

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-06529

RECEIVED

FEB 20 2013

SC Court of Appeals

Amber Johnson.....Respondent,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,
Of Whom Stanley E. Alexander is the.....Appellant,

Mario S. Inglese and Mario S. Inglese, P.C. Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

RECORD ON APPEAL

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INDEX

PAGE

ORDERS

Order Denying Defendants' Request for Stay and for Protection (November 8, 2010)	1
Order Re: Motion Under Advisement (May 27, 2011).....	3
Order Re: Protection from Trial (June 6, 2011).....	4
Order Granting Motion for Partial Summary Judgment (July 6, 2011).....	5
South Carolina Court of Appeals Order Re: Order to Remand for Reconstruction of the Record (April 2, 2012).....	19
Consent Order on Remand to Reconstruct the Record (June 18, 2012)	21

PLEADINGS

Complaint (October 15, 2009)	23
Defendant Alexander's Answer and Crossclaim (March 5, 2010)	35
Defendant Alexander's Answer to Crossclaim and Third Party Complaint (December 2, 2010)	47
Defendant Alexander's Motion to Stay (October 5, 2010).....	51
Defendant Alexander's Motion for Protection (October 13, 2010).....	55
Plaintiff's Motion for Partial Summary Judgment (January 14, 2011)	70
Defendant Alexander's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment (May 25, 2011)).....	93

AFFIDAVITS

Affidavit of Mary Scarborough (May 24, 2011)	200
Affidavit of Todd Balish (May 24, 2011).....	208

HEARING TRANSCRIPTS

Motion Hearing Transcript <u>in toto</u> (May 26, 2011)	212
---	-----

OTHER MATERIALS

Letter from Justin S. Kahn (May 24, 2011).....	259
Letter from Joel W. Collins, Jr. (May 25, 2011).....	260
Additional Deposition Excerpts.....	262

CERTIFICATIONS

Certificate of Counsel	
Certificate of Compliance	

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Amber Johnson,)
)
Plaintiff,)

C.A. Number: 09-CP-10-6529

vs.)

Stanley E. Alexander, Mario S.)
Inglese, and Mario S. Inglese, PC,)
)
Defendants.)

ORDER DENYING
DEFENDANTS'
REQUEST FOR STAY
AND FOR PROTECTION

FILED
2010 NOV -8 AM 9:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This discovery matter came before the Court on November 2, 2010. Defendants filed two motions seeking to stop litigation in this matter: 1) Motion For Protective Order dated October 13, 2010 and 2) Defendants' Motion to Stay, filed October 5, 2010.

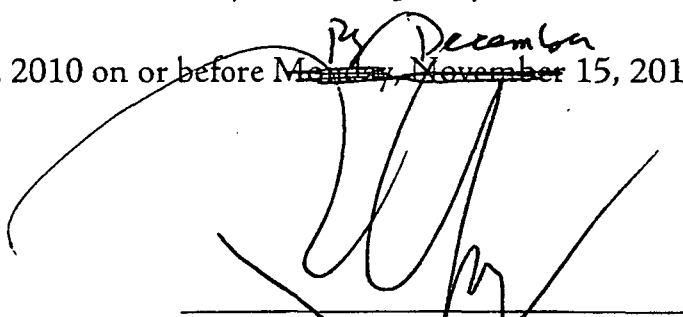
The Defendants claim that other cases in which Ms. Johnson is a party *may* determine what damages she may seek in this case. Thus, Defendants ask this Court to await the disposition of two other cases to ascertain whether any damages that may be awarded in those cases should be considered in this case. The Defendants seek a protective order to prevent further discovery in this matter, pursuant to SCRCP, Rule 26(c).

~~Py~~ abrogation of this Court's responsibility "to safeguard the rights" of Ms. Johnson to the discovery to which she is entitled. A continuance is not the proper relief to be sought as this case has not been called for trial. Thus, the request for continuance is denied and Defendant has not demonstrated good cause for protecting Ms. Johnson from engaging in discovery.

Having carefully listened to oral argument and considered the materials submitted by counsel,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendants' Motion For Protective Order, dated October 13, 2010, is DENIED and Defendants' Motion to Stay, filed October 5, 2010 is DENIED. Further, Defendants are ordered to provide Plaintiff's counsel with alternative dates when they will be available by ~~Py~~ December 1, 2010 November 8, 2010, Defendants are to attend their depositions on or before ~~Tuesday~~ ~~Py~~ December November 30, 2010 and Defendants are to fully and completely answer Plaintiff's discovery request dated October 6, 2010 on or before ~~Monday~~ ~~Py~~ December November 15, 2010.

IT IS SO ORDERED.



Roger M. Young
Circuit Court Judge
Ninth Judicial Circuit

November 2, 2010,

Charleston, South Carolina

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2009-CP-10-6529

Amber Johnson

versus

Stanley E. Alexander, Mario S. Inglese,
Mario S. Inglese PC, Charles Feely

PLAINTIFF(S)

DEFENDANT(S)

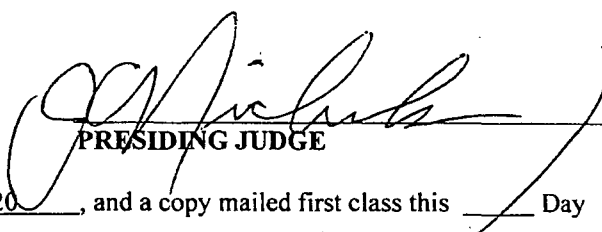
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit)
☐ Rule 43(k), SCRCP(Settled); ☐ Other -
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL
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:

Motion for Partial Summary Judgment is being taken under advisement per Judge's Nicholson's allowance for ten (10) days to submit additional documents.

Dated at Charleston, South Carolina, this 26th day of May 2011.


PRESIDING JUDGE

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class 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)

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2009-CP-10-6529

Amber Johnson

versus

Stanley E. Alexander, et al

PLAINTIFFS

DEFENDANT(S)

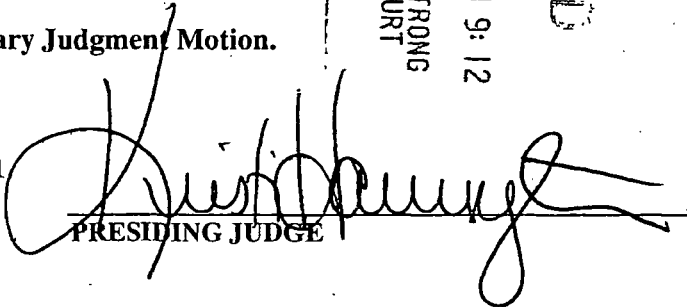
CHECK ONE:

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

-Case is protected until Judge Nicholson rules on Summary Judgment Motion.

Dated at Charleston, South Carolina, this 31st day of May, 2011


PRESIDING JUDGE

BY
JULIE J. ARMSTRONG
CLERK OF COURT
2011 JUN -6 AM 9:12

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Amber Johnson,

Plaintiff,

v.

Stanley E. Alexander, Mario S. Inglese and
Mario S. Inglese, PC,

Defendants,

Mario S. Inglese and Mario S. Inglese, PC,

Third Party Plaintiff,

vs.

Charles Feeley,

Third-Party Defendant.

Case No. 09-CP-10-6529

ORDER GRANTING PLAINTIFF
JOHNSON'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
AS TO DEFENDANT
STANLEY E. ALEXANDER'S
LIABILITY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUL -6 PM 12:50

FILED

 This matter is before the Court on Plaintiff, Amber Johnson's (hereinafter "Johnson"), Motion for Partial Summary Judgment filed January 14, 2011 against Defendant Stanley Alexander, Esq. (hereinafter "Alexander"). After careful consideration of the Motion, pleadings, materials submitted, and the extensive oral arguments, this Court finds Johnson's Motion for Partial Summary Judgment related to Alexander's liability should be granted.

PROCEDURAL HISTORY SUMMARY

On October 15, 2009, Johnson filed a complaint against Alexander for professional negligence. The complaint was supported by the affidavit of John Brown, Esquire. The gravamen of the complaint is that Alexander negligently conducted a closing in September 2006 related to property located at 2640 Ranger Drive, North Charleston, S.C. (hereinafter the "Property"). In

part, it is alleged that Alexander failed to discover or disclose that the Property had been sold on October 5, 2005 for delinquent 2004 taxes. The October 2005 tax sale resulted in a tax deed being issued by Mary Scarborough, the Charleston County Delinquent Tax Collector, in December of 2006 in the name of the tax sale purchaser.

After engaging in discovery and various depositions, on January 14, 2011, Johnson filed a Motion for Partial Summary judgment seeking judgment solely as to liability against Alexander. In part, the motion was supported with excerpts of Alexander's deposition testimony. On May 5, 2011, Alexander filed his own affidavit in opposition to the motion. A hearing was held on May 9, 2011. After carefully listening to argument, this Court gave specific instructions to the parties to inform the Court as to what public records were publicly available to a title abstractor or real estate closing attorney regarding the delinquent 2004 taxes and the October 5, 2005 tax sale at the time Alexander conducted the closing.

Johnson filed affidavits of Mary Scarborough, Charleston County Delinquent Tax Collector, and Todd Balish, a local abstractor who had conducted a title examination on the property in 2007. Alexander filed the affidavit of Charles M. Feeley, Esquire, a named defendant. Alexander offered no information from the Register Mesné Conveyance (RMC) Office, Auditor's Office, or Delinquent Tax Collector's Office to address the Court's instructions.

A second hearing was held May 26, 2011 to address the additional submissions and hear argument by the parties. Alexander's counsel strongly requested a continuance to address the affidavits submitted by Johnson (although this court notes that Johnson had timely submitted the affidavits to Alexander before the hearing). When asked, Alexander could not articulate any reason why there needed to be a continuance or what additional evidence the continuance would produce that concerned the Court's request for public records regarding the delinquent taxes and

subsequent tax sale. Although the Court denied the request for a continuance, to accommodate Alexander this Court gave both sides an additional ten (10) days to submit any additional counter-affidavits or materials for the Court to consider. No additional materials were submitted.

ISSUE

The issue before the Court is whether there is a material question of law or fact as to Alexander's liability for departing from the duty of care he owed Johnson, as his client, by failing to ensure good and marketable title to the property at closing.

STANDARD OF REVIEW



The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Matsell v. Crowfield Plantation Community Services Ass'n, Inc.*, -- S.E.2d -- (S.C. Ct. App. 2011), 2011 WL 1643557 *2. Summary judgment is available when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." SCRCP, Rule 56(c). The evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

The moving party has the initial burden of demonstrating no issue of material fact exists. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115-117, 410 S.E.2d 537, 545 (1991). This initial burden "may be discharged by 'showing' — that is, pointing out to the court — the absence of evidence to support the nonmoving party's case." *Baughman*, 306 S.C. at 115, 410 S.E.2d at 165, quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving

party carries its initial burden, the opposing party must "do more than simply show that there is some metaphysical doubt as to the material facts," and "must come forward with 'specific facts showing that there is a *genuine issue for trial*.'" *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545, quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (emphasis in original). SCRCF Rule 56(e) prohibits the nonmoving party from relying on mere allegations or denials in its pleadings. *Baughman* at 115, 545. For purposes of contesting the motion, the dispute must be genuine, and the court is not required to attach great significance to evidence introduced solely to create an issue of fact that is not genuine. See James F. Flanagan, *South Carolina Civil Procedure 3d*, 463-64 (S.C. Bar 2010). Unsupported and conclusory statements contesting the critical issues are not genuine disputes of material facts. *Id.*

Alexander failed to show why a continuance was needed or that it would produce additional evidence or create a genuine question of fact regarding his liability for his admitted failure to discover that the Property had been sold at a tax sale. Further, Alexander does not explain how a continuance would allow him to show that records concerning the delinquent taxes and tax sale were not publicly available at or near the time of closing.

With the argument and materials presented to the Court, the Court finds as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Alexander represented Johnson and was her closing attorney for the purchase of a property and a house at 2640 Ranger Drive, N. Charleston, S.C. (Alexander Affidavit, May 5, 2011, p. 2, ¶2, Alexander Dep. p. 10, lines 15-18.)
2. Alexander conducted the real estate closing and it took place on September 14, 2006.

3. Alexander admits he owed duties to Johnson, he breached those duties and there was resulting damage as a result thereof.¹ Those admissions include:

Duties to Make Sure Purchaser Gets Good and Marketable Title

- a. A lawyer handling a closing has the responsibility to make sure the purchaser gets good and marketable title to the property. Alexander Depo. p. 16-17. ("That would be your job." Alexander Dep. p. 17, line 7.) Alexander Depo. p. 23.
- b. Alexander had a duty to make sure Ms. Johnson got the property free and clear with good and marketable title. Alexander Depo. p. 102. 13-16; p. 16, 16-20.
- c. Mr. Alexander conducted a closing precisely to ensure that Johnson got good and marketable title. Alexander Depo. p. 16, lines 4-6 and 16-24.

Reliance by Johnson

- d. Johnson relied upon Alexander telling her she was getting good and marketable title. Depo. Alexander, p. 98, lines 24-25, p. 99, lines 1-17.

Failure of Title

- e. There was a failure in the title and Johnson did not get a marketable title to the property. Alexander Depo. p. 16, lines 7-12. Alexander Depo. p. 23. Alexander Depo. pp. 23-24 "There's no dispute about that."

Foreseeable Damage

- f. It is foreseeable that a property purchaser would end up in litigation, need to hire a lawyer and incur costs associated with that litigation. Depo. Alexander, pp. 17-18. It was foreseeable that the purchaser would be "in some litigation or negotiation to get the problem resolved." Alexander Depo., p. 18, lines 22-24.

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¹ In an attempt to create a question of fact, Alexander provided certain materials to the Court. Alexander submitted an affidavit dated May 17, 2011 from co-defendant Charles M. Feeley, Esq. who Alexander claims searched the property records for the closing. That affidavit does not create a question of fact for several reasons, including the fact that it states "I do not recall the details from this title examination" (Feeley Affidavit, ¶ 2, p. 2) and "I cannot recall the specific details of this title examination" (Feeley Affidavit, ¶ 3, p. 3).

Mr. Feeley states he routinely performs a ten year tax records search from the Charleston County Online Tax System that allows one to determine whether the taxes were current or delinquent. Mr. Feeley did not produce a copy of a 10 year screen from the search at issue or otherwise. Mr. Feeley's contentions that there was no notice because there was no *lis pendens*, a chain of title that would show a tax sale or a tax deed from 2006 are not relevant here. The issue is, Were public records about the tax sale and delinquent taxes available at the time of closing?

Mr. Alexander also argued that Defendants looked at the tax records, saw the property tax was paid in 2005, and assumed the taxes for previous years had been paid. Alexander offered no admissible evidence to support this assertion.

- g. Because of this situation, Ms. Johnson could not rent or resell the house. Depo. Alexander, p. 14, lines 14-17 and Alexander's letter dated July 13, 2009, Ex. 2 to his deposition. The issuance of the tax deed made Ms. Johnson unable to rent or sell the property. Depo. Alexander, p. 19 and 20, lines 8-14.

Resulting Damage and Lack of Johnson's Fault

- h. Johnson suffered direct, incidental and consequential damage as a result of the subject property being transferred by virtue of the tax deed. Depo. Alexander, p. 98, lines 9-16. Further, Johnson suffered damage as a result of not obtaining clear and marketable title to the property.
- i. Johnson was put into the situation through no fault of her own, and because of the litigation the property has been out of Ms. Johnson's control. Depo. Alexander, Ex. 2 thereto (Letter by Alexander, dated July 13, 2009).
4. The Property was sold on October 3, 2005 to pay for 2004 delinquent taxes nearly a year before Johnson's closing. Scarborough Aff. ¶¶ 6, 10, 11, Depo. Alexander, p. 34, lines 21-23.
5. Information concerning the 2003 and 2004 delinquent taxes on the Property was a public record and publicly available on the Charleston County On-Line Tax System July through September of 2006.² (Scarborough Aff. p. 3, ¶13).
6. By at least October 14, 2005, public records showed delinquent taxes on the property for 2004 and the October 3, 2005 tax sale. This information was publicly and readily available for abstractors, closing attorneys and the general public in the county's Register Mesné Conveyance Office, where delinquent tax data is maintained on a publicly accessible mainframe computer system known as the Vista 3270. (Scarborough Aff., pp. 2-3, ¶¶6-12).
7. Ms. Scarborough was personally familiar with the Vista system. It has been in continuous use since Ms. Scarborough helped design and implement it in 1997. (Scarborough Aff., p. 2, ¶8). Abstractors and closing attorneys routinely use the information available in the RMC Office

² Mr. Alexander contends that no "records were *discovered* at the time of the title examination that would have put me on notice that property taxes were delinquent or that a tax sale had occurred on the property." Alexander Aff. May 5, 2011, ¶ 11 (emphasis added).

to ensure property being sold is not encumbered by a Charleston County tax lien or been sold at a county tax sale. (Scarborough Aff. p. 2, ¶6-7).

8. In August 2006, when Alexander contends that the title examination of the Property occurred, Charleston County Delinquent Tax records showed the property taxes were delinquent in the years 2003 and 2004, and that the Property had been sold at a tax sale on October 3, 2005. (Scarborough Aff. p. 2-3, ¶¶ 9-12). Further, during the relevant time, the public records concerning these issues were available either by using the Charleston County On-Line Tax System via the web or the Vista system. (Scarborough Aff. p. 3, ¶ 12).

A. Standard of Care Established

To establish liability for legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of the attorney's duty; (3) damage; and (4) proximate cause of the client's damages by the breach. *Harris Teeter, Inc. v. Moore & Van Allen PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010). Attorneys must "render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession." *Id.* A plaintiff generally must use expert testimony to establish the standard of care. *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 437-38, 472 S.E.2d 612, 614 (1996).

Attorney Client Relationship

There is no dispute and the Court finds the existence of the attorney-client relationship between Johnson and Alexander.

Breach of Attorney's Duty

The Court finds and Alexander admits he breached duties owed to Johnson by being negligent in failing to determine the Property had been sold October 3, 2005 at a tax sale and in failing to

ensure Johnson was conveyed good and marketable title at the closing he conducted. (Alexander Depo., pp. 16-17). Johnson established Alexander was negligent with more than reasonable certainty. Alexander admitted to the duties he owed, including ensuring the property had good and marketable title. Mr. Brown also opined the closing attorney has the duty to ensure that good and marketable title is conveyed to a purchaser. Alexander Memo, p. 9; Brown Depo. pp. 69-71.

The proof that Alexander conducted the closing negligently is apparent from his failure to determine from the public records that the property had been sold at a tax sale. The gravamen of Alexander's argument against summary judgment is there exists a question of fact about whether public records existed concerning the status of delinquent taxes and tax sale.

With Ms. Scarborough's affidavit, Johnson proved to the Court what the public records reflected at the time of closing - taxes for the Property were delinquent for the tax years 2003 and 2004 and the Property had been sold on October 5, 2005 at a tax sale. Alexander offered no admissible facts to contradict those facts.³

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Alexander argues this is not really a legal malpractice issue but rather a title examination issue and Plaintiff's expert is not competent to render an opinion about how to conduct a title examination. Further, Alexander argues that Johnson's expert witness, Mr. Brown failed to establish to the standard of care for a closing attorney. (Defendant's Memorandum in Opposition of Plaintiff's Motion for Summary Judgment, pp.10-12). These arguments are without merit. First, the standard of care for a title examination is not the issue. The issue is the standard of care for an attorney conducting a real estate closing. In South Carolina, only an attorney can conduct a real estate closing. Although a closing lawyer may rely upon the title examination performed

³ Alexander's citation to "documentation from the seller's mortgagee" (Alexander Memo. p. 7) concerning the status of payment of taxes is nothing more than an unauthenticated document and inadmissible hearsay. If documentation from seller's mortgagee generally sufficed, South Carolina homebuyers would have no need to obtain title searches.

by others, the closing attorney must not be negligent in ensuring the purchaser gets good and marketable title to the property. Alexander argues that Johnson posits a strict liability theory for legal malpractice by imposing on an attorney the absolute requirement to ensure good and marketable title. Alexander Memo pp. 5-6. This is not the case. Alexander was negligent in not ensuring good and marketable title because he (or his agent) failed to determine that public records showed the delinquent taxes on the property for 2003 and 2004 and that the property had been sold at a tax sale in October of 2005.⁴ It was the failure to discover and properly act upon public records that results in Alexander being negligent and liable to Johnson.

Second, South Carolina recognizes expert testimony is *not* necessary to establish the standard of care if the professional defendant himself "admits the standard of care that was owed to the plaintiff." *Sims v. Hall*, 357 S.C. 288, 296, 592 S.E.2d 315, 319 (Ct. App. 2003). This rule was further explained in *Mali v. Odom*, 295 S.C. 78, 81, 367 S.E.2d 166, 168 (Ct. App. 1988) which also concerned a real estate transaction. The Court of Appeals found the defendants did not need an expert to testify to the standard of care required for closing attorneys in such situations because the defendant himself, a practicing lawyer, established the applicable standard during his deposition. Odom admitted "it was incumbent upon [him] to disclose [the]...covenants or restrictions on the property," which the appeals court held firmly established the duty he owed the plaintiff. *Mali v. Odom*, 295 S.C. at 80-81, 367 S.E.2d at 168-169 (Ct. App. 1988).

Here, Alexander, the attorney-defendant, admitted in his deposition that he had a duty and responsibility to ensure Johnson received good and marketable title to the property. (*See e.g.*

⁴ In his Answer and Crossclaim in this matter, Alexander alleges that he hired Inglese to conduct a title exam (¶ 69) and that Inglese was negligent or breached other duties in failing to detect the delinquent taxes and the subsequent tax sale. ¶¶ 72-83. Answer and Cross Claim of Defendant Stanley E. Alexander, March 5, 2010. Alexander is estopped to argue such information was not available to him.

Alexander Dep., pp. 16 and 102). Once Alexander admitted the duty, whether Johnson's expert did or did not establish it as well is purely academic. In any case, Johnson's expert is competent to testify about the standard of care of a closing attorney. He testified that Alexander fell below the standard of care for a closing lawyer by failing to discover the Property had been sold for 2004 delinquent taxes, failing to ensure Johnson received good marketable title at the time of closing and that Alexander's conduct was a proximate cause of Johnson losing title to the property. Brown Depo. pp. 69-71 Ex. 5 to Alexander Memo May 24, 2011.

Proximate Cause

The Court finds the proximate cause of Johnson's alleged damages was Alexander's breach of his duties to discover the property had been sold at a tax sale before Johnson closed on the property and his failure to convey good and marketable title to her. This failure directly resulted in a tax deed being issued that gave title to the property to the tax sale purchaser.

gem
In an attempt to break the proximate cause chain, Alexander claims Johnson engaged in fraudulent conduct with regard to obtaining financing for the purchase of the subject property. Alexander Memo. pp. 1, 12-13 May 25, 2011. Alexander claims there were various false statements on a document entitled Residential Loan Application. This is an attempt to divert the Court from determining Alexander's liability and failures. More importantly, fraud has not been alleged as a defense in Alexander's answer, Johnson denies any fraudulent conduct between herself and the third party bank and Alexander fails to demonstrate the lender asserted fraud.

Alexander also claims Johnson submitted a false and fraudulent mortgage application to obtain financing to purchase the property. These assertions lack proof and are irrelevant to the Court's consideration as to Alexander's liability for legal negligence for the reasons stated herein.

Alexander's unsupported and bald assertions of fraud based upon inadmissible documents do not create a material issue of fact as to his liability or break the chain of causation. The loan application process with a third party is separate and distinct from Alexander's duty to ensure good and marketable title to Johnson at the closing. Johnson's failure to get good and marketable title and loss of the property was not the consequence of any alleged fraud. Rather, it was the direct consequence of Alexander's negligence.

Finally, Alexander himself admits the failure to properly and fully examine "the title and all matter of public record available on the subject property" was "the proximate cause of the damages sustained by ... Johnson." Answer and Crossclaim of Defendant Stanley E. Alexander, March 5, 2010, ¶¶ 73, 78.

Given the above, Johnson establishes that Alexander's negligence was the proximate cause of her injuries and damages.

Damage

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The Court finds Johnson suffered damage from Alexander's breaches of his duties. Alexander admits that his failure to obtain good and marketable title for Johnson did result in foreseeable "problems" or damages for Johnson, including the inability to sell or rent the property and resulting legal action or litigation concerning it. (Alexander Depo., pp. 17-19).

Alexander argues that a foreclosure action that was filed against Johnson was not his fault and that he is not responsible for damages and litigation associated with that.⁵ However, as a direct result of Alexander's negligence, Johnson did not receive good and marketable title to the property and the tax deed transferred the property out of her name in December of 2006.

⁵ This Court dismissed the foreclosure action filed against Johnson on May 26, 2010 because the party bringing the action did not exist. The undersigned signed the orders concerning the dismissal.

Whether she stopped paying on a note in April of 2007 is irrelevant as to Alexander's negligence in September of 2006.

This Court makes no finding as to the value of damage Johnson suffered, if any as a result of a foreclosure action or otherwise. The amount of damage Johnson may be entitled to as the result of Alexander's breaches, including not getting good and marketable title to the Property, the loss of the Property, the loss of the ability to sell or rent the property and her need to engage legal assistance, is for a later determination.

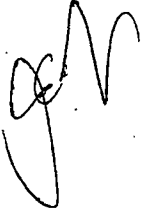
B. Establishing the Breach of the Duty of Care

There is no material question of law or fact as to whether Alexander breached his duty of care to Johnson. It is undisputed that the Property was sold in 2005 for 2004 delinquent taxes. Alexander offered an affidavit from Mr. Feeley who merely states what he usually does but does not remember what he did for this particular title examination.

gm
By contrast, Johnson provided an affidavit of Mary Scarborough. She is the Charleston County Delinquent Tax Collector, whose office maintains delinquent tax records, organizes tax sales to cover tax liens, and notices and makes public the details of delinquent taxes and tax sales. She was interim Delinquent Tax Collector at the time of the closing on the subject property in 2006, and she has worked in that office for 30 years. (Scarborough Affidavit, p. 1, ¶ 2). She establishes the delinquent tax records were public and readily available on both the Charleston County On-Line Tax System via the World Wide Web, as well as in the county's RMC Office via the mainframe computer known as the Vista 3270. Further, Johnson established that the records available in the RMC Office were updated to reflect the October 3, 2005, tax sale on October 14, 2005, the day on which the proceeds of the sale were applied to the tax lien.

(Scarborough Affidavit, p. 3, ¶¶ 10-11, and Scarborough Ex. 2). Alexander produces no admissible evidence to rebut these facts.

Second, Alexander suggests that the only way to view and obtain the complete Charleston County Delinquent Tax file about the property is to file a state Freedom of Information Act request, and that such steps are not usually taken as part of a title search. That may be true, but obtaining the full file is not relevant to the Court's consideration. Johnson establishes with a disinterested county official charged with maintaining the delinquent tax records, conducting the tax sale, and providing public notice of tax liens and sales, the fact that the property taxes were delinquent in 2004 was a public record available in the RMC Office and on-line via the Charleston County Tax Office On-Line. Information regarding the October 3, 2005, tax sale also was readily and publicly available in the RMC Office.⁶

 Although in a motion for summary judgment the moving party must carry the burden of showing no material questions of fact exists, once Johnson met that burden, Alexander must affirmatively come forward with admissible facts that dispute the moving party's contention. *See Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (the non-moving party "must come forward with 'specific facts showing that there is a genuine issue for trial.'"). Alexander fails to meet his burden. Even Alexander's affidavit from co-defendant Charles M. Feeley, Esquire, attesting to his usual practice of checking county tax records does not dispute the facts provided by Johnson

⁶ Further, Johnson provided the affidavit of Todd Balish, an abstractor and owner of Edisto Title Services Inc., who swore that he routinely used the system available in the RMC Office for years, including in 2006, to check for delinquent taxes and tax sales (Balish affidavit, p.2-3, ¶¶6-10). In November 2007, Mr. Balish ran a title search on the subject property and discovered the delinquent taxes and the October 3, 2005 tax sale. (Balish affidavit, pp. 1-2, ¶¶ 4-7). It is not necessary for the Court to rely upon Mr. Balish's affidavit as to what was available during the relevant time of 2006 for this motion because of Mary Scarborough's affidavit.

showing that the records regarding the delinquent taxes and the tax sale were public and existed for all to see.

For the above reasons, Alexander fails to meet his burden to demonstrate that a material question of fact or law exists.

CONCLUSION

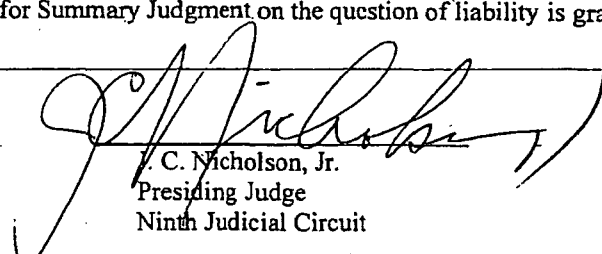
Johnson established the standard of care Alexander owed to Johnson, that Alexander breached the duties owed by failing to ensure good and marketable title to the property purchased by Johnson in September 2006 and that as a proximate result of that breach Johnson suffered damage.

Johnson also establishes that the records showing both the taxes on the subject property had been delinquent and that the property had been sold at a Charleston County tax sale to pay those taxes were readily and publicly available when the Defendants conducted the title examination. Therefore, there exist no material questions of facts as to the Alexander's liability for legal malpractice for failing to take note of the fact that the Property Johnson believed she was purchasing already had been sold in a tax sale.

IT IS THEREFORE ORDERED, for the reasons set forth above, based on the record of the case, extensive arguments presented by able counsel, and upon careful consideration of the facts and the law, that Johnson's Motion for Summary Judgment on the question of liability is granted.

IT IS SO ORDERED.

Charleston, South Carolina
June 30, 2011



J. C. Nicholson, Jr.
Presiding Judge
Ninth Judicial Circuit

The South Carolina Court of Appeals

Amber Johnson,

Respondent,

v.

Stanley E. Alexander, Mario S. Inglese
and Mario S. Inglese, PC,

Defendants,

Of Whom Stanley E. Alexander is the,) Appellant,

Marios S. Inglese and Mario S. Inglese,
PC,

Third Party Plaintiff,

v.

Charles Feeley,

Third Party Defendant.

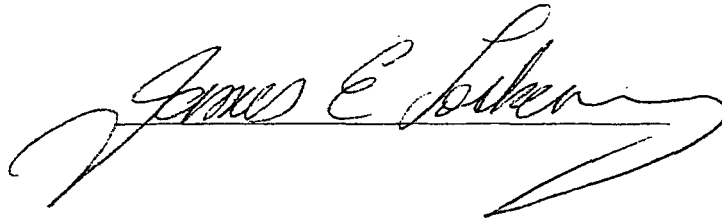
The Honorable J. C. Nicholson, Jr.
Charleston County
Trial Court Case No. 2009-CP-10-06529

ORDER

Appellant has filed a motion to remand for reconstruction of the record. In his motion, Appellant explains that the South Carolina Court Administration is unable to locate the records and tape from the first day of the hearing. Respondent filed a return. After careful consideration, Appellant's motion is granted. This Court will hold this appeal in abeyance and partially remand this action to the circuit court for a reconstruction hearing. Appellant shall provide this Court with a status report in thirty days, and every thirty days thereafter, until resolution of the remand.

IT IS SO ORDERED.

Columbia, South Carolina

A large, stylized handwritten signature in black ink, appearing to read "James E. Lukan". The signature is written over a horizontal line.

cc: Joel W. Collins, Jr., Esquire
Robert F. Goings, Esquire
Justin S. Kahn, Esquire
Mary L. Arnold, Esquire

FILED
W. Carter 4/2/10

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Amber Johnson,

Plaintiff,

vs.

Stanley E. Alexander, Mario S. Inglese and
Mario S. Inglese, P.C.,

Defendants.

vs.

Charles Feeley,

Third-Party
Defendant

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION No.: 2009-CP-10- 6529

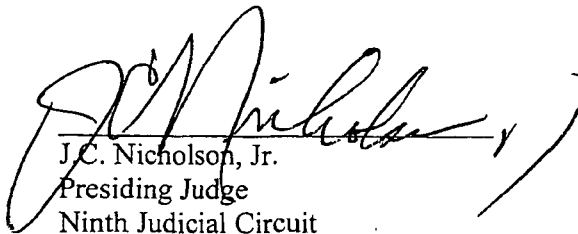
**CONSENT ORDER ON REMAND TO
RECONSTRUCT THE RECORD**

FILED
2012 JUN 18 PM 4:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before the Court on an order dated April 2, 2012 from the South Carolina Court of Appeals to reconstruct the record from the May 9, 2011 hearing on Plaintiff's Motion for Partial Summary Judgment. With agreement of the parties, the Court hereby finds as follows:

For purposes of reconstructing the record of the hearing of May 9, 2011, arguments presented to the Court on May 9, 2011 were contained in the filings made in the Court as of that date along with those contained in Stanley Alexander's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment dated May 25, 2011. Those filings shall serve as a reconstruction of the proceeding before the court on May 9, 2011.

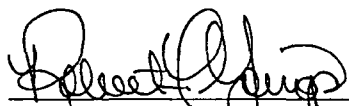
IT IS SO ORDERED.


J.C. Nicholson, Jr.
Presiding Judge
Ninth Judicial Circuit

June 18, 2012

Charleston, South Carolina

WE CONSENT:



JOEL W. COLLINS, JR.
COLLINS & LACY, P.C.
jcollins@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (phone)
(803) 771-4484 (facsimile)

ROBERT F. GOINGS
GOINGS LAW FIRM, LLC
rgoings@goingslawfirm.com
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
(803) 350-9230 (phone)
(877) 789-6340 (facsimile)

Date: June 13, 2012

ATTORNEYS FOR DEFENDANT
STANLEY E. ALEXANDER

WE CONSENT:



JUSTIN S. KAHN
KAHN LAW FIRM, LLC
jskahn@kahnlawfirm.com
Post Office Box 31397
Charleston, South Carolina 29417
(843) 577-2128 (phone)

MARY L. ARNOLD
MARY LEIGH ARNOLD, PA
749 Johnnie Dodds Blvd., Ste. b
Mount Pleasant, South Carolina 29464
(843) 971-6053 (phone)
(843) 971-6055 (facsimile)

Date: June 16, 2012

ATTORNEYS FOR PLAINTIFF
AMBER JOHNSON

State of South Carolina)
)
County of Charleston)

Court of Common Pleas
Ninth Judicial Circuit
09-CP-10- 6529

Amber Johnson,)
)
Plaintiff,)
)
vs.)
)
Stanley E. Alexander, Mario S.)
Inglese, and Mario S. Inglese, PC)
)
Defendants.)
)
_____)

Complaint
(Negligence, Breach of Contract)

JURY TRIAL DEMANDED

FILED
2009 OCT 15 PM 4:21
JULIE J. AUSTIN
CLERK OF COURT
BY _____

Plaintiff, Amber Johnson, complaining of the Defendants, Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, PC would respectfully show unto the Court as follows:

1. Plaintiff is a citizen and resident of the State of Florida.
2. Defendant Stanley E. Alexander, is upon information and belief, a citizen and resident of Charleston County, South Carolina, and is an attorney licensed to practice law in this State.
3. Defendant Mario S. Inglese, is upon information and belief, a citizen and resident of Charleston County, South Carolina, and is an attorney licensed to practice law in this State.
4. Defendant Mario S. Inglese P.C., is upon information and belief, a professional corporation organized and existing under the laws of South Carolina with its principal place of business in Charleston County, South Carolina.
5. Defendant, Alexander accepted the representation of Plaintiff to conduct a closing with regard to the purchase of certain real property located at 2640 Ranger Drive, North Charleston, South Carolina.

