision but prior to the Court issuing a signed order on September 27, 2018.

Plaintiff repeatedly argues that the Court failed to consider Allan Hill's Affidavit. However, Allan Hill's Affidavit was submitted to the Court after the Court made a ruling. Plaintiff also argues that the Order should be revised to note Allan Hill's Affidavit as a part of the record considered by the Court. Again, the Affidavit was not been considered by the Court because the Court made a decision prior to the Affidavit's filing. Defendant has submitted a Motion to Strike the Affidavit of Allan Hill, and argues that the Court should not include Allan Hill's Affidavit on the record.

a. Allan Hill's Affidavit is not a basis for Summary Judgment.

"Arguments of counsel are not evidence, and absent stipulation, they do not provide a factual basis for summary judgment." *Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); *Historic Charleston Foundation v. Krawcheck*, 313

S.C. 500, 508, 443 S.E.2d 401, 406 n.7 (Ct. App. 1994); *see also Higgins v. MUSC*, 326 S.C. 592 486 S.E.2d 269, 272 (Ct. App. 1997) (stating that “factual statements of the attorneys...ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists.”).

The Affidavit should not be considered evidence. Allan Hill’s Affidavit consists of quotes from Charles LeGrand’s arguments at a hearing on July 17, 2018, and quotes from prior Court Orders. The Affidavit attempts to present these arguments as testimony to convert them arguments into facts on the record. Whether his Affidavit is an argument of counsel or a factual statement of an attorney of record, the Affidavit should not be considered as a basis for summary judgment or to determine whether a genuine issue of material fact exists. Furthermore, any quotes from prior Orders are already on the record and would be redundant.

b. Allan Hill is not a Necessary Witness.

The Affidavit should not be considered because Allan Hill is not a necessary witness, as previously determined by the Court’s Order dated September 1, 2017. Here, Plaintiff claims that Allan Hill’s testimony is the only evidence that Allan Hill accepted the deed on a conditional basis. Yet, Plaintiff argued and defeated Defendant’s Motion to Disqualify Allan Hill as Counsel because Defendant’s claimed Allan Hill was a necessary witness. Defendant was not permitted to depose Allan Hill or consider him a witness. His testimony should not be admissible evidence. Nonetheless, even if Allan Hill were witness, Allan Hill’s affidavit would not be imperative to the Court’s decision.

Moreover, Allan Hill was present at the hearing, and attempted to present arguments or testimony. Given the Court’s prior decision denying Defendant’s Motion to Disqualify Allan Hill as Counsel and Motion to Compel Deposition, the Judge did not allow Allan Hill to present

arguments that could be construed as testimonial evidence when he was acting as counsel. The Court asked Allan Hill not to explain Hill's response to Defendant's arguments directly to the Judge, and permitted Hill to speak to Charles LeGrand outside the courtroom to ensure the comments did not go on the record. Thus, this Affidavit should not be used to circumvent the Court's decision not to hear testimony from Allan Hill.

3. Defendant's Motion for Summary Judgment is based on Merger of Title which occurred by operation of law.

Plaintiff claims that Defendant's Motion is a motion to enforce a settlement agreement. However, the Court ruled that delivery of the Deed in Lieu was an effective merger of title, and Plaintiff had no standing to pursue foreclosure. The Court found, "[w]hen the deed-in-lieu of foreclosure (DIL), which had been drafted and sent to [Parker] by the attorney for Super Suds, was returned to Mr. Hill, a merger of title occurred as a matter of law pursuant to the unambiguous language of the DIL, and ...even if the language in the DIL had not been clear, the intent to convey title to the property may be ascertained by the actions of the parties. Therefore, Super Suds lacks standing to pursue this foreclosure action because it holds title to the property." The Court ruled on doctrine of merger of title rather than a purported settlement agreement.

The Court did not grant Defendant's Motion for Summary Judgment on the basis of settlement agreement affecting the proceedings denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRCF. Plaintiff contends that the Court should consider evidence related to the Parties' intention to achieve a settlement agreement. The Court did not seek to determine whether a settlement agreement occurred but the Court based its decision on the doctrine of merger. The Court considered Super Suds' immediate possession of the property, no separate accounting for rents and profits, length of time the case languished on the docket, and lack of

follow-up from Super Suds' counsel to determine effective delivery and merger. Given these considerations, Allan Hill's testimony should not be considered for the reasons stated herein.

CONCLUSION

Summary Judgment was properly granted, and Plaintiff submits no substantial basis for the Court's reconsideration of the Order. Plaintiff was not prejudiced by Defendant's conversion of the Motion to Dismiss into a Motion for Summary Judgment. Plaintiff was provided a reasonable opportunity to submit any specific, admissible evidence to refute Defendant's motion. Plaintiff did not submit a response to Defendant's Brief, or object to the procedural posture prior to the present Motion for Reconsideration. Plaintiff should not be permitted to submit Allan Hill's Affidavit on the record, as it would not be a basis for summary judgment, and his testimony would not be admissible evidence.

RESPECTFULLY SUBMITTED,

/s/ Barbara E. Brunson
 Barbara E. Brunson (SC Bar # 0012940)
 LAW OFFICE OF BARBARA E. BRUNSON, LLC
 P.O. Box 50943
 Columbia, SC 29250
 T: (803) 799-0425
 F (877) 310-8766
barbara@brunsonlawsc.com

/s/ Samantha L. Nicholson
 Max T. Hyde, Jr. (SC Bar # 17014)
 Ryan E. Gaylord (SC Bar # 101946)
 Samantha L. Nicholson (SC Bar #102790)
 HYDE LAW FIRM, P.A.
 753 E. Main St., Suite One
 Spartanburg, SC 29302
 T: (864) 804-6330
 F: (864) 804-6449

max@maxhydelawfirm.com
ryan@maxhydelawfirm.com
samantha@maxhydelawfirm.com

*ATTORNEYS FOR DEFENDANTS, CAROLINA
PROPERTIES HOLDINGS, LLC AND WALTER W.
PARKER, IV*

January 16, 2018

Spartanburg, South Carolina

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 SUPER SUDS, LLC,
4 PLAINTIFF,

5 -VS-

TRANSCRIPT OF TESTIMONY

6 CAROLINA PROPERTIES HOLDINGS,
7 LLC, WALTER W. PARKER, IV, THE
8 UNITED STATES OF AMERICA BY
9 AND THROUGH THE U. S. SMALL
BUSINESS ADMINISTRATION,
CAROLINA CLEAN GREER 1, LLC,
AND COMMUNITY DEVELOPMENT &
IMPROVEMENT CORPORATION,
DEFENDANTS.

(2011CP420500)

Spartanburg, South Carolina

10 REFERENCE HELD: AUGUST 14, 2017.

11 B E F O R E: HONORABLE GORDON G. COOPER,
12 MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

13 APPEARANCES: LEGRAND LAW FIRM, LLC.
14 BY: CHARLES D. LEGRAND, ESQUIRE
Attorneys for the Plaintiff.

15 THE WILKES LAW FIRM, P.A.
16 BY: MICHAEL B.T. WILKES, ESQUIRE
AND J. DERHAM COLE, JR., ESQUIRE
Attorneys for Allan Hill, Individually.

17 HYDE LAW FIRM, P.A.
18 BY: MAX T. HYDE, JR., ESQUIRE
AND SAMANTHA L. NICHOLSON, ESQUIRE
19 AND RYAN E. GAYLORD, ESQUIRE,
LAW OFFICE OF BARBARA E. BRUNSON, LLC
20 BY: BARBARA E. BRUNSON, ESQUIRE
Attorneys for Carolina Properties Holdings, LLC
21 and Walter W. Parker, IV.

22 JOHNSON, SMITH LAW FIRM,
23 BY: HOWARD R. KINARD, ESQUIRE
Attorneys for Community Development & Improvement

24 ALAN HILL, ESQUIRE

25 Sarah Hollis, Court Reporter

1 THE COURT: We go on the record in the case of Super Suds, LLC, versus Carolina Properties
2 Holdings, LLC, Walter W. Parker IV, the United States of America by and through the US Small
3 Business Administration, Carolina Clean Greer I, LLC and Community Development &
4 Improvement Corporation. This is Case number 2011CP42-0500. We have got several motions
5 for today. Mr. Hyde lets start with you. Are you ready to proceed?
6 MR. HYDE: Thank you, Your Honor. May it please the Court. We had reserved the time
7 today for three (3) motions. I did take note that some other activities occurred by my friends. I
8 am not sure if they are asking for time today or for some other time. But we were looking
9 forward to spending our time today on our three motions. The Motion to Compel Discovery,
10 Motion to Disqualify Counsel and Motion to Amend the Answer. And I would like to start with
11 some good news. Since we filed our Motion to Compel Discovery and if it suits the Court, I am
12 going to address that motion. Ms. Nicholson is going to address the Motion to Disqualify and
13 Ms. Brunson is going to address the Motion to Amend the Answer. We had served
14 Interrogatories and Request for Production back in March, on March 24, and also we served a
15 deposition notice for the deposition of Allan Hill on April 5, 2017. The good news is that on
16 July 26, a few weeks ago, some Answers to the Interrogatories and Request for Production were
17 actually served. Now a privilege has been maintained and actually we consented to some
18 confidentially which I have correspondence about that. In other words, I think on this first
19 Motion to Compel in essence we are dealing with whether Mr. Alan Hill should be made to sit
20 for a deposition. And I can explain rather distinctly why we are asking to depose Mr. Hill. On
21 January 26, 2017, in this Court, Mr. LeGrand made a representation in open court to the Court
22 and to us that in fact Allan Hill would be making a transition from serving as an attorney in the
23 case to a witness. And as with any witness certainly we would like to know what a witness
24 might say before our trial. That fact coupled with the failure to answer our interrogatories, we
25 asked who the witnesses would be on March 24 and never received a response until Answers to

1 Interrogatories were served on July 26, 2017, a few weeks ago. Certainly if we are going to
2 prepare adequately for trial we need to know who the witnesses are and what they may say. So
3 now that Mr. Wilkes is in the case and maybe some new explanations are being provided for
4 what has occurred in the long duration of this case. The case was filed as the Court noted back
5 in 2011. So I find it a little erroneous that we are being accused of duplicatory delay tactics in
6 moving to disqualify Mr. Hill. But we would like to depose Mr. Hill and I think even going on
7 the Defendants' brief that they filed Friday and they cited one case which is a Federal District
8 Court Trial Court Opinion in this state, a circuit court matter before an equity court. You can go
9 by their own test, they quote from *Shelton v. American Motors*, an Eight Circuit Court not even a
10 Fourth Circuit Court. At least it was admitted in their brief that is the test used by some but not
11 all. Even by going by that test I think that we should be entitled to depose Mr. Hill because he
12 has unique knowledge in this case that we do not have from any other source. We are not just
13 seeking to learn his version of events. For example, and Mr. Parker was pro se throughout much
14 of this case. What happened in 2014 at the status conference before Judge Cole? My client
15 doesn't know because I don't think that he ever received notice and whether it was intentional
16 that he was being left out of the loop in this case is the real question. Whether Super Suds
17 wanted him to know that this case has not been resolved as the parties had anticipated due to
18 their settlement or their agreement. And then a back drop argument is now well may be there
19 was never any settlement. Well if that is not true then why is Super Suds even in this case.
20 There is no agreement for Super Suds to come in for the Bank. And in deed, you know, if there
21 was no agreement then why are they maintaining that the counterclaims were waived. Clearly
22 there was an agreement. The counterclaims were being waived in exchange for the failure to
23 seek a deficiency judgment. So I think any direction that you go the Defendants are going to
24 have some problems. We are doing our best in good faith to work with the Plaintiff to figure out
25 the best way to resolve this case and we have just been stonewalled. So at least we have made

1 some progress on answering our interrogatories and request. We do feel that we have the right
2 to depose Mr. Hill. It does seem that maybe now the final position and maybe we will find out
3 more today that Mr. Hill as a lawyer is still in the case with Mr. LeGrand or not Mr. LeGrand, I
4 don't know. But this case has been raising more questions than providing answers. The only
5 certainty we have had is that my client Mr. Parker is on the hook for \$260,000.00 from the SBA
6 when he thought that was going to be a part of the settlement that Mr. Hill was going to be
7 working with the SBA to deal with the claims on behalf of Super Suds.

8 THE COURT: Let me interrupt for one moment.

9 MR. HYDE: Yes sir.

10 THE COURT: The Affidavit that is on file by Mr. Parker indicates that and this goes back to
11 this case being here that he never consented to this matter being referred to the Master?

12 MR. HYDE: That is correct, Your Honor.

13 THE COURT: So that to me is an interesting question to be dealt with.

14 MR. HYDE: And Your Honor I am holding up that order and frankly that is something that we
15 have not wanted to get into. And that was going to be an issue for the deposition which I have
16 no obligation to tell my colleagues you know every question that I am going to ask in the
17 deposition but that was going to be a primary question. My client swears that he had no idea this
18 case was being referred to the Master. And while that is a pre-functional task often and it
19 probably could have been done without his consent it raises many significant questions because
20 he has no memory of the referral and certainly never giving consent. And here we have the
21 Order of Reference as it is in the court file of Walt W. Parker by S. Allan Hill with his
22 permission. So you have a lawyer signing for an opposing party who claims to have not been
23 notified over the course of several years about the progress of the case. I have learned in
24 inspecting the file that really this case was sitting dormant and maybe that was the intention by
25 the Plaintiff, I don't know. One of many questions, sitting dormant for years. Perhaps the file

1 reflects the Court in going through some housekeeping maybe made a note to check with the
2 lawyers about the status of this case because it has some age on it and needs to be resolved and
3 only after the court inquired did people start to pay attention to this case again and it was at that
4 point that I was hired last August, and certainly since last August we have been working
5 diligently to deal with this case. We suspect that it was the hope of Super Suds to go ahead and
6 foreclose without the notice or without much involvement from Mr. Parker so that this collateral
7 is wide open to the SBA. It would be taking away from the SBA and leave Mr. Parker hanging.
8 And Mr. Parker is now facing garnishment of his wages for this SBA loan. And he never
9 expected that after handing over the property five years ago that he would be receiving the worse
10 of both worlds. So the way that I read the brief from my friends, I guess they are saying, that
11 Mr. Parker still owns the property. But that is a real problem for them. I would be curious to
12 see what they have been reporting to the IRS about who owns the property and who has been
13 paying taxes and who has been collecting rents and what the sign says out front because it
14 doesn't say Mr. Parker. So we just want to know what happened from Mr. Hill and again we
15 have been stonewalled.

16 THE COURT: Lets see if we can kind of separate these issues out. I don't even know what
17 issue we are on at this point.

18 MR. WILKES: Your Honor, it seems like he is moving to compel Mr. Hill's deposition. That
19 seems to be most of what I have heard so far. I will just see if we agree on that and make sure
20 we are keying it up as you wish.

21 MR. HYDE: That is correct.

22 THE COURT: I mean there is a lot of issues here and we might as well take one and that would
23 be a good one to start with. Lets do that.

24 MR. WILKES: Yes sir. And I will say and I know you want this in the most orderly fashion
25 possible. I suppose that the Motion to Disqualify, well I consider it really a prelude to this

1 proposition that somebody could be deposed. So maybe Defense counsel would like to go ahead
2 and make their motion now on the disqualification and I could respond to all of that at one time,
3 if that suits Your Honor.

4 THE COURT: That is fine with me. I noticed those in reviewing this file for this the
5 statements made by Mr. Parker but I don't want to digress and get us off point. So lets go back
6 to the disqualification, the motion for disqualification. All right.

7 MS. NICHOLSON: Yes, Your Honor. May it please the Court. This Motion is really an
8 application of Rule 3.7 of the South Carolina Rules of Professional Conduct. And under that
9 Rule, this is about whether Allan Hill is going to be a necessary witness and not meeting any of
10 the exceptions of the Rule. So the Rule states that, "an attorney shouldn't act as an advocate at a
11 trial where he is likely to be a necessary witness." And it delineates the three (3) exceptions.
12 Here it basically comes down to this first point though, and I would like to go into that first.
13 And the test as Plaintiff admits is that the attorney's testimony is relevant to disputed, material
14 questions of fact and there is no other evidence available to prove those facts. So it is material
15 information that no one else could provide. And we contend that Allan Hill has material
16 information that no one else can provide and his testimony would contain some of those unique
17 and particular pieces of information that Mr. Hyde has just iterated. Not to reiterate too many of
18 those but as far as the communications that happened between Walt Parker and BB&T, yes, sure
19 Walt Parker and BB&T could speak to some of those but it is Allan Hill's unique perspective as
20 to some of the consequences of those conversations, the intentions behind them, and the effect
21 that those were intended to have would be unique to Allan Hill's testimony. In addition, you
22 know, the issue of whether or not Rule 43(k) applies as to a settlement agreement. That
23 becomes relevant here because we contend that it is a deed in lieu of foreclosure and that when
24 that was effectively delivered that it merges the title and the issues resolves. Well was Allan
25 Hill working toward what he would contend as a Rule 43(k) settlement. We need to know that

1 from Allan Hill. Was it his intention to effect an over arching settlement agreement that would
2 apply to this kind of triangle of parties between BB&T and Walt Parker or not. And he would
3 understand that specifically. So the representation to the parties would be relevant per Allan Hill
4 as well as you know the promptness of the action itself. They seek to our delay in moving to this
5 all by Allan Hill. But as noted we came into this action August 29th. Charles LeGrand came in
6 August 3rd. But it wasn't until later that we even heard that Allan Hill was going to be acting as a
7 witness and you have seen the series of events that have unfolded from that time and our new
8 information on that. So in addition, he is not going to meet any of the exceptions of the Rule.
9 So this is really a tip and topic issue. Whether or not the deed in lieu is effective is the issue at
10 hand. I think that there would be a great harm in Allan Hill serving as a witness and an advocate
11 as to that effect, because his personal knowledge should be represented fairly to the court and be
12 seen as facts and not something that is speaking to an argument about the facts. It is not relevant
13 to the nature and the value of his legal services. We are trying to get to what happened here.
14 And he knows how this unfolded and can speak to those facts at hand. He was the attorney yes
15 during the execution of his client's goals but we are really trying to see how was this enacted and
16 it speaks to why he is the necessary witness and it is not going to work a substantial hardship on
17 Super Suds. Charles LeGrand is in this action. He is up to speed on everything that is
18 happening here. We are requesting that Allan Hill be disqualified as an attorney at the trial and
19 we believe that you know we need someone here to be an objective conveyer of the facts and not
20 someone that is going to contemplate the roll of being an attorney with those facts that are
21 particular and unique to figuring out what happened in this case.

22 THE COURT: All right.

23 MR. WILKES: May it please the Court, Your Honor. Mike Wilkes again. Your Honor, this is
24 purely a procedural matter. It is procedural in that Rule 43(k) controls every aspect of the matter
25 with respect to Mr. Hill's involvement. The Defendants that Max and his team represents,

1 essentially contend that they have a settlement agreement that should result in a dismissal with
2 prejudice of this foreclosure action. That is what they contend. That this civil action, which is a
3 foreclosure action, should be dismissed because of the settlement agreement. Well that is the
4 reason that we have Rule 43(k). If this case governed by the Rules of Civil Procedure is going to
5 be dismissed pursuant to a settlement agreement that settlement agreement must comply with
6 Rule 43(k). Allan Hill acted as the attorney for Super Suds in negotiating with BB&T preceded
7 by the note and obtained an assignment of the BB&T mortgage. That note and mortgage are the
8 two primary documents at issue in this case. That is, you know the note and the debt is being
9 foreclosed upon trying to enforce the rights under the mortgage. That is the trial on the merits,
10 Your Honor. And Mr. Hill had nothing to do with the original execution or delivery by Carolina
11 Properties to BB&T of the note and the mortgage that essentially are being foreclosed upon, that
12 are being foreclosed upon in this case. That is the merits. He has no testimony to offer about
13 any of that. So if we get to a trial on the merits, and of course, that trial would be before you, he
14 will not give any testimony that affects, you know, was that a valid note to BB&T. How much is
15 owed on that note? What is the property described on the mortgage? Is the mortgage proper on
16 its face? Was it properly executed and delivered? If all of that proves favorable for the
17 Plaintiff, then you know a foreclosure should be obtained. So that is a trial on the merits.
18 What they want is to say this case has ended. This case has ended because we made a settlement
19 agreement. And, of course, the proposition here that is somewhat - - it is just essentially - it is
20 difficult to give it much credence is that somehow the current Plaintiff Super Suds would agree
21 to accept a deed in lieu of foreclosure without having obtained the release of subordinate liens. I
22 mean that makes no sense, of course. Allan Hill has no interest in Super Suds. He is an
23 attorney. He is the current attorney of record. He received delivery of a deed in lieu of
24 foreclosure in trust. And, of course, you know we will get to this when somebody testifies one
25 day, Your Honor, but for the purposes of this hearing today Mr. Hill's position is that his goal

1 once his client, Super Suds had bought the BB&T mortgage, excuse me, bought the BB&T note
2 and obtained an assignment of the mortgage that he was going to try to work things out because
3 the subordinate lien holders knew that they would get cut off eventually. And so could they
4 work it out. Could they save the trouble and expense of the remainder of the foreclosure action.
5 And so part of that was the communication with Mr. Parker and as you know Mr. Parker
6 represented himself until Mr. Hyde came in. Mr. Parker in violation of our rules and law also
7 represented his LLC but that is what he has done, he has represented the LLC in this matter. So
8 Mr. Hill communicated with Mr. Parker and says look I am going to try to work it out. Send me
9 a deed in lieu of foreclosure. Which Mr. Hill's office prepared. It is still in a sleeve in Mr.
10 Hill's file and unfortunately things never worked out with the SBA and the other subordinate lien
11 holder. So there was no way to effect a resolution of the entire foreclosure action. When the
12 property was taken over and was no longer being used by Mr. Parker and it had been operated by
13 Super Suds and Super Suds does have an obligation to give a credit for net recovery, net proceeds
14 of operation. And I don't want to misstate that but some portion of that. That would be an
15 issue. That would be a matter for a trial on the merits as well that Mr. Hills has nothing to do
16 with the operation of the facilities. It is noteworthy, Your Honor, that Mr. Parker was a BB&T
17 employee at the time that he obtained the BB&T loan back in the day and also during these
18 negotiations you will find out that he was a Georgia resident. He also had a Georgia law firm
19 representing him. But, of course, the Georgia law firm was not the attorney of record because
20 they weren't licensed to appear. So Mr. Parker is operating on his own. He is protecting his
21 own interest. But he also had an obligation to comply with Rule 43(k). Rule 43(k) is intended
22 to prevent exactly the kind of dispute that we are looking at here. First just imagine, lets say Mr.
23 Parker and Carolina Properties had an attorney of record. Lets say that they were taking the exact
24 same position as they are today with respect to this deed in lieu of foreclosure. Mr. Hill would
25 be here arguing with an attorney like Mr. Hyde about who said what and when about a settlement

1 agreement. Well our courts don't want any part of that. That is why we have Rule 43(k).
2 Your Honor, I have - - may it please the Court, may I hand up an article about 43(k)?
3 THE COURT: All right.
4 MR. WILKES: Your Honor, this cites a number of cases and this is for you know, Your
5 Honor's later consideration as you wish, but we cite the *Farnsworth* case. And in the
6 Farnsworth case, it is a contract case, in which some local attorneys here were involved. Your
7 Honor, if it pleases the Court I will hand up the *Farnsworth* case, thank you. Your Honor in the
8 *Farnsworth* case, it is a relatively small case. The Plaintiff's attorney had sent a letter
9 demanding that they settle for \$22,000.00. The Defense attorney agreed. He signed the letter
10 and he sent it back but then the Plaintiff decided the Plaintiff wanted a trial. And the lower court
11 granted the motion to compel settlement and the Appellant Court said no. It doesn't comply
12 with Rule 43(k). At that time 43(k) said that it didn't comply because there was no agreement
13 that was in the form of a consent order. There was no written stipulation signed by the attorneys
14 and entered in the record. And there was no agreement made in open court and noted on the
15 record. And under our current rule, we added one more provision that also doesn't help them
16 out in our case and that is if the attorneys and the parties sign a settlement agreement then that is
17 enforceable. So Your Honor, this Rule is strict. You will see from the article and you will see
18 from *Farnsworth* and Rule 43(k), strictly interpreted. You don't have these requirements. You
19 don't have a settlement agreement. You are where you are. Go ahead and track the case on the
20 merits and see how things come out because what the courts don't want and what 43(k) is
21 intended to prevent is putting a lawyer like Max and a lawyer like me and a lawyer like Allan
22 Hill in front of you and now you are going to start weighing credibility. What did Max say
23 about that agreement and what did Mr. Hill say about that agreement. Well we can't have this.
24 It is essentially the statute of frauds and obviously Your Honor is quiet familiar with the statutes
25 of frauds but there is an intent to protect the citizens of South Carolina and in this instance it is