6. On information and belief, Defendant Alexander retained the professional services of Defendants Mario S. Inglese and Mario S. Inglese, PC, to conduct a title search of the subject property to ensure that Plaintiff was receiving good and marketable title (a fee simple estate), all of which was for the benefit of Plaintiff. Defendant Alexander hired and paid Defendants for their professional services for the benefit of Plaintiff. (See Exhibit A attached hereto.)
7. A real estate closing took place in September 2006 in the offices of Defendant, Alexander.
8. Defendant, Alexander prepared a title to real estate warranting good and marketable title to the subject property to Plaintiff.
9. Several months after the closing and unknown to the Plaintiff at the time, in December of 2006, the subject property was transferred by virtue of a Tax Deed for past due taxes due and owing for the year 2004.
10. Sometime thereafter, Plaintiff was notified that title to the property had transferred to another entity as a result of the Tax Deed.

FOR A FIRST CAUSE OF ACTION

(Legal Professional Negligence)

11. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
12. At all times relevant hereto, an attorney-client relationship existed between Plaintiff and Defendants for various reasons including they were paid to render legal services for the benefit of Plaintiff.
13. By virtue of their attorney client relationship, Defendants owed duties to Plaintiff,

including the duty to protect, preserve and advance the rights and interests of Plaintiff by possessing and exercising that degree of care, skill, and learning which other reasonable and competent attorneys would be expected to possess and exercise under the same or similar circumstances.

14. Defendants had professional duties to properly and fully examine the title to the relevant property, including reviewing all tax records for past due taxes or taxes that may be due and owing or otherwise not subject to tax sale or execution.
15. Defendants had professional duties to meet the standard of care in conducting real estate closings, including determining the status of the property with regard to the tax sale that had taken place before going forward with the closing on the property.
16. Defendants had professional duties to ensure that Plaintiff was receiving good and clear title to the subject property free of any encumbrances, liens or clouds on title before conducting the closing and if there was a problem after the closing, to correct said deficiencies and/or advise Plaintiff how to correct said deficiencies.
17. Defendants failed to meet the minimum standard of care thereby breaching their professional duties to Plaintiff and otherwise acted in a negligent, grossly negligent, willful, wanton or reckless manner by failing to protect, preserve and advance the rights and interests of Plaintiff.
18. Defendants failed to meet the minimum standard of care thereby breaching their professional duties to Plaintiff by other such particulars as the evidence in this case may demonstrate.
19. As a direct and proximate result of Defendants' breach of their professional duties

by the actions and omissions as specified herein, Plaintiff sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

20. In addition to the actual, consequential, and incidental damages suffered, Plaintiff is informed and believes that Defendants' highly reckless, wanton, and irresponsible conduct as specified in certain causes of action in this Complaint entitle Plaintiff to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

21. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
22. Defendants were in a fiduciary relationship with Plaintiff.
23. Defendants owed Plaintiff fiduciary duties of a very delicate, exacting and confidential nature, requiring a high degree of fidelity and good faith, undivided loyalty, and competence, as well as the duty to act single-mindedly in preserving, protecting, and advancing the rights and interests of Plaintiff.
24. Defendants had fiduciary duties to Plaintiff to ensure she was receiving good marketable title without liens, encumbrances or clouds on title before conducting the closing and if there was a problem after the closing, to correct said deficiencies and/or advise Plaintiff how to correct said deficiencies.
25. Defendants failed to meet the minimum standard of conduct thereby breaching their fiduciary duties to Plaintiff and otherwise acted in a manner inconsistent with the fiduciary duties to Plaintiff.

26. As a direct and proximate result of Defendants' breach of their fiduciary duties by the actions and omissions as specified herein, Plaintiff sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.
27. In addition to the actual, consequential, and incidental damages suffered, Plaintiff is informed and believes that Defendants' highly reckless, wanton, and irresponsible conduct as specified in certain causes of action in this Complaint entitle Plaintiff to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

28. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.
29. Defendants entered into a contract with Plaintiff, the terms of which Defendants agreed and contracted to provide competent and prudent legal services.
30. Plaintiff fulfilled all necessary preconditions, if any, of the contract with Defendants.
31. By virtue of their contract, Defendants owed duties to Plaintiff, including the duty to protect, preserve and advance the rights and interests of Plaintiff by possessing and exercising that degree of care, skill, and learning which other reasonable and competent attorneys would be expected to possess and exercise under the same or similar circumstances.
32. Defendants failed to meet the minimum standard of care thereby breaching their contractual duties to Defendants and otherwise acted in a negligent, grossly

negligent, willful, wanton and reckless manner.

33. Defendants failed to meet the minimum standard of care thereby breaching their contractual duties to Plaintiff by other such particulars as the evidence in this case may demonstrate.
34. As a direct and proximate result of Defendants breach of their contractual duties by the actions and omissions as specified herein, Plaintiff sustained actual, consequential, incidental, and special damages in an amount to be determined by the jury at the trial of this case.

TRIAL BY JURY.

35. Plaintiff demands a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

36. Pursuant to S.C. CODE ANN. § 15-36-100(B) (2006), attached hereto and incorporated herein by reference as Exhibit 2, is the affidavit of John Brown, Esq., an attorney licensed in South Carolina who is qualified render opinions relevant as to the acceptable conduct of the professionals whose conduct is at issue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, for all actual damages, consequential damages, special damages, and incidental damages, for disgorgement of attorney's fees paid in the underlying action, for prejudgment interest, and for punitive damages, all in an amount to be more specifically proven at trial, and the costs of this action, and for such other and further relief as this Honorable Court may deem just and proper.

Submitted By:

MARY LEIGH ARNOLD, P.A.

Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mount Pleasant, SC 29464
(843) 971-6053
Attorney for Plaintiff

and

Justin Kahn, Esquire
KAHN LAW FIRM
P.O. Box 31397
Charleston, S.C 29417
(843) 577-2128
Attorneys for Plaintiff

October 15, 2009

EXHIBIT 1

STAN ALEXANDER
ATTORNEY AT LAW - ESCROW ACCOUNT
3010 WATERWAY BLVD.
ISLE OF PALMS, SC 29451

CAROLINA FIRST
ISLE OF PALMS, SC 29451

67-219/539

9/14/2006

5607

PAY
TO THE
ORDER OF Ingles Law Offices

\$ 195.00

One Hundred Ninety-Five and 00/100

DOLLARS

Ingles Law Offices
445 Folly Road
Charleston, S.C. 29412


AUTHORIZED SIGNATURE

MEMO Title work - 2840 Ranger Drive

Date 10-04-2006 Account [REDACTED] Serial 5607 Amount 195.00 TR 5390219 Sequence 35869900 BankNum 1 TranCode 0 DbDr D;

67-219/539

2541500

0000019500

PAY TO THE ORDER OF
FIRST FEDERAL BANK
FOR DEPOSIT ONLY
MARIO S. INGLES, PO
OPERATING ACCOUNT
ACCT. [REDACTED]

EXHIBIT 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
IN THE MATTER OF:)
STANLEY EUGENE ALEXANDER and)
MARIO INGLESE)

AFFIDAVIT OF JOHN G. BROWN II ESQUIRE

PERSONALLY APPEARED before me the undersigned, after being duly sworn, depose and says:

1. I am a licensed attorney in the State of South Carolina, and have been practicing law since 1998.
2. For approximately the last six (6) years, my practice has focused on real estate matters and conducting real estate closings.
3. I received my Juris Doctorate degree from the University of South Carolina School of Law and was Admitted to practice law in South Carolina in 1997. I have remained in good standing since my admission.
4. I am familiar with the standards, procedures and accepted practices to which real estate lawyers and their staff are required to adhere in performing their professional duties at all times relevant.
5. I have reviewed the foreclosure complaint filed by The Bank of New York for the Certificate holders CWABS, Inc., Asset-Backed Certificates Series 2006-23, the Answer submitted on behalf of Defendants Amber Johnson, Charleston County, Mary Scarborough, as Delinquent Tax Collector for Charleston County, Responses to Local Civil Rule 26.01 Interrogatories and documents provided by Mr. Stanley Alexander relating to the subject closing.
6. On September 14, 2006, Mr. Stanley Alexander, a licensed South Carolina attorney, conducted a closing for Amber Johnson relating to real property generally described as 2640 Ranger Drive, North Charleston, South Carolina.
7. According to the papers reviewed, Mr. Alexander used and relied upon the Inglese Law Offices and Mr. Mario Inglese to conduct a title review concerning the property at issue. It appears that Mr. Alexander wrote a check to Inglese Law Offices for title work associated with 2640 Ranger Drive.
8. In order to consummate the purchase Ms. Johnson executed a Note and Mortgage in

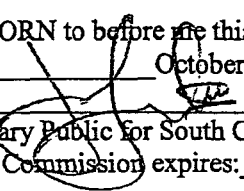
the amount of \$75,000 in favor of the original lender for property and the deed prepared by Mr. Alexander provided that Ms. Johnson was receiving good, clear and marketable title.

9. Sometime after the closing, it was learned that the subject property was sold on or about October 3, 2005 by the Delinquent Tax Collector for Charleston County for failure to pay 2004 Charleston County real property taxes for the subject real property.
10. Through a legal process, the subject property was conveyed to Westwood Properties, LLC by way of a Tax Deed dated December 12, 2006. This deed was recorded December 13, 2006 in the Charleston County RMC Office in Book N608 at Page 628.
11. Although there may be more acts of negligence, Stanley Alexander and Mario Inglese departed from the applicable standard of care by failing to discover and address the tax sale concerning the property at issue and address that matter before allowing Ms. Amber Johnson to close on the property.
12. Based upon the forgoing, it is my opinion to a reasonable degree of legal certainty, most probably, that the legal services rendered to Ms. Johnson by Stanley Alexander and Mario Inglese of the Inglese Law Firm fell below and departed from the accepted standard of care.
13. It is further my opinion to a reasonable degree of legal certainty, that the failure of either Stanley Alexander or Mario Inglese to discover and timely address the issues concerning the tax sale related to the non-payment of taxes concerning the subject property, that resulted in the deeding of the subject property to another entity is a proximate cause of Ms. Johnson's damage, loss of the subject property and other damage and losses, including being a defendant and having to defend herself in a lawsuit.

AFFLIANT FURTHER SAYETH NAUGHT.


John G. Brown II

SWORN to before me this 8 day
of October, 2009


Notary Public for South Carolina

My Commission expires: July 23, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Amber Johnson,	)	CIVIL ACTION NUMBER: 09-CP-10-6529
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER AND CROSSCLAIM OF
	)	DEFENDANT STANLEY E. ALEXANDER
Stanley E. Alexander, Mario S. Inglese, and	)	(Jury Trial Demanded)
Mario S. Inglese, PC,	)	
	)	
Defendants.	)	
	)	

FILED
MAR -5 PM 3:29
CLERK OF COURT

Defendant Stanley E. Alexander, by and through his undersigned counsel, answers the Complaint of Plaintiff Amber Johnson by denying each and every allegation not hereinafter specifically admitted, demands strict proof and asserts the following crossclaims against Mario S. Inglese and Mario S. Inglese, P.C. as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Admits the allegations contained in Paragraph 1 of the Complaint.
2. Admits the allegations contained in Paragraph 2 of the Complaint.
3. Admits the allegations contained in Paragraph 3 of the Complaint.
4. Admits the allegations contained in Paragraph 4 of the Complaint.
5. Admits the allegations contained in Paragraph 5 of the Complaint.
6. Admits the allegations contained in Paragraph 6 of the Complaint.
7. Admits the allegations contained in Paragraph 7 of the Complaint.
8. Admits so much of Paragraph 8 that Defendant prepared title documentation

subject to the real estate closing. Defendant denies the remaining allegations contained in Paragraph 8 and demands strict proof thereof.

9. Admits the allegations contained in Paragraph 9 of the Complaint.
10. Admits the allegations contained in Paragraph 10 of the Complaint.
11. The allegations contained in Paragraph 11 are procedural in nature and Defendant need not answer; however, to the extent an answer is required, Defendant denies the allegations contained in Paragraph 11 and demands strict proof thereof.
12. Defendant admits the allegations contained in Paragraph 12 of the Complaint.
13. Defendant admits the allegations contained in Paragraph 13 of the Complaint.
14. Defendant admits the allegations contained in Paragraph 14 of the Complaint.
15. Defendant admits the allegations contained in Paragraph 15 of the Complaint.
16. Defendant admits the allegations contained in Paragraph 16 of the Complaint.
17. Defendant denies the allegations contained in Paragraph 17 and demands strict proof thereof.
18. Defendant denies the allegations contained in Paragraph 18 and demands strict proof thereof.
19. Defendant denies the allegations contained in Paragraph 19 and demands strict proof thereof.
20. Defendant denies the allegations contained in Paragraph 20 of the Complaint and demands strict proof thereof.
21. The allegations contained in Paragraph 21 are procedural in nature and Defendant need not answer; however, to the extent an answer is required, Defendant denies the allegations contained in Paragraph 21 and demands strict proof thereof.
22. Defendant admits the allegations contained in Paragraph 22 of the Complaint.
23. Defendant admits the allegations contained in Paragraph 23 of the Complaint.

24. Defendant denies the allegations contained in Paragraph 24 and demands strict proof thereof.

25. Defendant denies the allegations contained in Paragraph 25 and demands strict proof thereof.

26. Defendant denies the allegations contained in Paragraph 26 of the Complaint and demands strict proof thereof.

27. Defendant denies the allegations contained in Paragraph 27 of the Complaint and demands strict proof thereof.

28. The allegations contained in Paragraph 28 are procedural in nature and Defendant need not answer; however, to the extent an answer is required, Defendant denies the allegations contained in Paragraph 28 and demands strict proof thereof.

29. Defendant denies the allegations contained in Paragraph 29 of the Complaint and demands strict proof thereof.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint and demands strict proof thereof.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint and demands strict proof thereof.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint and demands strict proof thereof.

33. Defendant denies the allegations contained in Paragraph 33 of the Complaint and demands strict proof thereof.

34. Defendant denies the allegations contained in Paragraph 34 of the Complaint and demands strict proof thereof.

35. The statement contained in Paragraph 35 is not an allegation of fact to which a response is required.

36. The statement contained in Paragraph 36 is not an allegation of fact to which a response is required. However, to the extent Paragraph 36 relating to the Affidavit of John Brown, Esq. can be deemed an allegation, the same is denied and strict proof thereof is required.

37. Defendant will show that Plaintiff is not entitled to any relief from this Defendant sought in the WHEREFORE paragraph of the Complaint.

FOR A SECOND DEFENSE

38. The Complaint fails to set forth facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

39. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

40. Plaintiff's claims are barred by the doctrine of laches.

FOR A FIFTH DEFENSE

41. Plaintiff's claims are barred by the doctrine of estoppel.

FOR A SIXTH DEFENSE

42. Plaintiff's claims are barred by the doctrine of waiver.

FOR A SEVENTH DEFENSE

43. Plaintiff's claims are barred or otherwise reduced due to Plaintiff's failure to mitigate damages required by law.

FOR AN EIGHTH DEFENSE

44. Plaintiff's claims are barred or otherwise reduced by the doctrine of set-off.

FOR A NINTH DEFENSE

45. Any injuries or damages sustained by the Plaintiff are due to and caused and occasioned by Plaintiff's own negligence, gross negligence, recklessness, willfulness, and wantonness to which the direct and proximate cause of Plaintiff's alleged injuries or damages, if any and without which the same would not have occurred, and therefore, due to the Plaintiff's sole negligence, gross negligence, recklessness, willfulness and wantonness, Plaintiff's claims are barred.

FOR A TENTH DEFENSE

46. Such injuries or losses as Plaintiff sustained, if any, were caused by Plaintiff's assumption of a known risk, and this Defendant pleads Plaintiff's assumption of a known risk as a complete defense of this action.

FOR AN ELEVENTH DEFENSE

47. Such injuries or losses as Plaintiff sustained, if any, were caused by the contributory negligence, carelessness, recklessness, willfulness, and wantonness of the Plaintiff, and this Defendant pleads the Plaintiff's contributory negligence as a complete defense to this action.

FOR A TWELFTH DEFENSE

48. Even if this Defendant was negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's injuries, if any, which is expressly denied, this Defendant alleges Plaintiff's negligence, gross negligence, recklessness, willfulness and wanton conduct contributed to more than fifty percent (50%) to the cause of the accident and, therefore, Plaintiff's claims are barred.

FOR A THIRTEENTH DEFENSE

49. Even if this Defendant was negligent in any respect, which is expressly denied, and even if such conduct on the part of the Defendant operated as a greater than fifty percent (50%) cause of Plaintiff's injuries, if any, which is also denied, this Defendant is entitled to a determination as to the percentage which Plaintiff's negligence, gross negligence, reckless, willful, and wanton conduct contributed to Plaintiff's resulting injuries, if any, and the reduction of any amount awarded to the Plaintiff by an equal amount to the percentage of Plaintiff's own negligence.

FOR A FOURTEENTH DEFENSE

50. Any injuries sustained by the Plaintiff were due to and caused by the sole negligence, error, omission, or conduct of a third party over whom this Defendant had no control, and therefore, this Defendant should not be liable to the Plaintiff in any sum whatsoever.

FOR A FIFTEENTH DEFENSE

51. Plaintiff is not entitled to recover because Defendant had a right to rely on documentation, materials, and statements filed or contained as a matter of public record in Charleston County.

FOR A SIXTEENTH DEFENSE

52. Plaintiff's claims may be barred by the doctrine of unavoidable accident.

FOR A SEVENTEENTH DEFENSE

53. Plaintiff's claims are barred for failure to join an indispensable party.

FOR AN EIGHTEENTH DEFENSE

54. Plaintiff's claims are barred by the doctrine of justification.

FOR A NINETEENTH DEFENSE

55. Plaintiff's claims are barred for a lack of standing.

FOR A TWENTIETH DEFENSE

56. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

FOR A TWENTY-FIRST DEFENSE

57. Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore, Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR A TWENTY-SECOND DEFENSE

58. The U.S. Constitution's Due Process Clause "forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly [do not] represent," *Phillip Morris USA v. Williams*, 127 S.Ct. 1057, 1063 (U.S. 2007), and, therefore, to the extent that Plaintiff seeks an award of punitive damages for potential or speculative harm to non-parties to the present action, such prayer for relief is unconstitutional and must be struck from the pleadings and is otherwise inadmissible at trial.

FOR A TWENTY-THIRD DEFENSE

59. Notwithstanding Defendant's prior defenses incorporating *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424 (2001) and *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408 (2003), and the cases upon which they are based,

in the event the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury's award of actual damages, as explicated within *Exxon Shipping Company v. Baker*, 128 S.Ct. 2605 (2008).

**FOR A TWENTY-FOURTH DEFENSE AND BY WAY OF CROSSCLAIM, IN THE
ALTERNATIVE, AGAINST MARIO S. INGLESE AND MARIO S. INGLESE, P.C.**

60. Defendant Stanley E. Alexander is a citizen and resident of Charleston County, South Carolina, and is an attorney in good standing licensed to practice law in this State.

61. Defendant Mario S. Inglese, is upon information and belief, a citizen and resident of Charleston County, South Carolina and is an attorney in good standing and licensed to practice law in this State. Defendant Mario S. Inglese, P.C. a professional corporation organized and existing pursuant to the laws of the State of South Carolina for the purposes of rendering professional legal services in the State of South Carolina. Defendant Mario S. Inglese and Mario S. Inglese, P.C. are hereinafter collectively referred to as "Inglese."

62. Defendant Stanley E. Alexander makes the following allegations and claims against Inglese in the alternative pursuant to Rule 8 of the South Carolina Rules of Civil Procedure.

63. On or about September 2006, Defendant Stanley E. Alexander contracted with Inglese to conduct a title search attendant to a real estate closing that occurred on or about September 14, 2006 involving real property located at 2640 Ranger Drive in North Charleston, South Carolina ("subject property").

64. Upon information and belief, Inglese, their employee, agent, or assign, performed a title examination on subject property for the benefit or reliance upon Defendant Stanley E. Alexander.

65. Inglese warranted and represented to Defendant Stanley E. Alexander that he properly and fully examined the title to subject property, including a review of all matter of public record, including but not limited to all tax records for past due taxes or taxes that may be due and owing or otherwise not subject to lien, tax sale, or execution.

66. Inglese warranted and represented to Defendant Stanley E. Alexander that the subject property was free of any encumbrances, liens, or deficiencies to title.

67. Defendant Stanley E. Alexander paid Inglese for these services.

FOR A FIRST CROSS CLAIM
(Breach of Contract)

68. The foregoing paragraphs are incorporated by reference as if fully repeated herein.

69. Defendant Stanley E. Alexander entered into a contract with Inglese, through words, actions, and conduct, for him to properly and fully examine the title to subject property and to advise if the subject property was free of any encumbrances, liens, or deficiencies to title.

70. Inglese breached this contract by failing to properly, thoroughly, and fully examine the title to subject property and by failing to advise or disclose that title of the subject property was subject to past due taxes or taxes that may be due and subject to lien, tax sale, or execution.

71. As a result of this breach, Defendant Stanley E. Alexander has suffered direct, incidental, and consequential damages because, upon information and belief, the subject property was transferred by virtue of a tax deed for past taxes due and owing for the year of 2004. Furthermore, Defendant Stanley E. Alexander is entitled to contribution and indemnification from Inglese for any damages suffered or judgment obtained by Amber Johnson.

FOR A SECOND CROSS CLAIM
(Negligent Misrepresentation)

72. The foregoing paragraphs are incorporated by reference as if fully repeated herein.

73. Inglese, through their words, actions, and conduct, represented they properly and fully examined the title and all matter of public record available on the subject property. Inglese further represented the subject property was free of any encumbrances, liens, or deficiencies to title.

74. Upon information and belief, the representations of Inglese were false.

75. Inglese had a pecuniary interest in making these statements and representations about the subject property.

76. Inglese owed Defendant Stanley E. Alexander a duty of care to ensure that information communicated to him was accurate, complete and truthful and Defendant Stanley E. Alexander had a right to rely on the representations of Inglese.

77. Inglese breached this duty through false representations.

78. The false representations by Inglese were the proximate cause of the damages sustained by Defendant Stanley E. Alexander and Plaintiff Amber Johnson. Defendant Stanley E. Alexander is entitled to judgment against Inglese for such amounts to be determined at trial which represents a sum equal to or greater than any judgment awarded to Plaintiff Amber Johnson.

FOR A THIRD CROSS CLAIM
(Breach of Fiduciary Duty)

79. The foregoing paragraphs are incorporated by reference as if fully repeated herein.

80. Defendant Stanley E. Alexander placed a special confidence and trust in Inglese to perform a thorough and proper title examination on subject property and to make representations that title was free of any encumbrances, liens, or deficiencies and Defendant Stanley E. Alexander, in equity, law and good conscience, was entitled to rely on Inglese's performance of these obligations.

81. Inglese owed Defendant Stanley E. Alexander a fiduciary duty.

82. Inglese breached their fiduciary duty owing to Defendant Stanley E. Alexander, and the intended beneficiaries of the real estate closing, by failing to perform a thorough and proper title examination on subject property as a reasonable person, attorney, or fiduciary would be expected to possess and exercise under the same or similar circumstances.

83. As a direct and proximate cause of Inglese's breach, Defendant Stanley E. Alexander has sustained actual, consequential, and special damages and is entitled to judgment against Inglese for such amounts to be determined at trial which represents a sum equal to or greater than any judgment awarded to Plaintiff Amber Johnson.

FIRST A FOURTH CROSS CLAIM
(Equitable Indemnification)

84. The foregoing paragraphs are incorporated by reference as if fully repeated herein.

85. Defendant Stanley E. Alexander and Inglese had a special relationship, incumbent with a fiduciary status and a duty of care which other reasonable and competent attorneys would be expected to possess and exercise under the same or similar circumstances, which imposes, as a matter of equity, an obligation on Inglese to indemnify Defendant Stanley E. Alexander for any sum he is required to pay to Plaintiff Amber Johnson in resolution of this matter, as well as for attorney's fees and other costs of litigation.

86. Because Inglese exposed Defendant Stanley E. Alexander to liability as a result of Inglese's acts or omissions which he did not join and were specifically subcontracted to Inglese to perform, Inglese is obligated to indemnify Defendant Stanley E. Alexander for any sum he is required to pay to Plaintiff in resolution of this matter or by way of judgment, as well as for attorney's fees and other costs of litigation.

WHEREFORE, having fully answered the Complaint of Plaintiff, Defendant Stanley E. Alexander prays for the following relief from this Honorable Court:

- a) Plaintiff takes nothing by this action;
- b) A judgment of dismissal be entered in favor of Defendant Stanley E. Alexander;
- c) A judgment be entered against Defendant Inglese on Defendant Stanley E. Alexander's crossclaims; and
- d) An award of the cost of the suit incurred, attorney's fees, and awarded such other and further relief as the Court deems proper.

Respectfully submitted,
COLLINS & LACY, P.C.

By:


JOEL W. COLLINS, JR., ESQUIRE
jcollins@collinsandlacy.com
ROBERT F. GOINGS, ESQUIRE
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Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (f)

ATTORNEYS FOR DEFENDANT
STANLEY E. ALEXANDER

Columbia, South Carolina

March 4, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Amber Johnson,

Plaintiff,

vs.

Stanley E. Alexander, Mario S. Inglese, and
Mario S. Inglese, PC,

Defendants,

Mario S. Inglese and Mario S. Inglese, PC,

Third-Party Plaintiff,

vs.

Charles Feeley,

Third-Party Defendant

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 09-CP-10-6529

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 DEC -2 PM 1:55

FILED

**DEFENDANT STANLEY E.
ALEXANDER'S ANSWER TO
CROSSCLAIM OF AND THIRD PARTY
COMPLAINT OF DEFENDANTS MARIO
S. INGLESE AND MARIO S. INGLESE,
P.C.
(Jury Trial Demanded)**

Defendant Stanley E. Alexander, by and through his undersigned counsel, answers the crossclaim asserted by Defendants Mario S. Inglese and Mario S. Inglese, P.C. in the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C. by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof and further responding as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Admit the allegations contained in paragraph 83 of the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C.

2. Deny the allegations contained in paragraph 84 of the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C.

3. Deny the allegations contained in paragraph 85 of the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C.

4. Deny the allegations contained in paragraph 86 of the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C.

5. Deny the allegations contained in paragraph 87 of the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C.

6. Deny the allegations contained in paragraph 88 of the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C. This Defendant will further show that any liability was proximately caused by Defendants Mario S. Inglese and Mario S. Inglese, P.C. and Third-Party Plaintiff.

FOR A SECOND DEFENSE

7. The Crossclaim fails to set forth facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

8. The Crossclaim is barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

9. The Crossclaim is barred by the doctrine of laches.

FOR A FIFTH DEFENSE

10. The Crossclaim is barred by the doctrine of estoppel.

FOR A SIXTH DEFENSE

11. The Crossclaim is barred by the doctrine of waiver.

FOR A SEVENTH DEFENSE

12. The Crossclaim is barred or otherwise reduced due to a failure to mitigate damages required by law.

FOR AN EIGHTH DEFENSE

13. The Crossclaim is barred or otherwise reduced by the doctrine of set-off.

FOR A NINTH DEFENSE

14. Any losses or damages sustained by Defendants Mario S. Inglese and Mario S. Inglese, P.C. are due to and caused and occasioned by their own wrongful conduct or acts, negligence, gross negligence, recklessness, willfulness, and wantonness to which the direct and proximate cause of Plaintiff's alleged injuries or damages.

FOR A TENTH DEFENSE

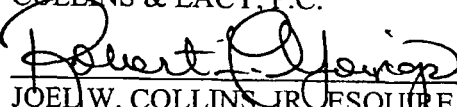
15. To the extent liability is entered against Defendant Stanley E. Alexander, any fault should be apportioned and attributed to Defendants Mario S. Inglese and Mario S. Inglese, P.C. and Third-Party Defendant.

WHEREFORE, having fully answered the Answer, Reply, Crossclaim of and Third Party Complaint of Defendants Mario S. Inglese and Mario S. Inglese, P.C., Defendant Stanley E. Alexander prays for the following relief from this Honorable Court:

- a) A judgment of dismissal be entered in favor of Defendant Stanley E. Alexander;
- b) A judgment be entered against Defendant Inglese on Defendant Stanley E. Alexander's Crossclaims; and
- c) An award of the cost of the suit incurred, attorney's fees, and awarded such other and further relief as the Court deems proper.

Respectfully submitted,
COLLINS & LACY, P.C.

By:



JOEL W. COLLINS, JR., ESQUIRE
jcollins@collinsandlacy.com
ROBERT F. GOINGS, ESQUIRE
rgoings@collinsandlacy.com
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Columbia, South Carolina 29211
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(803) 771-4484 (f)

ATTORNEYS FOR DEFENDANT
STANLEY E. ALEXANDER

Columbia, South Carolina

December 1, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Amber Johnson,

Plaintiff,

vs.

Stanley E. Alexander, Mario S. Inglese, and
Mario S. Inglese, PC,

Defendants.

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 09-CP-10-6529

MOTION TO STAY

FILED
2010 OCT -5 PM 3:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

10-17270
Defendants Stanley E. Alexander, Mario S. Inglese, and Mario S. Inglese, PC, by and through their undersigned counsel, hereby jointly move for an order to stay the above-referenced matter until a final adjudication in a foreclosure action presently pending in this court captioned *The Bank of New York Mellon as Trustee for the Certificateholdings CWABS, Inc., Asset Backed Certificates, Series 2006-23 v. Westwood Properties, LLC, Amber Johnson, and Carla Anderson, 2010-CP-10-4973* ("Foreclosure Action")¹ and a class action for damages for violations of the Fair Debt Collection Practices Act filed in the United States District Court of South Carolina captioned *Johnson v. Korn Law Firm PA & Callison Tighe & Robinson LLC, 2:10-cv-01726-RMG* ("Class Action").

"The court has broad discretion in its supervision over the progression and disposition of a circuit court case in the interests of justice and judicial economy." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 104, 674 S.E.2d 524, 530 (Ct. App. 2009). A continuance or stay is not a drastic remedy, but is preferred in order to obtain the benefit of the outcome of a companion case. Id. "The authority of the court to grant continuances and to determine the order in which

¹ A previous foreclosure action concerning this property was filed prior to the commencement of the present case captioned *The Bank of New York as Trustee for the Certificateholdings CWABS, Inc., Asset Backed Certificates, Series 2006-23 v. Amber Johnson, et. al.*, 2009-CP-10-4488. This matter was dismissed and then refiled.

cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon’s, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980)

The grounds to stay the above-referenced matter based on the interest of justice and judicial economy are as follows:

1. The above-captioned matter is a legal malpractice action. Plaintiff purchased real property described as 2640 Ranger Drive, North Charleston, South Carolina (“subject property”) on or about September 14, 2006. Thereafter, Plaintiff learned the subject property was sold by the Delinquent Tax Collector of Charleston County as a result of the seller’s failure to pay 2004 Charleston County real property taxes. Plaintiff alleges Defendants were involved in the real estate closing. Plaintiff alleges that Defendants breached their duty owed to her by failing to conduct a thorough and accurate title examination which should have discovered a delinquent tax notice and tax sale concerning the subject property.

2. The damages Plaintiff seeks to recover against these Defendants in this legal malpractice are wholly contingent on and directly related to the outcome of the Foreclosure Action. Ex. 1, Plaintiffs’ Supplemental Discovery Responses. As relevant herein, Plaintiff is seeking a judgment as follows:

- (a) Total Principal and Interest of Note and Mortgage for 30 years: \$295,493.98
- (b) Cost of defending the foreclosure action, including attorneys’ fees
(over \$350.00/hr. at \$400.00 per hour)
- (c) Loss of sale of property: \$110,000.00
- (d) Deprivation of Tax Sale proceeds of \$19,000.00 plus interest.

(e) Property with diminished value
(difference between property with a Quit Claim deed without a warranty
and a Fee Simple with General Warranty)

(f) Costs to Quit Title to eliminate Quit Claim deed status

3. Plaintiff's claim for damages alleged in this lawsuit is dependent on the resolution of the Foreclosure Action. Without a final order in the Foreclosure Action, damages sought in this legal malpractice case cannot be reasonably certain, are speculative in nature, and can only result in a double recovery for the Plaintiff. Should the subject property be properly foreclosed, Plaintiff will be unable to claim the alleged indebtedness on the Note and Mortgage to this property. After the foreclosure, any claim or right to recover for the diminished value of the property, the right to recover overage funds resulting from the foreclosure, and the costs to quit title will be determined. Finally, Plaintiff's claim to recover costs and attorneys' fees for defending the foreclosure action cannot accrue until the conclusion of that foreclosure action. The defenses to recovery of attorneys' fees cannot be determined until a resolution of the merits of the Foreclosure Action. In addition, Defendants would be entitled to a set-off for any recovery obtained by Plaintiff in the Foreclosure Action as asserted in their counterclaims.

4. Additionally, Plaintiff's Class Action seeks to recover damages and statutory-based attorneys' fees against the law firms of Korn Law Firm PA & Callison Tighe & Robinson LLC concerning subject property. However, in this legal malpractice action, Plaintiff is seeking to "double dip" and recover the very same damages and attorneys' fees against these Defendants. Ex. 1, Plaintiffs' Supplemental Discovery Responses. In any event, Defendants should be entitled to a set off for any damages she may recover in this Class Action.

WHEREFORE, for these reasons and any additional ground that may be presented to the Court, the above-referenced matter should be stayed pending a final order adjudicating the Foreclosure Action and the Class action filed by Plaintiff.

Respectfully submitted,
COLLINS & LACY, P.C.

By:



JOEL W. COLLINS, JR., ESQUIRE
ROBERT F. GOINGS, ESQUIRE
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(803) 256-2660
(803) 771-4484 (f)
Attorneys for Stanley E. Alexander

Columbia, South Carolina

October 4, 2010

SIMONS & DEAN

By:

fw



DEREK F. DEAN, ESQUIRE
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
(843)-762-9132
(843)-406-9913 (f)
*Attorney for Defendants Mario S. Inglese
and Mario S. Inglese, P.C.*

Charleston, South Carolina

October 4, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

Amber Johnson,

Plaintiff,

vs.

Stanley E. Alexander, Mario S. Inglese, and
Mario S. Inglese, PC,

Defendants.

CIVIL ACTION NUMBER: 09-CP-10-6529

MOTION FOR PROTECTIVE ORDER

2010 OCT 27 PM 2:03
JULIE J. CRONSTRONG
CLERK OF COURT
BY _____

FILED

10-17680

Defendants Stanley E. Alexander, Mario S. Inglese, and Mario S. Inglese, PC, by and through their undersigned counsel, hereby jointly move for a protective order pursuant to Rule 26(c), SCRPC to protect the Defendants from further discovery in this matter until such time as their previously filed Motion to Stay has been heard by the Court. Defendants incorporate by reference as if fully set forth herein the grounds set forth in the Motion to Stay in support for this motion. In particular, Defendants seek protection of the following:

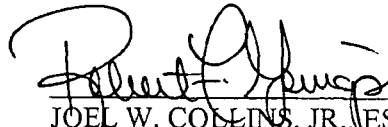
- (a) from appearing for the unilaterally scheduled videotape deposition of Defendants Stanley E. Alexander, Esq. and Mario S. Inglese Esq. on Wednesday, October 27, 2010. A copy of deposition notices are attached hereto as *Exhibit 1*.
- (b) from answering Plaintiff's Discovery Requests and Request to Admit dated October 6, 2010. As copy of these discovery requests are attached hereto as *Exhibit 2*. See Baughman v. Amer. Tel. And Tel. Co., 306, S.C. 101, 109, 410 S.E.2d 537, 542 (1991) (holding that a motion for protective order is an appropriate response of a party upon whom a request for admission is served and operates to prevent the matters from being deemed admitted).

(c) Any further discovery that may be served until the presently pending Motion to Stay is ruled upon.

WHEREFORE, for good cause and in the interest of justice, the Court should issue a protective order to prevent and/or stay discovery served by Plaintiffs.

Respectfully submitted,
COLLINS & LACY, P.C.

By:



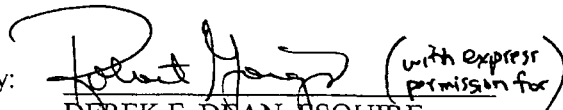
JOEL W. COLLINS, JR., ESQUIRE
ROBERT F. GOINGS, ESQUIRE
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(803) 256-2660
(803) 771-4484 (f)
Attorneys for Stanley E. Alexander

Columbia, South Carolina

October 13, 2010

SIMONS & DEAN

By:



DEREK F. DEAN, ESQUIRE
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(843)-762-9132
(843)-406-9913 (f)
*Attorney for Defendants Mario S. Inglese
and Mario S. Inglese, P.C.*

Charleston, South Carolina

October 13, 2010

EXHIBIT I

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

AMBER JOHNSON,

Case No. 09-CP-10-6529

PLAINTIFF,

V.

PLAINTIFF'S AMENDED NOTICE
OF VIDEOTAPED DEPOSITION
OF
STANLEY E. ALEXANDER

STANLEY E. ALEXANDER, MARIO
S. INGLESE AND MARIO S.
INGLESE, PC,

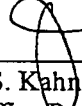
DEFENDANTS.

TO: ROBERT F. GOINGS, ESQ., ATTORNEY FOR DEFENDANT STANLEY E.
ALEXANDER:

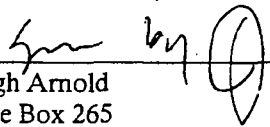
PLEASE TAKE NOTICE that pursuant to the South Carolina Rules of Civil Procedure, commencing on Wednesday, October 27, 2010 at 9:30 a.m., at the Kahn Law Firm, located at 562 Savannah Highway, Charleston, South Carolina, Plaintiff will take the videotaped deposition of Defendant Stanley E. Alexander, Esq. (Alexander), before a duly authorized notary public.

Defendant Alexander is to PRODUCE and bring with him the original file concerning Amber Johnson and the closing he performed and all documents he has reviewed in preparation for the deposition and/or which form a basis of his testimony and defense.

KAHN LAW FIRM


Justin S. Kahn
Post Office Box 31397
Charleston, South Carolina 29417-1397
Telephone (843) 577-2128
Facsimile (843) 577-3538
email to: jskahn@kahnlawfirm.com

MARY LEIGH ARNOLD, P.A.


Mary Leigh Arnold
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Mt. Pleasant, South Carolina 29465
Telephone (843) 971-6053
Facsimile (843) 971-6055
email: Sammie@maryarnoldlaw.com
ATTORNEYS FOR PLAINTIFF
AMBER JOHNSON

Charleston, South Carolina
October 6, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been served upon opposing counsel by United States mail, with sufficient postage affixed thereto this 6th day of October, 2010.

Signed: _____


STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AMBER JOHNSON,

PLAINTIFF,

V.

STANLEY E. ALEXANDER, MARIO
S. INGLESE AND MARIO S.
INGLESE, PC,

DEFENDANTS.

COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No. 09-CP-10-6529

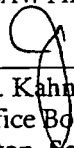
PLAINTIFF'S AMENDED NOTICE
OF VIDEOTAPED DEPOSITION
OF
MARIO S. INGLESE

TO: DEREK F. DEAN, ESQ., ATTORNEY FOR DEFENDANT STANLEY E.
ALEXANDER:

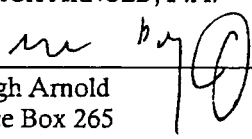
PLEASE TAKE NOTICE that pursuant to the South Carolina Rules of Civil Procedure, commencing on Wednesday, October 27, 2010 at 2:00 p.m., at the Kahn Law Firm, located at 562 Savannah Highway, Charleston, South Carolina, Plaintiff will take the videotaped deposition of Defendant Mario S. Inglese, Esq. (Inglese), before a duly authorized notary public.

Defendant Inglese is to PRODUCE and bring with him all documents he has reviewed in preparation for the deposition and/or which form a basis of his testimony and defense.

KAHN LAW FIRM


Justin S. Kahn
Post Office Box 31397
Charleston, South Carolina 29417-1397
Telephone (843) 577-2128
Facsimile (843) 577-3538
email to: jskahn@kahnlawfirm.com

MARY LEIGH ARNOLD, P.A.


Mary Leigh Arnold
Post Office Box 265
Mt. Pleasant, South Carolina 29465
Telephone (843) 971-6053
Facsimile (843) 971-6055
email: Sammie@maryarnoldlaw.com
ATTORNEYS FOR PLAINTIFF
AMBER JOHNSON

Charleston, South Carolina
October 6, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been served upon opposing counsel by United States mail, with sufficient postage affixed thereto this 6th day of October, 2010.

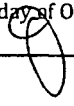
Signed: 

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

AMBER JOHNSON,

Case No. 09-CP-10-6529

PLAINTIFF,

V.

PLAINTIFF'S DISCOVERY
REQUESTS AND REQUEST TO
ADMIT TO DEFENDANTS

STANLEY E. ALEXANDER, MARIO
S. INGLESE AND MARIO S.
INGLESE, PC,

DEFENDANTS.

TO: ROBERT F. GOINGS, ESQ., ATTORNEY FOR DEFENDANT STANLEY E. ALEXANDER AND DEREK F. DEAN, ESQ., ATTORNEY FOR DEFENDANTS MARIO S. INGLESE AND MARIO S. INGLESE, PC:

Pursuant to the SCRCPP, Plaintiff Amber Johnson, requests that Defendants respond to the following discovery request and requests to admit within the time allowed by the applicable rules of civil procedure:

1. Admit that the attached July 13, 2009 letter was signed by Stanley E. Alexander, Esq., the Defendant in this matter.
2. Admit that the statement contained in the attached July 13, 2009 letter, "the property has been out of Ms. Johnson's control, and still is" was true when written.
3. Admit that the statement contained in the attached July 13, 2009 letter "She was put into the situation she is in through no fault of her own" refers to Amber Johnson and is true.
4. Admit that the statement in the attached July 13, 2009 letter, "I was asked if I would buy the title work from the other law firm, and I did." is a false statement.

5. Admit that the statement in the attached July 13, 2009 letter "because of the situation Mrs. Johnson could not rent or resale the house." is a true statement.
6. Admit that the attached check number 5607 is an accurate copy of the front and back of the check issued by the Defendant Stanley Alexander to the Defendant Inglese Law Offices on September 14, 2006.
7. Admit that the attached check was payment Stanley Alexander, Esq. made to Inglese Law Offices for title work Mario S. Inglese, Esq. and/or Mario S. Inglese, PC was to have performed for property located at 2640 Ranger Drive.
8. Admit that Mario S. Inglese, P.C. deposited the check attached in its operating account on or about October 4, 2006.
9. Admit that Defendants performed no title work concerning the property located at 2640 Ranger Drive on or before September 14, 2006.
10. Admit that Defendant Stanley Alexander, Esq. did not inform Amber Johnson in writing of her right to choose a title insurer.
11. Admit that Defendant Stanley Alexander, Esq. did not inform Amber Johnson as to the availability and cost of an owner's type policy from a title insurer at or near the time of the closing at issue in this case.
12. Admit that the property located at 2640 Ranger Drive, North Charleston was sold by Charleston County at a tax sale prior to September 14, 2006 and this information was not disclosed to Amber Johnson by the Defendants on or before the closing that took place on September 14, 2006.

13. Admit that a tax deed was issued by Charleston County and recorded in the Charleston County RMC's office at Book 608 Page 628 in December of 2006 and that tax deed took title to the property out of the name of Amber Johnson.

14. Admit that neither Defendant has taken any action to assist Ms. Johnson in challenging the tax sale or recovering her title to the property located at 2640 Ranger Drive, North Charleston.

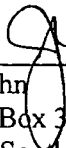
15. Produce a copy of the deposit and business records reflecting that Defendant Mario S. Inglese, PC deposited the attached check into the operating account.

16. Fully set forth the amount of the damages you believe Ms. Johnson has sustained as a result of losing title to the property located at 2640 Ranger Drive.

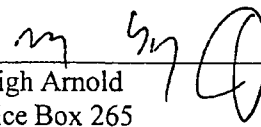
17. Should any of the requests to admit above not be unqualifiedly admitted, please produce all documents supporting the failure to admit said items and explain the basis of denying the same.

18. Produce a copy of all applications for and reapplications for legal malpractice coverage that the Defendants have made in the last 4 years.

KAHN LAW FIRM


Justin S. Kahn
Post Office Box 31397
Charleston, South Carolina 29417-1397
Telephone (843) 577-2128
Facsimile (843) 577-3538
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MARY LEIGH ARNOLD, P.A.


Mary Leigh Arnold
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Facsimile (843) 971-6055
email: Sammie@maryarnoldlaw.com
ATTORNEYS FOR PLAINTIFF
AMBER JOHNSON

Charleston, South Carolina
October 6, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been served upon opposing counsel by United States mail, with sufficient postage affixed thereto this 6th day of October, 2010.

Signed: 

STANLEY E. ALEXANDER
Attorney at Law
1102 Ventura Place
Mount Pleasant, South Carolina 29464
E-mail address: S.ALEXANDER1@COMCAST.NET

PHONE/FAX: (843) 388-9497

MOBILE: (843) 813-7273

July 13, 2009

Florida State Bar Association

Re: Amber Johnson

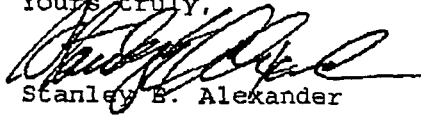
To Whom It May Concern:

I am acquainted with and have done work for Ms. Amber Johnson and I am very impressed with her and I think she would make a fine lawyer.

I have been asked to address the property issue that I understand is causing a problem for Ms. Johnson in regards to taking the bar exam. I was asked by a mortgage broker, who I have known for some time, if I would close a loan for some friends of hers. She apparently was friends of Ms. Johnson's parents. She informed me that another law firm was supposed to close the loan, but for some reason had to back out. I was asked if I would buy the title work from the other law firm, and I did. The loan closed on September 14, 2006; shortly thereafter we were told that the property had been sold at a tax sale the year before and had now been deeded to the new owner. Unfortunately because of the situation Ms. Johnson could not rent or resale the house. Likewise because of the litigation with the title insurance company the property has been out of Ms. Johnson's control, and still is. She was put into the situation she is in through no fault of her own.

If you need any further information from me, or if you have any questions, please do not hesitate to call.

Yours truly,

A handwritten signature in dark ink, appearing to read "Stanley B. Alexander", written over the typed name.

Stanley B. Alexander

69

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

AMBER JOHNSON,

Case No. 09-CP-10-6529

PLAINTIFF,

v.

PLAINTIFF'S NOTICE AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT

STANLEY E. ALEXANDER,
MARIO S. INGLESE AND MARIO
S. INGLESE, PC,

DEFENDANTS.

TO: ROBERT F. GOINGS, ESQ., ATTORNEY FOR DEFENDANT
STANLEY E. ALEXANDER, ESQ.:

PLEASE TAKE NOTICE that at such time and place as may be set by the Court, no sooner than 10 days from the date hereof, Plaintiff Amber Johnson will move before the Court for an order granting partial summary judgment in her favor. The basis for this request is outlined below and also based upon the attached documents.

2011 JAN 14 PM 2:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY *Julie J. Armstrong*

FILED

Summary Judgment is Proper Because Alexander Admits Duties and Breaches Thereof Resulting in Damage to Johnson.

Plaintiff Ms. Amber Johnson moves, pursuant to SCRC, Rule 56 for partial summary judgment as to liability, including causation as to Defendant Stanley Alexander, Esq. Summary judgment is proper because Mr. Alexander's own sworn testimony and admissions establish liability and causation. Summary judgment is proper when there is no genuine issue of material fact. As Mr. Alexander concedes and admits the duties he owed were breached and other facts relevant to the motion, partial summary judgment in favor of Ms. Johnson as to Mr. Alexander's liability and causation is proper.

Alexander Represented Ms. Johnson at a Real Estate Closing

It is not disputed that Mr. Alexander represented Ms. Amber Johnson in a real estate closing. Depo. Alexander, p. 9. (See Ex. A attached – Stanley Alexander's Deposition.) Ms. Johnson purchased property at that closing. Shortly after the closing, it was realized that the property had been previously sold at a tax sale the year before and had been deeded to a new owner. Depo. Alexander, p. 12, 9-13. (Ex. A.)

Alexander Failed to Ensure Johnson Got Property Free and Clear.

Mr. Alexander concedes he had a duty to make sure Ms. Johnson got the purchased property free and clear with good and marketable title. He failed to

ensure that Ms. Johnson got the property free and clear with good and marketable title. As a result, Ms. Johnson has damages flowing from Mr. Alexander's breaches.

Johnson Suffered As A Result Thereof

As a result of Alexander's negligence, Johnson failed to get the property, and had resulting damage. For example, Ms. Johnson could not rent or resale the house and property. Depo. Alexander, p. 14. (Ex. A.)

ARGUMENT

The following is admitted by Mr. Alexander's sworn testimony:

Duty of Alexander

1. Alexander had a duty or responsibility to make sure Ms. Johnson got the property free and clear with good and marketable title. Alexander Depo. p. 102, lines 13-16; p. 16, lines 16-20. (Ex. A.)
2. As a result of the closing conducted by Alexander, Ms. Johnson was supposed to get good and marketable title. Alexander Depo. p. 16, lines 4-6 and lines 16-24. (Ex. A.)

Breach/Failure by Alexander

3. There was a failure in the title and Ms. Johnson did not get a marketable title to the property. Alexander Depo. p. 16, lines 7-12. (Ex. A.)
4. As a result of the failure of title, Ms. Johnson could not sell the house or convey clear title. Alexander Depo. pp. 14-15. (Ex. A.)

Proximate Cause Resulting in Damage to Johnson

5. Ms. Johnson suffered direct, incidental and consequential damage as a result of the subject property being transferred by virtue of the tax deed. Depo Alexander, p. 98, lines 9-15. (Ex. A.)
6. Because of this situation, Ms. Johnson could not rent or resale the house. Depo. Alexander, p. 14, 14-17 (Ex. A.) and letter. (Ex. B.)
7. Mr. Alexander testified that because of the tax deed, Ms. Johnson could not sell, rent or dispose of the property. Depo. Alexander, pp. 19-20. (Ex. A.)

Reliance by Johnson on Alexander

8. Ms. Johnson relied upon Alexander telling her she was getting good and marketable title. Depo. Alexander, p. 99. (Ex. A.)

Foreseeable

9. It is foreseeable that a purchaser would end up in litigation concerning the property problems, need to hire a lawyer and incur costs associated with that litigation. Depo. Alexander, pp. 17-18. (Ex. A.)
10. Mr. Alexander testified that it was foreseeable that the purchaser would be "in some litigation or negotiation to get the problem resolved." Depo. Alexander, p. 18, lines 22-24. (Ex. A.)

No Fault of Johnson

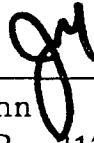
11. Ms. Johnson was put into the situation through no fault of her own and because of the litigation the property has been out of Ms. Johnson's control. Depo. Alexander, Ex. 2 thereto (Letter by Stanley E. Alexander Dated July 13, 2009 attached as Ex. B).

Additionally, Ms. Johnson's expert has not been refuted. Thus, liability and causation has been established.

CONCLUSION

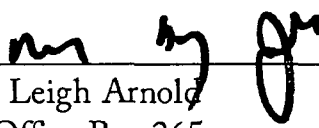
As the Defendant Alexander has admitted that he had certain duties that he breached and that resulted in damage, the Court should grant Ms. Johnson's motion for partial summary judgment as to liability. Following the grant of partial summary judgment, the court should set a hearing on damages.

KAHN LAW FIRM, LLC



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ATTORNEYS FOR PLAINTIFF
AMBER JOHNSON

Charleston, South Carolina
January 13, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing has been served upon all counsel by United States mail, with sufficient postage affixed thereto this 13th day of January 2011.

Signed:  _____

EXHIBIT A

1 STATE OF SOUTH CAROLINA)
2 : IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) Case No. 2009-CP-10-6259
3 AMBER JOHNSON,)
4 Plaintiff,))
5 -vs-) VIDEOTAPED DEPOSITION OF:
6 STANLEY E. ALEXANDER,) STANLEY E. ALEXANDER, ESQ.
7 MARIO S. INGLESE AND)
MARIO S. INGLESE, PC,)
8 Defendants.)

COPY

9
10
11
12
13 Given before Raymond E. Swartz, Notary
14 Public and Certified Court Reporter, in the Kahn Law
15 Firm, 562 Savannah Highway, Charleston, South Carolina on
16 Thursday, December the 16th, 2010, commencing at 10:25
17 o'clock, a. m.
18
19
20
21
22
23

24
25

RAYMOND E. SWARTZ, CSR
Professional Court Reporter
"A Timeless Standard of Excellence"

1 A Yes.

2 Q Alright, this is a letter you wrote?

3 A Yes.

4 Q And you recognize it as a accurate copy of a
5 letter you wrote?

6 A Yes.

7 Q In this letter you state that -- and this is a
8 letter you wrote to the Florida State Bar Association, or
9 for the Florida State Bar Association?

10 A Yes.

11 Q And it was concerning Amber Johnson, who is the
12 plaintiff in this matter?

13 A Yes.

14 Q And in the letter you state that you are
15 acquainted with and have done work for Mrs. Amber
16 Johnson? Is that right?

17 A Yes.

18 Q And the work you have done for Amber Johnson in
19 the past is as an attorney for her? Right?

20 A Yes.

21 Q And there is no dispute you were her attorney
22 in the closing that's at issue in this case? Right?

23 A Right.

24 Q And when you stated you had done work for Mrs.
25 Johnson in the past, was that before the closing that

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1 A Yes.

2 Q And you state that the loan was closed on
3 September 14th, 2006, which is the loan related to the
4 particular closing we are talking about? Right?

5 A Correct.

6 Q And that's the date of the closing that you
7 handled?

8 A Yes.

9 Q And you state in there "shortly thereafter we
10 were told that the property had been sold at a tax sale
11 the year before and had now been deeded to the new
12 owner." Do you see that?

13 A Yes.

14 Q When you say shortly thereafter you were told
15 that the property had been sold at a tax sale the year
16 before, at what point in time is that? When were you
17 informed that the property had been sold at a tax sale
18 the year before?

19 A I do not remember exactly.

20 Q And in terms of a frame of reference, it
21 appears that in October of 2006 Mrs. Johnson had a
22 contract to sell her property that she had purchased in
23 September. Were you aware of that? And I'll show you a
24 copy of it.

25 MR. GOINGS: Object to the form of the

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1 2006?

2 A I don't know.

3 Q Okay. How would you define the words shortly
4 thereafter, or what did that mean to you when you wrote
5 this letter? Sometime within a few weeks?

6 A Six months to a year.

7 Q Okay. So sometime under six months to a year
8 was what you mean by shortly thereafter?

9 A Correct.

10 Q If at some time during the deposition some
11 light bulb goes off or you remember what you meant by
12 shortly thereafter, would you stop and let us know?

13 A Yes.

14 Q Alright. And you said "unfortunately, because
15 of this situation Mrs. Johnson could not rent or resale
16 the house." Do you see that?

17 A Yes.

18 Q And that's why I was showing you this contract
19 to see if that refreshed your recollection that you had
20 some kind of awareness that she was unable to sell the
21 house or rent the house because of this. Does that ring
22 any bells?

23 A No. Just because of the situation, I mean, was
24 such she couldn't rent or sell the house.

25 Q And why was that?

RAYMOND E. SWARTZ, CSR
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- 1 A Because there was a failure in the title.
- 2 Q And can you explain that to me, please?
- 3 A Well, if a third party had a deed to it, she
- 4 couldn't convey title at that time.
- 5 Q I'm sorry, say that again?
- 6 A If a third party had a deed to the property,
- 7 the people that bought it at the tax sale...
- 8 Q Okay.
- 9 A ...she could not convey a clear title.
- 10 Q Alright. Because the tax deed had been issued
- 11 to Westwood, Amber Johnson no longer had the ability to
- 12 deed or do anything with the property? Right?
- 13 A Well, that's actually really not true because
- 14 just like any liens, they could have paid them off and
- 15 got the title.
- 16 Q But at the time that Westwood had the deed to
- 17 the property Amber Johnson doesn't have any rights to the
- 18 property? Right?
- 19 A Well, I think she had as much rights as they
- 20 had to the property. She had a deed from the rightful
- 21 owner.
- 22 Q Okay.
- 23 A And the rightful owner gave her a deed saying
- 24 that there was no problem with the property.
- 25 Q Okay. So your understanding was that when Mrs.

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1 Johnson bought this property she was to get a fee simple
2 title from the seller?

3 A Certainly.

4 Q Right? And she was supposed to have good and
5 marketable title?

6 A Correct.

7 Q And she in fact did not get good and marketable
8 title? Correct?

9 A No.

10 Q I'm not correct, or no, she didn't get it?

11 A I'm saying she didn't get a marketable title to
12 it.

13 Q Alright. And you were hired, or you were her
14 attorney for this closing? Right?

15 A Correct.

16 Q And you had responsibility to make sure that
17 she got good and marketable title? Correct?

18 MR. GOINGS: Object to the form of the
19 question.

20 A Correct.

21 Q And that's one of the responsibilities of a
22 lawyer handling the closing, representing a purchaser?
23 Right?

24 A Correct.

25 Q And in 2006 a lawyer practicing good and

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1 prudently would, while representing a purchaser, would
2 make sure that the purchaser is getting good and
3 marketable title? Correct?

4 MR. GOINGS: Object to the form of the
5 question.

6 Q Is that correct?

7 A Well, that would be your job, sure.

8 Q The -- and if a purchaser doesn't get good and
9 marketable title to the property it can cause the
10 purchaser problems? Correct?

11 A Yes, it can.

12 Q And what are some of the kinds of problems it
13 can cause that purchaser?

14 A Well, I wouldn't -- well, it would depend, I
15 guess on the circumstances. I wouldn't begin to say
16 what.

17 Q Alright.

18 A You know, sometimes you can -- sometimes the
19 problems can be worked out.

20 Q Well, one of the problems that foreseeably
21 could be is that the purchaser could no longer sell or
22 rent the property? Right?

23 A Right.

24 Q And another foreseeable problem is that the
25 purchaser would end up in litigation concerning that?

RAYMOND E. SWARTZ, CSR
1806 Mallard Circle, Moncks Corner, South Carolina 29461
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1 Right?

2 A Right.

3 Q And another foreseeable problem would be that
4 the purchaser would end up needing to hire a lawyer to
5 deal with that litigation? Right?

6 MR. GOINGS: Object to the form of the
7 question.

8 A Yes.

9 Q And another foreseeable problem that could
10 result from that is that the purchaser would have to
11 incur costs associated with that litigation?

12 MR. GOINGS: Objection.

13 A Yeah.

14 Q Another foreseeable problem is that the
15 purchaser's credit could be affected?

16 MR. GOINGS: The same objection.

17 A Well, I wouldn't necessarily say that's a
18 problem.

19 Q Okay. Well, what are the other kinds of
20 problems that are foreseeable as a result of a closing
21 lawyer not giving a purchaser good and marketable title?

22 A Well, the only ones I foresee could be involved
23 in some litigation or negotiation to get the problem
24 resolved.

25 Q Okay. Now, you state in your letter that

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1806 Mallard Circle, Moncks Corner, South Carolina 29461
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1 "Likewise, because of the litigation with the title
2 insurance company the property has been out of Ms.
3 Johnson's control, and still is." Now, can you explain
4 what you meant by that, please?

5 A Well, when I say that, she could not -- well,
6 she could not completely -- she could not sell it to
7 convey title. She could have sold her interest in it but
8 she could not sell the property to a third party, is what
9 I meant.

10 Q Okay.

11 A And she couldn't rent it to a third party.

12 Q She what?

13 A She could not rent it to a third party.

14 Q Okay. She basically couldn't dispose of the
15 property or really make full use of it? Right?

16 A Right.

17 Q In terms of -- and you also put in here that
18 she was put into the situation she is in through no fault
19 of her own. Do you see that?

20 A I do.

21 Q Do you believe that's a true statement?

22 A Well, not completely now. I did not know some
23 of the facts at that time. I mean, I presume she was
24 paying them off and doing anything she could do -- what I
25 was saying was the tax deed was not her problem.

RAYMOND E. SWARTZ, CSR
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1 Q Okay. Or not her fault?

2 A Right. Yeah, not her problem.

3 Q It was her problem?

4 A Yeah.

5 Q And how was this tax deed her problem?

6 A Well, she would still have the property. It
7 was a problem to be resolved.

8 Q The issuance of the tax deed made it such that
9 Mrs. Johnson was no longer able to sell the property?
10 Right?

11 A Correct.

12 Q And the issuance of the tax deed was such that
13 Mrs. Johnson was no longer able to rent the property?

14 A Correct.

15 Q The issuance of the tax deed put Mrs. Johnson
16 in a position where she was going to end up in litigation
17 over all of this?

18 A Well, not necessarily. The lender's title
19 insurance would have straightened it out, which it did,
20 and tried to put the title back in her hands, as I
21 understand it.

22 Q Alright. Well, have you reviewed all of the
23 documents associated with the title insurer's attempt to
24 quitclaim the property back to Mrs. Johnson?

25 A No, I have not.

RAYMOND E. SWARTZ, CSR
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(843) 277-0899 - r_dswartz@homesc.com

1 A Yes.

2 Q And paragraph 47 states as a result of this
3 breach, Alexander has suffered direct, incidental, and
4 consequential damages because, upon information and
5 belief, the subject property was transferred by virtue of
6 a tax deed for past taxes due and owing for the year of
7 2004. Is that a true statement?

8 A Yes.

9 Q And is it fair to say that if you have suffered
10 direct, incidental, and consequential damages because of
11 that, then Mrs. Johnson has suffered direct, incidental,
12 and consequential damages because of that?

13 MR. GOINGS: Object to the form of the
14 question.

15 Q Is that fair?

16 A Yeah.

17 Q Okay. On paragraph 52, on the next page? Do
18 you see that? Paragraph 52, you state Inglese owed
19 Alexander a duty of care to ensure that information
20 communicated to him was accurate, complete and truthful
21 and Alexander had a right to rely on the representations
22 of Inglese? Is that a true statement?

23 A Yes.

24 Q And is it a true statement that Mrs. Johnson
25 had a right to rely on the information you represented to

1 her at the time of closing?

2 A Yes.

3 Q including that -- and one of those
4 representations was that the title she was receiving to
5 the property was good and marketable title? Right?

6 MR. GOINGS: Object to the form of the
7 question.

8 A According to the information I had at the time,
9 yes.

10 Q Alright. And that's what you would have told
11 Mrs. Johnson? Right?

12 A Yes.

13 Q That what she was getting at the time of
14 closing was good and marketable title? Right?

15 A Yes.

16 Q I'm sorry?

17 A Yes.

18 Q And you agree that you had a duty of care to
19 ensure that the information communicated to Mrs. Johnson
20 was accurate, complete and truthful as concerning the
21 title to her property? Right?

22 A I had a duty to give her what I had as the best
23 of my knowledge at the time, yes.

24 Q Or what was capable of being within your
25 knowledge? Right?

RAYMOND E. SWARTZ, CSR
1806 Mallard Circle, Moncks Corner, South Carolina 29461
(843) 277-0899 - r_dswartz@homesc.com

1 Q Okay. And that was not true, was it?

2 A Well, apparently not.

3 Q Okay. The -- as part of -- you have already
4 told us that you agree that you were the attorney for
5 Mrs. Johnson and she was your client? Right?

6 A Right.

7 Q Can you tell me what responsibilities you had
8 to Mrs. Johnson at the time of this attorney/client
9 relationship?

10 A To close her loan transaction for her to the
11 best of my abilities and based on the information I had
12 at the time.

13 Q And you had a duty or responsibility to make
14 sure that she got the property free and clear with good
15 and marketable title? Right?

16 A Right.

17 Q And you -- let's go through this. We were
18 talking about Plaintiff's Exhibit Number 9. You agree
19 that as part of the relationship you had with Mrs.
20 Johnson it was a fiduciary relationship? Right?

21 A Yes.

22 Q And that's one of trust and confidence? Yes?

23 A Yes.

24 Q And a fiduciary relationship means that you
25 have to put the interests of your client above your own

RAYMOND E. SWARTZ, CSR
1806 Mallard Circle, Moncks Corner, South Carolina 29461
(843) 277-0899 - r_dswartz@homesc.com

EXHIBIT B

STANLEY E. ALEXANDER
Attorney at Law
1102 Ventura Place
Mount Pleasant, South Carolina 29464
E-mail address: S.ALEXANDER1@COMCAST.NET

PHONE/FAX: (843) 388-9497

MOBILE: (843) 813-7273

July 13, 2009

Florida State Bar Association

Re: Amber Johnson

To Whom It May Concern:

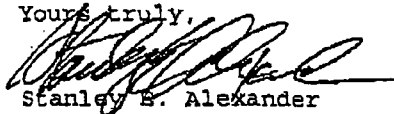
I am acquainted with and have done work for Ms. Amber Johnson and I am very impressed with her and I think she would make a fine lawyer.

I have been asked to address the property issue that I understand is causing a problem for Ms. Johnson in regards to taking the bar exam. I was asked by a mortgage broker, who I have known for some time, if I would close a loan for some friends of hers. She apparently was friends of Ms. Johnson's parents. She informed me that another law firm was supposed to close the loan, but for some reason had to back out. I was asked if I would buy the title work from the other law firm, and I did. The loan closed on September 14, 2006; shortly thereafter we were told that the property had been sold at a tax sale the year before and had now been deeded to the new owner. Unfortunately because of the situation Ms. Johnson could not rent or resale the house. Likewise because of the litigation with the title insurance company the property has been out of Ms. Johnson's control, and still is. She was put into the situation she is in through no fault of her own.



If you need any further information from me, or if you have any questions, please do not hesitate to call.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Stanley B. Alexander', written over the printed name.

Stanley B. Alexander

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Amber Johnson,

Plaintiff,

vs.

Stanley E. Alexander, Mario S. Inglese, and
Mario S. Inglese, PC,

Defendants,

Mario S. Inglese and Mario S. Inglese, PC,

Third-Party Plaintiff,

vs.

Charles Feeley,

Third-Party Defendant

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 09-CP-10-6529

**DEFENDANT ALEXANDER
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

FILED
2011 MAY 25 PM 3:12
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Stanley E. Alexander ("Alexander") submits this memorandum of law in opposition to Plaintiff's Motion for Partial Summary Judgment. Plaintiff moves for summary judgment as to liability.

FACTS

This is a legal malpractice action arising from a real estate closing that occurred in September 2006. Plaintiff Amber Johnson ("Johnson") purchased a single family house located at 2640 Ranger Drive in North Charleston, South Carolina for \$75,000.00. Johnson applied for and obtained 100% financing through a lender.¹ Defendant Mario S. Inglese ("Inglese") was

¹ As discussed below, Johnson submitted a false and fraudulent mortgage application for purposes of obtaining financing to purchase this property. Among other misrepresentations, the application falsely claimed she would be an owner-occupant of the property.

originally scheduled to close the transaction, but due to a conflict, Alexander was requested to serve as the closing attorney. Alexander understood a title search was performed through Inglese. Inglese had hired Attorney Charles Feeley ("Feeley"), who specializes in conducting title examinations in Charleston, South Carolina, to perform the title work. The title report delivered to Alexander showed no encumbrances or liens on the property. The examination report also reflected that all real estate taxes were current and up to date. Documentation from the Charleston County Online Tax System in August 2006 showed that all taxes were current, paid, and with no *nulla bona* amount outstanding. (Exhibit 1, Alexander Affidavit, ex. 2). The escrow ledger from the seller's mortgage company also showed the taxes were paid each year to the Charleston County Tax Assessor's Office. (Exhibit 1, ex. 4, Escrow Ledger).

Approximately four (4) months after the closing, on December 12, 2006, a tax deed was recorded conveying the property to Westwood Properties, LLC following a tax sale by the Delinquent Tax Collector for Charleston County. The sale was purportedly the result of nonpayment of 2004 Charleston County real property taxes. (Exhibit 2, Tax Deed). At the time of the title examination and closing, the prior tax sale would not have been revealed in the chain of title for this property or made publically available in the Charleston County Register Mesne Conveyance (RMC) Office. (Exhibit 3, Feeley Affidavit, ¶ 5). No notice of tax sale or *lis pendens* was filed as a matter of public record that would have given notice of this pending, unrecorded tax sale.

As to the standard of care employed in examining this title, Feeley testified he always performs title examinations with the very same strict routines of practice and habits. (Feeley Aff. ¶ 2). He followed these routine practices when conducting the title examination at issue. (Feeley, ¶ 2). As part of his routine practice, Feeley reviews the Charleston County Online Tax

System website. He performs a "Tax Records Search" query by "Parcel ID (TMS)". The first screen that appears is a 10-year history of the property's tax payments. On each line is a notation that the taxes were either current or delinquent. When he reviews the 10-year tax history screen, evidence of delinquent taxes or a tax sale is shown. If a notation is made, his customary practice is to conduct further inquiry. He would clearly note on the title abstract any evidence of delinquent taxes or a tax sale. Feeley testified he acted in conformity with his routine practice and custom when performing this title examination. Based on his review of the 10-year history of the property's tax records, no back taxes or tax sale was noted on the Charleston County Online Tax System. (Feeley, ¶ 2-3).

Further, Feeley testified title examiners practicing in Charleston County routinely rely upon information contained online from the Charleston County public records website. Physical documentation kept at the Charleston County Tax Collector's office is not readily assessable and is only available pursuant to a Freedom of Information Act request. Submitting a Freedom of Information Act request is generally outside the ordinary practice and standard of care of title examiners in Charleston County. *Id.* at ¶ 4.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law." Bank of N.Y. v. Sumter County, 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010). "[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issue of fact exists, the evidence and all factual inferences drawn from it must be

viewed in a light most favorable to the nonmoving party.” Donahue v. Multimedia, Inc., 362 S.C. 331, 337, 608 S.E.2d 162, 165 (Ct. App. 2005). To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture. McKnight v. S.C. Dep’t of Corrs., 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009). A grant of a motion for summary judgment based on liability is immediately appealable. Nauful v. Milligan, 258 S.C. 139, 187 S.E.2d 511 (1972).

LAW/ANALYSIS

I. Legal Malpractice Standard

In order to prevail in a cause of action for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client’s damages by the breach. Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). “In South Carolina, attorneys are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession,” Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000), and “[t]he standard to be applied in determining legal malpractice issues is statewide,” Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 437–38, 472 S.E.2d 612, 614 (1996). Finally, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony. Id. at 435, 472 S.E.2d at 613.

Legal malpractice or professional negligence is the failure to do what an ordinarily reasonable lawyer would have done under the same or similar circumstances or the doing of something that an ordinary lawyer would not have done under the same or similar circumstances. Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985). Similarly, the defendant’s mistake or error in making a decision alone does not constitute negligence. Hook v. Rothstein, 281 S.C.

541, 316 S.E.2d 690 (Ct. App. 1984), cert. denied, 283 S.C. 64, 320 S.E.2d 35 (1984). The law does not require absolute accuracy either in practice or decision making or hold an attorney to the standard of perfection. Bass v. Farr, 315 S.C. 400, 434 S.E.2d 274 (1993). A decision as to negligence must relate to the facts as they existed at the time, and not in light of what hindsight may reveal.