1 the intent to protect the parties first of all to the litigation and their attorneys, this provides
2 clarity. To reach a settlement agreement the attorneys and the clients need to communicate
3 clearly. Then the attorneys for the various parties need to communicate clearly. Then the
4 attorneys for the parties need to reduce their agreement to writing and they need to file it or have
5 a consent order or they can reduce their agreement to writing and have the parties to sign it. We
6 don't have any of that. And I point all of this out to make it clear that Mr. Hill has knowledge of
7 the procedural issue of whether there is a Rule 43(k) agreement. Now I don't think that we need
8 to go that far because there is no written agreement
9 to that effect, Your Honor. To the extent that there was an agreement that got BB&T out of this,
10 that is a whole other issue. None of these matters that we are talking about, a deed in lieu of
11 foreclosure, that is not in any written agreement. So again the position of the parties, the
12 position of the Defendants in this case is to somehow convince the Court that Mr. Hill had
13 authority to accept a deed in lieu of foreclosure without having satisfied the subordinate liens and
14 without having all of that done on the record so that Super Suds is protected. I mean it doesn't
15 pass you know the logic test. Now if he made a written agreement to that effect then you know
16 the written agreement is the written agreement. There is no such written agreement. Parker as
17 you will see has even contended literally that Mr. Hill made a mistake. So Mr. Parker wants to
18 play a little gotcha litigation and say hey you said that you were going to take the deed. It is not
19 my problem if you didn't satisfy subordinate liens. You got the deed in your hands. That is a
20 done deal. Well Mr. Hill is a lawyer. He is not a party. Mr. Hill has the ability to hold a deed
21 in lieu of foreclosure in trust pending the logical resolution of all of the other issues that would
22 need to be resolved. And, of course, one can reduce that to a settlement agreement or one can
23 simply proceed to complete the agreement by way of recording it. Obtaining a release of the
24 subordinate liens, documenting that, of course, of record as that would be required. And then
25 finally filing the deed in lieu of foreclosure. But none of that occurred. I will reiterate that this

1 situation today is no difference than if Mr. Parker and Carolina Holdings had been represented by
2 an attorney at the time of the purported agreement. We would have a dispute, if you will, among
3 two attorneys and it would be up to the Court to look at Rule 43(k) and if there is no written
4 agreement I respectfully submit that you have nothing to decide. If there was a written
5 agreement that had ambiguities in it then you might need evidence, you might need information
6 from the lawyers about their intent in drafting the agreement, if they are the only signatories who
7 can sign it but we don't have a written agreement that the Court needs to construe here. Rule 3.7
8 is on the technical side of things. The question is whether Mr. Hill would testify at a trial and
9 also be an advocate. Mr. Hill will never testify at a trial on the merits in this case. If they want
10 to ask him questions, well the Defendants did file a Motion to Dismiss which I respectfully
11 submit is the wrong motion to even consider it should be a Motion to Compel Settlement. Of
12 course, I think that would be denied very quickly but if a Motion to Compel Settlement had been
13 filed then Mr. Hyde and Mr. Parker I guess would stand up and Mr. Hill would be here and Mr.
14 LeGrand and the Court would first of all probably ask well where is the written settlement
15 agreement and then you would decide the case if there wasn't anything else after that. So this is
16 not a situation where Mr. Hill needs to be disqualified because he is going to testify at a trial of
17 merits on a BB&T note and mortgage. These events that occurred before this foreclosure action
18 was filed. That is the kind of trial testimony that we are talking about. What happened before
19 the foreclosure action was filed. And Mr. Hill had no idea about any of this when the
20 foreclosure action was filed. And it was well into the foreclosure before his client Super Suds
21 bought the note. What happened after litigation, after the foreclosure was filed is a matter of
22 procedure for the Court. So the Court then has to go to Rule 43(k) and all of its other applicable
23 rules and what the Court requires and Mr. Hill will not testify about pre-litigation matters. Mr.
24 Hill is able to shed light on discussions he had with effectively the attorney, the pro se attorney, if
25 you will. Mr. Parker to the extent your lawyers decide you need to hear that one day in the

1 absence of the settlement agreements. And I respectfully submit that you would not. I would
2 also add that the terms of the issue of whether Mr. Hill should be disqualified, this is not a
3 circumstance even if Your Honor were to consider any of this to be worthy, we are not going to
4 have a jury trial. You are not going to be confused by anything Mr. Hill says related to whether
5 there was a settlement agreement and anything that he says as an advocate in this case. So there
6 is no reason, in fact, a very fundamental issue there is no reason to think that this Court will be
7 confused by having him as purportedly a witness and an advocate. Of course, Your Honor can
8 understand that I respectfully submit that he is not a witness as to the merits. He is simply an
9 attorney of record and he was engaged in various communications as part of his representation
10 and there are procedures that control those communications and the effects of those
11 communications. And that is a matter for the Court to consider. It doesn't require sworn
12 testimony and it doesn't require a deposition. They don't have any right to depose Mr. Hill as an
13 attorney about what he did for his client in this case procedural. And again Your Honor may
14 want to ask questions, that is a whole other matter. If and when we get to the Motion to Compel
15 stage. I will say that I have, you have been doing this a long time. I have been doing this a long
16 time. I have seen lots of various kinds of settlements. I have seen issues about settlements and
17 one of my goals has always been to be the attorney and not the witness. And I am careful about
18 settlements and I think all lawyers are careful about settlements. If you want to enforce a
19 settlement agreement you have got to comply with Rule 43(k). I handled a lot of multiple party
20 matters and we go to mediation and we know that once we comply with Rule 43(k) at that
21 mediation which is really only an opportunity for attorneys and parties to sign that you are not
22 walking out of that mediation with an enforceable settlement agreement. If the attorneys sign
23 and you hit all of your points and the parties sign then you have met Rule 43(k). In this instance,
24 Mr. Hill was attempting to see if he could work things out and had an idea that the SBA would
25 accept a minimal payments and had an idea that the SBA would go away. And give up its one

1 (1) year right of redemption. That is my understanding but my friends would know a lot more
2 about that than I would. And yet another junior lien holder who ultimately just wouldn't
3 communicate to where they could even you know get that authority. Things just didn't work
4 out. It would have saved everybody a little bit of time and effort with the filing of the deed in
5 lieu, if that could have been accomplished. But it couldn't be. So Your Honor, with respect to
6 some of the arguments made, Mr. Hyde commented that he wants to interrogate Mr. Hill. I use
7 the word interrogate. Wanting to question Mr. Hill about a 2004 status conference with Judge
8 Cole that he says that Mr. Parker did not attend. Well that is a procedural question, Your Honor.
9 That is not something for deposition. That has nothing to do with the merits of the BB&T note
10 and mortgage. That is a procedural issue for the Court to handle. With respect to the reference,
11 Your Honor, and Mr. Hill, of course, can speak to this. Mr. Hill will represent to you that he
12 spoke with Mr. Parker and obtained Mr. Parker's consent, on the agreement to sign for him on
13 the consent reference and I understand Your Honor is concerned about your jurisdiction and
14 ultimately we can address that further as Your Honor wishes. But I will say again that is a
15 procedural matter. That is not something for a deposition. This is a matter for the Court and
16 the lawyers and the parties in this courtroom and not in a conference room with a court reporter
17 there with opposing counsel asking his opposing counsel a bunch of questions. They also
18 argued they want to question Mr. Hill about whether there was an intent to make a settlement
19 agreement. But once again Your Honor, that is as an attorney of record that he had solemn
20 communications with Mr. Parker. That is a matter of procedure for the Court governed by Rules
21 of Procedure, 43(k). It is not a matter of the merits of the case or BB&T's note and mortgage.
22 It is not a matter of what occurred before the foreclosure action was filed. It is a procedural
23 matter for the Court to address. Finally, there is the comment of a contested issue as well as the
24 deed in lieu of foreclosure is contested. And I know that it goes to the heart of it, but once again
25 Your Honor that is procedural. Mr. Hill held the deed in lieu and still holds the deed in lieu of

1 foreclosure in trust pending several conditions being met. Of which, unfortunately were met at
2 the time otherwise we wouldn't be here today. But that is yet another procedural issue. To the
3 extent that they want to question him about how he was holding it and are they going to ask him
4 what were your instructions from your client. We know that is protected, Your Honor. That is
5 why that type of issue is still within the confined of this courtroom and under Your Honor's
6 jurisdiction to explore whether there is a settlement agreement and I respectfully submit that the
7 Rules of Civil Procedure make it much easier for you to deal with this because 43(k) has been
8 strictly construed. There is no written agreement that is enforceable and there is no reason to
9 have any conversation about what the intent of the parties was at any given point in time.
10 Without that enforceable settlement agreement there is really nothing for the Court to address.
11 And we can move on to the merits of the case which is what was actually before the foreclosure
12 action was filed and how was BB&T's rights modified or assigned after that, which is you know
13 evidenced through writing and is filed as it should be. And that is the issues and those are the
14 facts that are in the record. That is what this is about. So Your Honor, Mr. Hill should remain
15 and tends to remain with Your Honor's permission an attorney of record in this case. If and
16 when, the Defendants decide that they want to file a Motion to Compel Settlement then we will
17 be here another day and Mr. Hill and Mr. LeGrand will be here to argue in opposition to such a
18 motion. Thank you for listening to me, Your Honor.

19 THE COURT: All right.

20 MR. HYDE: I would like to briefly respond.

21 THE COURT: Yes.

22 MR. HYDE: And I was hoping that it wouldn't go this direction but injustice adds insult to
23 injury. And you know this case is about the validity of a deed in lieu. So if I had their position,
24 I would do everything that I could to promote smoking mirrors and distract from the real issue.
25 And I applaud the creativity of this Rule 43(k) argument that has been fashioned out of thin air

1 and to try to blame my client, Walt Parker, for working at BB& T and not being a lawyer when
2 they had the McNair Law Firm and Allan Hill. Because Mr. Parker doesn't know how to
3 consummate a settlement under Rule 43(k). That is a total insult. The question that I ask is why
4 in the world did Mr. Hill draw up a deed in lieu and how did he present it or rather force it upon
5 my client. Give me a break. I was appalled to hear his comment, Allan Hill has nothing to do
6 with the deed in lieu of foreclosure. It was his idea. He drew it. He put it in front of my client
7 and he had it signed. And he is holding it. And now it is being held in trust. We find out in
8 2017, show me some documents where that was clearly communicated to my client, a pro se
9 litigant. Well I have questions about that. This is a case about is that deed in lieu valid. Was it
10 executed and was it delivered. It was fully executed. The Court has seen it. That is what this
11 case is about. It says on the first page, the consideration for this deed is the satisfaction and
12 cancellation of an indebtedness. An yes if you want to go on the 43(k) Rule there are also other
13 written aspects to this. There is a settlement agreement and immediate release of claims. So
14 Mr. Wilkes, I will give him credit. He said yes there was a settlement agreement which he
15 mentioned about half way through his presentation. And we have seen this document, its talks
16 about exchanging the waiver of counterclaims for an agreement not to pursue a deficiency
17 judgment. So you know to blame my client when they have McNair Law Firm, one of the
18 largest law firms in the state, and Allan Hill against another lawyer and to say that he didn't read
19 Rule 43(k) and a 2012 article from South Carolina Lawyer, you know, now he would be stuck
20 with over a quarter of a million dollars - give me a break. And to protect Mr. Hill when he will
21 not provide an explanation. This is why we are here today. Because we keep getting this kind
22 of stonewalling instead of problem solving in order to leave my client out to dry and to suck his
23 family and his four children in college. But if that is your approach, we will be glad to see you
24 another day.
25 MR. WILKES: Your Honor, I hope it was clear from my comments that Mr. Hill did prepare

1 the deed in lieu of foreclosure. He did draft it. He did send it to Mr. Parker. He did seek an
2 execution version by fax or email, whichever way, and did say go ahead and send it to me. So
3 that is the facts. There should be no misunderstanding about that but Mr. Hill was holding it in
4 trust until he could hopefully resolve this mortgage lien issue and he could not. Those are
5 arguably 43(k) issues, if you can get pass not having a settlement agreement. Thank you.

6 MR. LEGRAND: Your Honor, may it please the Court.

7 THE COURT: All right.

8 MR. LEGRAND: If I could, Charles LeGrand for the Plaintiff. If I could respond to two well a
9 couple of the discovery issues. On the Defendants' Motion to Compel they have asked for in
10 their Request for Production of Documents, and if I may stay right here. I can't get out. They
11 have asked for the production of documents. Some of the information that we have talked about
12 and I have the confidential financial information including tax returns of the Plaintiff. Mr. Hyde
13 and I have exchanged some emails and he indicated that he would consent to a confidentiality
14 order and if that is still the case I will be glad to email that to the Court with a copy to Mr. Hyde
15 and ask the Court to enter such a confidentiality order. And then we can provide the tax returns
16 and financial information that they have requested from the Plaintiff. That covers both of his - -
17 well part of his Motion to Compel and my Motion for a Protective Order.

18 MR. HYDE: Your Honor, I did that back on July 27.

19 MR. LEGRAND: But you did not add to the - - -

20 THE COURT: Wait a minute gentlemen. Wait. Have we completed with the Defendant's
21 Motion to Disqualify? Mr. LeGrand you are not addressing that issue?

22 MR. LEGRAND: No sir.

23 THE COURT: Well let me stay on point here.

24 MR. LEGRAND: All right.

25 THE COURT: Have we completed with that?

1 MS. NICHOLSON: Your Honor, I would just like to conclude as far as the Motion to Disqualify
2 and truly the relevant arguments for the necessary witness. That we continue to contend that it is
3 about the effectiveness of the deed in lieu of foreclosure and you know how it can be stated that it
4 just couldn't be worked out and then left the two clients hanging for five (5) years with one (1)
5 operating on a piece of property. I think that some of those decisions are at hand as well. And if
6 it just wasn't worked out well what happened in just five (5) years of time. That is all, Your
7 Honor.

8 THE COURT: All right.

9 MR. WILKES: Is that the - - -

10 THE COURT: That is the disqualification of him. There is another motion that is pending.

11 MS. BRUNSON: Your Honor, I am Barbara Brunson. There is a Motion to Amend the
12 Complaint.

13 THE COURT: All right.

14 MS. BRUNSON: May I?

15 THE COURT: Yes.

16 MS. BRUNSON: Thank you. We have moved pursuant to Rule 15, to amend the Complaint.

17 MR. WILKES: And the counterclaim.

18 MS. BRUNSON: Excuse me. I beg your pardon.

19 MR. WILKES: And the counterclaims. Motion to Amend Counterclaims.

20 MS. BRUNSON: Motion to Amend Answer.

21 MR. WILKES: And the counterclaim.

22 MS. BRUNSON: The counterclaim was dismissed earlier.

23 MR. WILKES: All right.

24 MS. BRUNSON: That is a matter of record. The counterclaim against BB&T. So here we are,
25 some five (5) years after the delivery of a deed in lieu and my clients, Mr. Parker and Carolina

1 Properties having delivered that deed believed that they complied and delivered title to the
2 property and I argue that the legal and equitable titles merged at that point in time and that the
3 Plaintiff has no standing, Super Suds, now to be foreclosing. We want to amend the Answer so
4 that we can address the issues that have arisen since Super Suds purchased the note and mortgage
5 and accepted the deed in lieu. And we submit that we will be greatly prejudiced if we are not
6 allowed to do that. Under Rule 15, leave should be freely granted if it does not prejudice the
7 other party. So the test does turn to what prejudice there is to the Plaintiff if we are allowed to
8 amend our Complaint. Well because of the Plaintiff dragging its feet, we are still in the discovery
9 stage since this case was resurrected back in 2016 and I practice in Richland County but this is my
10 first appearance in Spartanburg but foreclosures don't usually languish for five or six years.
11 Typically your creditor manages to get the matter taken care of. My client received no notice that
12 it was still on the roster. He thought that it had been dismissed or that it was over with. As a
13 non-attorney he wasn't familiar with the term dismissal or how that would work here. So the
14 Plaintiff can't argue that we are delaying in any matter when we made this Motion to Amend the
15 Complaint because they have created this delay of years in bringing this whole point to the court.
16 We discussed many of the issues that were in my argument since the time that the deed in lieu was
17 delivered, Super Suds took possession of the property and operated a business there and has
18 enjoyed all of the profits from that business, which all seems to affirm the fact that he believed
19 that he had title to it. The deed in lieu was given as we all know during the great recessionary
20 period or as a consequence of that and my client couldn't afford to keep his counsel. He had a
21 distress sale where he was giving a deed in lieu allowing BB&T and Super Suds to negotiate what
22 the price of the purchase of that would be. And without having all of the numbers available but
23 in regards to an argument that was raised earlier I would submit that it is not outrageous that
24 Super Suds would have taken this deed in lieu at the price they took it even knowing that there
25 was a second mortgage that would attach to the property when they took the deed in lieu. These

1 are facts that need to be developed and brought out in our defenses that we will raise in our
2 Amended Complaint. So I would ask the Court to allow us at this point to amend the Complaint
3 so that my client can take advantage of all of the defenses that are available and the counterclaims
4 that are available to him based on these actions of Super Suds.

5 THE COURT: All right.

6 MR. LEGRAND: May it please the Court, Your Honor. We didn't see any facts asserted in the
7 motion. There is no proposed Answer. And the only thing that I have heard now is that because
8 the deed in lieu of foreclosure was handed to Mr. Hill and now the Plaintiff has no standing.
9 Because if the Plaintiff owns the property then there is a merger of title. That would be correct
10 then if the Plaintiff holds title. It is subject to the SBA mortgage but that still doesn't change the
11 fact that Mr. Parker and Mrs. Parker signed guaranty agreements and that doesn't resolve their
12 liability to SBA. So if the Plaintiff chooses to not pay that mortgage off then the SBA forecloses
13 and then the Parkers are still personally liable for any deficiency to the SBA. But the point is,
14 there was no written agreement to support the fact that they were taking a deed in lieu of
15 foreclosure when this was filed. To get into whether there was an effective delivery of the deed,
16 then you would need more of an evidentiary hearing on that. But I don't think that there are
17 grounds to say that there was an effective delivery. This is a new theory and it does put the
18 Plaintiff in this case under a substantial prejudice to now have to defend that theory. The
19 simplest thing to do would have been to have completed the foreclosure last fall and let it go to
20 the foreclosure sale which would have extinguished the subordinate liens. And these Defendants
21 would be in the same position that they are in right now with potential liability to the SBA. And
22 also, any amendment at this point would be futile. And that is recited in a recent South Carolina
23 court case. Because it doesn't change the fact that the underlying action for this whole thing, the
24 underlying debt of the note and the mortgage that were originally given to BB&T in 2005, the
25 default on that is the underlying cause of action here. So none of that changes. It is futile and it

1 would put the Plaintiff at a substantial disadvantage at this point to have to defend that cause of
2 action or the counterclaim. And I would think that they would need to submit a proposed
3 amended Answer and Counterclaim before we could even argue any further on it because I had no
4 idea what they are going to allege. I have nothing further on that, Your Honor.

5 THE COURT: All right. Counsel.

6 MS. BRUNSON: Your Honor, is this the first time that we have raised that argument that the
7 delivery of that deed in lieu was a merger of title. My recollection is that has been in their
8 motions throughout this and certainly a concept that you have probably seen in your Court before.
9 As to the prejudice, we can supply him very quickly with a copy of our proposed Answer and
10 Counterclaims. And as to the argument that case revolves only around whether or not there was a
11 default on the note and mortgage which are the arguments that both my co-counsels have made
12 today and that I am making show that is not the case. The defenses that we want to raise against
13 Super Suds relate to the activity that took place during the negotiations. During the delivery of
14 the deed in lieu and during the activities on the property subsequent to that time. So I would say
15 that his argument doesn't - - that a default is the only issue in this foreclosure is incorrect. I ask
16 that the Court allow us to amend the answer to assert all of our defenses and counterclaim.

17 THE COURT: And what would happen or what is the position as far as the stipulation of
18 dismissal back in October of 2011? Does it relate to that or are we talking - - -

19 MS. BRUNSON: That is relative on - - I would argue that delivery of a deed in lieu created a
20 merger of title and Rule 41, with regards to the dismissal, becomes irrelevant because Super Suds
21 now has title to the property. There are other defenses that we would like to allege, such as;
22 fraud, misrepresentation and a litany of other defenses with regards to the settlement agreement
23 but in my opinion the settlement agreement is irrelevant because the deed in lieu is delivered.

24 THE COURT: All right. Counsel. Well has there been an answer filed?

25 MS. BRUNSON: Yes sir. An answer and counterclaim was filed early on by Mr. Parker.

1 THE COURT: Well I see. Because I don't see an answer. I see the amended complaint and
2 then an answer from Community Development but the only thing that I see next is the stipulation
3 as to counterclaims. There must be an answer in there somewhere with the counterclaims.
4 MR. HYDE: Your Honor, I have an unfiled copy of the answer and counterclaims. I do believe
5 that it is filed and I can locate it.
6 THE COURT: Well it may be prior to CMS? So it may be on another screen.
7 MS. BRUNSON: Your Honor, it was prior to the electronic filings.
8 THE COURT: All right.
9 MS. BRUNSON: It was back in 2011. And I have seen copies of the filings.
10 THE COURT: All right. So it is in the other screen that I am not able to get to. All right,
11 MR. LEGRAND: Your Honor, if the deed in lieu of foreclosure is construed as the settlement
12 agreement then there is nothing in writing that the Plaintiff by taking that deed in lieu of
13 foreclosure go payoff the SBA loan. There is absolutely nothing in writing. It get us right back
14 to Rule 43(k). If that was the deal. If that was the agreement then it should have been
15 somewhere in some document with the parties. And it is not.
16 THE COURT: So the title to the subject property is still in the name of - - -
17 MR. LEGRAND: Carolina Properties Holdings, LLC.
18 THE COURT: All right. Counsel.
19 MS. BRUNSON: It is not the fault of Walt Parker and Carolina Properties Holdings that title is
20 still in their name. They delivered the deed in lieu and they expected it to be recorded and all of
21 the activity on behalf of the Plaintiff would indicate that he thought that he owned the property.
22 And there doesn't need to be a written agreement with respect to a merger of title. When he
23 accepted the deed in lieu he took it subject to the junior liens. And I can brief that point further,
24 substantively, but I didn't expect to argue the substance of the defense in such detail today. But
25 there are cases on point that when the recipient of a deed in lieu takes with notice that there are

1 junior liens then they take it subject to the junior liens.

2 MR. WILKES: Your Honor, respectfully I can say that concept maybe generally is a pre-

3 litigation concept. In this instance we are talking about whether the deed in lieu is part of an

4 overall settlement agreement which takes us back to 43(k). So that one precept does not control

5 the case. THE COURT: All right.

6 MR. HYDE: Your Honor, I did find an activity sheet with the filings of the answer and

7 counterclaim on April 21 by Carolina Properties Holdings.

8 THE COURT: What year?

9 MR. HYDE: It is 2011.

10 THE COURT: All right. Mr. Hyde any further motions. We have got the Motion to

11 Disqualify, the Motion to Allow the Amendment?

12 MR. HYDE: No, Your Honor.

13 THE COURT: How about the Motion to Compel? Mr. LeGrand spoke to it but - - -

14 MR. LEGRAND: I did. And I think Mr. Hyde mentioned earlier that we had provided the

15 documents with the exception of the financial records and tax returns. He and I exchanged

16 emails and I sent a draft of a Confidentiality Order to him and he said we will consent to it but I

17 didn't have a signature from him even an e-signature on that block. And I could not file it as a

18 consent order. That way I can file it if he is consenting now in Court I can file it with a copy, I

19 can send you a copy so it will be a word document with a copy to him.