The Supreme Court of South Carolina has addressed the standard of care of a closing attorney related to the marketability of title to real property in Bass v. Farr, 315 S.C. 400, 434 S.E.2d 274 (1993). The Supreme Court held the fact that an attorney was incorrect as to the ultimate marketability of title did *not* establish negligence. Id. at 404, 434 S.E.2d 274. In so holding, the Court relied on legal precedent reasoning that “liability arise[s] where the attorney *negligently* certifies title” and reminded that “the law does not require that an attorney be infallible and simply because an attorney has made a mistake does not establish negligence or malpractice as a matter of law.” Id.

II. The Failure to Plaintiff to obtain Marketable Title is not Legal Malpractice

Plaintiff’s Motion for Partial Summary Judgment is premised upon a rejected legal theory. Plaintiff contends that since she did not receive the “property free and clear with good and marketable title” then Alexander is negligent. (Pls. MSJ, p. 2-3). This theory of liability is flawed. Plaintiff is attempting to confuse professional malpractice with a “strict liability” standard. Negligence cannot be proven based on the doctrine of *res ipsa loquitur*.² Eickhoff v. Beard-Laney, 199 S.C. 500, 20 S.E.2d 153 (1942); Crider v. Infinger Transportation Co., 248 S.C. 10, 16, 148 S.E.2d 732 (1966). Legal malpractice cannot be based on a failure to obtain a

² “*Res ipsa loquitur* is a rebuttable presumption that the defendant was negligent where an accident is one which ordinarily does not occur in the absence of negligence.” Watson v. Ford, 389 S.C. 434, 699 S.E.2d 169 (2010). This theory of liability is rejected in South Carolina.

specific result. Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000). Rather, the Plaintiff is required to show negligence with reasonable certainty, not through mere conjecture, and based on expert testimony. As stated above, Bass requires actual proof that an attorney performed a title examination and closing in a *negligent* matter. Plaintiff does not set forth any undisputed facts that Alexander was actually negligent in performing his duties as a closing attorney. Thus, summary judgment cannot be granted based on the grounds set forth in Plaintiff's Motion.

III. A Question of Fact Exists Whether Alexander Breached The Standard of Care

Viewing the evidence and all factual inferences in a light most favorable to Alexander, a material issue of fact exists as to whether Alexander's conduct fell below an accepted standard of care. Plaintiff boldly argues that Alexander "concedes and admits" that he is liable. Pl's MSJ p. 2. This is not accurate. Alexander's sworn testimony in his deposition does not concede liability.

Alexander testified that "after this came to light we looked back and it appears the county had made no notes anywhere that it had been sold at a tax sale. Plus, they were accepting current taxes and they don't do that when back taxes are due. So something was not right." (Exhibit 4, Alexander Depo. p. 86-87). He testified that the county "didn't make a note of it [and when] we go back and look at the back taxes and it says paid, period." (Id.) He testified the tax documentation "said paid...it didn't say sold, it said paid...all the tax records said paid." (Id. at 100-101). Alexander further testified his duty as a closing attorney was based on the information he reasonably had to rely upon. (Id. at 98-99). Alexander also stated he handled this closing within the generally accepted standard of care employed by attorneys performing real estate closings in Charleston County. Alexander believes he acted with the degree of knowledge, care,

and skill ordinarily possessed by other attorneys under the same or similar circumstances based on information readily known to him. (Alexander Aff. ¶ 13). Further, the title examination was conducted by an attorney who regularly conducts title examinations in Charleston County. Alexander had a right to rely upon this title examination. The title examination, and information obtained from the Charleston County Online Tax System, did not reveal any delinquent taxes or a prior tax sale.

Further, the existence of the tax sale would not have been disclosed in the chain of title for this property or made publically available in the RMC Office at the time of the title examination or closing because it was not recorded until December 12, 2006. There was no *lis pendens* or any other documentation recorded at the RMC or Clerk of Court's Office that would have placed Alexander, or any other person, on notice of this unrecorded tax sale.

Based on the title examination, the most recent tax notice posted prior to the closing showed that ownership was properly in the name of the seller (Carla Anderson), with the tax status listed as "Current (Paid)" with a "Nulla Bona Amount" of "0.00" and a "CURR Due" amount of "0.00". (Alexander Aff., ¶¶ 7-9). Documentation from the seller's mortgagee also revealed that both the 2004 and 2005 taxes were paid. (*Id.* at ¶ 10). The seller never disclosed to Alexander at any time prior to or during the closing that the property was subject to delinquent taxes and/or a tax sale. (*Id.* at ¶ 5).

The title examiner, Feeley, testified he followed his strict routine practice in examining the property title examination in question. This included reviewing the Charleston County Online Tax System website and performing a "Tax Records Search" query that revealed a 10-year history of the property's tax payments. Feeley testified he acted in conformity with his routine practice and custom when performing this title examination. Based on his review of the

10-year history of the property's tax records, neither back taxes nor the existence of a tax sale were noted on the Charleston County Online Tax System. (Feeley, ¶ 2-3). Feeley's testimony further establishes a genuine issue of material fact.

In addition, Alexander acted solely as the closing attorney. (Alexander Depo. p. 85). Plaintiff knew that Inglese had obtained the title examination and Plaintiff would not be paying for Alexander to perform another title examination. (Alexander Depo. p. 86-88; 120-121; 132-134). Thus, because of Alexander's limited role and the fact that Plaintiff knew the title examination was performed by a previous attorney, a genuine issue of fact exists.

IV. Plaintiff's Expert Testimony Is Insufficient to Establish Liability As a Matter of Law

Typically, a plaintiff in a legal malpractice case must establish the standard of care through admissible expert testimony. Sims v. Hall, 357 S.C. 288, 295-96, 592 S.E.2d 315, 319 (Ct. App. 2003). Plaintiff has not met this requirement.

Plaintiff has retained Attorney John Brown ("Brown") as a liability expert. His testimony fails to establish the standard of care or that a breach of that standard occurred in this case. His opinions are wholly insufficient to establish liability as a result of the alleged failure to conduct a proper title examination. For the following reasons his opinions should be excluded and summary judgment should be denied.

(a) Plaintiff's Expert Admits that If He Was the Closing Attorney that He Would Not have Discovered the Unrecorded Tax Deed

Brown admits that if he was the closing attorney or title examiner then he would not have discovered the encumbrance on the property. He testified as follows:

110

16 Q Mr. Brown, if you were closing this loan, and you had
17 also performed the title examination, how would you
18 have uncovered this issue?

19 A Well, I don't know that I would have.
20 Q So you could have been in the same position as Mr.
21 Alexander?
22 A Absolutely.
23 Q Okay.

111

14 Q So based on the scenario as it happened, as it relates
15 to 2640 Ranger Drive, you could, if you were the
16 closing attorney, be sitting in the same seat as Mr.
17 Alexander today, correct?
18 A I believe I could be.

(Exhibit 5, Jay Brown Depo. p. 110-111).

If Plaintiff's own expert testified that he would not have discovered the unrecorded tax sale, then certainly an issue of fact remains as to whether Alexander was negligent. The standard for liability is what a reasonable attorney would have done under the same or similar circumstances. This admission creates more than a genuine issue of material fact for a finder of fact to weigh the evidence as to whether Alexander's conduct fell below an acceptable standard of care. Simply put, Alexander cannot be found negligent if this title irregularity would have been unavoidable even to Plaintiff's own expert. Brown further admitted that marketable title cannot be guaranteed even with a proper title examination. (*Id.* p. 55-56). He also conceded that public records are not always accurate. (*Id.* p. 56). Thus, liability cannot be established as a matter of law.

**(b) Plaintiff's Expert Cannot Identify Any Negligent Act or Omission,
but Instead Testifies Liability Exists Based on Strict Liability
and/or *Res Ipsa Loquitur***

Plaintiff's expert does not identify a specific negligent act on the part of Alexander or the title examiner. Brown's opinion is based on his belief that a real estate closing attorney has the "absolute duty to ensure that clear and marketable title is conveyed to a purchaser." (Brown Depo. p. 69 -71). Based on his opinion, the mere failure to convey clear and marketable title is

per se legal malpractice. Proof of liability cannot be based on *res ipsa loquitur* and Brown's opinions are contrary to existing South Carolina law. See Bass v. Farr, 315 S.C. 400, 434 S.E.2d 274 (1993). His erroneous legal conclusion based on nothing more than his personal opinions should be excluded. See Nelson v. Piggy Wiggly Central, Inc., No. 4754 (Ct. App. Oct. 20, 2010) (excluding expert testimony at summary judgment that was based on own preferences rather than to the requirements of any law, ordinance, or recognized standard); In re Bausch & Lomb, Inc. Contact Lens Solution Products Liability Litigation, 2009 WL 2750462, *9 (D.S.C., Aug. 26, 2009) (Norton, C.J) ("An expert's subjective, personal beliefs or speculation fail to satisfy the requirement of reliability.").

(c) Plaintiff's Expert lacks the Qualifications to Testify as to the Standards and Procedures of Examining Title to Real Property

The testimony of Plaintiff's expert witness fails to comport with the standards set forth in Watson v. Ford Motor Co., 699 S.E.2d 169, 175 (2010) and Rules 401, 403, and 702 of the South Carolina Rules of Evidence. As stated in Watson, in executing its gatekeeping duties, the trial court must make three key preliminary findings before expert testimony may be considered.

First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Id. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Id. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable. Thus, expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Id. Expert opinions cannot be based on *ipse dixit* [a bare assertion resting on the authority of an individual] of the expert.

In this case, Brown's testimony should be entirely excluded because he fails to satisfy Rule 702, both in terms of expert qualifications and reliability as to how to properly conduct a title examination. Brown has no particular knowledge, skill, experience, training or education in conducting title examinations. Brown began conducting real estate closings in late 2003. (Brown Depo. p. 33). Unlike Alexander or Feeley, Attorney Brown does not perform title examinations. (Id. p. 43). In fact, Brown has never performed a full title examination. (Id. at 48). He concedes that he is "[un]qualified" to perform title examinations. Id. If Brown is unqualified to perform title examinations, he is equally unqualified to testify whether this examination was properly conducted. Thus, Brown lacks the qualifications to testify as to whether title examination performed for the subject closing fell below the standard of care.

Furthermore, his opinions lack any indicia of reliability. As discussed above, Brown attempts to create a "strict liability" standard for a real estate closing attorney which departs from South Carolina law. Brown conducted no independent investigation into how the title examination was conducted. He had no knowledge as to what types of information would be reasonably available to a title examiner to give sufficient notice of this encumbrance. Based on the facts here, Brown could not identify any particular measure that a reasonable attorney in a similar position could have undertaken to discover the unrecorded tax sale deed. Any opinion as to the existence of documentation that would put a reasonable attorney on notice is admittedly based on "speculation." (Brown Depo. p. 108-110). He is unfamiliar with the Charleston County Online Tax system and how public records are kept. (p. Id.) Significantly, he is unsure where any records would be kept--- the Auditor's Office or the Assessor's Office. (p. 110). Without sufficient proof of reliability, Brown's expert testimony should not be considered.

Accordingly, Plaintiff's expert should be excluded because his opinions fail to satisfy the requisite standard of proof for admissibility of expert testimony.

V. A Question of Fact Exists as to the Element of Causation based on Plaintiff's Fraudulent Conduct

In order to prove liability, plaintiff must show the defendant's negligence proximately caused the plaintiff's damages. As a threshold matter, Plaintiff would not have been allowed to purchase this property but for her own fraudulent conduct. Her own fraudulent conduct was the cause of any alleged damages. South Carolina law provides, "no person [should] be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act." Jackson v. Bi-Lo Stores, Inc., 437 S.E.2d 168, 170 (S.C. App. 1993) (citing 86 C.J.S. Torts § 12 (1954)).

Plaintiff could not have obtained financing to purchase this property without submitting a Residential Loan Application rife with admitted false statements and material misrepresentations. (Exhibit 6, Uniform Loan Application). First, Plaintiff certified that 2640 Ranger Drive was purchased to be her primary residence. This was patently false. The application states that she was moving into this home from her parent's home where she had lived for 7 years. This was also false. The loan application failed to disclose that she had, in fact, moved to Florida to attend law school. Third, in order to show gainful employment, the application stated Plaintiff was employed by a company named "Invisible Men Entertainment," listing a gross monthly income of \$3,500. This was false. Fourth, in Plaintiff's asset listing statement, she falsely included a life insurance policy in the face amount of \$100,000, two automobiles (2000 Dodge and 2003 Nissan), and personal property valued at \$65,000 in her asset listing. Her asset listing was completely baseless. Based on the language of the note and mortgage, this fraudulent conduct voided the real estate transaction. (Exhibit 7, Note and

Mortgage). Thus, Plaintiff cannot show the conduct of Alexander proximately caused her alleged damages based on her own fraudulent conduct.

VI. Plaintiff Cannot Show Any Damages as a Matter of Law

Finally, the Plaintiff must prove Alexander's alleged negligence proximately caused her damages. The damages set forth in Plaintiff's Motion relate to a being a party to a subsequent foreclosure action and the inability to rent or sell the subject property.

The existence of these damages is not supported by the evidence. Plaintiff's own failure to make payments was the proximate cause of the foreclosure action. (Exhibit 8, Letter from Korn Law Firm). Johnson admits that her failure to make mortgage payments resulted in the foreclosure action. (Johnson Depo. p. 98-99). The fact the property lacked marketable title cannot be the proximate cause of the foreclosure action as a matter of law. This exact issue has already been addressed by the South Carolina Supreme Court in Wilson v. Moseley, 327 S.C. 144, 488 S.E.2d 862 (1997). In Wilson, the Court held, "even if there were a cloud [based on tax deed], it was not the proximate cause of the foreclosure. The proximate cause of appellant's loss was her failure to make payments according to the note, which obligations were separate and independent of any alleged problem with the title." Id. at 147, 488 S.E.2d at 864.

Here, Plaintiff discontinued paying her note and mortgage on the subject property on April 2007. (Exhibit 9, Johnson Depo. p. 161-163). She admits that her failure to make her monthly payment resulted in a breach of the note and mortgage. (Id. at 98-99). She further conceded that if the mortgage payments had been made, then the foreclosure action would not have been commenced. (Id. at 177). The law, as illustrated in Wilson, obligates one to continue paying the note, irrespective of title concerns. **During the time Plaintiff ceased making mortgage payments, she rented the property for \$700.00 per month from October 2006**

until March 2009, thus profiting over \$20,000 in income. (Johnson Depo. p. 160; Exhibit 10, Melzetta Brown Depo. P. 35, 50-52 and 58). Johnson concedes that if she would have properly used the rental payments each month to pay the mortgage, then no foreclosure action would have been filed. (Johnson Depo. at p. 176). Not only did Johnson receive a windfall profit of over \$20,000 in rental income, but she received half of the overage resulting from the tax sale, approximately \$9000. Thus, Plaintiff fails to show proof of damages in order to establish liability.

VII. Alexander Objects to Plaintiff Submitting to the Court Documentation from the Charleston County Online Tax System printed after the date of the Closing

At the initial hearing on this Motion on Monday, May 9, 2011, Plaintiff attempted to submit to the Court a document printed from the Charleston County Online Tax System concerning the subject property dated May 9, 2011 at 8:53 am. Alexander objects to this document on the grounds that it does not accurately reflect the status of the tax records on or about the time of the title examination and the closing in 2006. This document was printed in 2011 and there is no evidence regarding what information could have been accessible through the Charleston County Online Tax System on or about the time of the closing. A decision as to negligence must relate to the facts as they existed at the time, and not in light of what hindsight may reveal. Since this document is not accompanied by any competent testimony and the actual screen shot from 2006, it should be deemed inadmissible as unauthenticated, irrelevant, unduly prejudicial pursuant to Rule 403, SCRE.

CONCLUSION

For these reasons, liability cannot be established as a matter of law Plaintiff's Motion for Partial Summary Judgment should be denied.

Respectfully submitted,
COLLINS & LACY, P.C.

By:



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ATTORNEYS FOR STANLEY E.
ALEXANDER

Columbia, South Carolina
May 24, 2011

EXHIBIT 1

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

9th JUDICIAL CIRCUIT

Amber Johnson,)

CIVIL ACTION NUMBER: 09-CP-10-6529

Plaintiff,)

vs.)

Stanley E. Alexander, Mario S. Inglese, and)
Mario S. Inglese, PC,)

Defendants.)

vs.)

Mario S. Inglese and Mario S. Inglese, PC,)

Third-Party Plaintiff,)

vs.)

Charles Feeley,)

Third-Party Defendant.)

FILED
2011 MAY -5 PM 12:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

AFFIDAVIT OF STANLEY E.
ALEXANDER

PERSONALLY APPEARED BEFORE ME, STANLEY E. ALEXANDER, who
upon being duly sworn deposes and states as follows:

1. I am a citizen and resident of Charleston County, South Carolina. I am
over the age of eighteen and competent to testify to matters contained herein. I am a
licensed attorney in the State of South Carolina and one of the Defendants in this matter.
The statements contained herein are true and accurate based on my personal knowledge
and information which I believe to be true. This affidavit is made in opposition to
Plaintiff's Motion for Summary Judgment.

2. I was the closing attorney for a real estate transaction between Carla Anderson (seller) and Amber Johnson (purchaser) for the purchase of 2640 Ranger Drive in North Charleston, South Carolina on September 14, 2006.

3. The title examination for this transaction was conducted by Attorney Charles Feeley at the request of the first attorney that was retained to originally close this transaction, Mario S. Inglese.

5. Prior to or at the time of the closing, Ms. Anderson never disclosed that property taxes were delinquent or that a tax sale had occurred on the property.

6. Prior to or at the time of the closing, evidence of a prior tax sale or information that would place a person on inquiry notice of delinquent taxes was not filed with the Charleston County Register of Deeds Office.

7. The title examination revealed that no property tax lien existed and that all taxes were current and paid. Further, it showed the 2005 property taxes were paid on December 13, 2005 in the amount of \$928.43. A true and accurate copy of the title examination worksheet that I relied upon for purposes of closing this transaction is attached hereto as Exhibit 1.

8. Attached as Exhibit 2 is an official statement from the Charleston County Tax Assessors' Office generated on August 10, 2006, prior to the closing. This record indicates that property taxes were "Current(Paid)" as of this date and that no back taxes were owed or due. The current due amount states "0.00" and the nulla bona amount states "0.00".

9. Attached as Exhibit 3 is an official statement from the Charleston County Tax Assessors' Office generated on September 11, 2006, prior to the closing. This record

also indicates that property taxes were "Current(Paid)" as of this date and that no back taxes was owed or due. The current due amount states "0.00" and the nulla bona amount states "0.00".

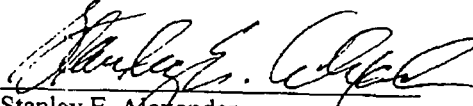
10. Further, based on documentation received from the Ms. Anderson's mortgage servicer, it appears that the 2005 property taxes were paid in the amount of \$928.43 and the 2004 property taxes were paid in the amount of \$441.19, attached hereto as Exhibit 4. A transaction history report from Ms. Anderson's mortgage servicer further reflects that the property taxes were paid in 2004 and 2005, attached as Exhibit 5.

11. No records were discovered at the time of the title examination or the closing that would have put me on notice that property taxes were delinquent or that a tax sale had occurred on the property.

12. Based on the results of the title examination and in particular, the official public records of the Charleston County Tax Assessor's Office, I understood that no back taxes were due or owing on 2640 Ranger Drive at the time of the closing. A real estate closing attorney routinely relies upon the result of a title examination and has a right to rely on information, such as Exhibits 1-3, kept as a matter of public record.

13. I believe I handled this closing with the generally accepted standard of care employed by attorneys performing real estate closings in Charleston County, South Carolina. I believe I acted with the degree of knowledge, care, and skill ordinarily possessed by lawyers in good standing under the same or similar circumstances and that I followed the generally accepted practices and procedures in the legal profession.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Stanley E. Alexander

SWORN to and SUBSCRIBED before me
This 5th day of May, 2011


NOTARY PUBLIC for South Carolina
My Commission Expires: 10-22-14

EXHIBIT 1

MORTGAGES:

1. BK/PB: M444-174 TYPE _____
 FROM Anderson
 TO Argent City Co LLC
 AMOUNT 53,500.00 @ _____ %
 DATE 4/18/03 REC 4/15/03

2. BK/PB: 5451-429 TYPE _____
 FROM Anderson
 TO Thomas
 AMOUNT 21,500.00 @ _____ %
 DATE 4/18/03 REC 6/15/03

ASSIGNMENTS:

BK/PB: _____ DATE _____ REC _____
 TO _____
 BK/PB: _____ DATE _____ REC _____
 TO _____

BK/PB: _____ DATE _____ REC _____
 TO _____
 BK/PB: _____ DATE _____ REC _____
 TO _____

MORTGAGES:

3. BK/PB: _____ TYPE _____
 FROM _____
 TO _____
 AMOUNT _____ @ _____ %
 DATE _____ REC _____

4. BK/PB: _____ TYPE _____
 FROM _____
 TO _____
 AMOUNT _____ @ _____ %
 DATE _____ REC _____

ASSIGNMENTS:

BK/PB: _____ DATE _____ REC _____
 TO _____
 BK/PB: _____ DATE _____ REC _____
 TO _____

BK/PB: _____ DATE _____ REC _____
 TO _____
 BK/PB: _____ DATE _____ REC _____
 TO _____

UCC LIENS:

None
 # _____ FROM _____ TO _____ REC _____
 # _____ FROM _____ TO _____ REC _____
 # _____ FROM _____ TO _____ REC _____

YR. 2005 TMS# 411.12.00054 REC# _____ AMT\$ 928.43

VALUE _____ @ _____ % MILS DIST _____ DATE PAID 12/15/05

GROSS AMOUNT \$ _____ RES. EXEMPT.\$ _____ CREDITS\$ _____ HMSTD\$ _____

PENALTIES \$ _____ COSTS/FEES _____

BACK TAXES: PAID X NOT PAID _____

NOTES

None

ALEXANDER000049

EXHIBIT 2

CHARLESTON COUNTY Online Tax System

MAIN MENU
CONTACT
EXIT

- Billing Information - Account: 411-12- Appraised: 62,700 (PID): 00-054 (FMV): Tax Year: 2005 Assessment: 3760 Prior Year: NA Mills: x0.2551 Status: Current (Paid) Receipt: 2005- Base Tax: 959.18 002420 Previous Receipt: NA Penalties: + 0.00 Next Receipt: NA Interest: + 0.00 Billed: 08-30- Credits: -119.76 2005 Paid Date: 12-13- User Fee: + 89.00 2005 Actual Date: 12-13- Date: 2005 Mortgage Co: OCWEN FEDERAL BANK, FSB MLOD Factor: No Net Tax: 928.43 Amount Paid: -928.43 Nulla Bona Amount: - 0.00 Refund Amount: - 0.00 Transfer Amount: - 0.00 CURR Due: 0.00		- Property Information - Legal Description: 2840 RANGER DR - LT 121 Subdivision: WAYLYN Deed: 04-15-2003 L444-803 Plat: F-117 Land Use: RESIDENTIAL General Use: SPR Parcel: 10R <table border="0"> <tr> <td>Buildings</td> <td>Appraisal</td> <td>Assessment</td> </tr> <tr> <td>Others (6%)</td> <td>62,700</td> <td>3,760</td> </tr> <tr> <td>Totals:</td> <td>62,700</td> <td>3,760</td> </tr> </table> <table border="0"> <tr> <td>Acreage</td> <td>Appraisal</td> </tr> <tr> <td>High: 0.00</td> <td>Land: 11700</td> </tr> <tr> <td>Marsh: 0.00</td> <td>Improvements: 0</td> </tr> <tr> <td>Swamp: 0.00</td> <td>Buildings: 51000</td> </tr> <tr> <td>Total: 0.00</td> <td>Total: 62700</td> </tr> </table>	Buildings	Appraisal	Assessment	Others (6%)	62,700	3,760	Totals:	62,700	3,760	Acreage	Appraisal	High: 0.00	Land: 11700	Marsh: 0.00	Improvements: 0	Swamp: 0.00	Buildings: 51000	Total: 0.00	Total: 62700
Buildings	Appraisal	Assessment																			
Others (6%)	62,700	3,760																			
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High: 0.00	Land: 11700																				
Marsh: 0.00	Improvements: 0																				
Swamp: 0.00	Buildings: 51000																				
Total: 0.00	Total: 62700																				

N608/628

- Owner Information -
 Current Owner: ANDERSON CARLA Tax Address: 2840 RANGER DR
 Current Co-Owner: NA
 Tax District: 43 Mail Address: 2840 RANGER DR
 Jurisdiction: 01 City State Zip: NORTH CHARLESTON SC 29405

Selections Tax Record Credits Main Menu

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http://taxweb.charlestoncounty.org/surfer/form/PIDSearch/SelectRecord/6_Eva849673750... 8/10/2006

ALEXANDER000024

EXHIBIT 3

CHARLESTON COUNTY

Online Tax System

[MAIN MENU](#)
[CONTACTS](#)
[EXIT](#)

2668/128

- Billing Information -		- Property Information -	
Account 411-12-	Appraised 62,700	Legal Description:	2640 RANGER DR - LT 121
(PID): 00-054	(FMV):	Subdivision:	WAYLYN
Tax Year: 2005	Assessment: 3760	Dated:	04-15-2003 L444-803
Prior Year: NA	Mills: x0.2531	Plot:	F-117
Status: Current		Land Use:	RESIDENTIAL
(Paid)		General Use:	SFR
2005-		Parcel:	10R
Receipt: 002420	Base Tax: 959.19		
Previous Receipt: NA	Penalties: + 0.00	Buildings	Appraisal 62,700
Next Receipt: NA	Interest: + 0.00	Others (6%):	Assessment 3,760
Billed: 09-30-2005	Credits: - 119.75		
Paid Date: 12-13-2005	User Fee: + 89.00	Acreage	Totals: 62,700 3,760
Actual Date: 12-13-2006		High: 0.00	Land: 11700
		Marsh: 0.00	Improvements: 0
		Swamp: 0.00	Buildings: 51000
		Total: 0.00	Total: 62700
	Net Tax: 928.43		
Mortgage Co:	Amount Paid: - 928.43		
OCWEN FEDERAL BANK, FSB	Nulla Bona Amount: - 0.00		
MLOD			
Factor: No	Refund Amount: - 0.00		
	Transfer Amount: - 0.00		
	CURR Due: 0.00		

- Owner Information -

Current Owner:	ANDERSON CARUA	Tax Address:	2640 RANGER DR
Current Co-Owner:	NA		
Tax District:	43	Mail Address:	2640 RANGER DR
Jurisdiction:	01	City State Zip:	NORTH CHARLESTON SC 29405

[Selections](#)
[Tax Record](#)
[Credits](#)
[Main Menu](#)

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http://taxweb.charlestoncounty.org/surfer/form/PIDSearch/SelectRecord/23_igh363082965... 9/11/2006

ALEXANDER000026

EXHIBIT 4

928.43

Refund of Interest Paid	\$0.00	Ferrell Payment Amount	\$0.00
Taxes Paid	\$928.43	Late Charges	\$0.00
Pre-Payment Penalties	\$0.00		
Interest Arrearage Amount	\$0.00		
Accident/Health Insurance	\$0.00	Accidental Death Insurance	\$0.00
Credit Life Insurance	\$0.00		

12/05

Year 2004

Beginning Principal Balance \$53,320.31

Ending Principal Balance	\$52,899.02	Principal Paid	\$421.29
Amount Paid to FHA	\$0.00	Beginning Escrow Balance	\$0.00
Ending Escrow Balance	(\$1,281.19)	Escrow Interest Paid	\$0.00
Interest Paid	\$4,542.63	Interest Reported to IRS	\$4,604.67
Interest Carried Over	\$0.00	Subsidy Interest Paid	\$0.00
Refund of Interest Paid	\$0.00	Ferrell Payment Amount	\$0.00
Taxes Paid	\$441.19	Late Charges	\$62.04
Pre-Payment Penalties	\$0.00		
Interest Arrearage Amount	\$0.00		
Accident/Health Insurance	\$0.00	Accidental Death Insurance	\$0.00
Credit Life Insurance	\$0.00		

9/14/04

ALEXANDER000050

EXHIBIT 2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TAX DEED BK N 608PG628

WHEREAS, by the Acts of the General Assembly of the State of South Carolina and the Statutes of this State, it is provided that hereafter the County Treasurer of Charleston County shall and is hereby authorized and directed to issue in the name of the State a tax execution against each defaulting taxpayer in Charleston County directed to the Delinquent Tax Collector requiring and commanding either to levy the same by distress and sell so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the delinquent taxes, assessments, penalties and costs for their collection; and

WHEREAS, it is further provided by said Acts of the General Assembly and Statutes of this State that under and by virtue of said tax execution the Delinquent Tax Collector shall seize and take exclusive possession of so much of the defaulting taxpayer's real property to collect delinquent taxes, assessments, penalties and costs for their collection as provided by law and after due advertisement sell the same at a public auction on a regular sales day and within the usual hours for public sales for legal tender and give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money but not make title to the purchaser until the expiration of twelve months from the date of sale, if the property sold be not redeemed as provided by law, and attach a copy of the receipt to the tax execution with the endorsement thereon of his action; and

WHEREAS, Andrew C. Smith, CPA, the County Treasurer of Charleston County, has issued a tax execution directed to the Delinquent Tax Collector, by authority of said Acts of the General Assembly of South Carolina and Statutes of this State, against defaulting taxpayer Carla Anderson, strictly charging the Delinquent Tax Collector of Charleston County to levy by distress and sell so much of the defaulting taxpayer's estate to satisfy the delinquent taxes, assessments, penalties and costs for their collection; and

WHEREAS, by virtue of said tax executions issued for tax year(s) 2004 the Delinquent Tax Collector of Charleston County sent on April 11, 2005, a copy of the tax execution to the aforementioned defaulting taxpayer(s) and further sent on May 23, 2005, via certified mail a notice of delinquent taxes, assessments, penalties and costs to Carla Anderson, 2640 Ranger Drive, North Charleston, SC 29405-7393, where notice was not received; and

WHEREAS, Dionne C. Brown and Edrian J. Trakas, deputy delinquent tax collectors, did post proper notice on July 22, 2005 on one or more conspicuous places on the property against which delinquent taxes were assessed and levied; and

WHEREAS, on October 3, 2005, during the usual hours of sale, the Delinquent Tax Collector, after due advertisement, did sell the same and gave receipt to Westwood Properties LLC, the highest bidder at such sale for the sum of \$20,000.00 dollars; and

WHEREAS, on September 11, 2006, the Delinquent Tax Collector did send via certified mail final notice before redemption to Carla Anderson and Carolyn Thomas, where such notice(s) were not received; and to Argent Mortgage Company LLC and Deutsche Bank National Trust Co, where such notice(s) were received; and

WHEREAS, the twelve month redemption period, provided by law, has expired.

NOW, therefore, know all men by these presents that I, Mary M. Scarborough, Interim Delinquent Tax Collector of Charleston County, in the State aforesaid, in consideration of the sum of Twenty Thousand (\$20,000.00) Dollars, to me in hand paid by Westwood Properties LLC, the receipt of which is hereby acknowledged, have remised, released and forever quitclaimed and by these presents do remise, release and forever quitclaim unto the said Westwood Properties LLC the property to wit:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in Charleston County, State

BK N 608PG629

aforesaid plat; the said lot herein being conveyed having such actual size, shape and dimensions as an actual survey of the lot will show.

Being the same property conveyed to Carla Anderson by deed of Carolyn Thomas dated 4/8/2003, and recorded in the RMC Office for Charleston County 4/15/2003, in Book L444, Page 803.

TMS Number: 411-12-00-054

Grantee's Address: Westwood Properties LLC
PO BOX 30422
Charleston, SC 29417-0422

TO have and to hold, all and singular the premises unto said Westwood Properties LLC, its heirs and assigns, forever.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said property belonging or in any wise incident or appertaining.

WITNESS my hand and seal this date 12-12-06.

Signed, Sealed and Delivered in the Presence of us:

Vicki Jenkins
First Witness

J. Greer
Second Witness

Mary M. Scarborough
Mary M. Scarborough
Interim Delinquent Tax Collector
Charleston County, South Carolina

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY APPEARED BEFORE, the undersigned, and made oath that he/she saw, Mary M. Scarborough, Interim Delinquent Tax Collector of the County of Charleston sign, seal, and as her act, did deliver the above Deed of Conveyance; and that he/she, with the other witness above named, witnessed the execution thereof.

SWORN to before me this date Dec 12, 2006

James L. Brown
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-31-2014

Vicki Jenkins
First Witness

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Amber Johnson,
Plaintiff,

vs.

Stanley E. Alexander, Mario S. Inglese, and
Mario S. Inglese, PC,
Defendants.

vs.

Mario S. Inglese and Mario S. Inglese, PC,
Third-Party Plaintiff,

vs.

Charles Feeley,
Third-Party Defendant.

) IN THE COURT OF COMMON PLEAS
) 9th JUDICIAL CIRCUIT
) CIVIL ACTION NUMBER: 09-CP-10-6529

) AFFIDAVIT OF CHARLES M. FEELEY

FILED
2011 MAY 17 PM 1:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED BEFORE ME, CHARLES M. FEELEY, who upon being
duly sworn deposes and states as follows:

1. I am a citizen and resident of Charleston County, South Carolina. I am a member in good standing of the South Carolina Bar, having been admitted to practice in 2002. I maintain a law practice in Charleston, South Carolina. My practice has always been focused in the area of real estate law and the examination of real estate titles and records in Charleston, Berkeley and Dorchester Counties. I have been examining titles in Charleston County for approximately 20 years, and I personally conduct my own title research. Over the course of my career, I have examined approximately 2,800 titles in Charleston County, and aside from the present case, I have never had a claim or suggestion of error with regard to a delinquent tax issue. I frequently work with other attorneys who engage my services. I am a party in the above-referenced matter.

2. Other than my review of the title examination documentation produced in this case, I do not recall the details from this title examination (2640 Ranger Drive, Charleston South Carolina, TMS No. 411-12-00-054) since it was performed in 2006; however, the abstract summary sheet produced is my summary sheet and the handwriting on the summary sheet is mine. According to the summary sheet, the abstract was completed on August 9, 2006, for Mario S. Inglese, PC. I do, however, perform title examination with very strict routines of practice and habits. I always perform my work in the same manner.

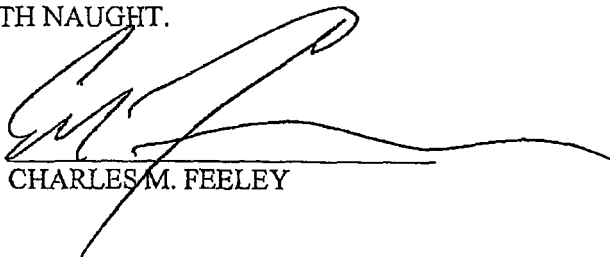
3. Although I cannot recall the specific details of this title examination, I do conduct my title examination with strict routines of practice and habits, and I always perform my title examinations in the same manner. Specifically, concerning the question of real property taxes, past and present, as part of my routine practice, I begin by reviewing the Charleston County Online Tax System website and I perform a "Tax Records Search" by "Parcel ID (TMS)" (Tax Map No.). The first screen that appears shows a ten-year history for the searched property's tax payments, beginning with the most recent tax year shown on the first line and each prior year on the successive lines; at the end of each line is a notation that the taxes were either current or delinquent. It is from this ten-year history screen that individual tax years can be further investigated. When I look at the ten-year history screen, I note any exceptions, problems, or notations that reflect unpaid taxes. If I see any evidence of unpaid taxes, I follow-up by reviewing the individual tax year screen for the tax year in question. If I see a delinquency or tax sale on the first screen, my custom and practice is to print the tax record for that year and to notate the issue on my abstract summary sheet. However, with this case, I noted on the abstract summary sheet that all of the taxes were paid and/or current, and that no back taxes were due or

owing for the property. I believe that I acted in conformity with my routine practice and custom when I performed the title examination for this property.

4. Title examiners in Charleston County, including myself, reasonably rely on information contained on the Charleston County Online Tax System. In order to obtain other information (including physical documentation) from the Charleston County Tax Collector not provided publicly on the Charleston County Online Tax System, a Freedom of Information Act request is required. I am not aware of any title examiner that submits a Freedom of Information Act request for purposes of performing a title examination.

5. The existence of the prior tax sale would not have been disclosed in the chain of title for this property or made publically available in the RMC Office at the time of the title examination and closing in 2006 because the tax sale deed was not recorded as a matter of public record with the Charleston County Register Mesne Conveyance (RMC) Office until December 12, 2006. Further, no *lis pendens* was recorded at the RMC Office or the Clerk of Court's Office at the time of the title examination and closing that would have placed the public on notice of an unrecorded tax sale.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


CHARLES M. FEELEY

SWORN to and SUBSCRIBED before me
This 17th day of May, 2011

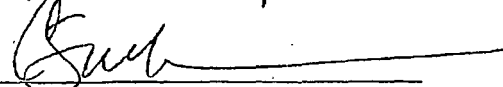

NOTARY PUBLIC for South Carolina
My Commission Expires: 12/27/17

EXHIBIT 4

STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) Case No. 2009-CP-10-6259

AMBER JOHNSON,

)
)
) Plaintiff,)

-vs-

)
) STANLEY E. ALEXANDER,
) MARIO S. INGLESE AND
) MARIO S. INGLESE, PC,
)

)
) Defendants.)

) VIDEOTAPED DEPOSITION OF:

) STANLEY E. ALEXANDER, ESQ.

Given before Raymond E. Swartz, Notary
Public and Certified Court Reporter, in the Kahn Law
Firm, 562 Savannah Highway, Charleston, South Carolina on
Thursday, December the 16th, 2010, commencing at 10:25
o'clock, a. m.

RAYMOND E. SWARTZ, CSR
Professional Court Reporter
"A Timeless Standard of Excellence"

1 A Well, if I had checked the title I may have
2 found it, but because the title had been checked...

3 Q Okay. So you were relying on the work of
4 someone else?

5 A Yes.

6 MR. GOINGS: Objection.

7 Q And you agree, though, that ultimately it's
8 your responsibility? Right?

9 A The closing is my responsibility but I think I
10 have a right to rely on a proper -- when somebody gives
11 me a title search and I pay for it, I have a right to
12 rely on it.

13 Q And the person who does the title search, in
14 your mind, is your agent?

15 MR. GOINGS: Object to the form of the
16 question.

17 Q That's somebody you hired?

18 A Well, normally, yes, but in this case, no. If
19 I understand it right, the Johnsons already engaged Mario
20 to do the closing. For some reason he didn't do the
21 closing and I was asked to do them and take over his
22 title work. They knew that I was using his title work.

23 Q So you...?

24 A They knew that I was using his title work. They
25 knew I was taking over for him and I was paying him so

1 that they wouldn't have to pay me and him both. I was
2 trying to do these folks a favor.

3 Q Alright. In the end the lawyer handling the
4 closing is ultimately responsible for making sure the
5 title work is done properly? Correct?

6 MR. GOINGS: Same objection.

7 A No, I can't see that he can be responsible. I
8 mean, you engage somebody that you feel comfortable with,
9 or that is supposed to be competent. If I went back and
10 oversaw the title work, I might have well do it myself,
11 which normally I do. But...

12 Q Alright. Should you have done that here?

13 A No.

14 Q Okay. The -- do you agree that the problem
15 here for Mrs. Johnson is the title work? Right?

16 A Yes.

17 Q The title work is defective?

18 A Apparently.

19 Q Well, isn't that what you are saying?

20 A Well...

21 Q That's it? That's the...?

22 A Well, after this came to light we looked back
23 and it appears the county had made no notes anywhere that
24 it had been sold at a tax sale. Plus, they were
25 accepting current taxes and they don't do that when back

1 taxes are due. So something was not right.

2 Q Well, in any case, the title work here is
3 defective? Right?

4 MR. GOINGS: Object to the form of the
5 question.

6 Q Because it didn't pick up on the fact there was
7 a tax sale?

8 MR. GOINGS: Same objection.

9 A It did not pick up the tax sale, correct.

10 Q And a proper title work would have picked up on
11 the tax sale?

12 A Unless the county records had had it -- had
13 entered things such that you wouldn't pick up on it.

14 Q Sitting here today you can't tell us that the
15 county improperly entered information concerning the tax
16 sale that would result in a lawyer not picking up on it,
17 can you?

18 A Not improperly, but -- I remember because they
19 didn't make a note of it. We go back and look at the
20 back taxes and it says paid, period.

21 Q For what year?

22 A For every year that we looked at since....

23 Q When did you look?

24 A Since this has all come to light. I don't have
25 the....

1 Q But before the closing you didn't look?

2 A No, because I had this sheet right here showing
3 that the back taxes were paid.

4 Q And that sheet right here is reflected on --
5 can I see the Plaintiff's Exhibit number, please? It's
6 Plaintiff's Exhibit Number 8 and you're pointing to the
7 third or fourth page? I can't...?

8 A Back taxes paid, the last page of it.

9 Q But in fact the back taxes were not paid, which
10 is why the property was sold at a tax sale? Right?

11 MR. GOINGS: Object to the form of the
12 question.

13 A Well, also from what I have found it appeared
14 that the taxes were paid.

15 Q You said what you have found. Have you
16 presented that argument to the county in an effort to
17 help Mrs. Johnson?

18 A Well, we did at the time when I got the lawyer,
19 I turned all that over. Like I said, since you were in
20 litigation, that you all would take care of that. I sent
21 you the documents where it appears that the mortgage
22 company paid those taxes.

23 Q Okay. But there has been no determination that
24 that in fact happened? Correct?

25 A No.

1 A Yes.

2 Q And paragraph 47 states as a result of this
3 breach, Alexander has suffered direct, incidental, and
4 consequential damages because, upon information and
5 belief, the subject property was transferred by virtue of
6 a tax deed for past taxes due and owing for the year of
7 2004. Is that a true statement?

8 A Yes.

9 Q And is it fair to say that if you have suffered
10 direct, incidental, and consequential damages because of
11 that, then Mrs. Johnson has suffered direct, incidental,
12 and consequential damages because of that?

13 MR. GOINGS: Object to the form of the
14 question.

15 Q Is that fair?

16 A Yeah.

17 Q Okay. On paragraph 52, on the next page? Do
18 you see that? Paragraph 52, you state Inglese owed
19 Alexander a duty of care to ensure that information
20 communicated to him was accurate, complete and truthful
21 and Alexander had a right to rely on the representations
22 of Inglese? Is that a true statement?

23 A Yes.

24 Q And is it a true statement that Mrs. Johnson
25 had a right to rely on the information you represented to

1 her at the time of closing?

2 A Yes.

3 Q including that -- and one of those
4 representations was that the title she was receiving to
5 the property was good and marketable title? Right?

6 MR. GOINGS: Object to the form of the
7 question.

8 A According to the information I had at the time,
9 yes.

10 Q Alright. And that's what you would have told
11 Mrs. Johnson? Right?

12 A Yes.

13 Q That what she was getting at the time of
14 closing was good and marketable title? Right?

15 A Yes.

16 Q I'm sorry?

17 A Yes.

18 Q And you agree that you had a duty of care to
19 ensure that the information communicated to Mrs. Johnson
20 was accurate, complete and truthful as concerning the
21 title to her property? Right?

22 A I had a duty to give her what I had as the best
23 of my knowledge at the time, yes.

24 Q Or what was capable of being within your
25 knowledge? Right?

1 A Yes.

2 MR. GOINGS: Object to the form of the
3 question.

4 A Was it within your power and abilities to
5 determine whether or not the property that she was buying
6 was free and clear of taxes. liens or encumbrances? Did
7 you have the ability to determine that?

8 A Yes, I could have gone back and rechecked
9 everything.

10 Q Okay.

11 A But there would be no sense in paying someone
12 to do it if I was going to do that.

13 Q You had the ability to determine those things?
14 Right? That is you had the ability to determine whether
15 or not the property she was buying was free of liens,
16 encumbrances, and taxes?

17 A Well, at that time I am not sure, because every
18 time we looked back at the tax year it said paid. It
19 didn't say sold, it said paid.

20 Q Did you have the ability to determine whether
21 or not the property had been sold at a tax sale?

22 MR. GOINGS: Object to the form. Asked
23 and answered.

24 A I do now.

25 Q Well, did you not have the ability in September

1 of 2006 to determine if the property had been sold at a
2 tax sale?

3 MR. GOINGS: Same objection.

4 A Well, when we looked back at the tax records
5 they said the taxes were paid and they accepted the
6 current taxes, which they would not do if there are prior
7 back taxes on the property.

8 Q My question was did you have the ability to
9 determine whether or not the property had been sold at a
10 tax sale in September of 2006?

11 MR. GOINGS: Objection. You have asked
12 the question five times and he's answered it.
13 I don't think you need to ask it again.

14 A No.

15 Q You did not have that ability?

16 A No.

17 Q Did you communicate to Mrs. Johnson that you
18 did not have the ability to determine whether or not the
19 property had been sold at a tax sale prior to having this
20 closing?

21 A No.

22 Q Would that be important information for Mrs.
23 Johnson to have before conducting a closing?

24 A It would have been, except all the taxes -- all
25 the tax records said paid and that's what we told her.

1 A Yes, I did.

2 Q How did you know her?

3 A The manager of the City Financial in
4 Summerville bought a house and I was working it for her
5 and her loan fell through, how she was buying it. If you
6 all have worked with mortgage brokers out of state,
7 things will go for months and months and all of a sudden
8 things fall through and you have to scramble around. And
9 Candy found her another mortgage very quickly with a bank
10 that I really liked working with, so I thought the lady
11 seemed pretty sharp. And that was the first I had ever
12 met her. And then she called me when this came up and
13 she said do you remember me?, and I said yes, I do, and
14 she said I've got three loans I want you to close, and I
15 said fine. And I believe after she gave me the loans she
16 then said well, would you mind paying for this title work
17 we have already had done, to keep the Johnsons from
18 having to pay twice? And I said, no. I'm used to that.
19 I would do that every now and then. And I try to be
20 accommodating to another lawyer, or somebody else, so I
21 told her no, I didn't mind paying for the title work.

22 Q Alright. So it was your understanding from
23 Candy Ryan that Mario Inglese's law firm had already done
24 the title work on these two parcels, or had someone
25 perform the title work?

1 A Yes.

2 Q And then you purchased the results of those
3 title abstracts?

4 A Right.

5 Q From his office?

6 A Right.

7 Q And you said earlier you don't recall who Mrs.
8 Johnson's realtor was for this closing?

9 A I don't. It was a black lady but I have no
10 idea what the name was.

11 Q Alright. And your previous testimony was that
12 the Johnsons engaged Mario initially to do this closing
13 and then apparently it got shifted over to you. What's
14 the basis for that testimony? What was your
15 understanding of...?

16 A That was my understanding from Ms. Ryan, that
17 Mario was supposed to do the closing but for some reason
18 he couldn't, or didn't. I didn't even know why not, but
19 I thought it was maybe a timing situation but I didn't
20 ask. I mean, you know, three closings at one time, I was
21 glad to get them.

22 Q And you also testified that the Johnsons knew
23 that you were using the title work. How did they know
24 that?

25 A Well, maybe it was an assumption that if they

1 Q Alright. And he never told you that on the
2 phone?

3 A No.

4 Q And Mr. Feeley never told you that?

5 A No.

6 Q Alright. And do you know whether or not Mario
7 Inglese has ever even done a title search?

8 A No, I don't.

9 Q Alright. And are there -- I don't see any
10 communications in your file in terms of written
11 correspondence, but would there have been any exchange of
12 e-mails and correspondence with Amber Johnson?

13 A No.

14 Q Alright. How did you -- assuming that the
15 three pages on Exhibit 8, or the title abstract, and
16 there may or may not have been some more documents
17 attached, how did you take receipt of the title? Did it
18 come from Island, or did it come from Mario's office?

19 A It came from Island in a file with whatever
20 other documents they had. It was stapled and clipped
21 together.

22 Q Alright. So as far as you know, the title
23 abstract had been pulled, had been sent to Island and
24 then Island sent it to you in a package and Candy said
25 write a check back to Mario's law firm? Is that

1 accurate?

2 A Yes.

3 Q Okay.

4 A Well, I was asked will you pay for this -- you
5 know, will you pay this lawyer for the title work.

6 Q Alright. Did you receive an actual invoice
7 from Mario's firm?

8 A Yes.

9 Q Alright. From his firm or was it in the
10 Island package?

11 A It was in the package with his...

12 Q Alright. So Island Lending, or Island
13 Mortgage, whatever that entity is called, they had not
14 paid Mario's firm at that point in time?

15 A I assume not if they asked me to pay it.

16 Q But it's your testimony that there was an
17 actual invoice...?

18 A Yes.

19 Q ...to somebody from Mario's firm?

20 A Yes.

21 Q Who would that invoice have been to?

22 A I really don't think it was to anybody in
23 particular. It was just an invoice and it was hooked to
24 the front of the title book.

25 Q Alright. Just so I'm clear, your testimony is

1 that you had an invoice from somebody showing that
2 Mario's law firm was owed a hundred and some dollars?

3 A Well, it had kind of like his letterhead, so...

4 Q Alright. Well, that's not in your package, so
5 what happened to that invoice?

6 A I would say I probably sent it back to Mario.

7 Q Alright.

8 A With the check.

9 Q Okay. You mailed that check back to him?

10 A Yes.

11 Q Alright. Did you have an understanding one way
12 or another at that time as to whether Mario was making
13 any money off of the title search, or that was just a
14 pass through cost from where Charles Feeley...?

15 A I didn't know anything about Charles at the
16 time. I thought that was Mario's fee for the title work.

17 Q Alright. And do you know today whether or not
18 that was just a pass through cost to pay Charles Feeley
19 back for...?

20 A I don't know. Mario just told me later that
21 Charles did his title work for him.

22 Q Alright. Bear with me a second. You have
23 talked about some of the software glitches, for lack of
24 a better word, from the HUD-1. What kind of closing
25 software were you using back in 2006?

EXHIBIT 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	C/A NO: 09-CP-23-8523
AMBER JOHNSON,	)	
	)	
PLAINTIFF,	)	DEPOSITION
	)	
VS.	)	OF
	)	
STANLEY E. ALEXANDER, MARIO	)	JOHN G. BROWN, II, ESQUIRE
S. INGLESE, AND MARIO S.	)	
INGLESE, PC,	)	
	)	
DEFENDANTS.	)	

DEPOSITION OF JOHN G. BROWN, II, ESQUIRE, TAKEN BEFORE
WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE
OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:04 A.M.,
TUESDAY, THE 1ST OF MARCH, 2011, AT THE KAHN LAW FIRM, 562
SAVANNAH HIGHWAY, CHARLESTON, SOUTH CAROLINA 29412.

C O P Y

1 Q No, I understand.

2 A -- totally honest with you. I mean, when I say I
3 haven't been --

4 Q So it's fair to say you've never handled a foreclosure
5 action?

6 A Not -- yeah. Not as far as the court-side of it and
7 all that. No.

8 Q Okay. And it's your testimony that the only
9 foreclosure-related matter you referred to Ms. Arnold,
10 correct?

11 A I referred that one to her. Right. And then, I think
12 I referred one to an attorney named Dan Bradley to
13 handle.

14 Q Okay. I think you kind of alluded a little bit
15 earlier. But has the economy affected the real estate
16 transactions in Charleston County?

17 A Certainly.

18 Q Okay. And has that, in turn, also affected your
19 practice as a real estate closing attorney?

20 A It has.

21 Q Okay. You started performing real estate closings in
22 late 2003, correct?

23 A Right.

24 Q What year would you say would be, like, the boom for
25 handling real estate closings?

1 Q Do you personally perform title examinations for every
2 closing?

3 A I do not.

4 Q Who conducts your title examinations?

5 A I use a company called F. Thomas Abstract.

6 Q Have you ever performed a title examination?

7 A I think I've done -- yeah. I've done a title
8 examination, probably once, I would say for sure.

9 Q Okay. When did you perform that one title examination?

10 A It has been years ago. I think, probably -- I would
11 probably say it was '04 or '05.

12 Q How many years have you utilized the services of F.T.
13 Abstractor?

14 A I've used F. Thomas for at least the last -- since '08.
15 I'm trying to remember if I used him at all at Buist
16 Byars. We have a couple of abstractors there that we
17 used. I don't remember -- I don't think I used F.
18 Thomãs while I was there. Actually, the Charleston
19 abstractor for F. Thomas was one that I used when I was
20 on my own as well. His name is John Dounian.

21 Q So the title abstractor that you privately used is --
22 his first name is John, right?

23 A John. Right.

24 Q Last name is --

25 A Dounian, I think it's D-O-U-N-I-A-N.

1 of year it is, and whether the tax bill had been
2 issued. You do a lien search. Which, I think those
3 would typically be recorded in the RMC office.

4 Most, if not all counties, any liens directly
5 affecting the property -- I'm not sure how they do the
6 state and federal tax lien, because those can attach,
7 even if they're not actually filed in the county where
8 the property is located. So there may be a database
9 that they use to check those kind of things.

10 Q When you performed a title examination that one time,
11 did you actually go to the tax assessor's office and
12 pull tax records?

13 A That was an update. I think it was within 12 months.
14 So maybe new tax bills had come out. I'm trying to
15 remember, at that point. I think the stuff was
16 available on-line, so I may have just pulled -- and I
17 was trying to remember the time and the year. But I
18 think the closing was maybe even within the same
19 calendar year. So I was just basically updating and
20 doing the lien search at that point.

21 Q Okay. So you've never performed a full-size title
22 examination?

23 A No. I didn't feel qualified to do that.

24 Q And that's why you hired a title abstractor?

25 A That's why I use title abstractors. Yes, sir.

Page 55

1 THE WITNESS: I mean, part of the purpose of
2 title insurance is there can be undiscovered
3 defects, you know, things like I mentioned, some
4 of the probate stuff. It depends on your
5 abstractor, you know, as to whether or not -- how
6 deep they delve into it, as to whether a probate
7 estate was properly handled, so to speak. But
8 then, there are issues like forgeries and that
9 kind of stuff. But you know, your abstractor is
10 not necessarily going to pick up on it.

11 BY MR. GOINGS:

12 Q Okay.

13 A And that's when you -- if someone else asserts title to
14 property as a result of, you know, a forged document,
15 for instance, then that would be something that a title
16 search wouldn't necessarily reflect, because I don't
17 know what your signature looks like, you know, from 20
18 years ago.

19 Q Right. So you would agree with me that it's fair to
20 say that even with a proper title examination on a
21 property, that property may still have encumbrances or
22 liens; is that correct?

23 MS. ARNOLD: Objection.

24 THE WITNESS: I mean, yeah. I could see a
25 situation in which there could be an encumbrance

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1 or a lien.

2 BY MR. GOINGS:

3 Q And that's why you have title insurance, right?

4 A Yeah, title insurance. And you have affidavits from
5 your seller. But there's another thing that could be
6 there, for instance, would be an unreported mortgage,
7 if the seller had gone and borrowed money from Uncle
8 Bob, you know, to give an example. And then, Uncle Bob
9 took a mortgage back \$10,000, but they just never
10 recorded it. And technically, Bob has got a lien on
11 that property. See, I see what you're saying.

12 Q Okay.

13 A There's a chance that a lien on the property, or in
14 that sense, an encumbrance on the property could exist
15 that the title search isn't going to reveal.

16 Q Okay.

17 A Because it just was never recorded.

18 Q Do you believe that public records are always correct?

19 A No. I would say they're not always correct.

20 Q Had you, as a real estate closing attorney, found there
21 to be errors, or omissions, or mistakes in public
22 records, as it relates to real estate transactions?

23 A I have had situations where, for instance, the legal
24 description of a property was insufficient, or
25 something was left out that should have been brought

1 care, correct?

2 A Correct.

3 Q You know what a Dismissal Without Prejudice is?

4 A Generally, yes. I mean, from being a lawyer, yes. I'm
5 familiar with what it is.

6 Q What's a Dismissal Without Prejudice?

7 A They'd get some action to dismiss -- you said without
8 prejudice?

9 Q Without prejudice.

10 A Essentially, an action is dismissed with leave to re-
11 file at a later date. That's my sort of general -- you
12 might have just tapped all of my litigation experience.
13 I'll give you that.

14 Q I don't need your book.

15 A I should probably review it, then.

16 Q Mr. Brown, have you reached an opinion in this case?

17 A I have.

18 Q Okay. And how many opinions have you reached, if any?
19 I mean, I know you've reached an opinion.

20 A Right.

21 Q So how many opinions have you reached, other than at
22 least one opinion?

23 A Not really sure how to answer that.

24 Q Okay. You've reached an opinion?

25 A Right.

1 Q Okay. What is that opinion?

2 A My opinion is that Mr. Alexander's conduct in
3 conducting this closing fell below the applicable
4 standard of care. And that that failure, for lack of a
5 better phrase, caused Ms. Johnson to lose title to the
6 property. And it was, you know, approximate cause to
7 any damages that may have resulted from her loss of
8 that property.

9 Q You said, approximate cause as to any damages. But you
10 don't know anything about the damages? That's what
11 you're testifying to?

12 A Not specifically, no. I don't know what damages would
13 be alleged. But I mean, obviously, there is foresee-
14 ability of litigation being which has happened now, at
15 least in a couple fronts. You know, I would be
16 reticent as to opine as to any and all damages, because
17 I just don't know. It's kind of outside of my scope of
18 my normal arena. But obviously, if you lose title to
19 property that you bought, there's going to be damages
20 associated with that.

21 Q And if you fail to pay on your note of mortgage,
22 there's also going to be foreseeable litigation
23 incurred, correct?

24 A Correct.

25 Q So, I'm trying to write down your opinion. And help me

1 out. Mr. Alexander's conduct fell below the applicable
2 standard of care and this failure caused Ms. Johnson to
3 lose title on property, correct?

4 A Right. The property was sold at a tax sale.

5 Q Okay. What conduct fell below the applicable standard
6 of care?

7 A Ultimately, it was the failure to discover the tax
8 sale, and the failure to ensure that she was receiving
9 clear title to the property, was the major failure that
10 I noted.

11 Q So the ultimate failure to discover tax sale failed
12 below the applicable standard of care; is that correct?

13 A Well, that as it related to failing to ensure that she
14 received good title to the property, clear title to the
15 property. I mean, again, to me, that's one of the
16 paramount responsibilities of a closing attorney. And
17 it didn't happen in this case.

18 Q Okay. So is it your opinion that a real estate closing
19 attorney has the absolute duty to ensure that clear and
20 marketable title is conveyed to a purchaser at closing?

21 A Yes.

22 Q Okay.

23 A I think I could agree with that.

24 Q All right. And regardless of the circumstances or what
25 happened surrounding the title examination, is it your

1 certainty that this information would have been
2 contained at the tax assessor's office?

3 A No. I can't say that for sure. That's where I believe
4 it would be.

5 Q Okay. So is it fair to say it's your personal opinion,
6 today, that evidence of a pending tax sale would be
7 contained at the tax assessor's office?

8 A Yes.

9 Q Okay. Where would you look in order to determine
10 whether -- at the tax assessor's office, where would
11 you look to be able to determine whether or not there
12 was a pending tax sale?

13 A And honestly, it's getting a little bit into the
14 abstractor side of it. I don't know if they just go up
15 and ask for the tax history for the last three years or
16 if they have a file cabinet. I don't believe they have
17 a file cabinet that you can just walk up to in the tax
18 assessor's office.

19 Q So you would defer to the abstractor?

20 A To the abstractor to know exactly how they pull their
21 tax history on the property.

22 Q Okay. And are you expecting to testify, to a
23 reasonable degree of legal certainty, that a title
24 abstractor would have discovered this pending tax sale
25 on or before the closing of September of 2006?

1 A Or that they should have. Yes.

2 Q But you don't know if there is actually any information
3 there at the tax assessor's office that would show it,
4 right?

5 A I don't know without having been there.

6 Q Okay. So you're just speculating then, that it should
7 be there?

8 A I suppose it could be speculation that there has got to
9 be record of the tax sale in the tax office.

10 Q I mean, can you testify to a reasonable degree of
11 certainty that a title examination would have uncovered
12 the pending tax sale to 2640 Ranger Drive?

13 A Again, we're hanging up on would and should. I believe
14 a proper title exam should discover that tax sale had
15 occurred.

16 Q Do you believe a proper title examination could have
17 discovered this pending tax sale?

18 A Should and could have. Yes. I'll go with both of
19 those.

20 Q How could a proper title examination would have
21 revealed this pending tax sale?

22 MR. KAHN: Objection.

23 THE WITNESS: And maybe I don't understand
24 the question.

25 BY MR. GOINGS:

1 Q How would a title examiner, title abstractor, discover
2 that there was actually a pending tax deed for 2640
3 Ranger Drive prior to the recordation of this tax deed?

4 MR. KAHN: Objection.

5 THE WITNESS: Again, it goes back to my
6 belief that there is a record -- if a tax sale
7 occurs, I believe that there is a record in the
8 tax office that a tax sale has occurred.

9 BY MR. GOINGS:

10 Q What does that record look like?

11 A I don't know what it looks like.

12 Q Do you know who would have that record in their
13 possession?

14 A I'm not sure if it would be the auditor or the
15 assessor.

16 Q Mr. Brown, if you were closing this loan, and you had
17 also performed the title examination, how would you
18 have uncovered this issue?

19 A Well, I don't know that I would have.

20 Q So you could have been in the same position as Mr.
21 Alexander?

22 A Absolutely.

23 Q Okay.

24 A And I take no pleasure in being here in the role I am,
25 because in part, I recognize that this could happen to

Page 111

1 any of us.

2 Q Okay.

3 A And it's part of the -- I don't want to step up on the
4 soap box. But I mean, it's part of the perils of what
5 we do. I mean, it's a tough way to make a living,
6 especially these days. But you know, it's truly
7 believed that it's of paramount importance of
8 transferring clear title, and that it falls at our
9 feet. And the errors of our abstractors, or the errors
10 of our support staff, if we're paralegals and that kind
11 of thing, I think it all falls at our feet. And it's
12 not a calming thought, but that's my believe, and
13 that's my opinion.

14 Q So based on the scenario as it happened, as it relates
15 to 2640 Ranger Drive, you could, if you were the
16 closing attorney, be sitting in the same seat as Mr.
17 Alexander today, correct?

18 A I believe I could be.

19 Q Why do you believe that?

20 A Well, given the information, you know, that we have.
21 And again, making an assumption that the abstract was a
22 quality abstract of title, then, you know, this
23 situation could occur. But you know, again, it doesn't
24 obviate the responsibility, or doesn't eliminate the
25 responsibility for delivering that clear title. And

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EXHIBIT 6

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will be used as a basis for loan qualification, but, if the 150-day rule can be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the county property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

Amber Johnson

Borrower		Co-Borrower	
Name: <u>AMBER JOHNSON</u>		Name: <u>AMBER JOHNSON</u>	
Mortgage Applied for:	☐ FHA ☐ VA ☐ Conventional ☐ USDA/Rural Housing Service ☐ Other (specify):	Agency Case Number:	Lender Case Number:
Amount: \$ <u>75,000</u>	Interest Rate: <u>3.2750%</u>	No. of Months: <u>360/360</u>	Amortization Type: ☐ Fixed Rate ☐ Other (specify): ☐ ARM (specify):
Subject Property Address (street, city, state, & ZIP): <u>2640 BARNHARTT RD, North Charleston, SC 29405</u>		No. of Units: <u>1</u>	
Legal Description of Subject Property (attach description if necessary):		Year Built: <u>2005</u>	
Purpose of Loan: ☒ Purchase ☐ Construction ☐ Other (specify):		Property will be: ☒ Primary Residence ☐ Secondary Residence ☐ Investment	
Complete this line if construction or acquisition of improvement loan.	Year Lot Acquired: <u>0</u>	Original Cost: <u>\$</u>	Amount Existing Lien: <u>\$</u>
(a) Present Value of Lot: <u>\$</u>	(b) Cost of Improvements: <u>\$</u>	Type (p+e): <u>\$</u>	
Complete this line if this is a refinance loan.	Year Acquired: <u>0</u>	Original Cost: <u>\$</u>	Amount Existing Lien: <u>\$</u>
Purpose of Refinance: <u>Rate</u>	Describe Improvements: ☐ made ☐ to be made		Cost: <u>\$</u>
This will be sold in what format? <u>SINGLE WORKMAN</u>	Manner in which this will be sold: <u>SINGLE WORKMAN</u>		Settle with De. Hold Inc. ☒ Fee Waiver ☐ Leasehold interest ☐ Other (specify):
Source of Down Payment, Gifted/Loan Charge and/or Subordinate (if financing) (explain):			

Borrower's Name (include J.C. or Sr. if applicable): <u>AMBER JOHNSON</u>		Co-Borrower's Name (include J.C. or Sr. if applicable):	
Social Security Number: <u>843-071-0448</u>	Home Phone (incl. area code): <u>843-071-0448</u>	Social Security Number:	Home Phone (incl. area code):
☐ Married ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower) <u>15</u>	☐ Married ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower) <u>0</u>
Present Address (street, city, state, ZIP): <u>2788 MANBUCKY ROAD (WITH PARENTS) Charleston, SC 29414</u>	Own ☐ Rent ☐ No. Yrs. <u>7</u>	Present Address (street, city, state, ZIP):	Own ☐ Rent ☐ No. Yrs. <u>0</u>
Mailing Address, if different from Present Address:		Mailing Address, if different from Present Address:	
If residing at present address for less than two years, complete the following:		If residing at present address for less than two years, complete the following:	
Former Address (street, city, state, ZIP):	Own ☐ Rent ☐ No. Yrs. <u>0</u>	Former Address (street, city, state, ZIP):	Own ☐ Rent ☐ No. Yrs. <u>0</u>
Former Address (street, city, state, ZIP):	Own ☐ Rent ☐ No. Yrs. <u>0</u>	Former Address (street, city, state, ZIP):	Own ☐ Rent ☐ No. Yrs. <u>0</u>

Name & Address of Employer UNIVERSAL MGR ENTERTAINMENT 2424 AIRPARK ROAD CHARLOTTE, NC 28406		Name & Address of Employer [] Self Employed [] Yes, on this job [] Yes, employed in the line of mortgage business	
Position/Title/Type of Business CONTRACT COORDINATOR	Business Phone (incl. area code) 843-945-6300	Position/Title/Type of Business	Business Phone (incl. area code)
If employed in current position for less than two years or if currently employed in more than one position, complete the following:			
Name & Address of Employer ROGER ROSEN AMACOS LLC 834 MEDLINE STREET CHARLOTTE, NC 28434	Date (from-to) 03/14/05 - 07/21/06 Monthly Income \$ 2,400.00	Name & Address of Employer [] Self Employed	Date (from-to) [] Monthly Income \$
Position/Title/Type of Business COURTIER	Business Phone (incl. area code) 843-060-6120	Position/Title/Type of Business	Business Phone (incl. area code)
Name & Address of Employer HAMPTON UNIVERSITY HAMPTON VIRGINIA, VA	Date (from-to) 2003 - 2005 Monthly Income \$	Name & Address of Employer [] Self Employed	Date (from-to) [] Monthly Income \$
Position/Title/Type of Business STUDENT/LAW MAJOR	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)
Name & Address of Employer [] Self Employed	Date (from-to) [] Monthly Income \$	Name & Address of Employer [] Self Employed	Date (from-to) [] Monthly Income \$
Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)
Name & Address of Employer [] Self Employed	Date (from-to) [] Monthly Income \$	Name & Address of Employer [] Self Employed	Date (from-to) [] Monthly Income \$
Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)

Gross Monthly Income	Borrower	Co-Borrower	Total	Overhead Monthly Housing Expense	Present	Proposed
State/Fed. Income*	\$ 3,500.00	\$	\$ 3,500.00	First Mortgage (P&I)	\$	\$ 615.02
Overhead				Other Housing (P&I)		
Rentals				Vehicle Insurance		100.00
Commission				Fuel/Gasoline Taxes		200.00
Other Income				Stocks/Bond Interest		
Other (please specify and attach supporting documents)				Phone/Cell Phone, Taxes		
Total	\$ 3,500.00	\$	\$ 3,500.00	Total	\$	\$ 915.02

* Self Employed Borrowers may be required to provide additional documentation such as tax returns and financial statements.
 Debtor's Other Income: Notice: Any other, third account, or separate income source need not be reported if the Borrower(s) or Co-Borrower(s) does not choose to have it considered for repaying this loan.

BIO	Monthly Amount
	\$

Provide Item Form 1003 07/03 CALIX Form Loanapp2.htm 00/03 Page 2 of 5 Borrower Co-Borrower Provide Item Form 60 07/03

EXHIBIT 7

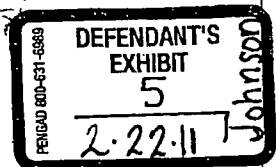
BK 0 598PG789

Return To:
CENTURY PACIFIC MORTGAGE CORPORATION
5655 PEACHTREE PARKWAY, SUITE 200
NORCROSS, GEORGIA 30092
Attn.: SHIPPING DEPT./DOC. CONTROL
Prepared By:

[Space Above This Line For Recording Data]

MORTGAGE

MIN 1000941-1100000802-9
MERS TELEPHONE: (888) 679-6377



DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

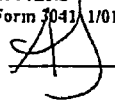
- (A) "Security Instrument" means this document, which is dated September 14, 2006, together with all Riders to this document.
- (B) "Borrower" is AMBER JOHNSON an unmarried woman. Borrower is the mortgagor under this Security Instrument.
- (C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
- (D) "Lender" is CENTURY PACIFIC MORTGAGE CORPORATION. Lender is a corporation organized and existing under the laws of the State of GEORGIA. Lender's address is 5655 PEACHTREE PARKWAY, SUITE 200, NORCROSS, GEORGIA 30092.
- (E) "Note" means the promissory note signed by Borrower and dated September 14, 2006. The Note states that Borrower owes Lender Seventy Five Thousand And 00/100 Dollars (U.S. \$ 75,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than October 1, 2036.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 1 of 17

scemertd

Initials: 

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

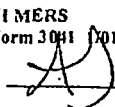
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 2 of 17

Form 3081 1/01

Initials: 

BK 0 598PG791

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction] of CHARLESTON [Name of Recording Jurisdiction]:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART
HEREOF.

Parcel ID Number:

which currently has the address of

2640 RANGER DRIVE

[Street]

NORTH CHARLESTON [City], South Carolina 29405 [Zip Code] ("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

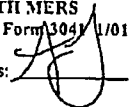
THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 3 of 17

Form 304 1/01

Initials: 

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of

SOUTH CAROLINA - Single Family - Fannie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS

amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

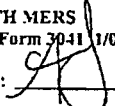
The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 5 of 17

Initials: 

amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

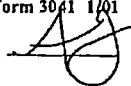
5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 6 of 17

Form 3041 1/01

Initials: 

BK 0 598PG795

Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 7 of 17

Form 3041 1/01

Initials: 

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

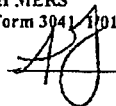
9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041-101

Page 8 of 17

Initials: 

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowner's Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

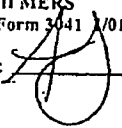
In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 10 of 17

Form 3041 1/01

Initials: 

Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signer s; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such

fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed,

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred

to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 14 of 17

Form 2041 1/01

Initials:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. **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 30 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 EXTENT PERMITTED BY LAW, THE UNDERSIGNED 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. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BK 0 598PG804

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Mildred Candy Ryan _____ (Seal)
AMBER JOHNSON _____ -Borrower

_____ (Seal)
_____ -Borrower

_____ (Seal)
_____ -Borrower

_____ (Seal)
_____ -Borrower

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 16 of 17

BK 0 598PG805

STATE OF SOUTH CAROLINA,
County of CHARLESTON

Personally appeared before me THE UNDERSIGNED WITNESS and
made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with STANLEY E. ALEXANDER
witnessed the execution thereof.