20 THE COURT: You are avoiding the e-filing aren't you?

21 MR. LEGRAND: I will send it to Sharon.

22 THE COURT: No, don't send it to Sharon. E-file it.

23 MR. LEGRAND: All right. I will e-file it. All right. I will e-file it. I will do that. So if he is

24 consenting to that I can - - -

25 THE COURT: Mr. Hyde are you consenting to the Order - - -

1 MR. HYDE: I do and I emailed that I would consent on July 27. I am glad to sign electronically
2 or otherwise—
3 THE COURT: Okay. You are consenting to it. Just e-file that document and I will sign that.
4 MR. LEGRAND: Okay.
5 THE COURT: And as much as you don't want to e-file it, e-file it.
6 MR. LEGRAND: Do you think that I am a dinosaur?
7 THE COURT: No, I think that you had mentioned that.
8 MR. LEGRAND: I did the last time I was here. Then the last thing that I think that I have is a
9 Motion for Protective Order regarding the communications between Allan Hill and Ken Howard.
10 They have asked for documentation of communications between Allan Hill and Ken Howard.
11 Ken Howard is a member of the Plaintiff LLC, Super Suds, LLC. He is authorized to make
12 decisions on behalf of the LLC. So any communications that he and Mr. Hill had were
13 effectively attorney client privilege communications. That would be for a Motion for Protective
14 Order to limit their interrogatories. And the last thing that I have is a Motion to Compel and this
15 regards a witness that the Defendants identified in their Answer to Interrogatories. A William
16 Winburn of Alexandria, Virginia. The Defendants responded regarding the facts to the witness as
17 William Winburn is expected to testify as to his knowledge of this matter. And that is
18 insufficient to inform the Plaintiff of the facts known to or observed by that witness. And we
19 need a more definite answer on who he is and what he knows.
20 THE COURT: All right.
21 MR. HYDE: Your Honor, it is always good again to continue to distract from the real issue at
22 hand. That is a non-issue. We will not call that witness. At one point we thought that he might
23 be helpful but we will withdraw his name. We had time and we answered our interrogatories
24 and so we will be glad to withdraw that. And the Protective Order, I think that was, well the
25 bottom line I do agree that generally there is an attorney client privilege that attaches there. I

1 would say that it could be an argument that since there was no timely response to our discovery
2 questions. There was not a letter saying that we have more time to answer. There was not an
3 assertion of privilege within time. This argument that my friends waived their right to assert the
4 privilege and so we would say that could create an exception although we would certainly also
5 agree that is the same privilege that we have between attorneys and clients. So we are not going
6 to be quiet as adamant about that issue. And you seek the court's counsel on that issue.

7 THE COURT: All right. So as far as the second clarification as to the witness, Mr. Hyde has
8 represented that he will not call that witness. Does that take care of that issue?

9 MR. LEGRAND: That he will not call William Winburn. That takes care of that issue.

10 THE COURT: All right. The other issue as far as I am concerned is the attorney - client as far
11 as the communication between Mr. Hill and his client.

12 MR. LEGRAND: Right, Your Honor.

13 THE COURT: I mean that was made as his representation of Super Suds, correct?

14 MR. LEGRAND: Correct.

15 THE COURT: All right.

16 MR. LEGRAND: I think even if you disqualify Allan Hill, that is today. You can't go back and
17 make us give up communications between the attorney and his client during the course of any of
18 this litigation.

19 THE COURT: So Mr. Hill's representation is only and has only been for Super Suds. He never
20 was the lender's attorney.

21 MR. LEGRAND: Well not until they obtained the loan.

22 THE COURT: No, I mean the original lender?

23 MR. LEGRAND: No, no. That was Weyman Carter with the McNair Firm.

24 THE COURT: All Right.

25 MR. LEGRAND: That is correct.

1 THE COURT: So I am holding that communication is attorney client. The request for the
2 amendment relates to claims against Super Suds.
3 MS. BRUNSON: Yes, Your Honor.
4 THE COURT: Was there ever an answer filed for Super Suds by virtue of the assignment or the
5 purchase from the original lender? Was there ever an answer pro se against or any action or
6 counterclaim again Super Suds.
7 MS. BRUNSON: No.
8 THE COURT: It was all against the original lender, correct?
9 MS. BRUNSON: That is correct. Super Suds stepped into the shoes of the lender in the
10 foreclosure action.
11 THE COURT: Right.
12 MS. BRUNSON: And we go back to my client - - -
13 THE COURT: Well let me stay on point and that is your request is to allow an amendment for
14 counterclaims against Super Suds?
15 MS. BRUNSON: Yes, Your Honor.
16 THE COURT: Not against the original lenders, is that correct?
17 MS. BRUNSON: That is correct.
18 THE COURT: Is that what you are requesting?
19 MS. BRUNSON: We are requesting to amend with respect to Super Suds not BB&T, the
20 original lender.
21 THE COURT: Okay. All right. So there are two things and I will deal with these first. One is
22 that I am not going to require the disqualification of Mr. Hill, the attorney for Super Suds. But I
23 am going to allow the answer and any action or counterclaim against Super Suds to amend the
24 answer as far as Super Suds. So if you gentlemen and ladies can figure out what I just did, if you
25 would submit an order to that effect. Denying the motion, the Defendant's motion to disqualify

1 Mr. Hill but granting the motion to allow the amendment to the answer to include an action or
2 counterclaim against Super Suds granting or finding that the communications between Mr. Hill
3 and his client and the other matter as far as the protective order is mute because the Defendants
4 have represented that they will not call that William Winburn.
5 MR. HYDE: And the motion to compel the deposition of Allan Hill, Your Honor.
6 THE COURT: That is denied.
7 MR. WILKES: Thank you, Your Honor.
8 THE COURT: Not disqualifying him to include in that the denial of the motion to compel
9 discovery or for the deposition of Mr. Hill. All right.
10 MR. LEGRAND: Thank you, Your Honor.
11 THE COURT: Mr. Hyde if you will prepare the Order.
12 MR. HYDE: I will be glad to do it.
13 THE COURT: And Mr. LeGrand if you would do the order on your portion or do you want to
14 include all of it in one order Mr. Hyde?
15 MR. WILKES: Could we handle the DQ issue and the deposition issue?
16 THE COURT: You are welcome to do that.
17 MR. WILKES: Thank you, Your Honor.
18 THE COURT: And Mr. LeGrand will be more than happy to e-file them.
19 MR. WILKES: Thank you, Your Honor.
20 MR. HYDE: I would request for information, to have the opportunity to review it before it is
21 submitted.
22 THE COURT: Well I think that is quite appropriate. Both can e-file each other for approval and
23 if you have a problem with it email it to me but once you have designed the verbiage satisfactory
24 then e-file it.
25 MR. WILKES: Your Honor just for clarity. Whatever time frame suits Your Honor, could we

1 agree to exchange orders within a week and give each other -- give us a chance to work it out
2 within a week and then if we have worked it out great and if we haven't worked it out you know.
3 THE COURT: I would like to see this action get back on some kind of time frame. So get the
4 orders, the proposed orders to each other within ten (10) days of today's date and responses within
5 ten (10) days, and if you don't reach your agreed order by then we will either have another hearing
6 or ---

7 MR. WILKES: Well Your Honor I respectfully, I am confidence that we will be able to reach an
8 agreement. But I would think that the normal order of play would be we will exchange orders
9 within ten (10) days and we will try to reach an agreement. If we can't accomplish that, then each
10 of us that have been asked to submit an order will submit it and then the Court will deal with it.
11 They can respond or we can respond in some way if we are disenchanted. I think that makes a
12 better exchange.

13 THE COURT: That is fine. Unless you gentlemen or ladies have a different opinion.

14 MR. HYDE: I entirely agree. Although, that is what motions for reconsideration remain for but I
15 am sure Mr. Wilkes and I can work together.

16 THE COURT: All right. Is there anything outstanding? All right, then I think that takes care of
17 all the pending motions?

18 MR. WILKES: Yes sir.

19 MR. HYDE: Now we do have the motion to dismiss. I don't think Mr. Wilkes liked how we
20 styled it. We filed it months ago and it was on the books for a hearing and it was continued and
21 that has not been reset yet.

22 THE COURT: Well do you want me to go ahead and deny it? If you are going to file your
23 responsive pleadings to have that motion to dismiss standing out there it is almost inconsistent.

24 MR. HYDE: Well we probably would prefer a dismissal of the case as we believe ---

25 THE COURT: I understand. But maybe the proper action is to go ahead and -- let me think

1 about that. You have got the motion to dismiss outstanding but it wasn't heard today.
2 MR. HYDE: If that could be held in abeyance we would be appreciative.
3 THE COURT: That is fine.
4 MR. HYDE: We are not planning to argue that motion today.
5 THE COURT: All right,
6 MR. HYDE: Thank you, Your Honor.
7 THE COURT: All right.
8 MR. WILKES: Thank you, Your Honor.
9 MR. LEGRAND: Thank you, Your Honor.

10 -----END OF THE MOTIONS HEARING-----
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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4
5 CERTIFICATE

6
7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Testimony of the proceedings had at the motions hearing of the captioned
10 case, before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South
11 Carolina, on the 14th day of August, 2017.

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

13 

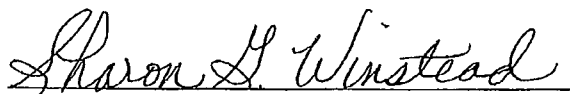
14 Sarah Hollis

15 Court Reporter

16
17 SWORN to before me this

18 18th day of August, 2017.

19 Spartanburg, South Carolina.

20
21 

22 Notary Public for South Carolina

23 My Commission Expires: September 13, 2026.

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

SUPER SUDS, LLC,

Plaintiff,

vs.

C.A. 2011-CP-42-0500

CAROLINA PROPERTIES HOLDINGS, LLC, WALTER
W. PARKER, IV, THE UNITED STATES OF AMERICA
BY AND THROUGH THE U.S. SMALL BUSINESS
ADMINISTRATION, CAROLINA CLEAN GREER I,
LLC, AND COMMUNITY DEVELOPMENT &
IMPROVEMENT CORPORATION,

Defendants.

D E P O S I T I O N

WITNESS: MORRIS KENNETH HOWARD, SR.

DATE: June 14, 2018

TIME: 10:24 A.M.

LOCATION: LeGrand Law Firm, LLC
 310 Mills Avenue, Suite 103
 Greenville, South Carolina 29605

TAKEN BY: Attorneys for the Defendants

REPORTED BY: Jeanne M. McLaren, RMR, CSR

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1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF
3 SUPER SUDS, LLC:

4 LeGRAND LAW FIRM
5 BY: CHARLES D. LeGRAND, ESQUIRE
6 310 Mills Avenue, Suite 103
7 Greenville, South Carolina 29605
8 864-242-6461
9 clegrand@legrandlaw.com

10 - AND-

11 S. ALLAN HILL, CPA - LAWYERS
12 BY: S. ALLAN HILL, ESQUIRE
13 819 E. North Street
14 Greenville, South Carolina 29601
15 864-242-4995
16 ahill@greenvillelaw.net

17 ATTORNEYS FOR DEFENDANTS
18 CAROLINA PROPERTIES HOLDINGS, LLC., ET AL.:

19 HYDE LAW FIRM, P.A.
20 BY: MAX T. HYDE, JR., ESQUIRE
21 SAMANTHA L. NICHOLSON, ESQUIRE
22 753 East Main Street, Suite One
23 Spartanburg, South Carolina 29302
24 864-804-6330
25 max@maxhydelawfirm.com
samantha@maxhydelawfirm.com

- AND-

19 LAW OFFICE OF BARBARA E. BRUNSON, LLC
20 BY: BARBARA E. BRUNSON, LLC
21 1408 Gregg Street
22 Columbia, South Carolina 29201
23 803-799-0425
24 barbara@brunsonlawsc.com

25 Also Present: Ms. Virginia Parker

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and among Counsel that
3 this deposition is being taken in accordance with the
4 South Carolina Rules of Civil Procedure, Rule 30; that
5 all objections as to Notice of this deposition are
6 hereby waived; that all objections except as to form are
7 reserved until the time of trial; and that the deponent
8 reserves reading and signing of this deposition.

9 * * * * *

10 MORRIS KENNETH HOWARD, SR., being first
11 duly sworn, testified as follows:

12 EXAMINATION

13 BY MS. NICHOLSON:

14 Q. Well, Ken, I'm Samantha Nicholson, and it's a
15 pleasure to be here with you today. Obviously, we have
16 a lot of people here in the room. It's just going to be
17 a conversation between the two of us and kind of walk
18 through what's happened here since a little before 2011,
19 and get to know a little more about you as well. So
20 could you start by just saying your full name and
21 address for the court reporter?

22 A. Morris Kenneth Howard, Sr., 133 Indigo Court,
23 Greer, South Carolina 29651.

24 Q. Thank you. And what do you do for a living?

25 A. I work for myself.

1 Q. Okay. And what do you do for yourself?

2 A. Well, I fool with work -- you know, run car
3 washes.

4 Q. Um-hum.

5 A. I own some car washes. I also have a couple
6 of companies that pump septic tanks.

7 Q. And how long have you run car washes?

8 A. I bought my first car wash in 1993.

9 Q. Okay. And what did you do prior to that?

10 A. I was in the garbage business.

11 Q. And what's the extent of your formal
12 education?

13 A. I'm sorry?

14 Q. What's the extent of your formal education?

15 A. High school.

16 Q. Are you the owner of Super Suds, LLC?

17 A. I am.

18 Q. And also the manager of Super Suds, LLC?

19 A. I am.

20 Q. How long have you owned and operated
21 Super Suds?

22 A. I couldn't give you an exact date. You're
23 talking about when Super Suds -- I think it was 2003.

24 Q. Okay.

25 A. I sold -- yeah, 2003.

1 Q. Now, was that -- did you purchase Super Suds
2 from anyone?

3 A. No. No, ma'am.

4 Q. But you created the business in 2003?

5 A. I did.

6 Q. Okay. And how long have you known
7 Walt Parker?

8 A. I really don't know him.

9 Q. Okay. Can you tell me about any relationship
10 you've had with Walt Parker?

11 A. With Walt Parker?

12 Q. (Nods head).

13 A. I can't give you any dates, but I guess I
14 first met him when I opened the car wash on
15 Wade Hampton.

16 Q. Um-hum.

17 A. Then probably -- I don't know, probably two or
18 three conversations after that. But as far as knowing
19 him, I don't know him. I know him when I see him.

20 Q. Did you ever operate any car washes on behalf
21 of Walt?

22 A. With Walt?

23 Q. With him or behalf of him.

24 A. No, ma'am.

25 Q. And so you didn't manage any business that

1 Walt owned?

2 A. No.

3 Q. Okay. So do you have a pretty good
4 understanding of how car washes operate?

5 A. I hope so.

6 Q. And so can you tell me a little bit more about
7 how you got into the car wash business back in 2003?

8 A. In 2003?

9 Q. Um-hum.

10 A. Okay. That was the second time I got in.

11 Q. Okay.

12 A. Yeah. I started -- I bought my first one in
13 '93.

14 Q. Okay.

15 A. And then sold I those and stayed out for a
16 while, and then I bought one in 2003, started back.

17 Q. Um-hum. Back in '93, how did you get into the
18 business back then?

19 A. A friend of mine had one for sale, and I had
20 sold my garbage business so I bought one.

21 Q. Um-hum. Did you only own one at that time?

22 A. Just the one at that time.

23 Q. Um-hum. When did you purchase your second car
24 wash?

25 A. Sometime after '93. I couldn't tell you when.

1 It's been a long time.

2 Q. Yes. So when you got out of the business for
3 a time, how many -- how many did you own at that point?

4 A. When I got out the first time?

5 Q. Um-hum.

6 A. Six.

7 Q. Okay. So in 2003, you purchased one. When
8 did you purchase your second after that?

9 A. I couldn't give you a exact date. Probably a
10 year or so later.

11 Q. Um-hum. Well, tell me a little bit about how
12 you operate your car washes and your business structure.

13 A. Well, we go to our car washes every day, me or
14 one of my employees, dump trash, clean the parking lot
15 up, check everything and leave. Once a week we'll get
16 our money out and tally up, do all the book work on it.
17 And that's basically it. We visit them all every day,
18 somebody does.

19 Q. Okay. And how many?

20 A. Now?

21 Q. Yes.

22 A. Now I've got four.

23 Q. Okay. How many employees do you have?

24 A. I'm sorry?

25 Q. How many employees do you have?

1 A. I don't have any full-time employees. I've
2 just got a retired guy that helps dump trash for me.

3 Q. Okay. So let's go back to 2011, and tell me
4 about your awareness of the construction of the car wash
5 at 14115 East Wade Hampton Boulevard.

6 A. And what do you want to know?

7 Q. Were you aware that it was under construction,
8 being built?

9 A. Well, I didn't know -- I didn't know what was
10 going on until I saw it built, you know. It was -- I
11 don't remember when that was, but it was prior to 2011.

12 Q. Right. Did you ever contact Walt Parker while
13 this car wash was under construction?

14 A. Under construction? No, ma'am.

15 Q. Okay. So you had no communication with Walt
16 prior to that car wash being built?

17 A. Prior to it being built?

18 Q. Right.

19 A. No, ma'am.

20 Q. Okay. So then in 2011, what was the first
21 contact you had with Walt Parker?

22 A. He called me, wanted to know if I wanted to
23 buy it.

24 Q. Um-hum. Can you tell me a little bit about
25 how that conversation went?

1 A. Well, I asked him how much, and he -- and I
2 don't remember the number, but I knew it was way out of
3 line. And I told him I wasn't interested.

4 Q. Okay. So you never made an offer to Walt?

5 A. I think I did.

6 Q. Okay.

7 A. Maybe the next conversation or
8 the -- or -- two or three is the only conversations I've
9 had with Walt Parker, but I want you to understand this
10 has been a long time, you know. And I'm 71 years old.
11 My mind's not near as sharp as you young folks, but I'm
12 pretty sure that I made him an offer but he laughed at
13 me.

14 Q. Okay. Do you remember --

15 A. He -- do what?

16 Q. Go ahead.

17 A. No. He said he couldn't do that.

18 Q. Can you remember what the offer was?

19 A. 200,000.

20 Q. And that was your first offer?

21 A. Um-hum.

22 Q. For the car wash?

23 A. And only.

24 Q. Why do you believe Walt declined your offer?

25 A. I'm sorry?

1 Q. Why do you believe Walt declined your offer?

2 A. He told me he owed too much on it.

3 Q. And so when you guys were negotiating this
4 deal, when -- when did you decide you did want to buy
5 the car wash?

6 A. Well, he called me later and asked me if I
7 minded him having BB&T contact me.

8 Q. Um-hum.

9 A. And I told him it's fine.

10 Q. Then what happened?

11 A. Well, a guy from BB&T -- and I cannot tell you
12 his name, but a representative from BB&T called me and
13 asked me -- said that Mr. Parker had told him that I may
14 be interested. And he asked if I was. And I said,
15 well, you know, I'm not going after it. But, you know,
16 if I thought it was worth the money, I would try to buy
17 it.

18 Q. Um-hum. So who was your primary contact for
19 negotiation --

20 A. With BB&T?

21 Q. Yes.

22 A. I don't know. I have no idea.

23 Q. And did you also engage in some negotiations
24 with Walt as well?

25 A. No, ma'am. That was the last conversation I

1 had with Walt Parker, when he asked me if I minded BB&T
2 contacting me.

3 Q. Do you remember when you would have talked
4 with Walt about the 200,000-dollar offer?

5 A. Before I talked with BB&T?

6 Q. Right.

7 A. No, ma'am -- the date you're talking about?

8 Q. (Nods head).

9 A. No idea.

10 Q. Okay. At this time I'm showing Ken Howard
11 what would be Defendants' Exhibit 2.

12 (Defendants' Exhibit No. 2, documentation
13 regarding \$200,000 offer for car wash, is
14 identified for testimony.)

15 BY MS. NICHOLSON:

16 Q. And Ken, are you familiar with that document?

17 MR. LeGRAND: Since he's not been shown this
18 before right now, we would have the right to confer over
19 that document. So if he feels like he needs to confer
20 with us privately, we'll need a few minutes.

21 THE WITNESS: I do not remember that.

22 MS. NICHOLSON: Would you like a moment to
23 talk to him on that?

24 MR. LeGRAND: Do we need to confer over this
25 document?

1 THE WITNESS: Yes, if I can.

2 MR. LeGRAND: Okay. If we could take a few
3 minutes to confer over that document?

4 MS. NICHOLSON: Yes.

5 (Pause in proceedings.)

6 BY MS. NICHOLSON:

7 Q. You can hang on to that.

8 A. Okay.

9 Q. And can you tell me just a little more -- you
10 can see here that it looks like, you know, you're making
11 an offer here of this 2,000. Can you tell me a little
12 bit more about your process prior to this offer
13 that -- the inspection that you mentioned here in the
14 letter?

15 A. I don't remember this.

16 Q. Okay.

17 A. I didn't sign it. I don't remember.

18 Q. So --

19 A. I did offer \$200,000 to Mr. Parker at one
20 time. Then I offered it to the BB&T guy.

21 Q. Okay. So prior to your offer to BB&T, did you
22 have conversations with Walt about the business itself?

23 A. No, ma'am.

24 Q. Do you believe that you had an understanding
25 of the business income or expenses?

1 A. Did I have an understanding of his business?

2 Q. Yes, sir.

3 A. I don't understand the question. I know how a
4 car wash operates, but I didn't know how Walt operated
5 it, if that's what you're asking.

6 Q. So prior to your offer to purchase this
7 business, had you seen any business documents relating
8 to their income or expenses?

9 A. No. No, ma'am.

10 Q. And did you have any conversations with Walt
11 about how he operated his car wash?

12 A. No, ma'am.

13 Q. And so at that time, did you believe you
14 needed to do any due diligence as to the business
15 itself?

16 A. His business?

17 Q. His business.

18 A. No, ma'am.

19 Q. Tell us, what made you interested in
20 purchasing this car wash?

21 A. What made me interested?

22 Q. Yes, sir.

23 A. Ken Howard. It's just me.

24 Q. What knowledge --

25 A. I mean, I'm -- I'm interested in everything.

1 But, I mean, it was a car wash, and I was in the car
2 wash business. So -- I mean, I did -- you know, I own a
3 car wash right up the street from -- from this wash,
4 that I've had for years, and I don't know what made me
5 interested. Just it's a car wash, and I notice -- I
6 notice all the car washes no matter where I'm at. But I
7 like garbage trucks. When I was in the garbage
8 business, I seen every garbage truck in the country.
9 That's me.

10 Q. Yes. I can understand that. Were your
11 businesses doing well, your car wash locations, doing
12 well in 2011?

13 A. In 2011? Nothing done well in 2011. It was a
14 terrible time economically.

15 Q. Were you aware that BB&T was pursuing
16 foreclosure in --

17 A. Do what now?

18 Q. Were you aware that BB&T was pursuing
19 foreclosure in a deficiency judgment against
20 Carolina Properties Holdings and Walt Parker?

21 A. To be honest, I didn't really understand the
22 first mortgage deal. You know, I -- I never bought a
23 first mortgage before, so I've never done that before.
24 So, I mean, I -- you know, he told me that he was having
25 trouble making the payments in that conversation when he

1 asked me if I'd buy it. But, you know, it didn't take a
2 brain surgeon to ride by the car wash and see that it
3 wasn't doing any business. So I -- you know, I can
4 understand why he couldn't make his payments, and I
5 guess, that's the only reason I might have been
6 interested. But I know -- as far as understanding BB&T
7 and what their situation was, no, ma'am.

8 Q. What conversations did you have with BB&T?

9 A. They called me -- the first time he called and
10 told me that Mr. Parker told him to call me and asked me
11 if I was interested. And I said, well, not at what I
12 understand he'd have to have. And he said, would you
13 make an offer? And I said, yeah. I offered him
14 200,000. He quickly declined.

15 Q. Um-hum.

16 A. Then I don't know how much later, a few weeks,
17 couple weeks, I'm not sure, but he called me again. And
18 he asked me if I was still interested. And I said,
19 well, you know, I made the offer. He says, is the offer
20 still good? And I said, yes. And he said, well, we're
21 going to sell it to you -- or sell you the mortgage.

22 Q. Um-hum. And did you have an attorney
23 representing you during this time?

24 A. I did.

25 Q. And who was that?

1 A. Allan Hill.

2 Q. And at what point did you retain Allan Hill?

3 A. Well, he's done stuff for me for years. I
4 called him and told him about it, and he said he'd take
5 care of it.

6 Q. So he engaged on your behalf --

7 A. Yes, ma'am.

8 Q. -- with BB&T? Were you aware that 561,859 was
9 owed on the BB&T promissory note in 2011?

10 A. I did not know the number. I knew there
11 was -- you know, I knew it was pretty high. As a matter
12 of fact -- I mean, from what I thought, I thought it was
13 more than that. But I'd never seen it in writing
14 anywhere, what it was.

15 Q. What did you believe the payment -- the amount
16 owed was?

17 A. I thought it was over 600, but -- I mean, I
18 don't know. I never saw exactly how much it was.

19 Q. But you were still willing to go forward with
20 the purchase of the note?

21 A. The note, yes, ma'am.

22 (Defendants' Exhibit No. 1, note purchase
23 closing statement, is identified for
24 testimony.)

25 BY MS. NICHOLSON:

1 Q. At this time I'm showing Ken Howard what is
2 Defendants' Exhibit Number 1. This is the note purchase
3 closing statement. If you can flip to that -- this tab
4 here. Well, if you'll just tell me first, is that your
5 signature on the bottom here?

6 A. Is that what?

7 Q. Is that your signature?

8 A. It is, yes.

9 Q. Very good.

10 A. Um-hum.

11 Q. Can you flip to this tab, to page -- and have
12 you seen this document before?

13 A. Yeah. I signed the front of it. Do you mean
14 did I read the whole document?

15 Q. (Nods head).

16 A. No, ma'am.

17 Q. You did not?

18 A. Huh-uh. That's why I pay him.

19 Q. So -- okay. I'm just --

20 A. It didn't matter to me what he owed on it.

21 Q. But you were aware of the amount owed on
22 the --

23 A. Not this amount, no, ma'am.

24 Q. Not that amount?

25 A. No.

1 Q. Okay.

2 A. I didn't know the exact amount.

3 Q. Okay, thank you. Were you aware of the CDIC
4 equipment loan and the SBA loan on the property prior to
5 you purchasing the BB&T note?

6 A. No, ma'am.

7 Q. Okay. What was your first knowledge of those
8 loans?

9 A. I don't know when. Allan told me about it
10 sometime after the -- I don't know when he told me. The
11 BB&T guy never mentioned it to me.

12 Q. Okay. Had you had any conversation with Walt
13 about --

14 A. No, ma'am.

15 Q. -- loans on the property?

16 A. Definitely not.

17 Q. Okay. Did you seek any information about
18 these loans?

19 A. Did I?

20 Q. Yes.

21 A. No, ma'am.

22 Q. Did your attorney on your behalf?

23 A. What?

24 Q. Seek information about the CDIC loan?

25 MR. LeGRAND: Objection to the form. You're

1 asking him for someone else's opinion or work?

2 MS. NICHOLSON: I am asking him if his
3 attorney sought information about this CDIC loan, any
4 information about it.

5 THE WITNESS: The question is, did he tell me
6 he was seeking -- I don't understand. Ask me one more
7 time.

8 BY MS. NICHOLSON:

9 Q. Did you have any knowledge of your attorney
10 seeking information about the CDIC loan?

11 A. I did. Allan told me, and I don't know when
12 it was, that there was a second on it with the SBA and
13 one -- also one on some equipment.

14 Q. What were your thoughts when you learned of
15 these?

16 A. Well, I didn't think it was a big deal. I
17 mean, I always thought -- since I fooled with this
18 thing, that if you was in the first position, you were
19 in good shape.

20 Q. What about any information about the SBA loan?
21 Did you have any idea of the amount owed on the SBA
22 loan?

23 A. Seems like Allan -- seemed like Allan told me
24 what it was. But to be honest, it didn't -- you know,
25 it didn't interest me. But I thought I'm in the first

1 position. I'm sitting in the driver's seat.

2 Q. What were your goals for this deal in
3 purchasing the note? What was your intended outcome?

4 A. What was my what?

5 Q. Your goal or your intended outcome.

6 A. Get a clear title on it.

7 Q. What do you think Walt's goal was?

8 MR. LeGRAND: Objection to the form. You're
9 asking speculation on someone else's knowledge.

10 THE WITNESS: Ask it again.

11 BY MS. NICHOLSON:

12 Q. What do you believe Walt's goal was for the
13 deal?

14 A. For the loan?

15 Q. For your entire arrangement.

16 A. I thought he wanted to get under the -- get
17 out from under the first mortgage, and if I'd been under
18 it, I'd want out from under it too.

19 Q. Did you hope to operate your business here at
20 this location?

21 A. Yes.

22 Q. And did you intend to purchase the property
23 and the assets there?

24 A. I thought the 200,000 did.

25 Q. Were you aware that Walt had no assets to

1 personally satisfy any judgment if he couldn't settle
2 with BB&T?

3 A. I had no clue. No, ma'am. All I know about
4 Walt Parker is I know him when I see him.

5 Q. Did you believe that the property is worth
6 more or less than the BB&T loan on it?

7 A. That I give or what the note was?

8 Q. The note.

9 A. I didn't think -- did I think it was worth
10 more?

11 Q. (Nods head)..

12 A. No, ma'am.

13 Q. What did you believe the property to be worth?

14 A. 200,000.

15 Q. Did you accept BB&T's offer to sell the note
16 for 200,000 with the conditions of an "as is" sale and
17 Walt's execution of a settlement agreement with BB&T?

18 A. I didn't, no, ma'am.

19 Q. Okay. Did you know that Walt was required to
20 dismiss his counterclaim against BB&T with prejudice for
21 foregoing this right?

22 A. I don't understand the question.

23 Q. Okay. Did you know that as you were
24 purchasing the BB&T note for the 200,000, that Walt was
25 executing a settlement agreement with BB&T to release

1 any counterclaim?

2 A. No.

3 Q. Were you aware of the foreclosure action that
4 BB&T had against Walt Parker?

5 A. No, ma'am.

6 Q. Okay. Tell me, did you intend to hold
7 Walt Parker responsible for the amount due on the
8 promissory note when you purchased it?

9 A. Did I intend to hold him responsible?

10 Q. Yes.

11 A. I didn't know anything about it.

12 Q. The amount due on the BB&T promissory note,
13 did you intend to hold him responsible for that amount?

14 A. I think I've already said I didn't. This is
15 the first first mortgage I've ever bought, so I didn't
16 know the -- I didn't know how it worked. My
17 understanding was if you own the first mortgage, you're
18 in the first position. And that's where I thought I
19 was.

20 Q. And did you intend for Walt to convey the
21 property to you?

22 A. Yes.

23 Q. Okay. And did you expect to receive title of
24 the property when you purchased the note?

25 A. Say what?

1 Q. To receive title of the property when you
2 purchased the note?

3 A. Yes, ma'am.

4 Q. And did you receive the property itself?

5 A. Did I receive it?

6 Q. Yes.

7 A. I started operating it, yes. Is that the
8 question?

9 Q. Yes. What was your awareness of a deed in
10 lieu of foreclosure?

11 A. Never heard of one.

12 Q. Okay. Did you expect Walt to execute a deed
13 to convey the title to you?

14 A. I didn't understand how it would work or when.
15 I -- I don't -- I mean, I definitely wanted a deed, a
16 clear deed. That's the purpose of buying it, to have a
17 clear deed.

18 (Defendants' Exhibit No. 3, deed in lieu
19 of foreclosure, is identified for testimony.)

20 BY MS. NICHOLSON:

21 Q. Okay. And I'm going to show Mr. Howard
22 Defendant's Exhibit 3. This is the deed in lieu of
23 foreclosure.

24 A. Um-hum.

25 Q. Have you seen this document before?

1 A. Have I what?

2 Q. Have you seen this before?

3 A. No.

4 Q. Okay.

5 A. I mean, it's not -- not before all this stuff

6 started right here.

7 Q. Okay. Do you mind flipping to --

8 A. I think I looked at it after all this mess

9 that we're in here doing started.

10 Q. Yes, okay. And can you tell me, do you see

11 Walt Parker's signature on here?

12 A. On this?

13 Q. Yes.

14 A. I don't know what Walt Parker's signature

15 looks like. I can tell you if his name's on it.

16 Q. Okay.

17 A. There's a mark over Walt Parker.

18 Q. Very good.

19 A. Whether it says it or not, I don't know.

20 Q. Okay, thank you. All right. Can you see here

21 that this is -- it reads -- under this first paragraph

22 here, is that saying it's for the satisfaction and

23 cancellation of debt? Will you tell me what that means

24 to you?

25 A. Tell me again, what are we talking about?

1 Q. This first sentence here.

2 A. Yeah. What about it?

3 Q. It says, "Consideration for this deed for the
4 satisfaction and cancellation of debt." What would that
5 mean to you?

6 A. It don't mean nothing. I'm not a lawyer. I
7 can't hardly read and write. I don't understand what
8 you're saying. I don't know -- I don't know what it
9 means.

10 Q. Okay. Well --

11 A. I guess, that's why I pay attorneys.

12 Q. I understand. You seem like a pretty smart
13 man to me, though. If you -- if somebody said that they
14 were giving you this for satisfaction and cancellation
15 of debt, would you believe that to be so?

16 A. If somebody told me?

17 Q. That they were giving you this deed for
18 satisfaction and cancellation of debt, would you believe
19 that to be so?

20 A. I don't know. I'd have to study this and read
21 it to see exactly what he says, for to believe it. I
22 mean, I've never seen a deed in lieu of foreclosure.
23 I've seen a lot of deeds before --

24 Q. Yes.

25 A. -- but I never even heard of this until all

1 this started.

2 Q. Okay. Did you think that Walt was going to
3 give you the property to cancel out the debt that you
4 purchased?

5 A. I thought, when I paid 200,000 to BB&T, that I
6 was going to own the property.

7 Q. Um-hum.

8 A. I mean, it's probably not a lot of money to
9 anybody else in this room, but 200,000, to me, is a lot
10 of money.

11 Q. Um-hum.

12 A. And that's what I thought.

13 Q. Okay. And can you tell me, on the bottom
14 there, who drafted that deed?

15 A. Do what now?

16 Q. Can you tell me who drafted that deed?

17 A. This deed in lieu of foreclosure?

18 Q. Yes.

19 A. Allan. It says right there, "prepared by
20 Allan Hill."

21 Q. Did you ever agree not to pursue judgment
22 against Walt Parker or Carolina Properties Holdings?

23 A. No, ma'am.

24 Q. Was Allan Hill communicating with Walt Parker
25 on your behalf, to your knowledge?

1 A. If he communicated with him, I guess it would
2 be on my behalf.

3 Q. Um-hum.

4 A. I don't know what that consisted of.

5 Q. Um-hum. All right. Did you expect your
6 attorney to take care of whatever paperwork was required
7 after you purchased the note for you to have the
8 property?

9 A. Yes, ma'am.

10 Q. Okay. And did you just stay in touch with
11 your attorney about the settling matters after you
12 signed the note?

13 A. Yes. I called him occasionally to see how it
14 was going.

15 Q. Um-hum. Can you tell me when you took
16 possession of the property?

17 A. Not exact dates but right after I paid
18 the -- bought the note.

19 Q. Okay. How long did it take you to start
20 operating Super Suds there?

21 A. I did some work on the property. I don't know
22 the exact -- how many days or -- I mean, you know, after
23 I spent the 200,000, I had to try to get it to make some
24 money.

25 Q. Sure. What was that process like?

1 A. The process?

2 Q. Um-hum.

3 A. Well, it had a terrible parking lot.

4 Whoever -- whoever built it didn't know what they was
5 doing. So we went in and redid the parking lot, took a
6 lot of curving out. The entrance on the back was too
7 narrow. We widened it.

8 Q. Um-hum.

9 A. Painted the building, got equipment people in
10 there to get it going the way it was supposed to.

11 Q. And did you get a sign out front changed to
12 say Super Suds?

13 A. I did. I actually moved the sign.

14 Q. Was that effective?

15 A. Hum?

16 Q. Was that effective?

17 A. I hope so.

18 Q. Okay.

19 A. It was sitting way off -- way behind, a
20 terrible location. It couldn't have hurt it.

21 Q. Did you have any separate agreement that
22 allowed you to operate Super Suds on the property?

23 A. Do what now?

24 Q. Did you have any separate agreement or
25 anything written that allowed --

1 A. No, ma'am.

2 Q. -- you to operate Super Suds?

3 A. I was under the understanding that, you know,
4 it was mine to go try to fix it and get it going.

5 Q. Okay.

6 A. Maybe that's -- whatever.

7 Q. And you've operated Super Suds there since
8 that day?

9 A. Yes, ma'am.

10 Q. And you received income there from Super Suds
11 on that site?

12 A. From that site?

13 Q. Yes, sir.

14 A. Yes, ma'am.

15 Q. Do you think that Walt believed he would walk
16 away from this with some debt at the end of everything?

17 A. With some what?

18 Q. With debt.

19 MR. LeGRAND: Objection, calls for
20 speculation.

21 THE WITNESS: Yes.

22 MS. NICHOLSON: I am showing Mr. Howard what
23 is Defendants' Exhibit Number 4.

24 (Defendants' Exhibit No. 4, email between
25 Walt Parker and attorney Allan Hill, is

1 identified for testimony.)

2 BY MS. NICHOLSON:

3 Q. Have you ever seen this email that was between
4 Walt Parker and Allan Hill?

5 A. Have I ever seen this?

6 Q. Yes, sir.

7 A. I don't remember if I have.

8 Q. Okay.

9 A. No, ma'am.

10 Q. Do you mind taking a look at that bottom
11 paragraph there and just reading that for us?

12 MR. LeGRAND: And at this point, since he has
13 not seen this before, we have the right for an
14 off-the-record conference if he needs that.

15 Do you want to confer on this briefly or --

16 THE WITNESS: I've never seen it. Do we need
17 to confer?

18 MR. LeGRAND: Yes. That's what I'm asking
19 you. Do you want -- I don't know -- you've not seen
20 this. Do you want to confer --

21 THE WITNESS: Yes.

22 MR. LeGRAND: -- about this document?

23 THE WITNESS: Yes.

24 MR. LeGRAND: You do? All right. If we could
25 take just a few minutes.

1 (Off-the-record discussion about the
2 remaining exhibits.)

3 MS. NICHOLSON: At this time we have
4 Defendants' Exhibit 5 through 12 that we're going to
5 place on the record. This is going to go -- give the
6 plaintiff time to go and confer with his attorney about
7 the remaining exhibits.

8 BY MS. NICHOLSON:

9 Q. At this time we have Defendants' Exhibit 5
10 that I'm showing Mr. Howard. This is the email dated
11 August 18th, 2011. At this time we have Defendants'
12 Exhibit 6, and this is a ledger, handwritten ledger.
13 I'm showing the defendant that exhibit. Have you seen
14 that exhibit?

15 A. (Nods head).

16 MR. LeGRAND: You've got to answer "yes" or
17 "no."

18 THE WITNESS: Yes.

19 BY MS. NICHOLSON:

20 Q. Showing Defendants' Exhibit 7, this is a Form
21 1065, U.S. Return of Partnership Income, 2011. Have you
22 seen that document before?

23 A. Yes.

24 Q. This is a BB&T -- this is Defendants'
25 Exhibit 8 I'm showing Mr. Howard, BB&T of South Carolina

1 Mortgage of Real Estate. Have you seen that exhibit as
2 to Carolina Properties Holdings?

3 A. I have not seen that.

4 Q. Okay. This is going to be Defendants' Exhibit
5 Number 9, the U.S. Small Business Association Loan
6 Authorization and Agreement, I'm showing Mr. Howard.
7 Have you seen that?

8 A. I have not seen that.

9 Q. And this is Defendants' Exhibit Number 10,
10 U.S. Small Business Association Note. Have you seen
11 this document?

12 A. No.

13 Q. This is Defendants' Exhibit Number 11. This
14 is information reported from a point of sale machine.
15 Have you seen these documents --

16 A. Yes.

17 Q. -- for 2018?

18 A. I've seen this.

19 Q. Okay. Thank you. And this is Defendants'
20 Exhibit number 12, settlement agreement and mutual
21 release of claims entered into September 19th, 2011,
22 from BB&T and Carolina Properties Holdings. Have you
23 seen that document?

24 A. No.

25 Q. Okay.

1 MS. NICHOLSON: At this time we suggest that
2 you be allowed to confer.

3 (Recess was taken from 11:13 A.M.
4 Until 11:24 A.M.)

5 MS. NICHOLSON: We'll go on record here.

6 BY MS. NICHOLSON:

7 Q. Mr. Howard, can you tell me the first time
8 that you learned of any lawsuit against Walt Parker or
9 Carolina Properties Holdings?

10 A. A lawsuit?

11 Q. (Nods head).

12 A. Huh-uh, I can't.

13 Q. Okay. And did you believe at any time you
14 were forgiving Walt Parker for a debt that he owed?

15 A. That I was forgiving? No, ma'am.

16 Q. Okay. Did you believe that if you received
17 title to the property at issue, that you would not
18 receive the money from the note?

19 A. One more time?

20 Q. Did you believe that, if you received title to
21 the property, that you would then not receive any money
22 that was due on the note you purchased?

23 A. That I would not receive money from the note?

24 MS. NICHOLSON: Can you repeat the question?

25 THE REPORTER: "Q. Did you believe that, if

1 you received title to the property, that you would then
2 not receive any money that was due on the note you
3 purchased?"

4 THE WITNESS: Not receive? I wasn't expecting
5 any money out of the deal.

6 BY MS. NICHOLSON:

7 Q. Okay. I'm showing Defendants' Exhibit Number
8 4 again to Mr. Howard. Do you mind just reading this on
9 to the record, this -- starting, "I am preparing"?

10 A. Um-hum.

11 Q. Do you mind reading that on to -- out loud for
12 the record?

13 A. Not at all.

14 Q. Thank you.

15 A. "I am preparing to execute this Settlement
16 Agreement and Stipulation of Dismissal, which is a
17 condition precedent to the BB&T note sale. I wanted to
18 memorialize the verbal agreement we have that
19 Ken Howard, Super Suds, LLC and/or the new note holder
20 will not pursue a deficiency judgment against
21 Carolina Properties Holdings, LLC or me. Also, I heard
22 you say that Ken Howard, Super Suds, LLC and/or the new
23 note holder would not be filing a 1099 for the
24 forgiveness of debt. Please, let me know if my
25 understanding is correct."

1 Q. Thank you.

2 A. How did I do?

3 Q. That was excellent reading, thank you. Did
4 you know, around September of 2011, any information
5 about any deficiency judgment?

6 A. No, ma'am.

7 Q. Okay. And did -- that's fine. Were you aware
8 that your attorney had information about this SBA loan
9 or the CDIC loan?

10 A. When?

11 Q. In 2011.

12 A. No, ma'am.

13 (Defendants' Exhibit No. 5, another email
14 between Walt Parker and Attorney Allan Hill,
15 is identified testimony.)

16 BY MS. NICHOLSON:

17 Q. Okay. I'm showing what is Defendants' Exhibit
18 Number 5 to Mr. Howard. This is an email that was
19 sent -- this was from Walt Parker to Allan Hill, some
20 information about the SBA loan or the CDIC loan. Is
21 this new information to you?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. You said, is this new information?

25 Q. Yes, sir.

1 A. Yes. I've never seen this.

2 Q. Did you have any awareness of whether or not
3 your attorney was in communication with either
4 organization?

5 A. Did I have information -- did I know that he
6 was in contact with them? I would assume he'd been in
7 contact with BB&T.

8 Q. Okay.

9 A. But I've never seen this.

10 Q. When was the first time you learned about this
11 present lawsuit?

12 A. I guess 2016, or whenever all this mess here
13 started.

14 Q. And do you understand that you are standing in
15 the shoes of BB&T in this lawsuit?

16 A. That I'm standing in their shoes?

17 Q. Do you understand that you're substituting the
18 place of BB&T in this lawsuit?

19 A. Well, I understand that I bought the first
20 mortgage, if that's what you're asking.

21 Q. Okay. Do you understand that BB&T used to be
22 the plaintiff in this lawsuit?

23 A. I understand that BB&T owned the mortgage, the
24 first mortgage.

25 Q. How do you believe you got into this lawsuit?

1 A. How do I believe that I got into this lawsuit?

2 I have no idea. I wish I knew.

3 Q. Why are you pursuing this lawsuit?

4 A. Why?

5 Q. (Nods head).

6 A. Because I want a clear deed on the property.

7 Q. Have you ever seen a consent order

8 substituting parties into this lawsuit?

9 A. No.

10 Q. Okay. Why do you believe you didn't know

11 about this lawsuit until 2016?

12 A. I don't know. You know, I pay attorneys to

13 handle that stuff.

14 Q. What did you think when you found out about

15 the lawsuit?

16 A. What did I think? I don't know. I didn't

17 like it.

18 Q. Until 2016, did you believe you owned the

19 property?

20 A. I did.

21 Q. Do you know about any settlement discussions

22 with the SBA?

23 A. No, ma'am.

24 Q. Okay.

25 A. You're talking about by me?

1 Q. Yes.

2 A. No.

3 Q. Are you aware of any settlement negotiations
4 by your attorney on your behalf with the SBA?

5 A. No, ma'am.

6 Q. Okay. How did you believe that you owned the
7 property?

8 A. Well, I wrote a check for \$200,000.

9 Q. Okay. When was the first time you saw the
10 deed in lieu of foreclosure?

11 A. I don't think I've ever seen it. You had it
12 awhile ago, didn't you? Didn't we have a copy of it?

13 Q. I did.

14 A. As far as looking at it and reading it, that's
15 the first time I've probably seen it. I know it's been
16 discussed, but I hadn't seen it until a while ago, that
17 I remember.

18 Q. Did you believe your attorney was in
19 possession of it?

20 A. Of the deed in lieu?

21 Q. (Nods head).

22 A. Yes. When we started having these meetings,
23 he had it in his file.

24 Q. Okay. Did you believe that he was holding
25 that deed in lieu in trust?

1 A. I -- I don't know -- I didn't know what he was
2 holding. I don't understand.

3 Q. Did you expect to receive that deed in lieu of
4 foreclosure at any point?

5 A. I don't understand deed In lieu of
6 foreclosure. I believe I've said that. I expected to
7 get a deed.

8 Q. Okay.

9 A. I don't understand the difference.

10 Q. Okay. Let's turn to your operation of
11 Super Suds at the location.

12 A. Um-hum.

13 Q. And can you tell me a little bit about -- you
14 began before -- your accounting for your car washes?

15 A. All of them or just this one we're talking
16 about?

17 Q. You can tell me about this one.

18 A. You mean the accounting process?

19 Q. Yes.

20 A. Okay. Every Monday -- most of the time on
21 Monday -- we try to do it all on Monday, we go by the
22 car wash, take the money out, run a tape on each
23 machine, see what it done. And once I make all my
24 rounds, I go by the office. And usually my son counts
25 the money and fills in the book, tells what each one has

1 done. And on the automatics, it separates credit and
2 cash.

3 (Defendants' Exhibit No. 6, Ken Howard's
4 handwritten ledger about his car washes, is
5 identified for testimony.)

6 BY MS. NICHOLSON:

7 Q. Okay. I'm showing Mr. Howard Defendants'
8 Exhibit Number 6. This is your handwritten ledger?

9 A. Um-hum.

10 Q. Can you walk me through what each column
11 means?

12 A. Each line?

13 Q. If you can tell me what Greer Auto 1 means?

14 A. Greer Auto 1, that's bay 1. This is how much
15 cash it taken in. That's how much credit it did for
16 bay 1. Bay 2, cash, credit, total.

17 Q. Okay.

18 A. We did that every -- you know, tried to do it
19 every Monday. Usually, it is on Monday unless something
20 happens. And that's 2011, November the 10th, every
21 week. That's the dates.

22 Q. Okay. And you told me your son enters this
23 into the ledger. Does your son work for you?

24 A. Um-hum. We work together, yes, ma'am.

25 Q. Okay. Do each of you receive a salary from

1 this business?