Michael C. Ryan

Sworn to before me this 14th day of SEPTEMBER, 2006.

My Commission Expires: 10-18-14

Stanley E. Alexander
Notary Public for South Carolina

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 17 of 17

Initials: AX

BK 0 598PG806

LEGAL DESCRIPTION

**2640 Ranger Drive
North Charleston, S.C. 29405**

All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in Charleston County, State of South Carolina, known and designated as Lot 121, on a plat of the subdivision known as Waylyn, which plat is duly recorded in the Office of the Register of Deeds for Charleston County in Plat Book F, at Page 117; the said lot in general having such size, shape, and dimensions, more or less, as will by reference to the said plat more fully appear and being bounded as shown on aforesaid plat; the said lot herein being conveyed having such actual size, shape and dimensions as an actual survey of the lot will show.

TMS # 411-12-00-054

Being the same lands conveyed to mortgagor by deed of Carla Anderson dated September 13, 2006 and recorded in the Charleston County RMC Office simultaneously herewith.

AO

EXHIBIT 8

EXHIBIT 9

KORN LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817
FACSIMILE (803) 252-5827

July 10, 2009

Amber Johnson
311 North Lake Blvd., Apt. # 1012
Altamonte Springs, FL 32701

Re: 2640 Ranger Drive, North Charleston, South Carolina

Dear Ms. Johnson:

As we discussed this morning, this office represents BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P., which services a note and mortgage held by The Bank of New York. The mortgage is a lien on the above-referenced property. Although the loan has been referred to us for foreclosure, we have not yet begun the foreclosure action, as we must first resolve a title issue. As you know, prior to your purchase of the property, the property was sold at tax sale. This title defect was not the fault of my client or my client's predecessor in interest. Upon learning of the title defect, a title claim was filed, and the title company is in the final stages of obtaining the property from the tax sale purchaser.

As soon as the title issue is resolved, my client intends to bring a foreclosure action, unless, of course, you make arrangements to bring the loan current.

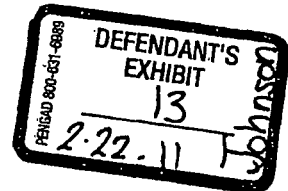
Please contact me at (803) 231-2022 if you have any questions.

Very truly yours,


Dean A. Hayes

DAH/tsg

THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT, AND ANY
INFORMATION WILL BE USED FOR THAT PURPOSE. THIS LETTER IS FROM
A DEBT COLLECTOR.



Amber Johnson

Amber Johnson v Stanley E. Alexander, Mario S. Inglese, and Mario Inglese PC

C.A. No: 09-CP-10-6529

February 22, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NUMBER: 09-CP-10-6529
	)	
AMBER JOHNSON,	)	
	)	
PLAINTIFF,	)	DEPOSITION
	)	
VS.	)	OF
	)	
STANLEY E. ALEXANDER,	)	AMBER JOHNSON
MARIO S. INGLESE, AND	)	
MARIO INGLESE PC,	)	
	)	
DEFENDANTS.	)	

DEPOSITION OF AMBER JOHNSON, TAKEN BEFORE LORI
BOGGS REILLY, PROFESSIONAL VERBATIM REPORTER, AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 9:48 A.M., THE 22ND DAY OF FEBRUARY, 2011,
AT THE LAW OFFICES OF THE KAHN LAW FIRM, 562 SAVANNAH HIGHWAY,
CHARLESTON, SOUTH CAROLINA.

COPY

Verbatim, Inc. Court Reporting
803.787.7242

1 Q Are these in fact your initials?

2 A Yes.

3 Q Does page 17 of 17 in the final document, entitled
4 Legal Description, also bear your initials?

5 A Yes.

6 Q These are in fact your initials?

7 A Yes.

8 Q Are you in breach of the terms of this mortgage?

9 MR. KAHN: Can you repeat the question?

10 Q Are you in breach of the terms of this mortgage?

11 MR. KAHN: Objection.

12 A I guess. I haven't paid the mortgage.

13 Q Do you believe that you're in breach of the terms of
14 the mortgage because you haven't paid the mortgage?

15 MR. KAHN: Objection.

16 A Yeah, I guess that's part of that issue, yes.

17 Q So the answer is yes?

18 MR. KAHN: Objection.

19 A Yes, I haven't paid the mortgage.

20 Q And are you aware that the Note and Mortgage for 2640
21 Ranger Drive required you to make certain payments
22 each month?

23 A Yes.

24 Q And without the assistance of a lender, you would not
25 have been able to purchase 2640 Ranger Drive; isn't

1 that correct.

2 A Yes.

3 Q Now, let's look at page 7 of 17?

4 A Seven.

5 Q Read out loud for me paragraph 6, at the bottom of page
6 7 of 17 of Defendant's Exhibit 5.

7 A Paragraph 6. "Borrower shall occupy, establish and use
8 the property as Borrower's principal residence within
9 60 days after the execution of this security instrument
10 and shall continue to occupy the property as Borrower's
11 principal residence for at least one year after the
12 date of occupancy unless lender otherwise agrees in
13 writing which -- in writing, which consent shall not be
14 reasonably withheld, or if extenuating circumstances
15 exist which are beyond borrower's control.

16 Q Did you comply with the terms and conditions as set
17 forth in this paragraph?

18 A No.

19 Q So you did not occupy, establish or use 2640 Ranger
20 Drive as your principal residence; is that correct?

21 A No.

22 Q Did you ever have any intention of using 2640 Ranger
23 Drive as your principal residence?

24 A No.

25 Q Now, let's go to the next page, page 8 of 17,

1 payments to 2640 Ranger Drive?

2 A No.

3 Q Did you learn at one time that your father ceased
4 making mortgage payments on 2640 Ranger Drive?

5 A Yes, sir.

6 Q What month?

7 A I'm not sure. I can guess. But I'm not sure.

8 Q Did you tell your father to continue making mortgage
9 payments for 2640 Ranger Drive?

10 A No.

11 Q Why not?

12 A Because he explained to me that because of the title
13 issue, I no longer owned the property.

14 Q Did your father explain to you that he was still making
15 or still obtaining rent payments each month from
16 Melzetta and Cleveland Brown?

17 MR. KAHN: Objection.

18 A No, we never talked about it.

19 Q Are you aware that Melzetta and Cleveland Brown made
20 monthly required mortgage -- excuse me, rental payments
21 to your father --

22 MR. KAHN: Objection.

23 Q -- from November of 2006 until March or April of 2009?

24 MR. KAHN: Objection.

25 A I'm not aware.

1 Q Did you know that your father was receiving rent
2 payments each month from Cleveland and Melzetta Brown.

3 A I know he was receiving rent.

4 Q How long did Cleveland and Melzetta Brown live in 2640
5 Ranger Drive?

6 A I don't know.

7 Q Did they live at that address during 2007?

8 A I believe so, but I don't know.

9 Q Did they live at that the address in 2008?

10 A I don't know.

11 Q Did Cleveland and Melzetta Brown live at 2640 Ranger
12 Drive during any months of 2009?

13 A I don't know.

14 Q How many payments were made pursuant to the Note and
15 Mortgage for 2640 Ranger Drive?

16 A I think five or six.

17 (MARKED AS DEFENDANT'S EXHIBIT NUMBER 12 FOR IDENTIFICATION
18 PURPOSES, BANK OF AMERICA PAYMENT HISTORY FOR 2640 RANGER
19 DRIVE)

20 BY MR. GOINGS:

21 Q I hand you a document that's marked as Defendant's
22 Exhibit 12. If you can identify this document for me?

23 A It's a loan history.

24 Q Does this document marked as Defendant's Exhibit 12
25 accurately reflect the payment history made for

1 property address 2640 Ranger Drive in North Charleston,
2 South Carolina.

3 MR. KAHN: Objection.

4 A I don't know.

5 Q Does this document show that mortgage payments were
6 made on or about November 30, 2006?

7 A Yes.

8 Q Does it show the mortgage payments were made on or
9 about January 5, 2007?

10 A Yes.

11 Q Does it show the mortgage payments were made on or
12 about February 9, 2007?

13 A Yes.

14 Q Does it show that mortgage payments were made on or
15 about March 1, 2007?

16 A Yes.

17 Q Does it show that mortgage payments were made on or
18 about April 4, 2007?

19 A Yes.

20 Q Does it show that mortgage payments were made on or
21 about May 24, 2007?

22 A Yes.

23 Q Is it your testimony that your father ceased making
24 mortgage payments as required under the Note and
25 Mortgage when he learned of a title irregularity on the

1 property?

2 A That's when I learned about it. That's when they
3 stopped making the payments.

4 Q So is it true that only five or six mortgage payments
5 were made for 2640 Ranger Drive?

6 A Yes.

7 Q Were any other payments made for 2640 Ranger Drive
8 other than as set forth on Defendant's Exhibit 12?

9 A These are all that I know of.

10 Q Where were you when you learned that there was a title
11 irregularity or problem as to the property at 2640
12 Ranger Drive?

13 A Where was I? I was in my parents' house.

14 Q In Charleston?

15 A Yes.

16 Q Who told you there was a problem with the title 2640
17 Ranger Drive?

18 A I think it might have been my mother.

19 Q What did you say when you heard this?

20 A I asked her what it meant, what was going on with it.

21 Q What response did you receive from your mother?

22 A Basically that it wasn't mine anymore.

23 Q Did you call anyone?

24 A No.

25 Q Did you call Stan Alexander?

1 Q Did your father ever tell you he received rental
2 payments from Cleveland and Melzetta Brown in the
3 amount of \$750 per month?

4 A No. I just knew -- I just know he received rental.

5 Q Are you aware that your father received rental payments
6 from Cleveland and Melzetta Brown for 2640 Ranger Drive
7 for months after the mortgage payments were ceased?

8 MR. KAHN: Objection.

9 A Am I aware that he received the rental payments?

10 Q Yes, ma'am.

11 A Yes.

12 Q What did your father do with the rental payments?

13 A I don't know.

14 Q Did your father give you that money?

15 A He didn't give me all the money directly, saying this
16 is the rental money.

17 Q Did you ask your father to continue making the mortgage
18 payments as he was receiving rent on this property?

19 A No, I didn't

20 Q Why not?

21 A Because I believe that there was a title issue.

22 Q Do you understand that your father profited off of 2640
23 Ranger Drive each month and never paid the mortgage
24 payment?

25 MR. KAHN: Objection.

1 A I understand that the mortgage wasn't paid.

2 Q And you also understand that he received mortgage
3 payments each month, too, correct?

4 A Mon- -- rental payments?

5 Q Rental payments each month.

6 A I guess so, yes.

7 Q So you know that your father received rental payments
8 at the same time he was not paying on the mortgage,
9 correct?

10 MR. KAHN: Objection.

11 A Yes.

12 Q Do you believe that if your father continued to pay the
13 mortgage payments as set forth in the Note and Mortgage
14 on 2640 Ranger Drive that you would not be involved in
15 the present foreclosure action?

16 MR. KAHN: Objection.

17 A In the present for- -- I guess the present, yes.

18 (MARKED AS DEFENDANT'S EXHIBIT NUMBER 14 FOR IDENTIFICATION
19 PURPOSES, RESIDENTIAL RENTAL AGREEMENT)

20 BY MR. GOINGS:

21 Q I'm going to hand you a document which I'm going to
22 represent was marked as Defendant's Exhibit 3 in the
23 deposition of Cleveland and Melzetta Brown, which for
24 the purposes of today's deposition is going to be
25 marked as Defendant's Exhibit 14. Have you ever seen

EXHIBIT 10

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CIVIL ACTION NO.: 09-CP-10-6529
AMBER JOHNSON,)
PLAINTIFF,) DEPOSITION
VS.) OF
STANLEY E. ALEXANDER,) MELZETTA BROWN
MARIO S. INGLESE, AND)
MARIO INGLESE PC,)
DEFENDANTS.)

DEPOSITION OF MELZETTA BROWN, TAKEN BEFORE LORI
BOGGS REILLY, PROFESSIONAL VERBATIM REPORTER, AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 10:00 A.M., THE 8TH DAY OF FEBRUARY, 2011,
AT THE LAW OFFICES OF THE KAHN LAW FIRM, 562 SAVANNAH HIGHWAY,
CHARLESTON, SOUTH CAROLINA.

COPY

1 them.

2 Q Okay. Do you recall -- tell me about when you took out
3 a bank loan. What was that for?

4 A That's my own personal savings, checking.

5 Q Okay, I got you. Did you go to South Carolina Federal
6 Credit Union to obtain financing to purchase 2640
7 Ranger Drive?

8 A Like I said before, my understanding, when I went to
9 the bank, it was like for -- I want to try to say it
10 was like promise to pay. They did some kind of share -
11 - a share thing, like borrow, to see if I would have
12 been able to pay the bank back, the money that I
13 borrowed from them, which I did.

14 Q Okay. Was that related to the purchase of 2640 Ranger
15 Drive?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes, sorry.

19 Q So my notes, you lived at 2640 Ranger Drive from
20 October of 2006 until March of 2009; is that correct?

21 A Exactly.

22 Q Other than with South Carolina Federal Credit Union, do
23 you recall if you applied for any other loan or
24 financing as it relates to --

25 A No.

Page 50

1 Defendant's Exhibit 2 is the agreement to buy and sell
2 real estate residential, correct, and it was entered
3 into October 11, 2006; is that correct?

4 A Yeah, I think they were -- we were moving in the house
5 in October, we were moving in the house in October and
6 that's when he was trying to see if he could get us to
7 buy the house.

8 Q Why did you sign a month later an agreement called
9 Residential Rental Agreement, marked as Defendant's
10 Exhibit 4?

11 A She -- because she drew -- his wife drew up the papers,
12 I guess to make sure that we -- they would've gotten
13 their rent. And I told them that I wanted something in
14 writing to verify that, you know, who I'm paying my
15 rent to, and I wanted something drawn up, and his wife
16 drew up this rental thing here, so that way we could
17 have proof that we live in the house and that we were
18 renting from Mr. Alfred Johnson.

19 Q Okay. So, instead of purchasing the house, you chose
20 to rent the house, correct?

21 A Well, at the time it was basically rent, and then later
22 on rent-to-own. That's how that fell. But we would
23 have had -- I think he told me I would have to meet the
24 people who he was dealing with to rent the house, I
25 mean to finance the house or to sell us the house or

1 whatever. But in the process of them doing all of
2 that, I've told them if that wasn't a go, I wanted to
3 do the rent.

4 Q Okay.

5 A Do the rent, and if anything that comes back,
6 everything that I've put in the house, I would want to
7 try to get back from out of the house.

8 Q And then, that relates to paragraph 2 of Defendant's
9 Exhibit 4 when it states, "Renter will have the option
10 to buy said property," correct?

11 A Uh-huh.

12 Q So is it your understanding that Defendant's Exhibit 4
13 of the agreement set forth as Defendant's Exhibit 4
14 superceded Defendants Exhibit 2?

15 MR. KAHN: Objection.

16 A I don't know. All I know is that it sounds so good to
17 be true, and we just signed so we can either try to
18 either rent or buy the house.

19 Q Okay. But as set forth in Defendant's Exhibit 4 you
20 ended up renting the house, correct?

21 A Uh-huh.

22 Q Is that a yes?

23 A Yes.

24 (OFF THE RECORD)

25 BY MR. GOINGS:

1 Q Ms. Brown, did you have the electricity bills in your
2 name?

3 A My husband. I think it was in Cleveland Brown.

4 MR. BROWN: Yes.

5 A Yes.

6 Q Is that water bill in your name?

7 A Yep.

8 Q Did you ever receive at any time a notice on the door
9 from the Charleston Delinquent Tax Assessors office?

10 A Not to my knowledge. I never received nothing like
11 that. We went and put -- it ran in his name for a
12 while and then we went and turned it over and put it in
13 our name.

14 Q What ran in the name of the Johnsons?

15 A I can't recall if it was Amber's or Alfred, because
16 when we moved in there the water and stuff was on. The
17 water and the lights and stuff was on.

18 Q Okay. How long did it take for you to transfer the
19 utilities into you and your husband's name from the
20 Johnson's name?

21 A It didn't take us really that long. I mean when we
22 move in the house, I think our next step was to go and
23 get everything turned in and transferred into our name.

24 Q Okay. Would you say that within 15 days from moving
25 in --

1 A Oh yeah, yeah. He did tremendously with us. And even
2 the receipts can show you, because I got everything
3 dated every time I call him and let know that I'm \$200
4 or \$300 short, and he said, well, you know, just
5 whenever you get it. And then when he'd come and get
6 what I got, I make sure how much I paid him, when I
7 paid him, what date I paid him, and then when he comes
8 back on the same receipt, or I do it on another
9 receipt, to verify that I did pay them the other
10 portion of the money.

11 Q Sometimes making the \$750-a-month rent payment was
12 difficult during that time?

13 A Yeah, because I was working -- like a school bus driver
14 gets paid like nine months out of the year, and it was
15 sometimes hard.

16 MR. KAHN: Object. I think it was 700, and
17 you said 750.

18 Q And the lease says 750, and then the testimony says
19 700, so I'm a little confused as well.

20 A Yeah. He didn't charge us the 750 because he actually
21 really just took the 700 from us. Because like I said
22 before, he saw how we were taking care of the house and
23 he didn't want to put that down on us like that.

24 Q Were you were working for Durham during the time you
25 were living at Ranger Drive.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL
CIRCUIT

AMBER JOHNSON,

PLAINTIFF,

V.

STANLEY E. ALEXANDER, MARIO
S. INGLESE AND MARIO S.
INGLESE, PC,

DEFENDANTS.

Case No. 09-CP-10-6529

AFFIDAVIT OF

Mary Scarborough
Delinquent Tax Collector
Charleston County, South Carolina

Deponent, Mary Scarborough, having been duly sworn, states as follows:

1. My name is Mary Scarborough. I am over the age of 18 and I am competent to make this affidavit.
2. I am the Delinquent Tax Collector for Charleston County, South Carolina and have worked in this capacity as collector or interim collector for over 5 years. In 2006, I was the Interim Delinquent Tax Collector for Charleston County. I have worked in the Charleston County Delinquent Tax Office for about 30 years.
3. I have no interest in the matter known as *Amber Johnson v. Stanley E. Alexander, et al*, Case No. 09-CP-10-6529, in the Court of Common Pleas of Charleston County.
4. I have first hand knowledge about this matter as I issued the tax deed recorded with the Charleston RMC Office at Book N 608, page 628 and signed an Affidavit recorded with the Charleston RMC Office at Book N 608, page 630 related to the property at issue, property identification number (PID) or TMS 411-012-00-054, at 2640 Ranger Drive, North Charleston, South Carolina.
5. In my professional capacity, I have direct and personal knowledge of the ways and means by which the Delinquent Tax Office informs the public about the status

of taxes regarding real property in Charleston County and how the office maintains information regarding delinquent real property taxes, and how abstractors, attorneys and members of the public access such public information, particularly for the purposes of conducting title searches.

6. I am aware that the tax deed from the October 3, 2005 tax sale of the property at issue was not recorded with the Charleston County Office of the Register Mesné Conveyance (RMC) until December 12, 2006. The tax deed merely reflects that the property sold at the tax sale in October of 2005 has been conveyed to the purchaser at the tax sale. Information regarding the status of the taxes, delinquent, paid, etc. is always available through the public records and means discussed herein. The facts and information regarding the property that had been sold at a Charleston County tax sale would have been readily and publicly available in ways that are routinely, regularly and as a matter of course accessed by abstractors, attorneys and members of the public conducting title examinations or inquiring about the tax status of real property.

7. I have direct and personal knowledge that information regarding delinquent taxes for real properties located in Charleston County, South Carolina, was readily and publicly available in July, August and September of 2006, in the Office of the RMC office for Charleston County via the Vista 3270, a computer database commonly known as the "mainframe." I have personal and direct knowledge that title abstractors and attorneys routinely and regularly used that public system in July, August and September of 2006 to conduct title examinations to make themselves aware of the status of taxes regarding property.

8. Based on my first-hand knowledge in working in the Office of the Delinquent Tax Collector for many years, I know that Delinquent Tax data for Charleston County real properties has been publicly available on the Vista 3270 mainframe system since 1997, when in my professional capacity I helped design the system.

9. I also know that the Delinquent Tax Office regularly and timely updates for itself and members of the public, Delinquent Tax data on the mainframe system (Vista 3270) regarding Charleston County real properties. Numerous machines for publicly accessing that system are readily available in the RMC office to abstractors, attorneys, or any member of the public interested in examining the title for real property in Charleston County and that system would have made known to anyone accessing it in July, August or September of 2006 that the property at issue had been sold at a tax sale in 2005 and that taxes were delinquent on the property for the years 2004 and 2003.

10. I know that an attorney or abstractor using the mainframe system in July, August or September of 2006 would have seen that the real property located at 2640 Ranger Drive, North Charleston, S.C., with the property identification number (PID) or TMS Number of 411-12-00-054, had been delinquent in tax payments for years 2003 and 2004 because the system is designed to provide that information to members of the public who access it. Further, one using that publicly available system would have seen that the property had been sold at a Charleston County tax sale on October 3, 2005 to pay the 2004 delinquent taxes.

11. I know that information about the sale of TMS No. 411-12-00-054 has been publicly and readily available on the mainframe system since October 14, 2005, which is the date that proceeds from the October 3, 2005, tax sale were applied to the Delinquent Tax account. Delinquent Tax Records in the Vista 3270 are updated to reflect a tax sale as soon as proceeds of the sale are applied to the account, even though a tax sale deed is not recorded for at least one year after the sale. The delay in posting and filing a tax deed is to take into account the "redemption period" to give a property owner or purchaser sufficient time to pay the delinquent taxes before the property that was sold at the tax sale to be conveyed and recorded in the name of the tax sale purchaser.

12. Attached are documents printed from my office relating to the real property identified by way of TMS No. 411-12-00-054. With the exception of information related to the dates after 2006, I know that the attached print-outs from the mainframe system (Vista 3270) accurately reflect and represent what an attorney, abstractor or any member of the public would have seen regarding this specific real property had he or she accessed the public records via the mainframe system at any time in 2006, including July, August and September of 2006. Exhibit 1 shows the real property taxes were delinquent in 2003 and 2004, as delineated by the "D" on the lines for those years. Exhibit 2 reflects that the subject real property was sold at a tax sale on October 3, 2005. Exhibit 3, the Delinquent List Screen, shows all the years for which taxes on the property were delinquent.

13. Further, I know that delinquent real property tax information in Charleston County, South Carolina, was publicly and readily available in 2006, including July, August and September 2006, on a Charleston County internet web-based system known as the Charleston County On-Line Tax System, available at <http://taxweb.charlestoncounty.org>. The system allows an abstractor, attorney or member of the public to check a real property's tax history simply by conducting Tax Records Search by entering the PID or TMS number into the search field.

14. I know that in July, August or September of 2006, any abstractor, attorney, or member of the public who conducted a "Tax Records Search" on the Charleston County On-Line Tax System by entering the PID or TMS number 411-12-00-054 would have seen a list of the property's payments or delinquencies by year, including the years 2003 and 2004. The fact that the property taxes were delinquent for the years 2003 and 2004 would have been visible to those conducting such a search. I know that had any abstractor, attorney or member of the public who used that system at that time could have then "clicked" on the delinquent tax years and would have seen a message instructing him or her to call the Charleston County Delinquent Tax Office for more information.

15. Further, I know in July, August or September 2006, had an abstractor, attorney or any member of the public called the Delinquent Tax Office for information about the property in question, would have been told about the tax sale that occurred on October 3, 2005 and the current status of whether the property had been redeemed. Obtaining a full Delinquent Tax file from the Delinquent Tax Office on a particular piece of real property requires filing a S.C. Freedom of Information Act (FOIA) request. However, it is not necessary to obtain the "full file" to determine that the taxes were delinquent or the property had been sold at a tax sale because the information regarding the tax status is publicly available as set forth above. In any case, as a matter of policy in July, August and September of 2006, as now, I know people call about delinquent property taxes are given basic information about the property's delinquent status, including how much tax is owed, whether the property has been sold at a tax sale, and whether the property has been redeemed.

16. In sum, as to the real property located at 2640 Ranger Drive, North Charleston, South Carolina with TMS or PID number 411-12-00-054, in July, August and September of 2006, the fact that the taxes were delinquent for the tax years 2003 and 2004 and that the property had been sold at a tax sale on October 3, 2005 was information in the public records and easily, publicly and readily available, including through information provided by this office; through the Vista 3270 mainframe system available in the Office of the RMC; and via the Charleston County On-Line Tax System available via the World Wide Web. The attached printouts are exemplarily of what the public records an abstractor, attorney or other member of the public would have seen when performing a search related to taxes concerning the property on one of the public systems.

FURTHER DEPONENT SAYETH NOT.

Mary Scarborough
Mary Scarborough
Delinquent Tax Collector

Sworn to before me
This 20 day of May, 2011
Notary Public for South Carolina
My commission expires: Nov. 7 2016

jm

U102

OPER ID: RMCP01

CHARLESTON COUNTY TAX SYSTEM
REAL PROPERTY - PID HISTORY

05-18-2011

12:59:11

PID NO: 411-12-00-054

TAX YEAR:

TAX YEAR	PRIOR YEAR	*----- OWNER NAME	-----*	RECEIPT NUMBER	STAT
2010		JOHNSON AMBER		2010-176632	C P
2010		JOHNSON AMBER		2010-079218	C N
2009		WESTWOOD PROPERTIES LLC		2009-163317	C P
2008		WESTWOOD PROPERTIES LLC		2008-161278	C P
2007		WESTWOOD PROPERTIES LLC		2007-157158	C P
2006		ANDERSON CARLA		2006-990000	C P
2006		ANDERSON CARLA		2006-160580	C N
2006		ANDERSON CARLA		2006-002560	C N
2005		ANDERSON CARLA		2005-002420	C P
2004		ANDERSON CARLA		2004-002394	D
2003		THOMAS CAROLYN		2003-130062	D

MORE RECORDS

NEXT SCREEN:

PF1-AUDIT PF2-TREAS

PF8=SCROLL FWRD

Exhibit

1

D102

OPER: RMCP01

CHARLESTON COUNTY TAX SYSTEM
DELINQUENT RECEIPT INQUIRY

05-18-2011

13:04:52

TAX YR: 2004 ACCT: 4111200054

PROP: 00 RCPT: 2004 - 002394 ACT: I

PY: REF:

TD: 43

JUR: 01 HE CD: STAT: S RC: 40

OWN1 1ST: ANDERSON CARLA

OWN2 1ST:

CARE OF:

TAX ADDR: 2640 RANGER DR

UNIT:

C,S,Z:

SC

MAIL ADDR: 2640 RANGER DR

UNIT:

C,S,Z: NORTH CHARLESTON

SC 29405 7393

DESC: LT 121

WAYLYN

BANKRUPTCY:

ORIG TAX: 601.19

CREDITS: 77.86

PENALTIES: 78.50

INTEREST: .00

USER FEE: .00

SW FEE : .00

NET AMT: 601.83

PAID DT: 10-14-2005

BD CHK DT:

TOT APPR: 34,000

MILLAGE: 294.7

TOT ASMT: 2,040

LEGAL RES:

HME ASMT:

OTHER RES: OT

MEMO: Y

PTR ASMT:

AGRI LAND:

NB DT:

CAP ASMT:

CAP APPR:

REF AMT:

TAX SALE: 10-03-2005 S

REF CK/DT:

REDEEMED:

ABT OP/DT:

ABMT AMT:

CONVEYED:

UPD OP/DT: SHDPEL 10-14-2005

RSEQ: 0

INQUIRY COMPLETE

SOLD TO BIDDER

F1=ACCT F4=CRED F6=COLL F9=MEMO F11=ADMN F16=RFND F21=ABAT

NSCN:

Exhibit 2

D103

OPER: RMCP01

CHARLESTON COUNTY TAX SYSTEM
DELINQUENT LIST SCREEN

05-18-2011

13:03:55

TAX YR: 2010 ACCT: 4111200054

PROP: 00

REF:

OWNER1: ANDERSON CARLA

TAX ADDR: 2640 RANGER DR

UNIT:

C, S, Z:

SC

OWNER1 NAME	RECEIPT	NET AMOUNT
ANDERSON CARLA	2004-002394	601.83 S
THOMAS CAROLYN	2003-130062	326.19 P
THOMAS CAROLYN	2000-121046	240.40 P

INQUIRY COMPLETE
F1=ACCT F2=RCPT

TAXYR DEFAULTS TO CURR YEAR

NEXT SCREEN:

Exhibit 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

**COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL
CIRCUIT**

AMBER JOHNSON,

Case No. 09-CP-10-6529

PLAINTIFF,

V.

AFFIDAVIT OF

STANLEY E. ALEXANDER, MARIO
S. INGLESE AND MARIO S.
INGLESE, PC,

TODD BALISH

DEFENDANTS.

FILED
2011 MAY 24 PM 3:40
JULIE J. ARMSTRONG
CLERK OF COURT

Deponent, Todd Balish, having been duly sworn, states as follows:

1. My name is Todd Balish. I am over the age of 18 and I am competent to make this affidavit.
2. I am a resident of Dorchester County engaged in the practice of conducting abstracts of title for residential closings, commercial transactions, foreclosure law suits as well as litigation matters. I am sole proprietor of Edisto Title Services, Inc., which has been in existence since 1994. I routinely conduct abstracts of title for properties located in Charleston, Colleton and Berkeley counties. I have been engaged in the business of abstracting title for 21 years.
3. I have no interest in the matter known as *Amber Johnson v. Stanley E. Alexander, et al*, Case No. 09-CP-10-6529, in the Court of Common Pleas of Charleston County.
4. On November 1, 2007, I was contacted by Jim Koutrakous, Esquire of Callison, Tighe & Robinson, LLC, who was handling a title claim on behalf of Chicago Title. Mr. Koutrakous contacted me and requested that with regard to real property located at 2640 Ranger Drive, North Charleston, South Carolina, TMS No. 411-12-00-054 (The Property) that I do the following: (1) conduct a title examination back to 2000; (2) review the delinquent collector's records to determine if someone doing the closing for Amber Johnson should have discovered that the property was

sold at a tax sale; and (3) procure a copy of the Assessor's/Delinquent Tax Office's files for the tax sale of this property.

5. On November 15, 2007, I completed a Title Examination Report with all relevant documentation. I conducted the title abstract of The Property in the same manner in which I generally conduct title abstract.

6. I am familiar with the standard for abstractors and attorneys as it relates to the normal, usual, and standard practice for abstractors and attorneys conducting title examinations in South Carolina to check tax records for 10 years.

7. By examining the public Charleston County Tax System, which is readily and publicly accessible in the Charleston County Register Mesné Conveyance (RMC) Office, I know that delinquent taxes were due on The Property in question in 2004, and that the property was sold in a tax sale on October 3, 2005. Further, anyone checking the title on the publicly available system in the RMC office in Charleston County in July, August or September of 2006 on the Charleston County Tax System would have seen that the taxes were delinquent in 2004 and that the property had been sold at a tax sale in October of 2005.

8. The printout of the publicly available Charleston County Tax System Delinquent Receipt inquiry, attached as Exhibit A (CT&R 000709), shows The Property was sold on October 3, 2005 for delinquent 2004 taxes. A computer screen reflecting the information available from the Charleston County Delinquent Tax Office that is the equivalent of the printout of this information would have been and was readily and publicly available to any abstractor, attorney or member of the public checking tax records for the subject property at the Charleston County RMC office.

9. Further, I know that in 2006, including July, August and September, records and information that the property taxes were delinquent in 2004 would have been publicly available via the Charleston County On-Line Tax System, an internet web-based system available on any computer with internet access. I know that further details about the delinquent taxes, including how much was owed and that The Property had been sold at a tax sale in October of 2005, would have been a public record publicly available on the Charleston County Tax System at the RMC Office or by calling the Delinquent Tax Office.

10. As a title abstractor engaged in the practice for 21 years, I am of the opinion and belief to a reasonable degree of title abstractor certainty that anyone

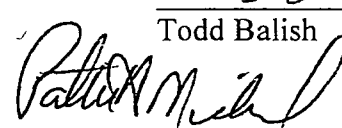
conducting a standard and proper title abstract in 2006, including July, August and September of 2006, would have and should have discovered that taxes were delinquent and the property was sold for past due taxes in 2005 prior to a closing conducted in September 2006 because the information was publicly available in the RMC office as well as online on the internet via the world wide web on the Charleston County Tax System.

11. In this matter, the abstractor and/or attorney involved in the performing a title search in August and September of 2006 departed from the applicable standard of care related to performing a proper title abstract by failing to discover the public information that the property was sold for delinquent taxes in October of 2005.

12. Each of my opinions are to a reasonable degree of certainty, most probably.

FURTHER DEPONENT SAYETH NOT.


Todd Balish

Sworn to before me 
This 23rd day of May, 2011
Notary Public for South Carolina
My commission expires: 1-21-21

D102
OPER: RMCP01

CHARLESTON COUNTY TAX SYSTEM
DELINQUENT RECEIPT INQUIRY

11-15-2007
11:07:00

TAX YR: 2004 ACCT: 4111200054 PROP: 00 RCPT: 2004 - 002394 ACT: I
PY: REF: TD: 43 JUR: 01 HE CD: STAT: S RC: 40
OWN1 1ST: ANDERSON CARLA
OWN2 1ST:
CARE OF: BANKRUPTCY:
TAX ADDR: 2640 RANGER DR UNIT: ORIG TAX: 601.19
C,S,Z: SC CREDITS: 77.86
MAIL ADDR: 2640 RANGER DR UNIT: PENALTIES: 78.50
C,S,Z: NORTH CHARLESTON SC 29405 7393 INTEREST: .00
DESC: LT 121 USER FEE: .00
WAYLYN NET AMT: 601.83
PAID DT: 10-14-2005
BD CHK DT:
TOT APPR: 34,000 MILLAGE: 294.7
TOT ASMT: 2,040 LEGAL RES:
HME ASMT: OTHER RES: OT MEMO: Y NB DT:
PTR ASMT: AGRI LAND: REF AMT:
CAP ASMT: CAP APPR: REF CK/DT:
TAX SALE: 10-03-2005 S
REDEEMED: ABT OP/DT: ABMT AMT:
CONVEYED: UPD OP/DT: SHDPEL 10-14-2005 RSEQ: 0
INQUIRY COMPLETE SOLD TO BIDDER
F1=ACCT F4=CRED F6=COLL F9=MEMO F11=ADMN F16=RFND F21=ABAT NSCN:

Exh. A

CT&R 000709

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
09-CP-10-00529

AMBER JOHNSON,)
PLAINTIFF,)
vs.)
STANLEY E. ALEXANDER,)
MARIO S. INGLESE and)
MARIO S. INGLESE, PC)
DEFENDANTS.)

TRANSCRIPT OF RECORD
(ORIGINAL)

MARIO S. INGLESE and)
MARIO S. INGLESE, PC)
THIRD-PARTY PLAINTIFF,)
vs.)
CHARLES FEELEY,)
THIRD-PARTY DEFENDANT.)

MAY 26, 2011
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR., JUDGE.

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

JUSTIN S. KAHN, ESQ.,
MARY LEIGH ARNOLD, ESQ.,
Attorney for the Plaintiff.