2 A. Neither one of us.

3 Q. Okay. That's fine. And tell me, what's your
4 expectation of profit for, say, this year, from this
5 business?

6 A. I don't have that information before me --
7 you're talking from just this one?

8 Q. From just that one.

9 A. I don't know.

10 Q. Okay.

11 A. I'd have to look at these.

12 Q. Okay. Can you tell me, do you remember, did
13 you profit in 2011?

14 A. Did I profit? No, ma'am.

15 Q. What about 2012?

16 A. No, ma'am.

17 Q. What was the first year you received a profit?

18 A. I don't know. I don't know if -- I'd have to
19 go back and look at -- you know, look at them to see. I
20 don't know.

21 Q. Okay.

22 A. Not much even now.

23 Q. Okay. Now, this is what was coming in for the
24 business each year. Did you keep record of your
25 expenses for this location specifically?

1 A. No, I didn't. No, ma'am. Expenses,
2 everything, goes into the Super Suds, and we pay the
3 bills out of it. I don't -- I don't break out each
4 location, as far as expenses.

5 Q. Can you list your expenses?

6 A. Total expense?

7 Q. The items you have expenditures for.

8 A. For this location?

9 Q. For all of Super Suds.

10 A. Yes. It's probably on the tax return.

11 Q. Can you explain for me, here now, listing some
12 of your expenditures?

13 A. No, ma'am. I mean, I can give you -- you're
14 talking about numbers?

15 Q. No. Examples of items that might be
16 expenditures.

17 MR. LeGRAND: Could he refer to the tax return
18 to --

19 MS. NICHOLSON: Yes.

20 MR. LeGRAND: I think it's the next exhibit.

21 MS. NICHOLSON: I'm now showing the witness
22 Exhibit 7.

23 (Defendants' Exhibit No. 7, Ken Howard's
24 2011 tax return, is identified for testimony.)

25 BY MS. NICHOLSON:

1 Q. This is a 2011 tax return.

2 A. What's your question?

3 MS. NICHOLSON: Can you repeat the question?

4 THE REPORTER: "Q. No. Examples of items
5 that might be expenditures."

6 THE WITNESS: Expenditures. Of course, power
7 and utilities is the big expense. Other than utilities,
8 the next expense would be supplies, soap and supplies.

9 BY MS. NICHOLSON:

10 Q. Um-hum.

11 A. And also repairs, maintenance -- maintenance.

12 Q. Um-hum.

13 A. And that's -- that's basically it. Now, of
14 course, we had a debt on the car wash. That's an
15 expense.

16 Q. Um-hum. Can you tell me why you keep your
17 expenditures for all of the Super Suds together rather
18 than specific locations?

19 A. Well, I've just always did it that way, and
20 it's a lot simpler. That's just the way we do it. We
21 give information to accountants. They take care of it.

22 Q. Has anyone ever advised you to do your
23 accounting differently?

24 A. Individually? No, ma'am.

25 Q. Okay. And while we have this document here,

1 can you tell me, is this your name listed here on the
2 bottom?

3 A. Is that what?

4 Q. Is this your name here?

5 A. Morris Kenneth Howard, yes, ma'am.

6 Q. And you're listed as the member manager?

7 A. Am I?

8 Q. Yes.

9 A. I own them?

10 Q. Excellent, thank you.

11 (Defendants' Exhibit No. 8, BB&T mortgage
12 associated with Mr. Howard's note, is
13 identified for testimony.)

14 BY MS. NICHOLSON:

15 Q. I'm showing what is Defendants' Exhibit
16 Number 8, the mortgage from BB&T.

17 A. Um-hum.

18 Q. Have you seen this document?

19 A. No, ma'am.

20 Q. Did you know that this document is the
21 mortgage associated with the note that you purchased?

22 A. No. I just saw it a few minutes ago.

23 Q. Okay.

24 A. I've never seen this before.

25 Q. Okay.

1 A. That's what I pay these guys for.

2 Q. I'm turning to what is section 6 here.

3 A. Section 6? Okay.

4 Q. Yes. Now, feel free to read this section.

5 It's a good bit of legalese, but were you aware that

6 this section requires you to keep a record of your

7 profits -- rents and profits associated with the

8 property if you were the mortgage holder?

9 A. No.

10 Q. Okay. Did you ever believe yourself to be
11 acting as a creditor in your operation of the business
12 here?

13 A. No.

14 Q. Okay. Tell me a little bit about the
15 performance of this location this year.

16 A. You're talking about revenue?

17 Q. Yes.

18 A. No, I can't. I mean, I don't know -- I don't
19 understand -- you want me -- you want to know how much
20 it's doing this year?

21 Q. Is the business performing well at this time?

22 A. No. It's never performed well. It needs a
23 lot of work.

24 Q. What type of work?

25 A. Equipment, the building needs work.

1 Q. Okay. Anything else?

2 A. No.

3 Q. How does this location compare to the other
4 locations you own?

5 A. All I can compare it with is one other
6 location because I just have one other location. It's
7 just an automatic. And that's -- an automatic and a
8 self-serve wash is two different ballgames --

9 Q. Can you --

10 A. -- and you can't compare them.

11 Q. Tell me about the --

12 A. The other location that's automatic?

13 Q. Those two -- does this perform better than the
14 other location that's also automatic?

15 A. This location has two bay automatic. My other
16 automatic location has one bay automatic. And last
17 week, the one bay automatic did three times what this
18 two bay automatic did.

19 Q. Okay.

20 A. That's last week.

21 Q. What's the difference in these locations and
22 the other locations that you own?

23 A. This location just has two touch free
24 automatics. The location I just described has one
25 automatic.

1 Q. What about the other locations --

2 A. They're all just self-serve.

3 Q. Self-serve?

4 A. You know, you pull in, put your quarters in,
5 wash your car yourself. These other two locations you
6 just drive through.

7 Q. Which locations perform the best?

8 A. Depending on which one you're talking about.
9 There's good ones and bad ones. I mean, I don't -- my
10 best location is that one bay automatic right now. I
11 think I'm telling you right. It's -- it's close.

12 Q. Okay.

13 A. And I'm talking off the top of my head because
14 I ain't got the numbers in front of me.

15 Q. Okay. Do you keep an accounting of the income
16 from the automatic base versus the vacuum machines?

17 A. The -- the automatics, the one bay automatic I
18 referred to doesn't have vacuums. This -- this one
19 does. It has two vacuums locations. And I don't keep
20 separate accounting because the vacuums -- what money it
21 generates, which is all quarters -- it just takes
22 quarters, I always put those quarters back into the
23 automatic machine because -- to keep it running. You've
24 got to have quarters in the machine because if you buy a
25 5-dollar wash and put a 10-dollar bill in it, then it

1 gives you \$5 in quarters back. So it doesn't -- it
2 doesn't generate quarters, if you understand. So I use
3 my -- I've never taken a -- this one I've never taken
4 quarters away from the wash because it needs them all,
5 if you understand.

6 Q. Okay.

7 A. All the revenue that shows up is the green
8 money and credit cards.

9 Q. Okay. Would you say this car wash is
10 operating at capacity?

11 A. No. No, ma'am -- you talking about a full
12 potential?

13 Q. (Nods head).

14 A. No, ma'am.

15 Q. Okay.

16 A. It is the way it is right now.

17 Q. Um-hum. Have you --

18 A. I hope I'm a good enough operator to get to
19 full potential.

20 Q. Have you had any capital expenditures for this
21 location this year?

22 A. This year?

23 Q. This year.

24 A. Oh, no, ma'am.

25 Q. Can you recall what your capital expenditures

1 for this location have been last year?

2 A. Last year?

3 Q. (Nods head).

4 A. What are you calling "capital"?

5 Q. What types of investment have you made in this
6 location last year?

7 A. Are you talking capital of 1,000 or more or
8 10,000?

9 Q. Do you --

10 A. I don't understand your definition of
11 "capital." I mean, general operating funds -- you know,
12 I haven't done any capital expense. I don't think I did
13 any last year, if that's what you're asking. Normal
14 operating is about all we did.

15 Q. Have you had any improvements to this location
16 in the past year?

17 A. In the past year?

18 Q. Yes.

19 A. No, ma'am.

20 Q. Okay. Is there any point in time, within this
21 year, 2018, for a week's period where this location was
22 not operating at all? Say it was down?

23 A. Not for any period of time.

24 Q. Okay. Would you be prepared to apply any of
25 the profits that you've currently made to the debt

1 associated with the property?

2 A. I don't understand.

3 Q. Do you understand that you could be required
4 to apply any of your profits from this location to the
5 debt that's associated with this location?

6 A. No.

7 Q. Okay. Do you believe that you're the owner of
8 the property?

9 A. Right now?

10 Q. (Nods head).

11 A. I'm -- I'm really -- I don't know. I don't
12 know what I believe.

13 Q. Who do you believe is the owner of the
14 property?

15 A. I don't know. I thought I was.

16 Q. Until 2016?

17 A. Well, that's when the questions started
18 flying. Yes, ma'am.

19 Q. Do you believe that, if you're not the owner
20 of the property, that it could be sold?

21 A. I don't know. I think I own the first
22 mortgage. I think.

23 Q. All right. For any of the other locations
24 that you own, do you have any idea of which one is the
25 most profitable?

1 A. Of what I've -- of my locations now?

2 Q. Yes.

3 A. Which one is most profitable, is that the
4 question?

5 Q. Right.

6 A. Without look at them, I can't tell. But more
7 than likely, my one bay automatic, I think, is the most
8 profitable.

9 Q. All right. Can you give me one minute?

10 A. Sure.

11 MS. NICHOLSON: Do you mind if we take a
12 break?

13 THE WITNESS: I'd like to have one, restroom.

14 (Pause in proceedings.)

15 MS. NICHOLSON: Well, this is going to be all
16 for us, and I thank you for your participation. So no
17 further questions at this time.

18 (The deposition was concluded at 11:58 A.M.)

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1 SIGNATURE OF DEPONENT

2 I, the undersigned, MORRIS KENNETH
3 HOWARD, SR., do hereby certify that I have read the
4 foregoing deposition and find it to be a true and
5 accurate transcription of my testimony, with the
6 following corrections, if any:

7 PAGE LINE CHANGE REASON

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MORRIS KENNETH HOWARD, SR.

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CERTIFICATE OF REPORTER

I, Jeanne M. McLaren, CSR, RMR,
Registered Merit Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify:

That reading and signing of the foregoing
deposition by the witness is reserved.

That the foregoing deposition was taken
before me on the date and at the time and location
stated on the title page of this transcript; that the
deponent was duly sworn to testify to the truth, the
whole truth and nothing but the truth; that the
testimony of the deponent and all objections made at the
time of the examination were recorded stenographically
by me and were thereafter transcribed; that the
foregoing deposition, as typed to the best of my
ability, is a true, accurate and complete record of the
testimony of the deponent and of all objections made at
the time of the examination.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
by signature on this, the 19th day of June, 2018, at
Landrum, Greenville County, South Carolina.

Jeanne M. McLaren
Registered Merit Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 22, 2022

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9 EXHIBITS
 (Identified during testimony)

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12	Exhibit No. 1, note purchase closing	16	22
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25	with Mr. Howard's note		
	Reporters Note: Defendants' Exhibits 9 & 10 were		
	identified for the record but not used in testimony so		
	were retained by attorney.		

NOTE PURCHASE AND SALE CLOSING STATEMENT

PURCHASER: SUPER SUDS LLC
SELLER: BRANCH BANKING AND TRUST COMPANY
PROPERTY: PROMISSORY NOTE; MORTGAGE DEBT FROM CAROLINA
PROPERTIES HOLDINGS, LLC
DATE: September 23, 2011

Purchase Price Due From Purchaser:	\$200,000.00
Seller's Attorneys' Fees:	N/A
LESS: Credits toward Purchase Price	<\$0.00>
BALANCE DUE FROM PURCHASER:	<u>\$200,000.00</u>

SPECIAL STIPULATIONS

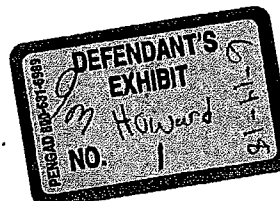
1. Upon the complete execution of the Note Purchase and Sale Agreement between Purchaser and Seller dated as of September 6, 2011, (the "Agreement") and this Closing Statement, Purchaser will initiate its wire transfer for the balance of the Purchase Price to Seller in accordance with the wire instructions attached as Exhibit "A" of the Agreement.

SELLER:
BRANCH BANKING AND TRUST COMPANY

By: [Signature]
Beverly Gilstrap
Title: Banking Officer

PURCHASER:
SUPER SUDS LLC

By: [Signature]
Name: Ken Howard
Title: President



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NOTE PURCHASE AND SALE AGREEMENT

THIS NOTE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the 6th day of September, 2011, by and between **BRANCH BANKING AND TRUST COMPANY** (the "Seller") and **SUPER SUDS LLC** (whether one or more collectively the "Purchaser") with reference to the following facts:

RECITALS:

A. Seller is the holder of those certain Notes listed as "Notes" on Schedule 2 attached hereto and incorporated by reference herein, which Notes evidence the loans and/or other financial accommodations described in and evidenced by the Loan Documents. For purposes of this Agreement "Loan Documents" shall mean copies or originals of the loan documents evidencing and securing the Loan as set forth on Schedule 2 attached hereto and incorporated herein and any and all modifications and/or extensions thereof. "Borrower" and "Guarantor" shall have the meanings set forth in the Loan Documents. "Obligor" shall mean Borrower and/or Guarantor.

B. Seller has agreed to sell, and Purchaser has agreed to buy, all of Seller's right, title and interest in and to the Loan Documents, subject to the terms and conditions set forth in this Agreement

NOW THEREFORE, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration from each party to the other paid, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The Recitals are hereby incorporated into this Agreement and made a part hereof as if fully stated herein.

2. Purchase and Sale; Condition Precedent. Seller hereby agrees to sell, transfer and convey to Purchaser, and Purchaser agrees to purchase, acquire and accept from Seller, AS IS, WHERE IS, WITH ALL FAULTS, and WITHOUT RECOURSE, WARRANTY OR REPRESENTATION (except as expressly set forth in Paragraph 7 hereof), all of its right, title and interest in and to the Loan Documents, together with any and all other security agreements, financing statements, assignments of leases, rents, or contracts, guaranties and all other loan documents and instruments evidencing or securing the Loan.

As an express condition precedent to Seller's obligation to enter into this Agreement, Seller must have entered into a settlement agreement with the Obligor in a form acceptable to Seller in its sole discretion requiring the Obligor to dismiss with prejudice the counterclaim asserted against Seller in the mortgage foreclosure action pending between Seller and Obligor in the Court of Common Pleas for Spartanburg County, South Carolina as Civil Action Number 2011-CP-42-0500 (the "Foreclosure Action") and further releasing Seller from any and all claims relating to the Loan, including claims raised or which could have been raised in the Foreclosure Action.

3. Purchase Price. In consideration for the sale, transfer and conveyance of Seller's interest in the Loan Documents, Purchaser does hereby agree to pay to Seller, in immediately available U.S. Dollars, the sum of Two Hundred Thousand and no/100 Dollars (\$200,000.00) (the "Purchase Price"). No later than September 9, 2011, Purchaser shall deliver Twenty Thousand and NO/100 Dollars (\$20,000.00) (the "Deposit") to the Seller via wire transfer in accordance with the instructions provided herein and in immediately available funds. If for any reason the Closing does not occur strictly in accordance with the terms of this Agreement (other than solely as a result of Seller's default), the Deposit shall be automatically deemed forfeited and the Seller may retain same; provided, however, that the forfeiture of the Deposit shall not be deemed an election of remedies by Seller who shall retain all of its rights and remedies relating to Purchaser's default. On the day of Closing, Purchaser shall deliver to Seller the balance of the Purchase Price by federal wire funds transfer or other means of payment acceptable to Seller, made payable to Seller. The consideration stated herein fully accounts for any and all contingencies that may now exist or hereafter arise with respect to the Loan Documents or the Collateral. Purchaser agrees (i) that the transfer herein contemplated is made subject to any and all liens, taxes and unpaid assessments, utilities, including water bills and sewer assessments, or unpaid bills of any other nature relating to the subject property; and (ii) Seller shall have no further responsibility for, and Purchaser hereby indemnifies Seller from and against, any and all liens, taxes, utilities, and unpaid bills of any nature relating to the subject property.

4. Purchaser Acknowledgments; Waiver and Acceptance. Purchaser acknowledges and agrees with Seller as follows:

(a) Purchaser has had an opportunity to examine the Loan Documents in anticipation of the purchase and sale contemplated herein and hereby accepts same on an AS IS, WHERE IS basis, WITH ALL FAULTS and WITHOUT RECOURSE, WARRANTY OR REPRESENTATION (except as expressly set forth in Paragraph 7 hereof). Upon execution and delivery of this Agreement, Purchaser waives any right to reject, rescind, cancel, or terminate this Agreement by reason thereof.

(b) **PURCHASER ACKNOWLEDGES THAT SELLER DOES NOT OWN AND IS NOT IN POSSESSION OF THE COLLATERAL AND ACCORDINGLY, PURCHASER MAY NOT BE ABLE TO INSPECT THE COLLATERAL PRIOR TO ITS PURCHASE OF THE LOAN DOCUMENTS.**

5. Limitation of Warranties. Except as specifically set forth in Paragraph 7 herein, this Note Purchase and Sale Agreement is made by Seller WITHOUT RECOURSE and without representations or warranties whatsoever, whether expressed, implied, or imposed by law. Without limiting the generality of the foregoing total exclusion of representation and warranties, this Note Purchase and Sale Agreement is made without:

(a) Any representations or warranties with respect to: (i) the collectibility of any amount owed to Seller under the Loan Documents; (ii) the enforceability of any of the Loan Documents; or (iii) the absence of the existence or basis for any claim, counterclaim, defense or setoff to or against the Loan Documents;

(b) Any representations or warranties with respect to the financial condition or creditworthiness of any obligor under the Loan Documents, or otherwise; and

(c) Any representations or warranties as to the value, lien priority, or condition of the Collateral or any other property or other collateral securing the Loan.

6. Purchaser's Representation.

(a) Purchaser warrants and represents to Seller that it has purchased the Loan and the Loan Documents for its own account, for investment purposes only and not with a view toward any public sale or other distribution of all or a portion thereof.

(b) Purchaser has the right, legal capacity, power and authority to enter into and perform its obligations under this Agreement and under all documents executed by Seller which are to be delivered to Purchaser at the Closing (as hereinafter defined) and no approvals or consents are required in connection with the execution or performance of this Agreement by Purchaser.

(c) Purchaser is a sophisticated investor with sufficient knowledge and expertise to evaluate the merits and risks associated with its acquisition of the Loan, and Purchaser has made such inquiries, examinations and investigations as it deems warranted to make the determination to purchase the Loan without reliance upon any representations of Seller whatsoever other than those expressly set forth in Paragraph 7 below.

(d) Neither Purchaser nor any of its affiliates, nor any of their respective partners, shareholders, members or other equity holders, is a person with whom U.S. persons or entities are restricted from doing business under regulations adopted by the U.S. Office of Foreign Asset Control, pursuant to any Executive Order, by any governmental action or otherwise. Purchaser is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

(e) (Check one box.) Purchaser represents that it [☐ is] [☒ is not] an affiliate of an Obligor. In the event that the first box is checked, all Borrowers and Guarantors must join in this Agreement and agree to the following provisions: Borrowers and Guarantors agree that they will benefit from the sale of the Loans to Purchaser and in consideration of such benefit and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, effective as of Closing each Borrower and each Guarantor does hereby release, acquit and forever discharge Seller and its subsidiaries, affiliates, predecessors-in-interest, successors, assigns, directors, officers, agents, stockholders, members, partners, attorneys and employees from any and all claims, causes of action, suits, debts, obligations, liabilities, demands, losses, attorney's fees, costs and expenses whether known or unknown, suspected or unsuspected, which Borrowers and Guarantors individually or collectively may have had, now may have or hereafter may have against them arising out of or otherwise relating to the Loans or the

Loan Documents, including without limitation and claims relating to the underwriting, closing, administration, collection or enforcement of the Loans. For purposes of this section, "Affiliate" shall mean any parent or subsidiary or any person or entity controlled by, or under the common control of, any Borrower or Guarantor or its parent or subsidiary.

(f) With respect to any Loan which, after the date of this Agreement, becomes the subject of a judicial proceeding (whether pending or a final judgment entered), Purchaser agrees to notify Seller immediately in the event a claim, counterclaim or cross-claim is brought or threatened against Seller in any litigation, bankruptcy or foreclosure involving a Loan. To the extent Seller receives notice thereof, Seller shall promptly notify Purchaser of any such claim, counterclaim or cross-claim brought or threatened against Seller in any litigation, bankruptcy or foreclosure involving a Loan. In connection with any such claims against the Seller, Purchaser shall assume the defense of such litigation on behalf of Seller and shall have the sole responsibility to determine the appropriate direction and strategy for such litigation or proceeding, excluding any government loan insurance program; provided however, that Seller may choose, at its sole discretion, but shall not have an obligation, to assume the defense of such claims. If Purchaser fails to comply with the obligation to assume such defense, Seller may, but is not obligated to take such actions as it deems necessary to protect its interest in the litigation. Purchaser shall reimburse and indemnify Seller for any costs, legal fees and damages incurred by Seller in connection with such proceeding. Purchaser will use its commercially reasonable efforts to obtain for Seller and Seller's affiliates the same releases Purchaser obtains for itself in any future settlement of the Loans, if any, and shall furnish Seller with copies of any such releases. With respect to any compromise or settlement of any claims against Seller, Purchaser shall not admit any liability on the part of the Seller without Seller's written consent and shall obtain a release of any and all claims, known or unknown, against Seller.

7. Seller's Representations. Seller represents and warrants as of the Closing that:

(a) Seller has the full right to transfer its interest in the Loan Documents to Purchaser. Upon the Closing and Seller's execution and delivery of the Assignment and endorsement of the Note to Purchaser as provided herein, Purchaser shall receive all of Seller's interest in the Loan Documents free and clear of all liens, encumbrances or other claims created by Seller or those claiming by, through or under Seller.

(b) Seller has the right, legal capacity, power and authority to enter into and perform its obligations under this Agreement and under all documents executed by Seller which are to be delivered to Purchaser at the Closing (as hereinafter defined) and no approvals or consents are required in connection with the execution or performance of this Agreement by Seller.

(c) The outstanding unpaid principal balance of each Note is as set forth on Schedule 1 as of the date set forth thereon.

(d) Upon the full consummation of the purchase and sale contemplated herein, Purchaser shall have acceded to all rights and recourse of Seller in and to the Loan Documents.

8. Closing. The receipt of the Purchase Price and execution and delivery of the Assignment and endorsement of the Note (the "Closing") shall take place **no later than September 23, 2011** (the "Closing Date") and if no sooner date and time is set, shall take place at 9:00 a.m. on the Closing Date at the offices of Seller, or at such other place as may be mutually agreed upon by Seller and Purchaser. The following items shall be delivered on or before the Closing Date:

(a) Purchaser shall pay the Purchase Price to Seller in cash at Closing by transfer of Federal funds pursuant to the transfer instructions attached hereto as EXHIBIT "A".

(b) Seller shall endorse and deliver the original Notes to Purchaser without recourse, warranty or representation, except as specifically set forth in Paragraph 7 herein. Such endorsement shall be effected at Seller's option and in its sole discretion, either by inscribing the endorsement on the signature page of the original (or if a lost instrument affidavit is delivered, a copy) of the Note or by attachment of an allonge thereto in substantially the form of EXHIBIT "B" attached hereto (the "Allonge").

(c) Seller shall execute and deliver to Purchaser a Bill of Sale and Assignment of Loan Documents in substantially the form of EXHIBIT "C" attached hereto (the "Assignment"), executed by an authorized representative of Seller, which Assignment shall evidence the conveyance of the Loan Documents (with the exception of the Mortgage and the Assignment of Rents, which shall be separately assigned) to Purchaser without recourse, warranty or representation, except as specifically set forth in Paragraph 7 herein.

(d) Seller shall execute and deliver to Purchaser an Assignment of Security Instrument and Other Loan Documents in substantially the form of EXHIBIT "D" attached hereto (the "Security Instrument Assignment"), which Security Instrument Assignment shall evidence the conveyance of the Mortgage and the Assignment of Rents to Purchaser without recourse, warranty or representation, except as specifically set forth in Paragraph 7 herein.