JOEL W. COLLINS, JR., ESQ.,
ROBERT F. GOINGS, ESQ.,
MARIO S. INGLESE, ESQ.,
Attorneys for Defendants.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

I-N-D-E-X
MAY 26, 2011
(AMBER JOHNSON

V.
STANLEY E. ALEXANDER, ET AL.)
(09-CP-10-6529)

	<u>PAGE</u>
COLLOQUY	3
REPORTER'S CERTIFICATE	49

E X H I B I T S

	<u>IDENTIFICATION</u>	<u>ENTERED</u>
<u>COURT EXHIBITS:</u>		
1	COLLINS & LACY BINDER	19
2	MAY 25, 2011 FAX	47
3	TODD BALISH AFFIDAVIT	48
4	MARY SCARBOROUGH AFFIDAVIT	48

P R O C E E D I N G S

(CASE NO.: 09-CP-10-00529)

(MAY 26, 2011 - 9:40 A.M.)

THE COURT: Uh -- let me see. Mr. Collins, the Clerk just -- I -- I've been in trial all week and I see where both of you sent some emails. I haven't opened up the emails; I don't know what was in 'em.

And I see, Mr. Collins, you had requested -- I did look on the Blackberry at your email -- you're requesting a continuance today.

MR. COLLINS: Judge, this is the letter---

THE COURT: And then the Clerk just handed me a letter that's overnight that I haven't opened yet.

So I guess we'll let you -- you got a Motion for Continuance?

MR. COLLINS: Yes we do, Your Honor. This is the letter that we emailed to you and faxed to you and---

THE COURT: I haven't -- the Clerk just game me a copy of it.

MR. COLLINS: Yes, sir; all right, we'll -- you have a copy of our letter?

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE, OFF THE RECORD.)

(WHEREUPON, COURT RESUMED.)

THE COURT: All right; well, first of all, do you --

1 does anybody have the order -- I know the file's here -- that
2 we issued from the last hearing that I can look at?

3 MR. KAHN: Your Honor, it wasn't an order, and The Court
4 may recall that---

5 THE COURT: It was all verbal---

6 MR. KAHN: ---correct; you---

7 THE COURT: ---there was no written order.

8 MR. KAHN: ---you had instructed us to get---

9 THE COURT: All right; my understand from the last
10 hearing, the reason I continued the hearing and scheduled the
11 hearing for this week was to give you a opportunity to bring
12 information into The Court by live testimony or affidavits as
13 to what -- the notice requirement, the tax liens in
14 Charleston County office, the Treasurer's Office, the R-M-C's
15 office. That was the purpose of this hearing.

16 So I don't understand -- I haven't read your material
17 and why you want the, uh, continuance, but the---

18 MR. COLLINS: All right---

19 THE COURT: ---in light of that, let me hear from you.

20 MR. COLLINS: ---let -- yeah, let -- please allow me to
21 explain, Your Honor.

22 THE COURT: Okay, because I thought it was very, very
23 specific. You -- you raised the issue that the -- the lawyer
24 didn't have notice, the abstracter didn't have notice because
25 it wasn't available. And I said I'll continue it to give you

1 an opportunity to bring live witnesses, affidavits, or
2 however you want to present it to The Court as to notice to
3 the public on the issue of tax liens.

4 But, I can't understand why we need a continuance.

5 MR. COLLINS: Judge, may I explain?

6 THE COURT: Yes, sir; I'll -- I'll listen to you.

7 MR. COLLINS: I hope you'll -- I hope you'll bear with
8 me, Your Honor.

9 THE COURT: I -- I'll listen. Let me hear him and I'll
10 listen to you, Mr. Kahn; okay?

11 MR. KAHN: All right.

12 THE COURT: But I just -- that was real simple---

13 MR. COLLINS: Judge---

14 THE COURT: ---a real simple reason we're having this
15 hearing today.

16 MR. COLLINS: ---Judge---

17 THE COURT: And I don't understand why we need a
18 continuance.

19 MR. COLLINS: ---may I be heard, Your Honor?

20 THE COURT: Yes, sir.

21 MR. COLLINS: Uh -- Judge, the big envelope that you
22 have in front of you, which you have not opened, is our
23 Memorandum of Law in opposition to this Motion for Summary
24 Judgment.

25 Attached to it are exerts of depositions and the

1 affidavit of the man who actually conducted the title
2 examination---

3 THE COURT: Okay.

4 MR. COLLINS: ---Mr. Charles Feeley. Mr. Feeley's
5 affidavit, we believe, Your Honor, abundantly proves that
6 there's a genuine issue of material fact about whether or not
7 that a title examiner in, uh -- in August of 2006 would have
8 before him such information as to create notice that there
9 was a defect in the title having to do with the unpaid taxes.

10 We believe that his dep- -- his affidavit abundantly
11 shows that that's the case.

12 We believe that the rest of what's before you also
13 corroborates that and clearly establishes a genuine issue of
14 material fact.

15 This is a professional liability case, Your Honor,
16 brought against not one, not two, but three lawyers. And,
17 they stand before you today, uh, with a -- a complicated but
18 factually intense, uh, record to show that you don't have
19 before you a -- a sufficient basis whatsoever to grant a
20 summary judgment to the Plaintiff.

21 First of all, their only expert that they identify,
22 Judge---

23 THE COURT: Well, I mean are we -- are you addressing
24 the continuance or what are we addressing?

25 MR. COLLINS: Judge---

1 THE COURT: The merits of the argument?

2 MR. COLLINS: ---I'm -- I'm addressing---

3 THE COURT: I thought you wanted a continuance.

4 MR. COLLINS: ---I'm addressing the continuance, but I'm
5 giving you some---

6 THE COURT: Okay.

7 MR. COLLINS: ---historical perspective---

8 THE COURT: Okay.

9 MR. COLLINS: ---for why we think that's important.

10 THE COURT: Okay.

11 MR. COLLINS: As I was saying, the only expert they
12 identify in this two-year-old case was Mr. John Brown.
13 Mr. Brown is a member of The Bar.

14 They have an affidavit from him, I believe, before they
15 filed this lawsuit, as is required by law. Mr. Goings
16 deposed him. At his deposition, Mr. Brown admitted he
17 doesn't check titles, is not familiar with the online system
18 here in Charleston County. And, went on to say that if he
19 had done this title work he would have had the same problem,
20 made the same omission or error -- whatever it is. But, he
21 said -- he went on to say essentially this. That when a
22 lawyer closes a loan, he's strictly liable for any problem
23 that comes up.

24 Well Judge, that's not the law. The law of South
25 Carolina is that a title attorney can only be guilty of

1 professional negligence if he fails to exercise due care and
2 fails to exercise, uh, a standard that is established by a
3 qualified expert. Mr. Brown doesn't establish a qualified
4 standard.

5 And, he goes on to say, uh, essentially, a -- a standard
6 that he applies is one that's not the law.

7 THE COURT: Mr. Collins, this is the same argument you
8 made at the previous hearing.

9 MR. COLLINS: If Your Honor will allow me to make my
10 record?

11 THE COURT: Okay.

12 MR. COLLINS: Now, after we filed our Memorandum of Law
13 and quote Mr. Brown's very deficient, uh, testimony, they
14 come up and the very next day---

15 THE COURT: That -- that was quoted at the last hearing.
16 The same argument you're making now was the same argument at
17 the last hearing.

18 MR. COLLINS: Judge, I believe I'm adding to that if
19 you'll allow me.

20 THE COURT: Okay -- all right.

21 MR. COLLINS: We then, after we make our filing, Your
22 Honor, receive on the -- on the day before yesterday---

23 THE COURT: You're talking about the memorandum that's
24 in the overnight package?

25 MR. COLLINS: No, Your Honor, I'm talking about what we

1 got from the Plaintiff.

2 Late on the afternoon of the 24th, we receive a letter
3 with two new affidavits in it.

4 THE COURT: All right.

5 MR. COLLINS: This was sent to you; this is the copy
6 that was sent to us. We got it late, uh, Tuesday afternoon;
7 all right?

8 In this submission, Your Honor, the Plaintiffs have
9 gotten them a new expert. He's not even a member of The Bar.
10 He's the owner of Edisto Title Service, Inc.

11 Because they realize the defect they have with their own
12 expert -- the fact that he doesn't measure up to any legal
13 standard recognized by the laws of South Carolina -- they
14 switch and now have a new expert.

15 Under Rule 56 and Rule 8, Your Honor, they are required
16 to have their supporting affidavits, uh, for Summary Judgment
17 filed with that motion. And their---

18 THE COURT: Mr. -- Mr. Collins, that was the purpose of
19 me continuing the case; to give both parties a opportunity to
20 come forward with additional information for this Court
21 'cause The Court felt like it didn't have enough information
22 as to notice on delinquent taxes.

23 I gave the Plaintiff that opportunity; I gave you that
24 opportunity.

25 MR. COLLINS: Judge, we---

1 THE COURT: And that was the purpose, and I was very
2 specific.

3 MR. COLLINS: ---Judge, we think we've met that
4 absolutely.

5 THE COURT: Well, that may be.

6 MR. COLLINS: All right.

7 THE COURT: But now they've done what I instructed them
8 to do by affidavits. So why should you have a continuance?

9 MR. COLLINS: Judge, please allow me to be heard.
10 They---

11 THE COURT: Well, I've been sitting here listening to
12 you and all you've done is regurgitate the same thing you
13 regurgitated at the first hearing.

14 MR. COLLINS: Judge---

15 THE COURT: Tell me something new.

16 MR. COLLINS: ---I can't be regurgitating what was in
17 the last hearing, because I'm giving you now the contents of
18 an affidavit of a brand new expert they didn't identify to us
19 until day before yesterday.

20 Okay, how can I be regurgitating to you at what was the
21 last hearing?

22 THE COURT: I haven't seen that affidavit, so I don't
23 know what you're talking about.

24 MR. COLLINS: All right.

25 THE COURT: The only thing you've told me is the same

1 thing you've argued at the last hearing.

2 MR. COLLINS: No, Your Honor.

3 THE COURT: Now, I assume you don't have any additional
4 testimony or affidavits to present to The Court today; is
5 that correct?

6 MR. COLLINS: We have what was submitted in that
7 envelope you haven't even opened---

8 THE COURT: Okay; all right, I understand.

9 MR. COLLINS: ---and that is the affidavit of Charles
10 Feeley.

11 THE COURT: Okay -- all right.

12 MR. COLLINS: And, Judge, we have, uh -- if you'll allow
13 me now -- Mr. Todd Balish is a new expert with a new cast
14 theory.

15 And the reason why we have asked you to continue this
16 hearing is because we don't believe it's fair in a
17 professional liability case against a lawyer for the
18 Plaintiff to rename a new -- a new expert, cast a new theory
19 of liability, presented it to you thirty-six hours before the
20 hearing, and have you make a ruling on Summary Judgment.

21 We believe that we are entitled to the opportunity of
22 deposing Mr. Balish.

23 THE COURT: Mr. who? What's his name?

24 MR. COLLINS: Balish -- Todd Balish.

25 THE COURT: Okay; Todd Balish.

1 MR. COLLINS: He's not even a lawyer. The first thing
2 we'd say, Your Honor, is you can't---

3 THE COURT: Well, most people that abstract titles
4 downstairs from the -- aren't lawyers, okay?

5 MR. COLLINS: But Judge, we don't think a non-lawyer can
6 carry the ball in a professional liability case against a
7 lawyer.

8 We believe that even though you may use a Title
9 Extractor, there has to be a qualified member of The Bar
10 identified as an expert who comes into this Court and, in
11 accordance with that new, uh, Supreme Court case, uh --
12 Wilson -- the case of -- it's cited in our brief. About the,
13 you know, the gate-keeping role you have, uh, by an expert.

14 We believe that they've got to have a qualified member
15 of The Bar opine and give opinion. Our client and those two
16 lawyers named as Defendants failed to meet their standard of
17 care---

18 COURT REPORTER: I'm sorry, the lawyers named as what,
19 Your Honor?

20 MR. COLLINS: ---recognized in South Carolina.

21 THE COURT: I'm sorry, what?

22 COURT REPORTER: Lawyers named as what?

23 MR. COLLINS: Mr.---

24 THE COURT: Hold on just a second. What?

25 COURT REPORTER: The lawyers named?

1 MR. KAHN: I think he said Defendants.

2 COURT REPORTER: Defendants.

3 THE COURT: Defendant; okay.

4 MR. COLLINS: The other named Defendants, uh, Madame
5 Court Reporter. Uh -- there are two other lawyers who are
6 named as Defendants. Uh -- Mr. Stan Alexander is our client.

7 By the way, Your Honor, Mr. Alexander couldn't be here
8 this morning. He had a Doctor's appointment that was very
9 important to him.

10 And Mr. Feeley had a -- a problem also. We do have, uh,
11 Mr. Inglese here; he's a---

12 THE COURT: Okay; all right.

13 MR. COLLINS: ---he's a named Defendant as well. But,
14 Your Honor, we believe that we're entitled to a continuance
15 because these two affidavits they have submitted to you go
16 far beyond a mere tweaking or a clarification of what's on
17 the record. It's a -- it's a recast theory of liability.

18 Now, with regard to the affidavit that I---

19 THE COURT: How does a recast ability -- a liability --
20 liability theory was that he missed a tax lien. That hasn't
21 changed.

22 MR. COLLINS: Judge, their theory---

23 THE COURT: How -- how has that changed, Mr. Collins?

24 MR. COLLINS: Because the theory of liability they
25 assert under Mr. Brown, their expert, is a theory of strict

1 liability. You close the loan, a problem arises later, you
2 buy the farm. That's their theory of liability as per their
3 first expert, Mr. Brown; okay?

4 Now their theory is different, and we believe we're
5 entitled, Judge, to defend our clients by deposing these two
6 witnesses.

7 For example, let me tell you about Ms. Scarborough. She
8 comes in with an affidavit and she talks about---

9 THE COURT: And who is Ms. Scarborough?

10 MR. COLLINS: She works with the tax -- delinquent tax
11 office, Your Honor.

12 THE COURT: Okay; all right.

13 MR. COLLINS: This is an affidavit we prepared -- also
14 that did not get read -- but which is -- was submitted to
15 you.

16 THE COURT: Well, I started the Motion saying I haven't
17 read any of it. I've been in trial all week. I did open
18 your email last night on my blackberry where you needed a
19 continuance.

20 Other than that, I haven't opened any -- I haven't
21 looked at anything else.

22 MR. COLLINS: Well, I think, Judge, another very strong
23 reason why we deserve a continuance is the fact that you
24 haven't even read our submission in support -- in opposition
25 to this Motion.

1 THE COURT: Well, I can read that after the hearing,
2 Mr. Collins, okay?

3 MR. COLLINS: Yes, sir; but, you won't have the same
4 understanding.

5 THE COURT: There's such a thing as taking things under
6 advisement and reading information that's been submitted by
7 The, uh, Court.

8 If you're insinuating I'm gonna make a decision without
9 reading your memorandum, sir---

10 MR. COLLINS: I -- I am insinuating that, Your Honor.

11 THE COURT: ---okay; wait---

12 MR. COLLINS: ---I am insinuating that based on the way
13 you handled the last hearing.

14 THE COURT: ---well, you are absolutely wrong, Mr.
15 Collins, okay?

16 MR. COLLINS: Well, I'm doing my best, Your Honor.

17 THE COURT: All right; do you have anything else to
18 say---

19 MR. COLLINS: Yes, sir; I do---

20 THE COURT: ---concerning a continuance?

21 MR. COLLINS: ---I do. Because, we need a continuance
22 in order to depose Mary Scarborough whose affidavit was
23 submitted to you about thirty-six hours ago and she, uh, goes
24 into some statements, uh, in her affidavit about the records-
25 keeping system here at the Charleston Courthouse.

1 But, Judge, she doesn't say that an entry made on the
2 screen of the computer is marked so as to be able to
3 reconstruct at a later time when that screen was changed.

4 She cannot say, Judge, that in August of 2006, when
5 Mr. Feeley went in there to check this title, she cannot say
6 here's the screen he was looking at; these are the records he
7 had in front of him. She does not say that because she
8 cannot say that.

9 Charleston County does not have a system that allows
10 anybody to go in and see when the screen was created, when it
11 was changed, when it was altered in any way. All you can do
12 is look at the screen that's there in front of you. And,
13 that's what Mr. Kahn had at the last hearing; he had a screen
14 that he printed off and gave to you. And, it showed what was
15 there in 2011; it didn't show what was there in 2006.

16 Mr. Feeley, in his affidavit -- which is in that
17 unopened package -- says this. He said, I have a strict,
18 very regimented process that I use every time. I used it in
19 this case. I looked at the screen; had there been anything
20 there that caused me any concern, I would have done the
21 following other things.

22 He goes into that in his affidavit. And in -- and in
23 Charleston County, if you want to see the source documents
24 about tax records, you have to file a Freedom of Information
25 Act Request. That's all in his affidavit.

1 So, Judge, what we have we think is abundantly clear to
2 create a genuine issue of fact applying to scintilla rule.

3 But, what we are concerned about is, Your Honor has, uh,
4 made statements on the record in this case indicting, uh, a
5 view that, uh, it's all a matter of what's on the screen.

6 And, we believe the screen is never going to be able to
7 tell you what was there in August of '06. What records of---

8 THE COURT: What's the -- what's the statute of
9 limitations on, uh, the County bringing, uh, a -- a -- a
10 sale -- a delinquent sale on unpaid taxes?

11 MR. COLLINS: I -- I don't know, Your Honor. I -- I---

12 THE COURT: Mr. Kahn, do you know?

13 MS. ARNOLD: Your Honor, I believe, if they're trying to
14 invalidate the tax sale, it's a two-year statute of
15 limitation.

16 THE COURT: It's a two-year statute of limitations to---

17 MS. ARNOLD: Yes, sir---

18 THE COURT: ---to validate the sale?

19 MS. ARNOLD: ---to invalidate tax liens.

20 THE COURT: How to -- to bring it once the taxes hasn't
21 been sold (sic) do they -- is -- is there a statute of
22 limitation period on that?

23 MR. KAHN: I know that they put the taxes -- when they
24 report 'em, they're there for ten years. But, I don't know
25 what period of time---

1 THE COURT: Right.

2 MR. KAHN: ---they have to report.

3 THE COURT: All right. Mr. Collins?

4 MR. COLLINS: Judge, uh, to -- following up on that, we
5 know that the mortgage company---

6 THE COURT: Well, before we get into that, I got to rule
7 on your Motion for Continuance first, Mr. Collins.

8 MR. COLLINS: All right.

9 THE COURT: Okay, is there anything else on your Motion
10 for Continuance?

11 MR. COLLINS: Let me confer one minute, Your Honor.

12 THE COURT: Yes, sir.

13 MR. COLLINS: With regard to the issue of a -- our
14 request for a continuance, Your Honor, I have nothing else to
15 add.

16 But, I do want to make sure that the wro- -- the letter
17 I wrote to you is made a part of the record in this case.
18 Uh -- may I have it marked as an Exhibit?

19 MR. KAHN: No objection.

20 THE COURT: I'll -- no, sir; no, you're not going to
21 mark it as an Exhibit. I'll mark it as a Court's Exhibit,
22 okay?

23 MR. COLLINS: Okay, very good.

24 THE COURT: And I received it this morning from The
25 Clerk's office.

1 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 WAS ADMITTED INTO
2 EVIDENCE.)

3 THE COURT: Uh -- anything else, Mr. Collins, on your
4 Motion for Continuance?

5 MR. COLLINS: No, Your Honor.

6 THE COURT: All right, sir. Mr. Kahn, be glad to hear
7 you on the Motion of Continuance.

8 MR. KAHN: Yes, Your Honor. I would think the Motion
9 for Continuance should be denied. The Court gave us a simple
10 mission; obtain information from the County as to what was
11 available and what the records showed.

12 We obtained an affidavit from Mary Scarborough, who is
13 the delinquent tax collector for the County of Charleston.
14 I'll hand it to The Court; it's already been filed and, um,
15 they have it. So that affidavit, I'm handing it to you along
16 with an affidavit of Todd Balish who they mention who's an
17 abstractor.

18 We did exactly what The Court requested; find out what
19 the publicly available records were and what they showed.

20 Uh -- Mrs. Scarborough, whose affidavit you have before
21 you, uh, says unequivocally -- first of all, she was actually
22 the one who issued the tax deed, so she testified in her
23 affidavit that she's familiar -- personally familiar with
24 this matter. She's been in Court for the Charleston County
25 Delinquent Tax Office about thirty years. She is the

1 delinquent tax collector involved with this matter.

2 She says she has first-hand knowledge of this matter.

3 Uh -- she says that she has professional -- in her
4 professional capacity she has direct and personal knowledge
5 of the ways and means by which the Delinquent Tax Office
6 informs the status about taxes.

7 She says that she's aware that, uh, this tax deed issue,
8 that she realizes that the tax deed itself may not have been
9 recorded but it -- the tax deed merely reflects -- and I'm
10 looking at paragraph six, page two of her affidavit---

11 THE COURT: I'm sorry, which page now?

12 MR. KAHN: Page two, paragraph six.

13 THE COURT: Okay.

14 MR. KAHN: ---that the tax deed merely reflects that the
15 property sold at the tax sale in October of 2005 had been
16 conveyed to the purchaser of the tax sale.

17 Her next sentence is, information regarding the status
18 of the taxes -- delinquent, paid, and so on -- is always
19 available through the public records and means discussed
20 herein.

21 And in her affidavit, she specifically states --
22 paragraph seven and eight -- that she has direct and personal
23 knowledge that the information regarding the delinquent taxes
24 for real properties in Charleston County was readily and
25 publically available in July, August, and September of 2006

1 in the Office of the R-M-C Office for Charleston County,
2 vis-à-vis Vista thirty-two-seventy computer data base.

3 Um -- that she has personal and direct knowledge that
4 Title Abstracters and Attorneys routinely and regularly used
5 that system during that time to conduct title events and to
6 make themselves aware of the status of taxes.

7 And anyway, she goes on through -- and The Court can
8 read it since you already indicated that you would read it --
9 uh, this information. She makes abundantly clear that the
10 information regarding both the fact that the property was
11 delinquent for the year 2004 was a public record available in
12 the R-M-C's office through this computer system, and she
13 makes -- uh, she attaches exemplars of the kinds of screens
14 one could pull up at that time in the R-M-C's Office. And,
15 she also makes clear that because it was printed in 2011 that
16 the information from 2007 afterwards on that first Exhibit 1
17 would not have been there. But otherwise, if The Court
18 refers to Exhibit 1, which is attached, uh, towards the
19 bottom it says---

20 THE COURT: Is that on this particular property or
21 that's just a sample?

22 MR. KAHN: That -- that's this property, Your Honor.

23 THE COURT: Okay; all right.

24 MR. KAHN: Uh -- it---

25 THE COURT: What's the status out here to the side?

1 What do those symbols mean?

2 MR. KAHN: What those stand for is spouse. First of
3 all, looking at Exhibit 1, it's got the property I-D number
4 at the top -- 4-11-12-00054 -- which is the property at
5 issue.

6 The bottom right where it says 'D' for 2004/2003, that
7 'D' stands for delinquent. And that would have been known
8 and visible to anybody doing the, uh, record search.

9 If you look at Exhibit 2, which is the delinquent
10 receipt inquiry screen for the property, for the tax year
11 2004, the bottom left, you see where it says tax sale
12 10-03-2005-S. That lets everybody know that there was a tax
13 sale.

14 Now, she does state that the information regarding the
15 October 3rd tax sale that took place in 2005 would not have
16 been available until around October 14 of 2005. But, in all
17 of 2006 it would have been on the screen had anybody looked.

18 And, uh, that's so -- the whole point is that she makes
19 abundantly clear she is the person in the office -- The Court
20 says to us, tell us what's -- The Court kept saying, down
21 there in the office. We went to the lady who keeps those
22 records, and she says, this is what was there at the time.
23 She knows it 'cause she's been working there thirty years or
24 so. And, that the information was available in two different
25 ways.

1 One is through her -- that Vista System for the
2 Delinquent Tax Office, and also via the worldwide web. So,
3 not only can somebody look at it in the R-M-C's office but if
4 you'd come in from anywhere on the planet to log in in 2006
5 you would have seen the same information had you looked for
6 the 2004, um, tax information. And that's all in this
7 affidavit. The Court can read that after this hearing, um,
8 so I think that affidavit addresses it.

9 The second affidavit that they are raising concern about
10 is an affidavit from Mr. Balish.

11 Mr. Balish is a Title Examiner who's conducted a Title
12 Exam for the property in the year 2007 for another lawyer
13 related to all this litigation in which Mr. Alexander is
14 involved in. The reason why we used him is they've known
15 about him through discovery because they've had his Title
16 Exam Report.

17 He opines two things; one is, he agrees with Mary
18 Scarborough that the information was publicly available, and
19 separately he does render an opinion that somebody should
20 have -- that -- that -- that the proper standard of care
21 required a Title Abstracter to find it.

22 To the extent that they are upset about that opinion,
23 and to the extent that that does not coincide with what The
24 Court ordered us to do, Judge we have no problems with The
25 Court saying you won't consider that part of his opinion.

1 THE COURT: Okay; I -- I wasn't ask- -- looking for
2 opinion. I was looking for what records were available for
3 notice to the public what (sic) I was looking for, not an
4 opinion; I'm not gonna consider any opinion that he gave---

5 MR. KAHN: I understand.

6 THE COURT: ---'cause that's not the purpose of this
7 hearing, okay? I don't -- I haven't read it, but I'm not
8 going to consider any opinion he gave.

9 I will consider any information he gives in the
10 affidavit about what's available to the public as far as
11 notice of delinquent taxes. And that's what I was after;
12 it's a simple question.

13 MR. KAHN: I understand; you sent us on a simple
14 mission. We thought we went right to the source, got what
15 the records showed from the lady who keeps up with those
16 records, and have now presented that to The Court.

17 The only other issue I've raised in terms of addressing
18 the Motion for Continuance is that there is no need for a
19 continuance. They've fully argued this matter, The Court
20 gave us direct instructions -- get what information was
21 available.

22 We have brought that to you. The affidavit they have
23 brought -- we've brought that to you from a disinterested
24 county official. The affidavit they have brought is from a
25 party, who says -- when you read the affidavit and I know The

1 Court will -- that I don't remember what I did that day, but
2 my normal practice is da-da-da-da-da.

3 So that's like in a car wreck case somebody saying I
4 don't remember if I ran this red light, but I know I normally
5 don't run red lights.

6 So, I think there's nothing for The Court to consider in
7 terms of the affidavit that they have submitted. And
8 certainly they haven't created a question of fact.

9 And -- and The Court should grant our Motion for Summary
10 Judgment because the---

11 THE COURT: No, let's don't get into that---

12 MR. KAHN: All right, no problem at all.

13 THE COURT: ---okay? Okay.

14 MR. KAHN: I -- I---

15 THE COURT: I just wanted to address the -- the Motion
16 of Continuance and thank you very much.

17 MR. KAHN: All right; now, the only other thing I'd
18 add -- which has nothing to do with the matter -- I'm
19 supposed to be in front of Judge Early at one-fifteen
20 in Aiken. So, with The Court's permission, I'd like --
21 Sammy Arnold will continue. But I, with The Court's
22 permission, would like to go to Aiken now.

23 THE COURT: Have a -- have a safe trip.

24 MR. KAHN: Thank you; thank you, Your Honor -- unless
25 you have any other questions for me?

1 THE COURT: All right; no, I hear you.

2 Mr. Collins, I apologize that I offended you at the last
3 hearing. If I remember I had difficulty with Mr. -- getting
4 Mr. Goings to answer some of my questions and I stayed at him
5 pretty hard to get a answer.

6 To me, uh, this is not a -- a opinion case. I -- it's a
7 real simple thing I wanted to know; what was available on the
8 delinquent taxes in the Charleston County's office. That's
9 all I wanted to know, 'cause I think that's the crux of this
10 issue.

11 MR. COLLINS: And there is a genuine issue about that.

12 THE COURT: Okay? That -- and that's -- and that's what
13 I wanted to know, okay?

14 MR. COLLINS: Okay; yes, sir.

15 THE COURT: And I -- if I offended you, I apologize,
16 okay?

17 MR. COLLINS: And I apologize.

18 THE COURT: But I -- I -- I remembered getting after
19 Mr. Goings pretty hard trying to get him to answer my
20 questions 'cause he didn't answer my questions. And if it'd
21 been you, I would have done the same thing. When I ask a
22 lawyer a question, I want a answer, not talking about
23 something else.

24 Now, is there anything you want to say in rebuttal on
25 the continuance?

1 MR. COLLINS: Sure.

2 THE COURT: I am not going to consider any opinions that
3 Mr. Balish -- Bellish (phonetic/sic), uh, submitted. I will
4 consider the por- -- portions of his affidavit of what's
5 available as far as notice on taxes and whether they've been
6 paid or they haven't been paid -- okay?

7 MR. COLLINS: Yes, sir.

8 THE COURT: Anything else you want to say on the
9 continuance?

10 MR. COLLINS: Yes, sir; yes, sir. With regard to our
11 Motion for a Continuance, we respectfully submit that we are
12 entitled to depose Mrs. Scarborough and establish through
13 either her deposition or the deposition of others a principle
14 contention that we've made, and that is, nobody can come in
15 here right now and tell you what that screen showed in August
16 of 2006.

17 THE COURT: Well Mr. Collins, you're not mis- -- you
18 apparently don't understand the position that The Court
19 ask- -- took last time and what I'm asking.

20 It's immaterial what's on the screen in -- when was it,
21 August of '05?

22 MS. ARNOLD: It was '06, Your Honor.

23 THE COURT: '06. The point is, the only taxes that were
24 looked at was '05 I believe.

25 MR. COLLINS: No, Your Honor; no, Your Honor.

1 THE COURT: Is that correct?

2 MS. ARNOLD: Your Honor---

3 THE COURT: It was just '05, that was the only taxes
4 that were looked at.

5 MR. COLLINS: No, sir. If you read the deposition --
6 the affidavit testimony of Mr. Feeley---

7 THE COURT: But -- But -- for the purposes of your
8 Motion of Continuance, that's denied okay?

9 Now, the point is I -- if I remember the affidavits and
10 the arguments, the abstractor or whoever -- the title
11 examiner or the whoever certified the title only saw the tax
12 records for one year. Is that correct?

13 MR. COLLINS: No, Your Honor.

14 THE COURT: Okay---

15 MR. COLLINS: No, Your Honor---

16 THE COURT: ---tell me otherwise---

17 MR. COLLINS: ---that is not correct.

18 THE COURT: ---tell me otherwise.

19 MR. COLLINS: The affidavit of Mr. Feeley clearly showed
20 that the screen shows a ten-year history for the search
21 property's tax payments and he looked at that. He looked at
22 all the ten years, Your Honor. That's what he said in his
23 affidavit he looked at.

24 THE COURT: Okay.

25 MR. COLLINS: All right? And, Judge, if -- if -- if I

1 could make my record -- make my record about your last
2 ruling---

3 THE COURT: Forget about your record. I'm gonna make a
4 decision, and I want to hear from you and quit worrying about
5 your record. I'll let you make your record.

6 Where is this information on Mr. Feeley about he looked
7 at the record for ten years?

8 MR. COLLINS: In his affidavit.

9 THE COURT: Have you submitted -- did you submit that
10 last time?

11 MR. COLLINS: Yes, sir, it's in that env- -- unopened
12 envelope.

13 THE COURT: Okay; it's in the envelope. Okay, I'll read
14 it. All right, what else did he say?

15 MR. COLLINS: Well, Your Honor, I'll read the whole
16 affidavit if you want me to do so, because I think it's all
17 important.

18 Um -- he, uh, talks about the---

19 THE COURT: I -- I'll read the affidavit; just make your
20 argument, please Mr. Collins.

21 MR. COLLINS: Well, Your Honor, the argument is his
22 affidavit -- condensing his affidavit. And what he says is,
23 that he has a very thorough---

24 THE COURT: Well, let -- let's back up. It's their
25 burden so let me listen to them first and then you can reply.

1 It's their burden on the Mo- -- Summary Judgment Motion.

2 I denied your Motion of Continuance. The reason I
3 denied it, it was a simple thing I asked to be done. That's
4 been done and you've submitted an affidavit. The Plaintiff
5 has submitted an affidavit. I will consider those, I will
6 listen to arguments, I'll read your Memorandum, I will make a
7 decision. But, I'll be happy to hear the information from
8 the Plaintiff and from the Defendant before I make a
9 decision.

10 Yes, ma'am?

11 MS. ARNOLD: Your Honor, my name is Mary Arnold, on
12 behalf of the Plaintiff.

13 Um -- Judge, I won't go any further into
14 Mrs. Scarborough's affidavit; I think that's done enough.

15 What we have in, uh -- to create or attempt to create a
16 material issue of fact, is an affidavit submitted by the
17 Defendant, Mr. -- Mr. Feeley.

18 And so The Court understands, when we brought this
19 action, we brought the action against Stan Alexander and
20 Mario Inglese who had Stan obtain (balance inaudible).

21 COURT REPORTER: I'm sorry, I'm having trouble hearing
22 you; can you use the microphone?

23 MS. ARNOLD: Sure enough. Uh -- Mr. Inglese then
24 third-partied in Mr. Charles Feeley, um, and brought a
25 claim against him. Mr. Feeley is the individual that

1 did prepare the Title Abstract that the lawyers relied on.

2 So, the affidavit that we now have in opposition to
3 create a material issue of fact is that of Mr. Feeley, who is
4 a party.

5 When The Court looks at this affidavit submitted by
6 Mr. Feeley, you will see that he says, I don't recall doing
7 this particular title search, but this is the normal course
8 that I would follow.

9 In his normal course that he describes, he makes
10 reference to a ten-year screen. A screen that provides a
11 ten-year status of taxes. That is not attached to this
12 affidavit; he just says I merely normally look at that. And
13 I don't have anything that reflects that I did anything
14 because I looked at that ten-year.

15 But, if you look at Ms. Scarborough's affidavit, there
16 is the ten-year screen attached, and it shows in this
17 situation delinquent taxes for 2003 and 2004.

18 So, Your Honor, the mere fact that they have submitted
19 this affidavit by Mr. Feeley -- a party -- and you look at
20 what it actually says, it does not create a material issue of
21 fact.

22 And, that would be our argument. This, Your Honor, we
23 feel -- and I don't mean to minimize -- is a simple case.
24 Closing was conducted, closing was conducted in 2006. The
25 documents you saw at the last hearing all refer to taxes for

1 2005. The issue is the fact that the taxes for 2004 were
2 delinquent and the property was sold in 2005 and that a deed
3 was also another issue. The---

4 THE COURT: The deed was conveyed after this deed was
5 conveyed, right?

6 MS. ARNOLD: Correct; about two months, Your Honor.

7 THE COURT: Okay; all right.

8 MS. ARNOLD: So that redemption period was gone; there
9 was nothing that could be done in redemption period. After
10 that time period they could have had another two years I
11 believe it was to invalidate or from the tax sale invalidate
12 it, which was never done.

13 Um -- but, Your Honor, so again -- not, uh -- not to
14 make it too simple at this -- and our experts testified to
15 it. Not only has our expert testified to it, if you look at
16 this Motion for Summary Judgment, we attached deposition
17 testimony of Mr. Alexander where Mr. Alexander testified yes,
18 it was his duty at the time of the closing to get good,
19 marketable title to this property. And he also admits that
20 didn't happen. I don't think there's any question it didn't
21 happen here. The property had a tax de- -- deficiency on it,
22 the property was sold for delinquent taxes, and the property
23 was conveyed out to a third party by the Tax Delinquent
24 Office.

25 So it -- again, it's simple; we believe we're entitled

1 to Motion for Summary Judgment. We do not believe the
2 affidavit they submitted is a material issue of fact.

3 THE COURT: Okay. All right, Mr. Collins, be glad to
4 hear you.

5 MR. COLLINS: Thank you. Your Honor, the fact that
6 Mr. Feeley is a party does not change the fact that he is a
7 member of The Bar, he is a, uh, expert in title examination.
8 He has given you an affidavit in which he states that he
9 checked the ten-year records, uh -- that's available.