(e) Following Closing, Seller shall deliver to the borrower, notice of the assignment of the Loan in substantially the form of EXHIBIT "E" attached hereto.

9. Broker. Neither Seller nor Purchaser has contacted any broker, finder or similar person in connection with the transaction contemplated hereby. Purchaser and Seller each represent and warrant to the other that there are and there will be no agent's, broker's, or other intermediary's fees or commissions payable as a consequence of this transaction and that they have not dealt with a broker, agent or intermediary, who might by reason of such dealing have any claim for a fee, commission or other compensation with respect to the purchase and sale of

the Collateral. Seller and Purchaser agree to indemnify, hold harmless, defend and protect the other from and against any and all claims for commissions, compensation, expense or charge of whatever nature on the part of any broker, agent or other intermediary claiming by reason of any dealing with them.

10. Confidentiality. Seller and Purchaser hereby covenant and agree that, and (if the first check box in Paragraph 6(e) has been checked) Obligors hereby covenant and agree that, at all times after the date of execution hereof and prior to the Closing (or if this Agreement is terminated prior to Closing), unless consented to in writing by Seller, no press release or other public disclosure concerning this transaction shall be made, and each party agrees to use best efforts to prevent public disclosure of this transaction, including to the Borrower, and to keep strictly confidential any unfavorable or negative information, fact or circumstance other than: (a) to directors and officers of the parties, and employees, agents, their law and accounting firms who need to know such information for the purpose of evaluating the possible purchase and affiliates of the parties who are involved in the ordinary course of business with this transaction, all of which shall be instructed to comply with the non-disclosure provisions hereof; (b) in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction; and (c) in any filings with governmental authorities required by reason of the transactions provided for herein. Notwithstanding anything to the contrary contained herein, this section shall survive any termination of the Agreement other than by the Closing. PURCHASER SHALL TAKE NO ACTION TO COMMUNICATE WITH ANY OBLIGOR, SELLER'S EMPLOYEES OR ATTORNEYS AND/OR ANY THIRD PARTY WHICH MAY HAVE PROVIDED ANY INFORMATION OR APPRAISALS TO SELLER UNTIL AFTER CLOSING DATE.

11. Entire Agreement. This Agreement, together with the other agreements specifically referred to herein, constitute the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements. This Agreement may not be amended except in writing signed by the parties.

12. Waiver. No waiver of any term, provision, or condition of this Agreement in any one or more instance shall be deemed to be or construed as a further or continuing waiver any such term of this Agreement.

13. Time is of the Essence. It is agreed that time is of the essence with respect to the obligations hereunder.

14. Governing Law; Venue; Jury Trial Waiver. This Agreement shall be governed by the internal laws of the State of North Carolina without regard to conflict of law provisions. Any lawsuit arising out of or otherwise relating to the subject matter of this Agreement shall be brought in state or federal court in Forsyth County, North Carolina, and both parties consent to the jurisdiction and venue of such courts. **UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF OR OTHERWISE RELATING TO THE SUBJECT MATTER OF THIS**

AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SELLER TO CONVEY THE LOAN TO PURCHASER.

15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns.

16. Survival of Warranties. It is the express intention and agreement of the parties to this Agreement that all covenants, agreements, statements, representations and warranties made by Seller in this Agreement shall survive this Agreement, the delivery of the Loan Documents and the Closing for a period of ninety (90) days.

17. Waiver; Modification. Failure by Purchaser or Seller to insist upon or enforce any of its rights shall not constitute a waiver thereof. Either party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement. No oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.

18. Construction. Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

19. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered, sent by facsimile, national overnight courier, or mailed by first-class registered or certified mail, return receipt requested, postage prepaid (and shall be effective when delivered or when proper delivery is rejected):

If to Seller: Branch Banking and Trust Company
2000 Interstate Park Drive, Suite 400
Montgomery, AL 36109
Attn: John E. Beasley

With a copy to: Branch Banking and Trust Company
Tamara A. Stidham, Esq.
Associate General Counsel
2000 Interstate Park Drive, Suite 400
Montgomery, AL 36109

If to Purchaser: Super Suds, LLC
200 Ford Street
Greer, SC 29650
Attn: Ken Howard

With a copy to: S. Allan Hill, Esq.
819 E. North Street
Greenville, SC 29601

20. Indemnity. Purchaser hereby indemnifies Seller and its affiliates and their respective employees, officers, directors and shareholders, and does hereby agreed to defend and save them harmless, from and against any and all claims, counterclaims, cross-claims, actions, causes of action, suits, proceedings, judgments, damages, accounts, reckonings, executions, and liabilities whatsoever of every name and nature (including reasonable attorneys' fees), whether known or unknown, whether or not well founded in fact or in law, and whether in law, at equity, or otherwise, involving, arising out of or relating to any act or omission alleged to have been taken or omitted to have been taken by Purchaser with respect to the Borrower, the Guarantor, the Loan, the Loan Documents or the Collateral after the Closing.

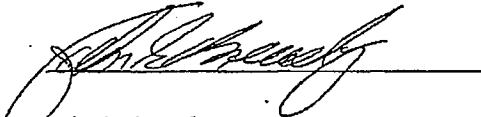
21. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one and the same instrument. Delivery of this Agreement may be accomplished by electronic facsimile reproduction ("FAX") or via electronic mail via .PDF ("PDF"); if FAX or PDF delivery is utilized, the electronic version shall have the same force and effect as the original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the day and year first above stated.

SELLER:

BRANCH BANKING AND TRUST COMPANY

By: 

Name: John E. Beasley

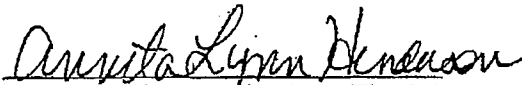
Title: Senior Vice President

SELLER'S ACKNOWLEDGMENT

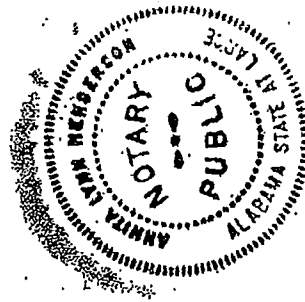
STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that John E. Beasley, Senior Vice President of BRANCH BANKING AND TRUST COMPANY, whose name is signed to the foregoing Note Purchase and Sale Agreement, appeared before me this 20th day of September, 2011, and acknowledged that the foregoing is the true act and deed on behalf of the bank.


Notary Public – Annita Lynn Henderson

My Commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
[Notarial Seal] MY COMMISSION EXPIRES: May 8, 2013
BONDED THRU NOTARY PUBLIC UNDERWRITERS



JOINDER OF OBLIGORS

[REQUIRED ONLY IF PURCHASER IS AN
AFFILIATE OF ANY BORROWER OR GUARANTOR]

The undersigned, being all of the Borrowers and Guarantors of the Loans, hereby join in the foregoing Note Purchase and Sale Agreement between Branch Banking and Trust Company as Seller and Super Suds LLC as Purchaser dated effective as of September 6, 2011 (the "Agreement") for the limited purpose of: (i) acknowledging that he, she or it has been provided with, has read and fully understands the provisions of Paragraphs 2, 6(e) and 10 thereof; (ii) consenting to the sale of the Loans from Seller to Purchaser as described in Paragraph 2; and (iii) agreeing to be bound by the provisions of Paragraphs 6(e) and 10. All capitalized terms used herein shall have the meanings set forth in the Agreement.

Carolina Properties Holdings, LLC

By: _____
Name: _____
Title: _____

Name: Walter W. Parker, IV

[ATTACH ADDITIONAL SIGNATURE
PAGES AND NOTARIALS IF NECESSARY]

ENTITY OBLIGOR'S ACKNOWLEDGMENT

STATE OF GEORGIA)
)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ of Carolina Properties Holdings, LLC, whose name is signed to the foregoing Joinder of Obligors, appeared before me this _____ day of September, 2011, and acknowledged that the foregoing is the true act and deed on behalf of the company.

Notary Public

My Commission expires: _____
[Notarial Seal]

INDIVIDUAL OBLIGOR'S ACKNOWLEDGMENT

STATE OF GEORGIA)
)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that Walter W. Parker, IV, whose name(s) is/are signed to the foregoing Joinder of Obligors, appeared before me this _____ day of September, 2011, and acknowledged that the foregoing is his, her or their true act and deed.

Notary Public

My Commission expires: _____
[Notarial Seal]

SCHEDULE 1

As of September 5, 2011, the principal balance due is \$561,808.59.

SCHEDULE 2

Promissory Note in the original principal amount of Five Hundred Eighty Five Thousand and 00/100 (\$585,000.00) dated October 21, 2005 executed by Carolina Properties Holdings, LLC payable to the order of Branch Banking and Trust Company

Mortgage of Real Estate dated October 21, 2005 executed by Carolina Properties Holdings, LLC to Branch Banking and Trust Company recorded on October 24, 2005 at 2:01 p.m. in the Office of the Register of Deeds for Spartanburg County, South Carolina in Mortgage Book 3542 at Page 190

Guaranty dated October 21, 2005 executed by Walter W. Parker IV relating to obligations of Carolina Properties Holdings, LLC

Note Modification Agreements executed between Carolina Properties Holdings, LLC payable to the order of Branch Banking and Trust Company dated as follows:

- November 14, 2006
- February 12, 2007
- December 18, 2007
- January 14, 2008
- July 3, 2008
- December 11, 2008
- December 9, 2009
- January 5, 2010
- May 19, 2010

EXHIBIT "A"

TRANSFER INSTRUCTIONS

Wire To: Branch Banking and Trust Company
2713 Forest Hills Road
Wilson, NC 27893

ABA #053101121 - LOAN SERVICES

Beneficiary GLA: 5112104153902

Reference: Carolina Properties Holdings, LLC

Bank to Bank Info: Please contact Annita Henderson at 334-676-5498
upon receipt of wire.

EXHIBIT "B"

ALLONGE

This ALLONGE is attached to and shall become a part of that certain Note in favor of BRANCH BANKING AND TRUST COMPANY in the original principal amount of Five Hundred Eighty Five Thousand and 00/100 (\$585,000.00), executed and delivered by Carolina Properties Holdings, LLC ("Borrower") on October 21, 2005, as the same may have been renewed, assigned, amended, supplemented, restated or modified, which evidences a loan (the "Loan") in the same amount to Borrower.

Pay to the order of Super Suds LLC WITHOUT RECOURSE, WARRANTY, OR REPRESENTATION except as expressly provided in Paragraph 7 of that certain Note Purchase and Sale Agreement dated as of September 6, 2011, by and between Super Suds LLC, as Purchaser, and Branch Banking and Trust Company, as Seller.

BRANCH BANKING AND TRUST COMPANY

By: _____
John E. Beasley
Title: Senior Vice President

STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that John E. Beasley, Senior Vice President of BRANCH BANKING AND TRUST COMPANY, whose name is signed to the foregoing Allonge, appeared before me this ____ day of September, 2011, and acknowledged that the foregoing is the true act and deed on behalf of the bank.

Notary Public—Annita Lynn Henderson

My Commission expires: _____
[Notarial Seal]

000085

EXHIBIT "C"

BILL OF SALE AND ASSIGNMENT OF LOAN DOCUMENTS

FOR VALUE RECEIVED, BRANCH BANKING AND TRUST COMPANY ("Assignor") hereby grants, assigns, sets over and transfers to SUPER SUDS, LLC ("Assignee"), whose address is 200 Ford Street, Greer, SC 29650, all of Assignor's right, title, and interest under those certain Loan Documents as defined on Schedule A hereto.

THIS CONVEYANCE is made WITHOUT RECOURSE, WARRANTY OR REPRESENTATION except as set forth in Paragraph 7 of the Note Purchase and Sale Agreement dated September 6, 2011 between Assignor and Assignee.

IN WITNESS WHEREOF, the undersigned has executed, signed and sealed this Bill of Sale and Assignment of Loan Documents as of September __, 2011.

BRANCH BANKING AND TRUST COMPANY

By: _____
John E. Beasley
Title: Senior Vice President

STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that John E. Beasley, Senior Vice President of BRANCH BANKING AND TRUST COMPANY, whose name is signed to the foregoing Bill of Sale and Assignment of Loan Documents, appeared before me this ____ day of September, 2011, and acknowledged that the foregoing is the true act and deed on behalf of the bank.

Notary Public—Annita Lynn Henderson

My Commission expires: _____
[Notarial Seal]

000086

Super Suds LLC
200 Ford Street
Greer, SC 30650
864-444-7316

July 15, 2011

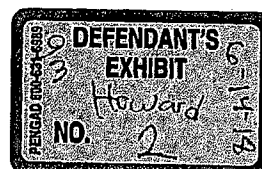
To Whom it May Concern:

We would like to offer \$200,000 cash to purchase BB&T's note secured by the twin automatic car wash located at 14115 E. Wade Hampton Boulevard in Greer, South Carolina. Over the past 20 years we have been owners and operators of several self serve and automatic car washes in the Upstate. We currently own 8 locations in the area.

After our inspection of the property we have determined that in order for us to bring the wash up to a fully operational business, we will need to invest an additional sum of money. Based on the trailing 12 months of income and expenses, the business would not justify any greater investment.

If we are able to reach an agreement, we can close very quickly. We would be happy to provide the bank proof of funds.

Ken Howard
Owner



000092

Space above this line for recording information

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

DEED IN LIEU OF FORECLOSURE
(No Title Examination)

KNOW ALL MEN BY THESE PRESENTS, that **Carolina Properties Holdings, LLC**, in consideration of Ten and NO/100ths (\$10.00) DOLLARS, and as a deed in lieu of foreclosure, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **Super Suds, LLC**, its successors and assigns forever;

SEE ATTACHED SCHEDULE "A"

TMS#: 9 03-10 092.00

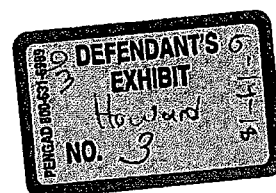
This conveyance is made subject to any and all existing reservations, easements, rights of way, zoning ordinances, setback lines, and restrictions or protective covenants that may appear of public record or on the premises affecting the property herein conveyed.

Grantee's Address: Super Suds, LLC, 200 Ford Street, Greer, SC 29650

The consideration for this deed is the satisfaction and cancellation of an indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD Office for Spartanburg County in ROD Mortgage Book 3542, at Page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest computed at the annual rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein, and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging, or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto grantee(s), and the grantee's(s') successors and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs, executors and administrators to warrant and forever defend all and singular said premises unto grantee(s) and grantee's(s') successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.



WITNESS the grantor's(s) hand(s) and seal(s) this 24 day of October, 2011.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Carolina Properties Holdings, LLC

Walter W. Parker, IV

By: Walter W. Parker, IV
Its: Manager

Stacy H. Parker, IV

STATE OF SOUTH CAROLINA)

COUNTY OF Beaufort)

ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by the Principal and was executed and acknowledged to be the free act and voluntary deed of the Principal.

WITNESS my signature this 24 day of October, 2011.

Stacy H. Parker, IV

Notary Public for: South Carolina
My Commission expires: _____

My Commission Expires September 11, 2017

PREPARED BY: S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North Street, Greenville, SC 29601

SCHEDULE "A"

ALL that piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, being shown as 0.56 acres on a survey for Jones Cooley and Raja Marzouca, dated April 24, 2003, by Site Design, Inc. recorded in Plat Book 154, Page 279, in the Spartanburg County ROD Office.

This being the same property conveyed to the Grantor herein by Jones M. Colley, Jr. and Rajai Y. Marzouca recorded in the Spartanburg County ROD office on August 26, 2005, in Deed Book 83-U at Page 906.

TMS#: 9 03-10 092.00

Grantor's Name: **Carolina Properties Holdings, LLC**

PREPARED BY: S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North Street, Greenville, SC 29601

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

)
)
)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred bearing County Tax Map Number 9 03-10 092.00 was transferred by **Carolina Properties Holdings, LLC** to **Super Suds, LLC** on _____, 2011.
3. The deed is exempt from the deed recording fee because (See information section of affidavit):

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgage or deed pursuant to foreclosure proceedings;
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Grantee
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

S. Allan Hill, Attorney at Law
819 E. North Street
Greenville, SC 29601
(864) 242-4995

SWORN to before me this _____ day of _____, 2011.

Notary Public for South Carolina
My Commission Expires:

Charles LeGrand

From: Allan Hill <ahill@greenvillelaw.net>
Sent: Friday, September 09, 2016 6:01 PM
To: Charles LeGrand
Subject: FW: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

S. Allan Hill
Attorney, CPA
819 E. North St.
Greenville, SC 29601
(864)242-4995
(864)331-3050 Direct Dial
(864)242-5500 fax
ahill@greenvillelaw.net

From: S. Allan Hill [<mailto:ahill@greenvillelaw.net>]
Sent: Tuesday, September 20, 2011 4:50 PM
To: 'Walter Parker'
Subject: RE: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

Walt,

Your understanding is correct.

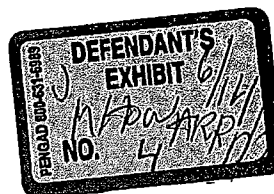
S. Allan Hill
Attorney, CPA
819 E. North St.
Greenville, SC 29601
(864)242-4995
(864)242-5500 fax
ahill@greenvillelaw.net

From: Walter Parker [<mailto:wwparker4@gmail.com>]
Sent: Tuesday, September 20, 2011 4:13 PM
To: ahill@greenvillelaw.net
Cc: rebecca@greenvillelaw.net
Subject: BB&T v. Carolina Properties Holdings LLC and Walter W. Parker

Allen,

I am preparing to execute the Settlement Agreement and Stipulation of Dismissal, which is a condition precedent to the BB&T note sale. I wanted to memorialize the verbal agreement we have that Ken Howard, Super Suds LLC and/or the new note holder will not pursue a deficiency judgment against Carolina Properties Holdings LLC or me. Also, I heard you say that Ken Howard, Super Suds LLC and/or the new note holder would not be filing a 1099 for the forgiveness of debt.

Please let me know if my understanding is correct.



Best Regards,
Walt Parker
843-473-9365

Charles LeGrand

From: Allan Hill <ahill@greenvillelaw.net>
Sent: Tuesday, December 27, 2016 4:50 PM
To: Charles LeGrand
Subject: FW: Contact Information for SBA and CDIC

Just found this.

S. Allan Hill
Attorney, CPA
819 E. North St.
Greenville, SC 29601
(864)242-4995
(864)331-3050 Direct Dial
(864)242-5500 fax
ahill@greenvillelaw.net

From: Walter Parker [<mailto:wwparker4@gmail.com>]
Sent: Thursday, August 18, 2011 11:40 AM
To: ahill@greenvillelaw.net
Subject: Contact Information for SBA and CDIC

Allen,

It was a pleasure to speak with you. Here is the contact information I promised:

SBA Disaster Loan

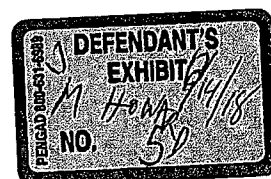
The borrower name is Carolina Properties Holdings LLC SBA Disaster loan number 30849260-03. Derenda Fisher was my point of contact. Greg Dixon Lead Loan Specialist was the individual who said they would take \$2,000 to go away. His number is 714/564-2880.

Derenda Fisher
Loan Specialist
US Small Business Administration
National Disaster Loan Resolution Center
200 W. Santa Ana Blvd., Suite 180
Santa Ana, CA 92701-4134
714-564-2809
202-741-6752 Fax
Derenda.Fisher@SBA.Gov

Community Development and Improvement Corporation

The borrower name is Carolina Clean Greer I, LLC & Carolina Properties Holdings LLC Loan number is 20019. The lender contact is Fred Gibbs with Banc Capital and Fiancial Services
P.O. Box 3218 Spartanburg, SC 29304. His telephone is 864-576-6678

CDIC
P.O. Box 90
Graniteville, SC 29829



000132

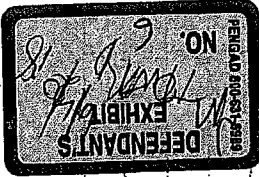
864-649-6673

Thanks,

Walt

843-473-9365

000133



	COOPER AUTO (1)	CREDIT	LAUREN AUTO (2)	CREDIT	Weekly Total
2011					
10-10	74	43	64	83	264
10-17	62	90	205	84	441
10-24	100	70	89	104	363
10-31	99	104	199	94	496
11-7	122	77	202	17	368
11-14	129	77	250	36	492
11-21	69	47	96	66	278
11-28	189	68	159	134	551
12-6	71	130	106	129	435
12-12	87	188	195	125	583
12-19	140	103	144	92	480
12-26	179	84	179	111	613
2012					
1-2	203	185	222	214	824
1-9	127	121	192	128	568
1-16	121	89	143	176	529
1-23	85	82	101	147	415
1-30	249	239	327	215	820
2-6	174	206	153	229	762
2-13	239	128	236	228	831
2-20	127	129	249	130	635
2-27	211	146	197	209	763

000304

2012	Case #1	Credit	Case #2	Credit	Total
3-5	412	136	202	78	558
3-17	352	112	318	286	1118
3-19	252	228	172	186	838
3-26	1166	125	189	631	1011
					3525
4-2	2312	258	4405	431	1454
4-9	267	251	216	200	1050
4-10	239	250	447	348	1260
4-23	135	101	152	130	548
4-30	118	169	447	277	1054
					4966
5-7	130	131	359	440	1074
5-14	130	69	418	172	819
5-20	205	173	193	116	1288
5-27	288	206	181	243	1318
Quarters					3597.99
6-4	184	112	161	195	652
6-11	112	127	112	121	532
6-18	242	194	189	203	828
6-24	310	305	262	227	1110
Quarters					3122
7-2	381	340	149	194	1064
7-9	199	237	191	166	793
7-16	133	144	143	122	512
7-23	135	124	154	180	593
7-30	195	214	195	209	813
					3777

2012	Case #1	Credit	Case #2	Credit	Totals
8-6	118	148	209	156	631
8-13	125	60	99	77	361
8-20	140	121	184	163	608
8-27	184	147	146	244	721
					2321
9-4	150	178	185	149	660
9-10	140	20	78	159	506
9-17	161	181	174	192	708
9-24	169	126	241	247	786
					2660
10-1	172	178	153	75	728
10-8	136	181	215	151	691
10-15	181	269	144	173	867
10-22	257	311	327	181	1032
10-29	246	208	247	335	1133
					467
11-5	357	282	377	379	1395
11-12	229	246	320	297	1092
11-19	177	218	161	112	728
11-26	191	263	320	282	1056
					4271
12-3	231	259	252	341	1083
12-10	203	186	261	186	836
12-17	207	184	142	184	617
12-24	147	117	211	253	708
12-31	116	22	175	150	463
					467

2-3	Cauchy	Credit	Cauchy	Credit	Total	
1-7	162	111	212	230	705	3460
1-14	158	123	137	278	696	
1-21	270	210	158	270	908	
1-28	197	180	416	358	1157	
2-4	174	245	337	346	1202	
2-11	205	250	214	203	858	1805
2-18	194	198	210	326	979	
2-25	158	238	215	165	766	
3-4	178	179	184	246	787	
3-11	232	240	276	321	1119	3181
3-18	226	116	237	320	799	
3-25	132	93	163	82	470	
4-1	271	157	308	281	1015	
4-8	213	239	225	228	903	51164
4-15	430	411	508	408	1751	
4-22	251	203	217	293	944	
4-29	381	342	206	212	1141	
5-6	133	114	84	129	460	
5-13	234	160	255	276	950	
5-20	259	277	174	211	941	
5-27	338	274	282	325	1239	
6-3	243	245	227	343	1055	4088
6-10	224	161	257	136	778	
6-17	221	224	216	224	885	
6-23	221	224	216	224	885	

✓ 2 10-10-13

2013

Cash Credit Credit Total

7-1	209	111	115	170	605
7-8	35	75	126	43	299
7-13	37	14	183	176	412
7-23	193	200	219	204	913
7-29	130	201	139	184	680

2889

8-5	170	188	186	195	739
8-12	108	123	171	169	573
8-19	72	126	171	187	520
8-27	117	0	149	908	1882