10 Mrs., uh, Arnold says he didn't attach that screen.
11 Your Honor, the only screen he could get right now is the
12 same thing they could get, and that's a screen that dates
13 today.

14 If you look at the screen -- the, uh -- uh, attachments
15 to Mrs. Scarborough's affidavit, one thing that's notable is
16 every one of them has at the top right-hand corner the date
17 5-18-2011. That's all you can get; all you can get is the
18 records now. Nobody has, and nobody can -- as far as I
19 know -- come in here and say, here's what that screen looked
20 like in August of 2006. Nobody has said that.

21 If you read Mrs. Scarborough's affidavit carefully, you
22 see almost in every paragraph -- and I went through that and
23 underscored it -- would have been readily public available,
24 would have been known. She's speculating, Your Honor, and
25 she speculates about what would have been known. That's not

1 testimony on what that screen showed.

2 Mr. Feeley's testimony is, in his affidavit, that he
3 checked it. And the only way he could have gone beyond
4 look -- that -- what was in the screen was to do a Freedom of
5 Information Act request and that is not a routine part of a
6 title examination.

7 He says that when he checked the record, there was
8 nothing on that screen to alert him to any unpaid taxes, and
9 nobody has come forward to refute that because nobody can
10 say.

11 THE COURT: Hold on just a second.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 THE COURT: Go ahead.

16 MR. COLLINS: Nobody has -- nobody can say what that
17 screen showed in 2006.

18 So, Your Honor, there's a genuine issue of material fact
19 about whether or not there was any failure to exercise
20 reasonable care in the course of conducting this---

21 THE COURT: See, Mr. Collins, my problem with your
22 argument is this. I want you to understand my problem and I
23 want you to address it, okay?

24 This property had been referred to the delinquent tax
25 collector for sa- -- sale, okay?

1 MR. COLLINS: But we don't know when---

2 THE COURT: Listen to me for a minute.

3 MR. COLLINS: All right.

4 THE COURT: All you want to do is talk. You don't
5 listen very well, Mr. Collins, okay? Will you listen for a
6 minute? And I will listen to you. Can you do that?

7 MR. COLLINS: Yes, sir.

8 THE COURT: Can you calm down and listen for a few
9 minutes? Just calm down, okay? I'm gonna listen to you, I'm
10 gonna read all your documents before I make a decision, and
11 I'm gonna try to be fair to both parties. But if you'll just
12 calm down and listen.

13 Let me tell you my problem with your argument and then
14 I'll listen to you, okay? Can we do that or do we need to
15 take a break, give you a chance to calm down?

16 MR. COLLINS: No, sir.

17 THE COURT: All right. The problem I have with your
18 argument is this. Charleston County Treasurer had referred
19 this to the -- to the delinquent tax collector, okay? In
20 order for them to do that, the taxes were not paid. So if
21 the tax -- if whoever checked that title had looked at the
22 last ten years where the tax had been paid for the last ten
23 years, they would have found that the taxes had not been
24 paid. Then they would have been required to look further.

25 That -- irregardless of what was on that screen, the

1 property had been referred to the delinquent tax collector, so
2 the Treasurer had put on the computer, taxes not paid.

3 Now, I -- and that's the problem I have with your
4 argument. I'll be glad to listen to you answer to that.

5 MR. COLLINS: Judge, uh, thank you. Nobody can tell us
6 when that record went onto that screen. Nobody has dated
7 precisely when any of the events you just referred to
8 occurred. Nobody can quantify exactly what there was there
9 for Mr. Feeley to see in, uh, August of 2006. Mr. Feeley---

10 THE COURT: But it would have had to show it delinquent
11 in order to be referred to the delinquent tax collector is my
12 point, Mr. Collins.

13 MR. COLLINS: Judge, I believe that that statement you
14 just made is an inference. But, it is not an inference
15 taking the evidence in the light most favorable to the
16 non-moving party. And, at this stage in this proceeding you
17 are required to give those inferences to the Defense, not to
18 the Plaintiff.

19 THE COURT: But I mean, your argument is that there's
20 just nothing and it's mysteriously -- the Treasure
21 mysteriously referred this to the delinquent tax collector.
22 That's basically your argument.

23 MR. COLLINS: Judge, what I'm telling you is Mr. Feeley
24 creates a genuine issue of material fact about what was there
25 in August of 2006 when he checked this title. And nobody

1 that they called, uh, can clear that up sufficiently for you
2 to conclude that there's no genuine issue of material fact to
3 find now.

4 Judge, there are other problems that the Plaintiff has
5 with regard to a Summary Judgment if I may be heard on those?

6 THE COURT: Yes, sir; I'll be glad to hear anything you
7 want to tell me.

8 MR. COLLINS: As -- as Your Honor well knows, in order
9 for there to be liability in -- in nature, there must be a
10 duty -- a breach of a duty, proximate causation, and damages.

11 The Plaintiffs here, Your Honor, have a huge problem
12 with re- -- with regard to causation. They lost this
13 property on a mortgage foreclosure proceeding. The mortgage
14 foreclosure, Your Honor, was brought about by the fact they
15 didn't make their -- their payments.

16 There's a South Carolina case, *Wilson versus Mosley*,
17 recorded on page, uh, thirteen of our brief, which stands for
18 the proposition that a defect in the title -- let me read it
19 to you.

20 Quote -- the fact the property lacked marketable title
21 cannot be the proximate cause of a foreclosure action as a
22 matter of law. Even -- quote -- even if there was a cloud
23 based on the tax deeds, it was not the proximate cause of
24 foreclosure. The proximate cause of Appellant's loss of
25 her -- was her failure to make payments according to the Note

1 which obligations were separate and independent of any
2 alleged problems with the title -- close quote. *Wilson v.*
3 *Mosley*, 488 S.C.(2d) 864.

4 And, Judge, we say that Mrs. Amber Johnson bought this
5 property representing it to be her, uh, her residence --
6 which was untrue -- falsified her income, falsified her
7 assets, made about four or five material, factual, deliberate
8 misrepresentations.

9 She acquired the property; she collects rent on it for
10 years. She quit making her payments after just a few months,
11 continued to collect rent, made over twenty thousand dollars
12 in rent, and then when the title insurance company stepped
13 in -- and that's an important consideration, Your Honor, from
14 the standpoint of causation because later, when the defect,
15 uh, was made known, the title insurance company came in, they
16 cleared up the problem.

17 They went out and bought the property, they paid off
18 the, uh, the party that had bought it at the tax sale. And
19 in fact, Mrs. Amber Johnson received half of the overage, uh,
20 that existed. And so, she made another nine thousand dollars
21 there. So she has, uh, made, uh, according to our
22 calculation, at least twenty-nine thousand dollars net profit
23 off this.

24 THE COURT: Well, and -- and---

25 MR. COLLINS: And so, therefore, Your Honor, there's no

1 proximate---

2 THE COURT: ---can I interrupt -- interrupt you and ask
3 you a question real quick before I -- I forget it?

4 MR. COLLINS: Yes, sir.

5 THE COURT: I understand it's a Partial Summary Judgment
6 for liability and the damage issue is not even before The
7 Court.

8 MR. COLLINS: Well, Your Honor, we believe the proximate
9 causation is---

10 THE COURT: Ms. Arnold, is that correct?

11 MS. ARNOLD: That's absolutely correct, Your Honor.

12 THE COURT: Okay; all right.

13 MR. COLLINS: I agree about the damages point but
14 fully -- Judge, Your Honor, you have to find that there's a
15 proximate causation of some damage before you can---

16 THE COURT: Well, but what -- what -- let me just ask
17 you the second question. If -- if -- I'm not -- I don't know
18 what I'm gonna do, Mr. Collins, I have not made up my mind.
19 I just wanted more information you-all have provided for me;
20 I want to thank both parties.

21 But let's assume that I grant Summary Judgment Motion on
22 their partial liability. All that's gonna do is address the
23 duty and the breach of the duty, then you're gonna have a
24 hearing on the causation and the damages. Is that correct or
25 is that incorrect?

1 MR. COLLINS: I think that's incorrect because the next
2 thing that happens is we -- we -- we appeal Your Honor's
3 ruling.

4 THE COURT: Oh, you think that's incorrect? You think
5 it -- you-all think causation would enter into your damage
6 hearing?

7 MR. COLLINS: Uh -- well, Your Honor, we think the next
8 step would be our appeal to this ruling. Because, according
9 to our research---

10 THE COURT: Well, that's -- that's fine. You're en- --
11 you -- but see, you're avoiding my question. That's fine if
12 you want to appeal it -- my ruling. I don't -- that's fine;
13 that's what you're entitled to do and that's great.

14 But, that's not the question I asked you. I asked you
15 the question -- irrespective of a appeal -- if I rule for
16 their partial Summary Judgment Motion, aren't you then
17 entitled to a damage hearing and causation would enter into
18 the award of any damages? Is that correct or incorrect?

19 MR. COLLINS: I believe that is correct, Your Honor.

20 THE COURT: Okay; thank you for answering my question,
21 okay? I appreciate it very much.

22 MR. COLLINS: May I add to my---

23 THE COURT: Please -- please continue your argument.

24 MR. COLLINS: All right. Judge, in -- in addition
25 to -- to the submission I made just now, we believe that Your

1 Honor must find, at this stage, that there is causation of
2 some damage. As to the amount of the damages, that could be
3 a later day, a later hearing. But, we believe that this
4 hearing, uh, today, before you can, uh, enter a Partial
5 Summary Judgment, you have to find some causation. And we
6 believe that if you read and -- and carefully apply the
7 principle of *Wilson versus Mosley* and take into consideration
8 those items which we have excerpted from Plaintiff's
9 deposition at, uh -- and which are attached as exhibits to
10 our Summary Judgment Memo, you will conclude that there is no
11 proximate cause of any damages.

12 Uh -- lastly, Your Honor, with regards to the issue of
13 liability, we believe that under South Carolina law, uh, the
14 *Simms* case -- *Simms against Hall* -- the Plaintiff has a duty
15 to establish a standard of care through admissible expert
16 testimony. They haven't done that.

17 The only expert they identified was John Brown.
18 Essentially came in and said if a defect in the tile later
19 surfaces, the closing attorney is liable -- period.

20 The -- the standard that he would apply is a standard of
21 strict liability. That is not the law of professional
22 liability in South Carolina.

23 So we believe, Your Honor, the Plaintiffs have not come
24 forward and met the requirement of *Simms against Hall* by
25 showing legal malpractice, uh, occurred in this case because

1 a standard of care, uh, as established by a competent and
2 qualified expert -- who has to be a member of The Bar -- has
3 found in his opinion that that occurred. They don't have
4 that in this case, Your Honor. And we believe without that
5 they sure can't get a Summary Judgment.

6 May I confer?

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE, OFF THE RECORD.)

9 (WHEREUPON, COURT RESUMED.)

10 Thank you, Your Honor.

11 THE COURT: The -- the Court Reporter needs that cite --
12 the case.

13 MR. COLLINS: Yes, sir. The *Simms* case?

14 THE COURT: She didn't get that cite.

15 MR. COLLINS: Very well. *Simms* against *Hall* is found
16 at, uh, 357 S.C. 288; pages 295 and 96 were, uh, the relevant
17 parts. That's also found at 592 S.E.(2d) 315. It was a
18 Court of Appeals case in 2003, Your Honor.

19 THE COURT: Thank you very much, Mr. Collins.
20 Yes, ma'am?

21 MS. ARNOLD: Just a few things, Your Honor. Again,
22 Mary Arnold.

23 Your Honor, I'll draw to this Court's attention -- I
24 think you can take, um, notice of what is also the public
25 record in Charleston County, um, Clerk's Office.

1 There is a related case, um, brought by the, um, lender
2 against Mr. Alexander with this particular closing. And in
3 that case Mr. Alexander submitted an answer and he submitted
4 in that case a cross-claim against Mr. Inglese.

5 In that case he claims there was a breach of contract.
6 The breach of contract was the tax issue was missed, the tax
7 sale was missed, and it shouldn't have been. So, exactly
8 what we are arguing, Mr. Alexander is arguing in another
9 related case about this same transaction.

10 Additionally -- and, Your Honor, I have -- I can hand it
11 up. It's -- it's a filed, um -- their copy, um---

12 **THE COURT:** Okay. But, what other -- anything else on
13 arguments -- oral?

14 **MS. ARNOLD:** Just one last thing, Your Honor. When you
15 look at our Motion for Summary Judgment we have cited the
16 testimony of Mr. Alexander that says, I had a duty, I had a
17 duty to give good, clear title. I didn't do that in this
18 instance because there was a tax deficiency and tax sale.

19 He also says in the citations that we have that that
20 failure of duty proximately caused damages to Mrs. Johnson.

21 As to the foreclosure, so The Court understands, um, the
22 foreclosure action -- you may recall this, Your Honor -- this
23 was a case that we argued in front of you. The first
24 foreclosure was dismissed because when the foreclosure action
25 was brought, it was brought in the wrong name of the lender.

1 It was the Bank of New York case.

2 THE COURT: Okay; yeah, I remember that case---

3 MS. ARNOLD: Okay---

4 THE COURT: ---I sure to. Okay, I remember that case.

5 MS. ARNOLD: ---that case came and went dismissed. We
6 then had a subsequent case---

7 THE COURT: That was the -- it was the Bank of New York
8 rather than Bank of New York Melon (phonetic).

9 MS. ARNOLD: Absolutely, Your Honor. After that case
10 was dismissed, a second case was brought for a foreclosure.
11 That case is not pending -- that's not correct; it is
12 pending, it has been resolved. Mrs. Johnson will not be a
13 party to that foreclosure action any longer. So there has
14 been no foreclosure of Mrs. Johnson's interest in this
15 property.

16 Mrs. Johnson lost the property when the tax sale
17 occurred. It was deeded out of her. But the second
18 foreclosure now is now being resolved and she will not be a
19 party to that action.

20 THE COURT: Okay, thanks very much.

21 MS. ARNOLD: Thank you, Your Honor.

22 THE COURT: Could I ask both parties, have you-all
23 submitted excerpts from depositions and everything that you
24 want The Court to consider? I want to give you a opportunity
25 to submit whatever excerpts of depositions you-all have been

1 talking about. I want to make sure everything's been
2 submitted to The Court to substantiate what you-all's
3 arguments are today so I can read it and make a decision.

4 Has the Plaintiff -- has the Defense done everything?
5 'Cause you-all been talking about depositions; I don't know
6 if you've submitted excerpts or not.

7 MR. GOINGS: Yes, Your Honor; um, Robert Goings for
8 the---

9 THE COURT: Are they attached to your memo?

10 MR. GOINGS: They are, Your Honor.

11 THE COURT: Okay.

12 MR. GOINGS: Uh -- one through ten---

13 THE COURT: Okay; all right.

14 MR. GOINGS: ---Exhibits one through ten.

15 THE COURT: Is there any other excerpts you would like
16 to submit? I will give you the opportunity to do that.

17 MR. COLLINS: Judge, we have no other excerpts that I
18 know of, but, uh, given the fact that we saw this, uh,
19 testimony from, uh, a representative of the County, uh,
20 we, uh, we wonder if there's not someone who is more
21 knowledgeable. Uh -- we -- we did not get this until, uh---

22 THE COURT: All right, well what are you asking me to --
23 what are you asking me to do?

24 MR. COLLINS: Well, Your Honor, I guess I'm going back
25 to the Motion to Continue. We wanted the opportunity to

1 address these, uh, representations and---

2 THE COURT: Well---

3 MR. COLLINS: ---and -- and find out the rest of the
4 story about the, uh, the records that were kept and -- and
5 how they are -- how they are modified. How those screens are
6 updated and that---

7 THE COURT: ---Mr. Collins, if you want to submit a
8 counter-affidavit, I'll give you ten days, okay?

9 MR. COLLINS: Well, uh, thank you.

10 THE COURT: If you want to. If you don't, that's fine.

11 MR. COLLINS: Fine; uh, I -- I'd like to confer, but I
12 appreciate that opportunity. Thank you, Your Honor.

13 THE COURT: Now, is there anything else you want to
14 submit for The Court to consider before I start reading all
15 this and trying -- and making up my mind?

16 MR. COLLINS: Uh -- not at this time, Your Honor.

17 THE COURT: All right. Well, this is the last
18 opportunity you're gonna have to submit anything. I've given
19 you ten days for affidavits. If you want to submit any more
20 excepts from depositions, I'll give you the same ten days.

21 MR. GOINGS: Your Honor, Robert Goings; we'll go back to
22 the office and -- and keep you---

23 THE COURT: Okay, that's fine. Just submit whatever
24 you're going to submit within ten days. I'll give you the
25 same opportunity.

1 MS. ARNOLD: Thank you, Your Honor.

2 THE COURT: If you-all want to submit any new affidavits
3 along for the -- this purpose that's fine. If you want to
4 submit any excerpts I give you the same ten days; okay?

5 MS. ARNOLD: Thank you, Your Honor.

6 THE COURT: All right, is there anything else?

7 MS. ARNOLD: Nothing from the Plaintiff, Your Honor.

8 THE COURT: All right; I'm going to take it under
9 advisement. I will not read anything for ten days until I
10 receive any additional information by either party either by
11 way of affidavit or by excerpts of depositions.

12 MR. GOINGS: Thank you, Your Honor.

13 THE COURT: I -- and I don't know what else I can do to
14 try to get you-all to give me what information you want.
15 Anything else?

16 (NO RESPONSE.)

17 THE COURT: You know, other than continuing and going
18 into deposition and discovery, and I'm not going to do that.

19 All right, thank you-all so very much; I appreciate it.

20 MS. ARNOLD: Thank you, Your Honor.

21 MR. GOING: Thank you, Your Honor.

22 THE COURT: And your letter and all the affidavits and
23 the, uh, memorandum I will submit as a Court's Exhibit to
24 the, uh -- your request for Summary Judgment.

25 (WHEREUPON, COURT EXHIBIT NUMBER 2 WAS ADMITTED INTO

1 EVIDENCE.)

2 (WHEREUPON, COURT EXHIBIT NUMBER 3 WAS ADMITTED INTO
3 EVIDENCE.)

4 (WHEREUPON, COURT EXHIBIT NUMBER 4 WAS ADMITTED INTO
5 EVIDENCE.)

6 MR. INGLESE: Your Honor, I would just like to note --
7 Mario Inglese, one of the Defendants.

8 THE COURT: Yes, sir?

9 MR. INGLESE: The Summary Judgment action is -- is
10 against Stan Alexander and not the remaining Defendants.

11 THE COURT: I understand; it's just against that one.

12 MR. INGLESE: I just wanted you to know, sir.

13 THE COURT: I understand that.

14 MR. INGLESE: Thank you, Your Honor.

15 THE COURT: Thank you very much.

16 (WHEREUPON, HEARING ENDED AT 10:40 A.M.)

17 *****END OF REQUESTED TRANSCRIPT*****
18
19
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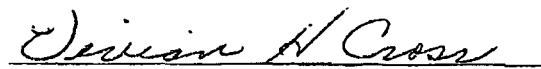
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS
REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS FOR CHARLESTON COUNTY, SOUTH CAROLINA,
ON THE 26th DAY OF MAY 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

FEBRUARY 5, 2012


VIVIAN H. CROSS
CIRCUIT COURT REPORTER

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May 24, 2011

VIA EMAIL AND U.S. MAIL

Robert F. Goings, Esq.
Collins & Lacey, P.C.
PO Box 12487
Columbia, SC 29211
Email: rgoings@collinsandlacy.com

Re: Johnson v. Alexander

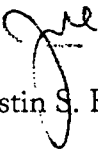
Dear Robert:

Enclosed are two affidavits we have obtained pursuant to Judge Nicholson's request.

Further, to the extent necessary, we hereby supplement our prior discovery responses with this information and identify Mary Scarborough and Todd Balish as witnesses who are expected to testify consistently with the information obtained within the attached affidavits.

Thank you very much.

Sincerely,


Justin S. Kahn

JSK/pm
Encl.

cc: Mario S. Inglese, Esq. (via fax and email, w/encl.)
Charles Feeley, Esq. (via fax, w/encl.)
Mary Leigh Arnold, Esq. (via email, w/encl.)

FILE NO. 1409-101

MAY 25 2011

REC'D JWC/RFG/KCR
COLLINS & LACY



Joel W. Collins, Jr. |
jcollins@collinsandlacy.com

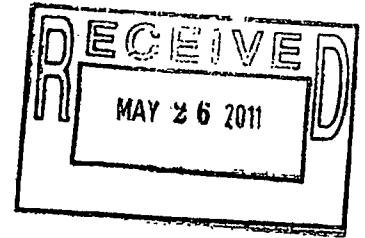
Office: 803.256.2660

E-Mail:

May 25, 2011

VIA U.S. MAIL, EMAIL (JNicholsonJ@sccourts.org) and FACSIMILE

The Honorable J.C. Nicholson, Jr.
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258



Re: Amber Johnson v. Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, PC
C/A No.: 2009-CP-10-6529
C&L File No.: 1409-101

Dear Judge Nicholson:

As you will recall, our firm represents the Defendant, Attorney Stan Alexander in the above styled case. Yesterday afternoon, on May 24, 2011, my partner, Robert Goings, received an email from Attorney Justin Kahn to which he attached two affidavits. One is from Mary Scarborough, the Delinquent Tax Collector of Charleston County, which she signed on May 20, 2011. The other affidavit is from a new expert, Todd Balish, owner of Edisto Title Services, Inc. The Plaintiffs have not previously identified these witnesses in discovery. The only expert Plaintiff has indentified and retained was Attorney John Brown.

Prior to our receiving Mr. Kahn's letter and these two affidavits yesterday afternoon, we filed and submitted our Memorandum of Law Opposing Plaintiff's Motion for Summary Judgment. As we argued in our Memorandum, we believe Plaintiff previously designated expert, Attorney Jay Brown, lacks the qualifications to be recognized as an expert. Even if he is allowed to testify, we argue his opinion does not comport with the well established law of South Carolina regarding professional negligence of a real estate attorney. Essentially Mr. Brown's position, as he stated during his deposition, is a closing attorney is strictly liable if any defect of title later is found. In addition, he stated that he would not have discovered this title irregularity if he served as the title examiner or closing attorney.

Because the Plaintiffs have recast their theory of liability and named a new expert at this late stage, we respectfully submit we are entitled to respond appropriately before Your Honor resumes the hearing on Plaintiff's Motion for Summary Judgment. Rules 56 and 6(d), SCRCP require these affidavits to have been submitted contemporaneous with the filing of the motion itself.

We respectfully submit it would be manifestly unfair if the Court considers these last minute affidavits and to proceed with the hearing tomorrow morning on this motion. We

The Honorable J.C. Nicholson, Jr.
May 25, 2011
Page 2

request, on behalf of our client, the opportunity to respond to these new affidavits, especially the speculative conclusion regarding what information was "readily and publicly available in July, August and September of 2006 in the Office of the RMC office for Charleston County via the Vista 3270". These affidavits do not state what the online records actually showed in 2006 when the title was check by Mr. Feeley..

Accordingly, we hereby request that Your Honor continue tomorrow's hearing for a reasonable period of time to allow the opportunity to depose these witnesses, and if necessary, to obtain counter affidavits. We appreciate Your Honor's consideration of this request. By copy of this letter we are advising opposing counsel of this communication with the Court.

Sincerely,



Joel W. Collins, Jr.

JWCjr:bre

cc: Mary Leigh Arnold, Esquire
Justin S. Kahn, Esquire
Mario S. Inglese, Esquire
Charles Feeley, Esquire
Stanley E. Alexander, Esquire
Mr. Barry Reiber
Honorable Julie J. Armstrong (for filing)

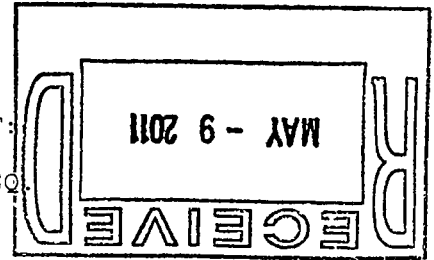
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-10-6259

6529

AMBER JOHNSON,)
)
Plaintiff,)
)
-vs-)
)
STANLEY E. ALEXANDER,)
MARIO S. INGLESE AND)
MARIO S. INGLESE, PC,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF:
STANLEY E. ALEXANDER, ESQ.



Given before Raymond E. Swartz, Notary
Public and Certified Court Reporter, in the Kahn Law
Firm, 562 Savannah Highway, Charleston, South Carolina on
Thursday, December the 16th, 2010, commencing at 10:25
o'clock, a. m.

RAYMOND E. SWARTZ, CSR
Professional Court Reporter
"A Timeless Standard of Excellence"

1 Q And at the time of the closing you handled in
2 September of 2006, you were not aware of the fact that
3 the property had been sold at a tax sale? Correct?

4 A Correct.

5 Q And you agree that a closing lawyer handling a
6 closing is required to determine something like whether
7 or not the property had been sold at a tax sale...?

8 A Well....

9 MR. GOINGS: Object.

10 Q ...before going forward with the closing?

11 MR. GOINGS: Object to the form of the
12 question.

13 A To the best of his ability.

14 Q Okay. And the best of his ability requires
15 that that lawyer exercise good and prudent judgment and
16 use the tools available to him to determine that? Right?

17 MR. GOINGS: Same objection.

18 A Correct.

19 Q The...?

20 MR. KAHN: Let's take a break. Before we
21 started you said I may need to take a quick
22 break, so let's take a break real quick.

23 (The deposition went off the record for a brief
24 period.)

25 Q Alright, we're back from our break. A little

1 MR. GOINGS: Object to the form of the
2 question.

3 A No.

4 Q And why do you say "no?"

5 A Because I relied on the title work of a
6 perfectly capable attorney.

7 Q Alright. You agree that ultimately it's the
8 responsibility of the lawyer handling the closing to
9 ensure that the papers, including the title work, is
10 proper?

11 MR. GOINGS: Object to the form of the
12 question.

13 A Well, unless you are going to do the title
14 again, I don't know how you would do that. And I don't
15 know any lawyer who is going to check the title again
16 after he paid for someone else to check the title.

17 Q Well, is it fair to say, though, in the context
18 of this case that it was your responsibility to make sure
19 that Mrs. Johnson was receiving good and marketable
20 title?

21 MR. GOINGS: Object to the form of the
22 question.

23 A Yes.

24 Q Alright. Is it fair to say that as a result of
25 the tax sale that had taken place in 2005 that Mrs.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NUMBER: 09-CP-10-6529
AMBER JOHNSON,	)	
	)	
PLAINTIFF,	)	DEPOSITION
	)	
VS.	)	OF
	)	
STANLEY E. ALEXANDER,	)	AMBER JOHNSON
MARIO S. INGLESE, AND	)	
MARIO INGLESE PC,	)	
	)	
DEFENDANTS.	)	

DEPOSITION OF AMBER JOHNSON, TAKEN BEFORE LORI
BOGGS REILLY, PROFESSIONAL VERBATIM REPORTER, AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 9:48 A.M., THE 22ND DAY OF FEBRUARY, 2011,
AT THE LAW OFFICES OF THE KAHN LAW FIRM, 562 SAVANNAH HIGHWAY,
CHARLESTON, SOUTH CAROLINA.

COPY

1 **A** **August 2006. I mean it was my parents' address. That**
2 **was when I started law school, so.**

3 **Q** Well, let's say September 11, 2006. You did not live
4 at 1788 Banbury Road, Charleston, South Carolina 29404,
5 did you?

6 **A** **No. I may have still been in a hotel.**

7 **Q** You were living in Florida at the time, correct?

8 **A** **I probably was in a hotel.**

9 **Q** And let's go to page 2 of this document.

10 **Q** It shows that you worked for Invisible Men
11 Entertainment for seven months; is that correct?

12 **A** **No. I've never worked for Invisible Men Entertainment**

13 **Q** Isn't it true that Invisible Men Entertainment, listed
14 on your Uniform Loan Application, is false?

15 MR. KAHN: Objection.

16 **A** **I'm saying I never worked there.**

17 **Q** Ms. Johnson, did someone on your behalf pay money to
18 Invisible Men Entertainment in order to put Invisible
19 Men Entertainment down as a name and address of your
20 employer in the Uniform Residential Loan Application
21 completed for 2640 Ranger Drive?

22 MR. KAHN: Objection.

23 **A** **Not that I know of.**

24 **Q** Isn't it true, Ms. Johnson, that in order to apply for
25 this loan, you needed to show at least two years of

1 Defendant's Exhibit 3.

2 MR. KAHN: Objection.

3 **A No.**

4 Q When was the first time you discovered that your
5 initials were forged on an Uniform Residential Loan
6 Application marked as Defendant's Exhibit 3?

7 MR. KAHN: Objection.

8 **A I saw these forms on Sunday.**

9 Q Who do you believe forged your initials?

10 MR. KAHN: Objection.

11 **A I don't know whose initials they are.**

12 Q Do these initials purport to be your initials, though?

13 MR. KAHN: Objection.

14 **A I don't know what it is.**

15 Q Now, let's look at page 2 of Defendant's Exhibit 3.

16 This also shows that Invisible Men Entertainment was
17 your employer, correct?

18 MR. KAHN: Objection.

19 **A That's what it says.**

20 Q Isn't it true that this is a false statement about
21 Invisible Men being your employer?

22 **A They weren't my employer.**

23 Q Why is Invisible Men Entertainment listed as one of
24 your employers on Page 2 of Defendant's Exhibit 3?

25 **A I don't know.**

1 **A** I don't personally have a life insurance policy that
2 I've paid for.

3 **Q** Has your parents into a life insurance policy on your
4 behalf?

5 **A** I think, I believe my mom has life insurance on me, but
6 I don't know how much it's worth or --

7 **Q** Well, how did this information related to life
8 insurance get placed in this Uniform Residential Loan
9 Application?

10 **A** I don't know.

11 **Q** Now, let's go down to "Automobiles name, make and
12 model." On or about August or September of 2006, did
13 you own a 2000 Dodge?

14 **A** No.

15 **Q** Has anyone in your family owned a 2000 Dodge?

16 **A** My dad.

17 **Q** So your dad's vehicle is listed --

18 MR. KAHN: Objection.

19 **Q** -- in this loan application?

20 MR. KAHN: Objection.

21 **A** Yes, it's listed.

22 **Q** What kind of Dodge did your dad own on or about August
23 or September of 2006?

24 **A** A Dodge -- it was an SUV. I can't think of the --

25 **Q** Was it a Dodge Durango?

- 1 **A** **Yes.**
- 2 **Q** Does he still drive that Dodge Durango today?
- 3 **A** **No.**
- 4 **Q** Did you own a 2003 Nissan?
- 5 **A** **Yes.**
- 6 **Q** In 2006, was this 2003 Nissan valued at 28,000?
- 7 **A** **I'm not sure how much it was valued for?**
- 8 **A** **How much did you pay for this 2003 Nissan.**
- 9 **A** **I'm not even sure of an exact -- it was twenty-**
10 **something I believe.**
- 11 **Q** When did you purchase the 2003 Nissan?
- 12 **A** **2005.**
- 13 **Q** So you bought a 2003 Nissan used; is that correct?
- 14 **A** **Yes.**
- 15 **Q** Where did you buy this Nissan from?
- 16 **A** **You need the name of the dealership?**
- 17 **Q** Yes, ma'am.
- 18 **A** **Marchant Chevrolet or something.**
- 19 **Q** Do you still drive this 2003 Nissan today?
- 20 **A** **No.**
- 21 **Q** When did you sell the 2003 Nissan?
- 22 **A** **August -- no, July 2010.**
- 23 **Q** Why did you sell the 2003 Nissan?
- 24 **A** **I just traded it in. It had a lot of miles on it.**
- 25 **Q** What car do you currently drive?

1 **A A Toyota Camry.**

2 Q What year?

3 **A 2009.**

4 Q You also list personal property in the amount of
5 \$65,000 on this, correct?

6 MR. KAHN: Objection.

7 **A It's listed here.**

8 Q Did you own personal property in the amount of \$65,000
9 on or about August or September of 2006?

10 **A Not that I can think of.**

11 Q On or about August or September of 2006, did you own
12 assets in the amount of \$106,593.

13 **A No, not to my knowledge.**

14 Q Do you believe your listing of assets as shown on page
15 3 of your Residential Loan Application is correct?

16 MR. KAHN: Objection.

17 **A You mean the whole listing or the total?**

18 Q The whole listing, and the total?

19 MR. KAHN: Objection.

20 **A I mean I did have -- the only thing I can see is the**
21 **Nissan.**

22 Q Okay. So as of August or September 2006, the only
23 asset that you had in your name was a 2003 Nissan; is
24 that correct?

25 MR. KAHN: Objection.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	C/A NO: 09-CP-23-8523
AMBER JOHNSON,	)	
	)	
PLAINTIFF,	)	DEPOSITION
	)	
VS.	)	OF
	)	
STANLEY E. ALEXANDER, MARIO	)	JOHN G. BROWN, II, ESQUIRE
S. INGLESE, AND MARIO S.	)	
INGLESE, PC,	)	
	)	
DEFENDANTS.	)	

DEPOSITION OF JOHN G. BROWN, II, ESQUIRE, TAKEN BEFORE
WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE
OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:04 A.M.,
TUESDAY, THE 1ST OF MARCH, 2011, AT THE KAHN LAW FIRM, 562
SAVANNAH HIGHWAY, CHARLESTON, SOUTH CAROLINA 29412.

C O P Y

Page 72

1 opinion that the mere failure to convey clear and
2 marketable title is conduct that falls below the
3 applicable standard of care?

4 A I believe so. I believe, ultimately, it falls -- as I
5 mentioned earlier, it falls at the feet of the closing
6 attorney.

7 Q So it's your testimony that because she did not receive
8 clear and marketable title, then Mr. Alexander is
9 therefore negligible, correct?

10 A Correct.

11 Q Okay. And this opinion that you have reached, what is
12 the factual basis for this opinion?

13 A Well, the fact that the property was sold at a tax sale
14 in 2004, that the deed was recorded subsequent -- or
15 not long after, it doesn't appear. I'm thinking it was
16 about a month or so. I can't remember the exact
17 timeframe, after closing.

18 (OFF THE RECORD)

19 THE WITNESS: Can you read that last part
20 back? I sort of lost track.

21 THE COURT REPORTER: Sure.

22 (WHEREUPON, THE COURT REPORTER READ BACK THE LAST QUESTION.)

23 THE WITNESS: Okay. So I think, essentially
24 where we were, was I said that the standard of
25 care for a closing attorney is such that the

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-06529

Amber Johnson.....Respondent,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,
Of Whom Stanley E. Alexander is the.....Appellant,

Mario S. Inglese and Mario S. Inglese, P.C. Third Party Plaintiffs,

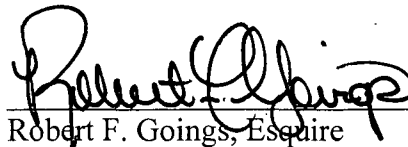
v.

Charles Feeley.....Third Party Defendant.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the Record on Appeal complies with Rule 211(b) SCACR, and the August 31, 2007 Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

By:



Robert F. Goings, Esquire
GOINGS LAW FIRM, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
(803) 350-9230
ATTORNEYS FOR APPELLANT

Columbia, South Carolina
February 20, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-06529

Amber Johnson.....Respondent,

v.

Stanley E. Alexander, Mario S. Inglese and Mario S. Inglese, P.C.,
Of Whom Stanley E. Alexander is the.....Appellant,

Mario S. Inglese and Mario S. Inglese, P.C. Third Party Plaintiffs,

v.

Charles Feeley.....Third Party Defendant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210 (g), SCACR, the undersigned hereby certifies the Record on Appeal in the above-captioned matter contains all material proposed to be included by any of the parties and not any other material.

By:



Robert F. Goings, Esquire
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ATTORNEYS FOR APPELLANT

Columbia, South Carolina
February 20, 2013