3114

9-2	231	249	319	353	1052
9-9	200	264	256	310	1030
9-16	313	313	333	393	1352
9-23	252	167	233	177	829
9-30	258	33	153	212	656

1109

10-7	245	124	263	243	875
10-14	151	249	239	231	870
10-21	184	178	198	198	758
10-28	173	179	278	231	861

1108

11-4	282	273	211	220	740
11-11	229	238	168	196	831
11-18	125	156	178	203	662
11-25	201	101	20	119	540

2805

2013	Cover #1	Credit	Cover #2	Credit	Total
12-2	374	178	35	315	927
12-9	88	35	164	161	398
12-16					
12-22	221	131	224	168	744
12-30	336	204	329	207	1076
1-6	179	110	173	172	
1-13	154	98	156	170	
1-20	477	327	476	342	
1-27	211	193	204	316	
2-3	711	835	613	746	2911
2-10	315	435	312		
2-17	839	715	471	217	
2-24	530	518	724	216	
3-3	342	384	487	0	1193
3-10	350	7	275	283	
3-17	328	206	244	185	
3-24	300	183	179	183	
3-31	255	120	111	210	
4-7	416	501	434	370	
4-14	577	423	180	466	
4-21	253	297	177	134	
4-28	358	496	440	327	

5160

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2014

date#1	date#2	credit
5-6	472	340
5-12	389	347
5-19	157	270
5-27	223	233

6-2	137	208	178
6-9	270	268	10
6-16	158	242	0
6-23	249	200	241
6-30	45	205	133

7-7	344	204	271
7-14	291	200	228
7-21	141	95	86
7-28	242	233	185

8-4	226	185	155
8-11	194	153	166
8-18	301	267	225
8-25	207	282	192

9-1	224	306	263
9-8	286	513	201
9-15	101	117	130
9-22	204	168	286
9-29	226	188	167

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2014	General	Credit	Debit	Balance	Total
10-7	147	238	191	197	
10-13	148	193	135	148	
10-20	213	270	232	270	
10-27	448	259	290	290	1957

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11-4	281	272	238	193
11-10	290	84	270	240
11-17	215	0	270	237
11-24	113	290	198	359

12-1	226	193	221	193
12-8	161	119	161	161
12-15	245	271	338	161
12-22	157	135	141	141
12-29	206	128	223	125

1-2	150	160	275	202
1-9	229	201	372	277
1-16	302	161	58	211
1-23	145	100	119	169

2-7	416	391	501	461
2-14	289	375	525	545
2-21	303	289	296	343
2-28	273	188	10	4510
3-6	215	212	341	341

2015	Current	Credit	Current	Credit	Total
1-5	176	92	140	91	
1-12	127	129	226	228	
1-19	861	287	280	347	
1-20	153	264	304	230	
4-6	383	319	601	497	1833
4-13	459	452	611	519	2099
4-20	200	220	78	89	487
4-27	309	235	300	322	1168
5-4	345	349	405	418	1567
5-11	413	316	512	539	1832
5-18	356	386	411	1120	1582
5-25	261	227	417	302	1277
6-1	176	140	348	307	911
6-8	171	168	267	210	816
6-15	213	209	287	315	904
6-22	236	232	453	415	1321
6-29	117	120	278	266	781
7-6	127	0	496	229	762
7-13	309	242	336	265	1055
7-20	290	233	315	206	1084
7-27	229	256	255	268	981

2015
 Cases #1 Cases #2 Cases #3 Total

8-3 206 211 256 130 883
 8-10 155 29 196 99 579
 8-17 302 41 194 210 867
 8-24 142 156 212 128 638
 8-31 206 21 237 108 572

9-7 185 118 210 216 829
 9-14 195 134 113 160 599
 9-21 232 252 228 312 1024
 9-28 174 123 177 160 534

10-5 108 124 164 168 564
 10-12 182 144 199 200 725
 10-18 288 249 314 240 1091
 10-25 243 326 212 350 1131

11-2 112 68 180 114 474
 11-9 350 260 404 293 1307
 11-16 206 216 380 252 1054
 11-30 291 212 342 205 1050

12-7 172 241 252 285 950
 12-15 180 238 373 359 1150
 12-21 198 126 190 100 674
 12-29 143 254 174 220 691

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2010	Case 41	Child	Case 41	Child	Total
1-4	348	236	582	582	1164
1-11	178	128	270	522	818
1-18	276	10	267	202	755
1-25	77	77	93	103	354

Quarters

2-1	591	588	981	1041	3121
2-8	181	162	463	483	1251
2-15	160	267	465	250	1012
2-22	384	429	429	546	1791
2-29	417	429	537	562	1436

Quarters

3-7	480	0	556	233	986
3-14	423	0	277	233	933
3-21	374	0	430	501	1305
3-28	530	517	687	516	2240

Quarters

4-4	458	503	636	548	2145
4-11	238	328	239	340	1145
4-18	300	343	390	439	1472
4-25	358	475	357	364	1554

5-2	428	278	427	383	1516
5-9	351	323	457	339	1470
5-16	377	445	405	225	1248
5-23	188	230	147	245	810

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Case #1 Case #2 Case #3
227 255 472 258 122

282 175 208 321 986
293 333 204 312 1352
290 293 190 415 1298
309 335 319 474 1487

479 354 390 341 1535
188 123 301 344 946
175 261 258 317 911
244 302 267 208 111

198 226 218 287 129
203 23 222 105 553
185 201 184 330 900
245 257 347 210 1057
304 282 314 408 1338

0 0 0 0 0
629 622 711 662 2624
379 491 338 438 1696
357 370 448 548 1223

304 396 235 361 1296
189 233 220 285 927
309 311 239 305 1204
304 327 407 447 1545
401 341 352 546 2070

000315

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Adm	Credit	Carroll	Count 1	Credit	Count 2	Credit
2794	0	18001				
1798	"	18002				
2797	249	18003				
576	525	2000				
		201150				
486	434	18004				
3097	234	18005				
2938	611	18006				
		2009				
1132	541	20021				
		1990				
		2807		427	492	1057
		1657		406	471	1057
		1804		583	476	1057
		1710		401	476	1057
		18525			152	
		880		54	168	1057
		1817		107	177	1057
		1851		217	178	1057
		2283		601	453	1057
		120.50				

000316

Account	Credit	Debit	Balance	Debit	Balance	Debit	Balance
	1566		222	2116	305	289	
	1013		136	110	121	159	
	2896		895	934	913	106	
	1480		319	405	286	509	
	1503		426	470	340	551	
	1475		572	456	424	327	
	1511		325	573	382	343	
	1484		24	24	362	286	
	1415		330	359	316	332	
	1267.25						
	1212		364	363	207	365	
	1180		301	311	345	356	
	1469		273	339	316	467	
	1687		203	344	205	343	
	1847		559.75				
	1200						
	2299		422	485	365	453	
	1701		382	443	367	555	
	2851		1771	686	623	982	
	1465		264	216	351	375	
	1406.50						

Account#1 Credit Capital Credit

285 2104 256 406
 283 413 345 367
 285 335 418 417
 286 893 406 487
 280 854 323 456

5/17

285 355 272 287
 289 459 389 500
 286 273 302 377
 219 273 222 355

11/17

287 831 287 812
 210 517 247 455
 238 300 301 334

11/17

CONFIDENTIAL

Form 1065 Department of the Treasury Internal Revenue Service		U.S. Return of Partnership Income For calendar year 2011, or tax year beginning _____, 2011, ending _____, 20____ ▶ See separate instructions.		OMB No. 1545-0099 2011
A Principal business activity CAR WASH	Print or type.	Name of partnership ▶ MORRIS K HOWARD SUPER SUDS LLC		D Employer identification number XXXXXX
B Principal product or service CAR WASH		Number, street, and room or suite no. If a P.O. box, see the instructions. 200 FORD STREET		E Date business started 01-01-2005
C Business code number 811190		City or town, state, and ZIP code Greer, SC 29650		F Total assets (see the instructions) \$ 1,909,384

G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return
(6) ☐ Technical termination - also check (1) or (2)

H Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶ _____

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ _____

J Check if Schedules C and M-3 are attached _____ ☐

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

I n c o m e	1a Merchant card and third-party payments (including amounts reported on Form(s) 1099-K). For 2011, enter -0-	1a	0	
	b Gross receipts or sales not reported on line 1a (see instructions)	1b	302,180	
	c Total. Add lines 1a and 1b	1c	302,180	
	d Returns and allowances plus any other adjustments to line 1a (see instructions)	1d		
	e Subtract line 1d from line 1c	1e	302,180	
	2 Cost of goods sold (attach Form 1125-A)	2	57,380	
	3 Gross profit. Subtract line 2 from line 1e	3		244,800
	4 Ordinary income (loss) from other partnerships, estates, trusts (attach statement)	4		
5 Net farm profit (loss) (attach Schedule F (Form 1040))	5			
6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)	6			
7 Other income (loss) (attach statement)	7			
8 Total income (loss). Combine lines 3 through 7	8		244,800	
D e d u c t i o n s (see the instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)	9		
	10 Guaranteed payments to partners	10		
	11 Repairs and maintenance	11	16,560	
	12 Bad debts	12		
	13 Rent	13		
	14 Taxes and licenses See ATT_PFL	14	35,348	
	15 Interest	15	138,935	
	16a Depreciation (if required, attach Form 4562)	16a	94,751	
	b Less depreciation reported on Form 1125-A and elsewhere on return	16b		94,751
	17 Depletion (Do not include oil and gas depletion.)	17		
	18 Retirement plans, etc.	18		
	19 Employee benefit programs	19		
20 Other deductions (attach statement) STM. 04	20	81,964		
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20	21	367,558		
22 Ordinary business income (loss). Subtract line 21 from line 8	22		(122,758)	

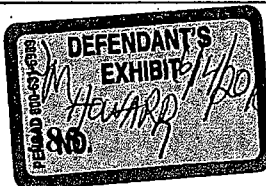
Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.			May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☒ No	
	MORRIS K HOWARD Signature of general partner or limited liability company member manager		06-16-2017 Date		
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check ☒ If self-employed	PTIN
	Wyatt Henderson CPA		06-16-2017		XXXXXX
	Firm's name ▶ Henderson Accounting	Firm's EIN ▶ XXXXXX			
	Firm's address ▶ PO Box 217 Greer, SC 29652		Phone no. (864) XXXXX		

For Paperwork Reduction Act Notice, see separate instructions.

EEA

Form 1065 (2011)

000134



Schedule B Other Information**1** What type of entity is filing this return? Check the applicable box:

- a** ☐ Domestic general partnership **b** ☐ Domestic limited partnership
c ☒ Domestic limited liability company **d** ☐ Domestic limited liability partnership
e ☐ Foreign partnership **f** ☐ Other ▶ _____

Yes No

2 At any time during the tax year, was any partner in the partnership a disregarded entity, a partnership (including an entity treated as a partnership), a trust, an S corporation, an estate (other than an estate of a deceased partner), or a nominee or similar person?

X

3 At the end of the tax year:

- a** Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization, or any foreign government own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see Instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership
b Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see Instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

X

X

4 At the end of the tax year, did the partnership:

- a** Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see Instructions. If "Yes," complete (i) through (iv) below

X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

- b** Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see Instructions. If "Yes," complete (i) through (v) below

X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

	Yes	No
5 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		
6 Does the partnership satisfy all four of the following conditions?		
a The partnership's total receipts for the tax year were less than \$250,000.		
b The partnership's total assets at the end of the tax year were less than \$1 million.		
c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.		
d The partnership is not filing and is not required to file Schedule M-3		X
If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		
7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8 During the tax year, did the partnership have any debt that was cancelled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?		
9 Has this partnership filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction?		X
10 At any time during calendar year 2011, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the Instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts. If "Yes," enter the name of the foreign country.		X
11 At any time during the tax year, did the partnership receive a distribution from, or was it the grantor of, or a transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See Instructions.		X
12a Is the partnership making, or had it previously made (and not revoked), a section 754 election? See instructions for details regarding a section 754 election.		
b Did the partnership make for this tax year an optional basis adjustment under section 743(b) or 734(b)? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions.		
c Is the partnership required to adjust the basis of partnership assets under section 743(d) or 734(b) because of a substantial built-in loss (as defined under section 743(d)) or substantial basis reduction (as defined under section 734(d))? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions.		
13 Check this box if, during the current or prior tax year, the partnership contributed any property received in a like-kind exchange or contributed such property to another entity (other than disregarded entities wholly-owned by the partnership throughout the tax year).		
14 At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in partnership property?		
15 If the partnership is required to file Form 990-B, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, enter the number of Forms 8858 attached. See instructions.		
16 Does the partnership have any foreign partner? If "Yes," enter the number of Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed for this partnership.		X
17 Enter the number of Form 8878, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return.		
18a Did you make any payments in 2011 that would require you to file Form(s) 1099? See instructions.		
b If "Yes," did you or will you file all required Form(s) 1099?		
19 Enter the number of Form 990-B, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, attached to this return.		

Designation of Tax Matters Partner (see instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP	MORRIS K HOWARD SR	Identifying number of TMP	XXXXX
If the TMP is an entity, name of TMP representative		Phone number of TMP	
Address of designated TMP	133 INDIGO CT Greer, SC 29651		

Schedule K Partners' Distributive Share Items		Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1 (122,758)
	2 Net rental real estate income (loss) (attach Form 8825)	2
	3a Other gross rental income (loss)	3a
	b Expenses from other rental activities (attach statement)	3b
	c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4 Guaranteed payments	4
	5 Interest income	5
	6 Dividends: a Ordinary dividends	6a
	b Qualified dividends	6b
	7 Royalties	7
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8
Deductions	9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a
	b Collectibles (28%) gain (loss)	9b
	c Unrecaptured section 1250 gain (attach statement)	9c
	10 Net section 1231 gain (loss) (attach Form 4797)	10
Self-Employment	11 Other income (loss) (see instructions) Type ▶	
	12 Section 179 deduction (attach Form 4562)	12
	13a Contributions	13a 950
	b Investment interest expense	13b
Credits	c Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)
	d Other deductions (see instructions) Type ▶	13d
	14a Net earnings (loss) from self-employment	14a (122,758)
	b Gross farming or fishing income	14b
	c Gross nonfarm income	14c 244,800
	15a Low-income housing credit (section 42(j)(5))	15a
Foreign Transactions	b Low-income housing credit (other)	15b
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 4562)	15c
	d Other rental real estate credits (see instructions) Type ▶	15d
	e Other rental credits (see instructions) Type ▶	15e
	f Other credits (see instructions) Type ▶	15f
	16a Name of country or U.S. possession	16a
	b Gross income from all sources	16b
	c Gross income sourced at partner level	16c
	d Foreign gross income sourced at partnership level	16d
	e Passive category ▶ f General category ▶ g Other ▶	16f
16g Deductions allocated and apportioned at partner level	16g	
Alternative Minimum Tax (AMT) Items	h Interest expense ▶ i Other ▶	16h
	j Deductions allocated and apportioned at partnership level to foreign source income	16i
	k Passive category ▶ l General category ▶ m Other ▶	16k
	n Total foreign taxes (see instructions): ▶ Paid ☐ Accrued ☐	16l
	16m Reduction in tax available for credit (attach statement)	16m
	16n Other foreign tax information (attach statement)	16n
Other Information	17a Post-1961 depreciation adjustment	17a (6,786)
	b Adjusted gain or loss	17b
	c Depletion (other than oil and gas)	17c
	d Oil, gas, and geothermal properties-gross income	17d
	e Oil, gas, and geothermal properties-deductions	17e
	f Other AMT items (attach statement)	17f
Other Information	18a Tax-exempt interest income	18a
	b Other tax-exempt income	18b
	c Nondeductible expenses	18c
	19a Distributions of cash and marketable securities	19a
	b Distributions of other property	19b
	20a Investment income	20a
Other Information	b Investment expenses	20b
	c Other items and amounts (attach statement)	

June 16, 2017

MORRIS K HOWARD SR
133 INDIGO CT
Greer, SC 29651

Dear MORRIS K HOWARD SR:

Attached is a copy of the Schedule K-1 for SUPER SUDS LLC. Use the information on this schedule when preparing your 2011 individual income tax return.

If you have questions regarding the amounts on Schedule K-1, please submit your questions to the following address:

ACCOUNTING
SUPER SUDS LLC
c/o MORRIS K HOWARD
200 FORD STREET
Greer, SC 29650

Also enclosed is supplemental K-1 information to assist you in preparing your tax return.

Sincerely,

MORRIS K HOWARD
PARTNER

Enclosure

CONFIDENTIAL

**Schedule K-1
(Form 1065)**

Department of the Treasury
Internal Revenue Service

For calendar year 2011, or tax
year beginning 2011
ending 20

**Partner's Share of Income, Deductions,
Credits, etc.**

▶ See page 2 of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
XXXXX

B Partnership's name, address, city, state, and ZIP code
SUPER SUDS LLC
% MORRIS K HOWARD
200 FORD STREET
Greer, SC 29650

C IRS Center where partnership filed return
efile

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
XXXXX

F Partner's name, address, city, state, and ZIP code
MORRIS K HOWARD SR
133 INDIGO CT
Greer, SC 29651

G ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	50.0000000 %	50.0000000 %
Loss	50.0000000 %	50.0000000 %
Capital	50.0000000 %	50.0000000 %

K Partner's share of liabilities at year end:

Nonrecourse
Qualified nonrecourse financing
Recourse

L Partner's capital account analysis:

Beginning capital account \$ (462,420)
Capital contributed during the year . . . \$
Current year increase (decrease) . . . \$ (61,854)
Withdrawals & distributions \$
Ending capital account \$ (524,274)

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

M Did the partner contribute property with a built-in gain or loss?

☐ Yes ☒ No

If "Yes", attach statement (see instructions)

☐ Final K-1

☐ Amended K-1

OMB No. 1545-0089

**Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items**

1 Ordinary business income (loss) (61,379)	15 Credits
2 Net rental real estate income (loss)	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income	
6a Ordinary dividends	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items A (3,393)
9b Collectibles (28% gain) (loss)	
9c Unrecaptured section 1250 gain	
10 Section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	
12 Section 179 deduction	19 Distributions
13 Other deductions A 475	20 Other Information
14 Self-employment earnings (loss) A (61,379) C 122,400	

*See attached statement for additional information.

FOR USE ONLY



June 16, 2017

MORRIS K HOWARD JR
111 COOPER BRIDGE RD
Duncan, SC 29334

Dear MORRIS K HOWARD JR:

Attached is a copy of the Schedule K-1 for SUPER SUDS LLC. Use the information on this schedule when preparing your 2011 individual income tax return.

If you have questions regarding the amounts on Schedule K-1, please submit your questions to the following address:

ACCOUNTING
SUPER SUDS LLC
c/o MORRIS K HOWARD
200 FORD STREET
Greer, SC 29650

Also enclosed is supplemental K-1 information to assist you in preparing your tax return.

Sincerely,

MORRIS K HOWARD
PARTNER

Enclosure

CONFIDENTIAL

**Schedule K-1
(Form 1065)**

Department of the Treasury
Internal Revenue Service

2011

For calendar year 2011, or tax

year beginning _____, 2011
ending _____, 20

**Partner's Share of Income, Deductions,
Credits, etc.**

▶ See page 2 of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
XXXXX

B Partnership's name, address, city, state, and ZIP code
SUPER SUDS LLC
% MORRIS K HOWARD
200 FORD STREET
Greer, SC 29650

C IRS Center where partnership filed return
efile

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
XXXXX

F Partner's name, address, city, state, and ZIP code
MORRIS K HOWARD JR
111 COOPER BRIDGE RD
Duncan, SC 29334

G ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	50.0000000 %	50.0000000 %
Loss	50.0000000 %	50.0000000 %
Capital	50.0000000 %	50.0000000 %

K Partner's share of liabilities at year end:

Nonrecourse \$
Qualified nonrecourse financing \$
Recourse \$

L Partner's capital account analysis:

Beginning capital account \$ (189,898)
Capital contributed during the year . . . \$
Current year increase (decrease) . . . \$ (61,854)
Withdrawals & distributions \$
Ending capital account \$ (251,752)

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

M Did the partner contribute property with a built-in gain or loss?

☐ Yes ☒ No

If "Yes", attach statement (see instructions)

☐ Final K-1

☐ Amended K-1

OMB No. 1545-0099

**Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items**

1 Ordinary business income (loss) (61,379)	15 Credits
2 Net rental real estate income (loss)	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income	
6a Ordinary dividends	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items A (3,393)
9b Collectibles (28% gain) (loss)	
9c Recaptured section 1250 gain	
9d Section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
9e Other income (loss)	
12 Section 179 deduction	19 Distributions
13 Other deductions A 475	20 Other information
14 Self-employment earnings (loss) A (61,379) C 122,400	

*See attached statement for additional information.

FOR IRS USE ONLY



Form 4562

Depreciation and Amortization (Including Information on Listed Property)

OMB No. 1545-0172

2011

Attachment
Sequence No. 179Department of the Treasury
Internal Revenue Service (99)

▶ See separate instructions.

▶ Attach to your tax return.

Name(s) shown on return

Business or activity to which this form relates

Identifying number

SUPER SUDS LLC

FORM 1065

XXXXX

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2010 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 9 (see instructions)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2012. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property. See instructions.)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2011	17	94,751
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B - Assets Placed in Service During 2011 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only-see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			27.5 yrs.	MM	S/L	
			39 yrs.	MM	S/L	

Section C - Assets Placed in Service During 2011 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instructions	22	94,751
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

EEA

Form 4562 (2011)

000142

Form **8879-PE****IRS e-file Signature Authorization
for Form 1065**

OMB No. 1545-2042

Department of the Treasury
Internal Revenue Service

For calendar year 2011, or tax year beginning _____, 2011, ending _____, 20____.

2011

▶ See instructions. Do not send to the IRS. Keep for your records.

Name of partnership
SUPER SUDS LLCEmployer identification number
XXXXX**Part I Return Information** (Whole dollars only)

1 Gross receipts or sales less returns and allowances (Form 1065, line 1e)	1	302,180
2 Gross profit (Form 1065, line 3)	2	244,800
3 Ordinary business income (loss) (Form 1065, line 22)	3	(122,758)
4 Net rental real estate income (loss) (Form 1065, Schedule K, line 2)	4	
5 Other net rental income (loss) (Form 1065, Schedule K, line 3c)	5	

**Part II Declaration and Signature Authorization of General Partner or Limited Liability Company Member
Manager (Be sure to get a copy of the partnership's return)**

Under penalties of perjury, I declare that I am a general partner or limited liability company member manager of the above partnership and that I have examined a copy of the partnership's 2011 electronic return of partnership income and accompanying schedules and statements and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts shown on the copy of the partnership's electronic return of partnership income. I consent to allow my electronic return originator (ERO), transmitter, or intermediate service provider to send the partnership's return to the IRS and to receive from the IRS (a) an acknowledgement of receipt or reason for rejection of the transmission, and (b) the reason for any delay in processing the return. I have selected a personal identification number (PIN) as my signature for the partnership's electronic return of partnership income.

General Partner or Limited Liability Company Member Manager's PIN (check one box only)

☒ I authorize Henderson Accounting ERO firm name XXXXX as my signature
do not enter all zeros
on the partnership's 2011 electronically filed return of partnership income.

☐ As a general partner or limited liability company member manager of the partnership, I will enter my PIN as my signature on the partnership's 2011 electronically filed return of partnership income.

General partner or limited liability company member manager's signature

Title ▶ PARTNERDate ▶ 02-27-2012**Part III Certification and Authentication**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN.

XXXXXX

do not enter all zeros

I certify that the above numeric entry is my PIN which is my signature on the 2011 electronically filed return of partnership income for the partnership indicated above. I confirm that I am submitting this return in accordance with the requirements of Pub. 3112, IRS e-file Application and Participation, and Pub. 4163, Modernized e-File (MeF) Information for Authorized IRS e-file Providers for Business Returns.

ERO's signature ▶ Wyatt Henderson CPADate ▶ 06-16-2017

**ERO Must Retain This Form - See Instructions
Do Not Submit This Form to the IRS Unless Requested To Do So**

For Paperwork Reduction Act Notice, see instructions.

EEA

Form 8879-PE (2011)

000143

Schedule M-2/Partners' Capital Reconciliation Worksheet Form 1065 (Keep for your records)		2011
Partnership Name SUPER SUDS LLC		EIN XXXXX
Analysis of Current-Year Partners' Capital		
1	Beginning partners' capital per balance sheet (Schedule L, column b, line 21)	1 (652,318)
2	Book income (loss) (Schedule M-1, line 1, or Schedule M-3, page 1, line 11)	2 (123,708)
3	Capital contributions during the year (Schedule K-1, item L)	3
4	Other increases (Schedule M-2, line 4)	4
5	Distributions (Schedule K, lines 19A and 19B)	5
6	Withdrawals and other decreases (Schedule M-2, line 7)	6
7	Subtotal (combines lines 1 through 6)	7 (776,026)
8	Ending partners' capital per balance sheet (Schedule L, column d, line 21)	8 (776,026)
9	Difference (line 7 minus line 8) (should be zero)	
Current-Year Change to Partners' Capital Compared to Current-Year Change to Schedule K, Item L (All partners)		
1	Ending partners' capital (Schedule L, column d, line 21)	1 (776,026)
2	Beginning partners' capital (Schedule L, column b, line 21)	2 (652,318)
3	Change in capital (line 1 minus line 2)	3 (123,708)
4	Ending partners' capital (Schedules K-1, item L)	4 (776,026)
5	Beginning partners' capital (Schedules K-1, item L)	5 (652,318)
6	Difference (line 4 minus line 5)	6 (123,708)
Current-Year Timing Adjustments from Schedule M-1 Screens (K-1 accounting method other than GAAP)		
Subtractions from net income per books (Schedule M-1, lines 5 and 6 - not included on Schedule M-2, line 3)		
7	Other income recorded on books not included on Schedule K	7
8	Depreciation on Schedule K not included on books	8
9	Other Schedule K items not included on books	9
10	Total subtractions (lines 7 through 9)	10
Additions to net income per books (Schedule M-1, lines 2 and 3 - not included on Schedule M-2, line 3)		
11	Income included on Schedule K not recorded on books	11
12	Depreciation on books not included on Schedule K	12
13	Other items on books not included on Schedule K	13
14	Total additions (lines 11 through 13)	14
15	Schedule M-1 timing adjustments not included on Schedule M-2, lines 3, 4, and 7 (combine lines 10 and 14)	
Current-Year Timing Adjustments from Schedule M-3 Screens (K-1 accounting method other than GAAP)		
Permanent or temporary book-to-tax difference amounts entered on the M32, M33, 8916A, and SCH3 screens appear on line 16 and line 17 as opposite of the actual entries. For example, an entry of -100 would appear as 100.		
16	Permanent differences	16
17	Temporary differences	17
18	Schedule M-3 timing adjustments not included on Schedule M-2 (combine lines 16 and 17)	
19	Capital amount after M-1 timing adjustments (add lines 6 & 15)	19 (123,708)
20	Capital amount after M-3 timing adjustments (add lines 6 & 18)	20
21	Net reconciliation difference (line 3 minus Line 19 or 20)	

Federal Supporting Statements		2011 PG01
Name(s) as shown on return		FEIN
SUPER SUDS LLC		XXXXX
Form 1065 Line 20 - Other Deductions		STM 04
DESCRIPTION	AMOUNT	
Accounting	550	
Advertising	95	
Automobile and truck expense	32	
Bank Charges	5,026	
Equipment rent	210	
Insurance	284	
Telephone	2,885	
Utilities	65,669	
Waste removal	3,824	
PAGERS	167	
LAWNCARE	3,222	
TOTAL	81,964	
Form 1065, Schedule K-1, Line 13a		PG01 STM 12
Description	Amount	
Cash Contributions (50%)	950	
Total	950	
Form 1065, Schedule L, Line 8		PG01 STM 28
Other Investments		
Description	Beg Of Year	End Of Year
Greer		121,876
Total		121,876

Analysis of Net Income (Loss)

1	Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16f	1	(123,708)
2	Analysis by partner type:	(i) Corporate	(ii) Individual (active)
a	General partners		
b	Limited partners	(123,708)	

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		906		3,765
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities				
6	Other current assets (attach statement)				
7a	Loans to partners (or persons related to partners)				
b	Mortgage and real estate loans				
8	Other investments (attach statement)	121,876			
9a	Buildings and other depreciable assets	2,621,478		2,21,478	
b	Less accumulated depreciation	742,984	1,878,994	837,735	1,783,743
10a	Depletable assets				
b	Less accumulated depletion				
11	Land (net of any amortization)				
12a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
13	Other assets (attach statement)				
14	Total assets		1,879,400		1,909,384
Liabilities and Capital					
15	Accounts payable				
16	Mortgages, notes, bonds payable in less than 1 year				
17	Other current liabilities (attach statement)				
18	All nonrecourse loans				
19a	Loans from partners (or persons related to partners)				
b	Mortgages, notes, bonds payable in 1 year or more		2,531,718		2,685,410
20	Other liabilities (attach statement)				
21	Partners' capital accounts		(652,318)		(776,026)
22	Total liabilities and capital		1,879,400		1,909,384

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. Schedule M-1 may be required instead of Schedule M-1 (see instructions).

1	Net income (loss) per books	(123,708)	6	Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2	Income included on Schedule K, lines 1, 2, etc., 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a	Tax-exempt interest \$	
3	Guaranteed payments (other than health insurance)		7	Deductions included on Schedule K, lines 1 through 13d, and 16f, not charged against book income this year (itemize):	
4	Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16f (itemize):		a	Depreciation \$	
a	Depreciation \$				
b	Travel and entertainment \$		8	Add lines 6 and 7	
5	Add lines 1 through 4	(123,708)	9	Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	(123,708)

Schedule M-2 Analysis of Partners' Capital Accounts

1	Balance at beginning of year	(652,318)	6	Distributions:	a Cash	
2	Capital contributed:		b	Property		
a	Cash		7	Other decreases (itemize):		
b	Property					
3	Net income (loss) per books	(123,708)	8	Add lines 6 and 7		
4	Other increases (itemize):		9	Balance at end of year. Subtract line 8 from line 5	(776,026)	
5	Add lines 1 through 4	(776,026)				

(Keep for your records)

PARTNERSHIP NAME

EIN

XXXXX

SUPER SUDS LLC

Description	Schedule M-2	K-1 Totals	Difference
1 Partner's Beginning Capital	(652,318)	(652,318)	
2 Capital Contributions			
3 Net income or loss	(123,708)	(123,708)	
4 Distributions			
5 Partner's Ending Capital	(776,026)	(776,026)	

Description	Schedule K	K-1 Totals	Difference
1 Ordinary business income (loss)	(122,758)	(122,758)	
13 A Cash contributions (50%)	950	950	
14 A Net earnings (loss) from self-employment . .	(122,758)	(122,758)	
C Gross non-farm income	244,800	244,800	
17 A Post - 1986 depreciation adjustment	(6,786)	786	

CONFIDENTIAL

Taxes and Licenses Attachment

Note: This information does not transmit to the IRS with e-filed returns.
Including with a paper filed return is optional.

2011

PARTNERSHIP NAME

SUPER SUDS LLC

EIN

XXXXX

Taxes and Licenses

Form 1065

Page 1, Line 14

- 1 State income taxes
- 2 State franchise taxes
- 3 City income taxes
- 4 City franchise taxes
- 5 Local property taxes
- 6 Intangible property taxes
- 7 Payroll taxes
- 8 Less: credit from Form 8846
- 9 Foreign taxes paid
- 10 Occupancy taxes
- 11 Other miscellaneous taxes
- 12 Licenses
- 13 Total to Form 1065, Page 1, Line 14

1	
2	
3	
4	
5	35,119
6	
7	
8	
9	
10	
11	
12	229
13	35,348

CONFIDENTIAL

Capital Account Reconciliation

(Keep for your records)

2011

Page 1

PARTNERSHIP NAME

SUPER SUDS LLC

EIN

XXXXX

Partner Name	Beginning Capital Account	Capital Contributed During Year	Partner's Share of Lines 3, 4 and 7 Form 1065, Sch M-2	Withdrawals and Distributions	Ending Capital Account
MORRIS K HOWARD SR	(462,420)		(61,854)		(524,274)
MORRIS K HOWARD JR	(189,898)		(61,854)		(251,752)
TOTALS	(652,318)		(123,708)		(776,026)

CONFIDENTIAL

**Worksheet for Figuring Net Earnings (Loss)
From Self-Employment**
(Keep for your records)

2011

Name(s) as shown on return SUPER SUDS LLC		Identifying Number XXXXX	
1a	Ordinary business income (loss) (Schedule K, line 1)	1a	(122,758)
b	Net income (loss) from certain rental real estate activities (see instructions)	1b	
c	Other net rental income (loss) (Schedule K, line 3c)	1c	
d	Net loss from Form 4797, Part II, line 17, included on line 1a above. Enter as a positive amount	1d	
e	Combine lines 1a through 1d	1e	(122,758)
2	Net gain from Form 4797, Part II, line 17, included on line 1a above	2	
3a	Subtract line 2 from line 1e. If line 1e is a loss, increase the loss on line 1e by the amount on line 2	3a	(122,758)
b	Part of line 3a allocated to limited partners, estates, trusts, corporations, exempt organizations, and IRAs	3b	
c	Subtract line 3b from line 3a. If line 3a is a loss, reduce the loss on line 3a by the amount on line 3b. Include each individual general partner's share in box 14 of Schedule K-1, using code A		(122,758)
4a	Guaranteed payments to partners (Schedule K, line 4) derived from a trade or business as defined in section 1402(c) (see instructions)	4a	
b	Part of line 4a allocated to individual limited partners for other than services and to estates, trusts, corporations, exempt organizations, and IRAs	4b	
c	Subtract line 4b from line 4a. Include each individual general partner's share and each individual limited partner's share in box 14 of Schedule K-1, using code A	4c	
5	Net earnings (loss) from self-employment. Combine lines 3c and 4c. Enter here and on Schedule K, line 14a	5	(122,758)

CONFIDENTIAL

* Item was disposed
of during current year.

Depreciation Detail Listing

FORM 1065

For your records only

2011

PAGE 1

Name(s) as shown on return

Social security number/EIN

SUPER SUDS LLC

No.	Description	Date	Cost	Salvage	Business percentage	Section 179	Depreciation Basis	Life	Method	Rate	Current depr.	Accumulated Depreciation	Prior expense	Bonus depreciation	AMT Current
1	HWY 183	20051001	425,000		100.00		425,000	31.5	S/L HY	3.175	13,494	171,170			13,492
2	EQUIPMENT	20050515	23,620		100.00		23,620	31.5	S/L HY	3.175	750	18,491			750
3	GARLINGTON & WOODRUFF	20050101	360,000		100.00		360,000	31.5	S/L HY	3.175	11,430	144,990			11,429
4	GREER SOUTH CAROLINA	20050101	425,000		100.00		425,000	31.5	S/L HY	3.175	13,494	171,170			13,492
5	EQUIPMENT	20060601	183,726		100.00		183,726	7	200 DB HY	8.92	16,388	159,124			22,506
6	SOUTH WASHINGTON AVE	20071101	325,000		100.00		325,000	31.5	S/L MQ	3.175	10,319	67,130			10,317
7	Van	20070119	12,300		100.00		12,300	5	200 DB MQ	11.01	1,354	12,130			2,032
8	Woodruff Car Wash	20070201	145,832		100.00		145,832	31.5	S/L MQ	3.175	4,630	39,964			4,630
9	Greenwood Car Wash	20080215	100,000		100.00		100,000	31.5	S/L HY	3.175	3,175	14,525			3,175
10	POINSETT CAR WASH	20090731	225,000		100.00		225,000	31.5	S/L MM	3.175	7,144	17,562			7,143
11	Simpsonville Car Wash	20100401	396,000		100.00		396,000	31.5	S/L MM	3.175	12,573	21,479			12,571
Totals			2,621,478				2,621,478				94,751	837,735			101,537

Land Amount

Net Depreciable Cost

2,621,478

ST ADJ:

402

000151

STATE OF SOUTH CAROLINA
PARTNERSHIP RETURN

SC1065
(Rev. 9/13/11)
3087



Tax Year 2011

Return is due on or before the 15th day of the fourth month following the close of the taxable year.

Mail to: SC Department of Revenue, Partnership Return,
Columbia SC 29214-0008

For the year January 1 - December 31, 2011, or fiscal tax year
beginning _____ 2011 and ending _____ 2012

SUPER SUDS LLC
200 FORD STREET
Greer, SC 29650

FEIN (Required): XXXXX	SC File # (Required): XXXXX	County: Greenville

Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Address change (4) ☐ Amended return

Total Number of Partners: 2	Number of Partners that are Not Resident: 0

ATTACH A COPY OF FORM 1065 FEDERAL PARTNERSHIP RETURN AND COPIES OF ALL SCHEDULES.

Read the instructions carefully and fill in all applicable lines and schedules.

Location of business property: City Greer State SC Phone Number XXXXX

COMPLETE SCHEDULE SC-K FIRST

Schedule W-H Withholding Tax on Income of Nonresident Partners

1. Total from line 21, page 2, SC1065	1.	(123,708)
2. Amount of line 1 income taxable to nonresident partners (from SC1065 K-1s)	2.	
3. Amount of line 2 exempt from withholding because of 1909 affidavit or composite filing	3.	
4. Subtract line 3 from line 2, if less than zero, enter -0-	4.	
5. Withholding tax due - line 4 times .05 (5%)	5.	
6. Withholding from nonresident self-employed (Attach I-290) or SC Withholding from form 1099MISC	6.	
7. Amount paid with extension SC8736	7.	
8. Add lines 6 and 7	8.	
9. Subtract line 8 from line 5. If zero or less, enter zero here. This is the amount due with this return. Refunds cannot be claimed from the SC1065. An overpayment must be claimed and refunded at the partner level	9.	

BALANCE DUE

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

14-0832

Please Sign Here	Signature of general partner or LLC/LLP member		Date
			06-16-2017
Paid Preparer's Use Only	I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☒		
	Preparer Printed Name	Check if self-employed ☒	Preparer telephone number
	Preparer signature		PTIN XXXXX
	Firm's name (or yours if self-employed)	Henderson Accounting	Date 06-16-2017
	and address	PO Box 217 Greer SC 29652	FEIN XXXXX

30871016

000152

SCHEDULE SC-K

PARTNERS' SHARES OF INCOME (LOSSES), DEDUCTIONS, CREDITS ETC. (See instructions.)

* Enter amounts from corresponding lines on your federal Schedule K in Column A.

	(A)* Amounts From Federal Schedule K	(B) Plus or Minus South Carolina Adjustment	(C) Federal Schedule K Amounts After SC Adjustments	(D) Amounts Allocated to SC	(E) Amounts Subject to Apportionment DO NOT include amounts allocated to other state
1	Ordinary Business Income (loss) (122,758)		(122,758)		(122,758)
2	Net Real Estate Rents (loss)				
3	Other Net Rents (loss)				
4	Guaranteed Payments				
5	Interest Income				
6	Dividends				
7	Royalties				
8	Net Short Term Cap. Gain (loss)				
9	Net Long Term Cap. Gain (loss)				
10	Net § 1231 gain (loss)				
11	Other Income (loss)				
12	§ 179 Deduction				
13a	Contributions 950		950		950
13b	Investment Interest Expense				
13c	§ 59 (e) (2) Expenditures				
13d	Other Deductions				
14	Total (123,708)		(123,708)		(123,708)
15	Amounts from federal Schedule K (line 1, Schedule SC-K, Col. A)				(123,708)
16	Amount Allocated to South Carolina (from line 14, Schedule SC-K, Col. D)				
17	Net income (loss) subject to apportionment (from line 14, Schedule SC-K, Col. E)				(123,708)
APPORTIONMENT					
18	Total Sales or Gross Receipts		TOTAL 302,180	SC	
19	Apportionment factor (SC ÷ TOTAL). 100% if operating entirely within SC				100.0000 %
20	Net business income (loss) apportioned to SC (line 17 multiplied by line 19)				(123,708)
21	Net business income (loss) taxable to SC (line 16 plus line 20)				(123,708)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

REM 3542 PAGE 190

BB&T
of South Carolina

MORTGAGE OF REAL ESTATE

THIS MORTGAGE, made this 21st day of October, 2005, by Carolina Properties Holdings, LLC

(hereinafter referred to as "Mortgagor"), and granted and given to BRANCH BANKING AND TRUST COMPANY OF SOUTH CAROLINA (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of South Carolina, whose address is 380 E MAIN ST, SPARTANBURG, SC 29302-1944.

WHEREAS, CAROLINA PROPERTIES HOLDINGS LLC

is indebted to Mortgagee, as evidenced by a certain promissory note dated the 21st day of October, 2005, executed in favor of Mortgagee in the principal sum of FIVE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS & 00/100 Dollars (\$ 585,000.00), and any renewals, extensions or modifications thereto, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor and payable to Mortgagee.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and also to secure in accordance with § 29-3-50, As Amended, of the Code of Laws of South Carolina (1976) or any such successor statute as may apply:

1. All future advances and readvances that may subsequently be made to the Mortgagor evidenced by the Note(s) and by all renewals and extensions thereof; and
2. All other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed \$ 585,000.00 plus interest thereon, all charges and expenses of collection incurred by Mortgagee including Court costs and reasonable attorneys' fees, has granted, bargained, sold, assigned, released and does by these presents grant, bargain, sell, assign and release unto the Mortgagee, its successors and assigns the following described property:

Please see attached Exhibit "A" for legal description

MTG-2005-55431
Recorded 5 Pages on 10/24/2005 2:01:16 PM
Recording Fee: \$11.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining; all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described (herein collectively the "Property").

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever.

The Mortgagor covenants that he is lawfully seized of the premises herein above described in fee simple absolute (or such other estate; if any, as is stated hereinbefore), that he has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises as herein conveyed unto the Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor (and where more than one, each jointly and severally) covenants and agrees as follows:

1. That if he is a maker or obligor on the Note(s), he will promptly pay the principal of and interest on the indebtedness evidenced by the said Note(s) and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.



2. That the lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby.

3. That he will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, assessed against the property hereby mortgaged. If the Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage.

4. That he will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof.

5. That he will produce and continuously maintain fire and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter on said premises, and will pay promptly when due any premiums therefor. If he fails to do so, the Mortgagee may cause the same to be done and reimburse itself for such premiums and expenses, and the same shall be secured by this mortgage. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In event of loss, Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by the Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the property damaged.

6. That he hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may desire.

7. That he will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage.

8. Mortgagor for itself, its successors, and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has used or installed any Hazardous Material (as hereinafter defined) on the Property or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Property; (c) the Property are presently in compliance with all Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws; and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) the Property shall be kept free of Hazardous Materials, and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, or process Hazardous Materials; (e) Mortgagor shall not cause nor permit the installation of Hazardous Materials in the Property nor a release of Hazardous Material onto or from the Property or suffer the presence of Hazardous Materials on the Property; (f) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (g) the Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and the Mortgagor is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; (h) Mortgagor shall immediately give the Beneficiary oral and written notice in the event that Mortgagor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. The Mortgagor hereby agrees to indemnify the Mortgagee and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, inquiries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (a) the presence, on, or under, or the escape, spillage, emission or release from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor, (b) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (c) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect. For purposes of this Mortgage, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purposes of) the Environmental Laws. For the purpose of this Mortgage, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Super Fund" or "Super Lien" law, or any other federal, state, or local law, regulation, or decree regulating, relating to, or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos, and/or any hazardous, toxic or dangerous waste, substance or material, as may now or at any time hereafter be in effect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation or release of record of this Mortgage or the payment and cancellation of the Note; or if otherwise expressly permitted in writing by the Mortgagee, the sale or alienation of any part of the Property.

9. Mortgagor shall be in default under this mortgage upon the occurrence of any of the following.

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty, in this mortgage, in the Note(s) or other document executed in connection herewith, or in any other note of Mortgagor to Mortgagee or any contract between Mortgagor and Mortgagee; or in any contract between any third party and Mortgagee made for the benefit of Mortgagor; or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors by, filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor or any co-maker, endorser, guarantor or surety for Mortgagor; or

(e) Failure of a corporate Mortgagor or co-maker, endorser, guarantor or surety for Mortgagor to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgement of the assessment or filing of any tax lien against Mortgagor; or upon the issuance of any writ of garnishment or attachment against any property, debts due or rights of Mortgagor; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagor, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note(s) unsafe or insecure; or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.

10. It is agreed that the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Note(s) secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Note(s) secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor or any other obligor on the Note(s) to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against any Mortgagor or any borrower or other obligor under the Note(s) under applicable provisions of South Carolina Law and of any other law governing the Note(s). This mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Note(s) or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of the lien of this mortgage or impair the Mortgagee's right to any other remedies against the Mortgagor or any other obligors under the Note(s). Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Note(s) secured hereby. Time is of the essence the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage, or in any of the Note(s) or any other document related thereto.

11. Mortgagor understands that upon default hereunder, along with other remedies set out herein and in the above referenced Note(s), the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgement pursuant to § 29-3-660 of the South Carolina Code of Laws (1976). Mortgagor hereby expressly waives and relinquishes any appraisal rights which Mortgagor may have under § 29-3-680 et seq., South Carolina Code of Laws (1976), as Amended, and understands and agrees that a deficiency judgement, if pursued by Mortgagee, shall be determined by the highest priced bid at the judicial sale of the Property.

12. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

13. **WAIVER OF TRIAL BY JURY.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

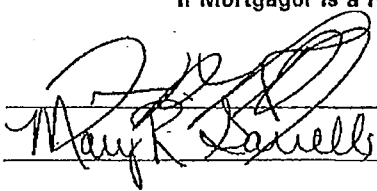
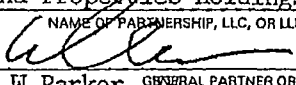
IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage the day and year first above written.

Signed, sealed and delivered in the presence of:

If Mortgagor is a Corporation:

_____ (SEAL)	By: _____	NAME OF CORPORATION
_____ (SEAL)	Title: _____	
_____ (SEAL)	By: _____	
_____ (SEAL)	Title: _____	

If Mortgagor is a Partnership, Limited Liability Company, or Limited Liability Partnership:

		Carolina Properties Holdings, LLC
		NAME OF PARTNERSHIP, LLC, OR LLP
 (SEAL)	By:  (SEAL)	
_____ (SEAL)	By: Walter W. Parker, _____	GENERAL PARTNER OR MANAGER
_____ (SEAL)	By: _____	GENERAL PARTNER OR MANAGER
_____ (SEAL)	By: _____	GENERAL PARTNER OR MANAGER
_____ (SEAL)	By: _____	GENERAL PARTNER OR MANAGER

If Mortgagor is an Individual:

_____ (SEAL)	_____	TYPE NAME OF MORTGAGOR
_____ (SEAL)	_____ (SEAL)	
_____ (SEAL)	_____	TYPE NAME OF MORTGAGOR
_____ (SEAL)	_____ (SEAL)	

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina corporation, by _____, its _____, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness that witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named _____, a South Carolina general partnership, by _____, its general partner, sign, seal and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that s/he saw Carolina Properties Holdings, LLC, a South Carolina limited liability company / limited partnership that by Walter W. Parker, IV, its member or manager / general partner, sign, seal and as its act and deed, and deliver the foregoing within-written instrument for the uses and purposes therein mentioned and that s/he together with the other witness witnessed the execution thereof.

SWORN TO and subscribed before me this 21st day of October, 2005.

Witness

Dilbert Little (SEAL)

Notary Public for South Carolina

My commission expires: 09-29-08

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named _____, sign, seal and as his/her act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

SWORN TO and subscribed before me this _____ day of _____, _____.

Witness

(SEAL)

Notary Public for South Carolina

My commission expires: _____

EXHIBIT A:

All that piece, parcel or lot of land, with improvements thereon or to be constructed thereon, being shown as 0.56 acres on a survey for Jones Cooley and Rajai Marzouca, dated April 24, 2003, by Site Design, Inc. recorded in Plat Book 154, Page 279, in the Office of the Register of Deeds in Spartanburg County.

This being the same property conveyed to the mortgagor herein by deed of Jones M. Cooley, Jr. and Rajai Y. Marzouca as recorded August 26, 2005, in Deed Book 83-U, Page 906, Office of the Register of Deeds for Spartanburg County.